



Finance (No. 2) Act 2005

2005 CHAPTER 22

PART 2

INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

CHAPTER 1

PERSONAL TAXATION

Social security pension lump sums

7 Charge to income tax on lump sum

- (1) A charge to income tax arises where a person becomes entitled to a social security pension lump sum.
- (2) For the purposes of the Tax Acts (including subsection (5)) a social security pension lump sum—
 - (a) is to be treated as income, but
 - (b) is not to be taken into account in determining the total income of any person.
- (3) The person liable to a charge under this section is the person (“P”) entitled to the lump sum, whether or not P is resident^{F1}... or domiciled in the United Kingdom.
- (4) The charge is imposed on P for the applicable year of assessment (see subsection (6)).
- (5) A charge under this section is a charge in respect of the amount of the lump sum at the following rate—
 - (a) if P's [^{F2}Step 3 income] for the applicable year of assessment is nil, 0%;
 - ^{F3}(b)
 - (c) if P's [^{F2}Step 3 income] for that year of assessment [^{F4}is greater than nil] but does not exceed the basic rate limit for that year, the basic rate for that year;

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- (d) if P's [^{F2}Step 3 income] for that year of assessment exceeds the basic rate limit for that year [^{F5}but does not exceed the higher rate limit for that year], the higher rate for that year.
- [^{F6}(e) if P's Step 3 income for that year of assessment exceeds the higher rate limit for that year, the additional rate for that year.]
- (6) Section 8 makes provision as to the meaning of “the applicable year of assessment” for the purposes of this section.
- (7) Section 9 contains further definitions and makes provision as to commencement.
- (8) Section 10 contains consequential amendments.
- [^{F7}(9) For the purposes of this section P's “ Step 3 income ” means P's net income less allowances deducted at Step 3 of the calculation in section 23 of ITA 2007 (calculation of income tax liability).]

Textual Amendments

- F1** Words in s. 7(3) omitted (with effect in accordance with Sch. 46 para. 135(2) of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 135\(1\)](#)
- F2** Words in s. 7(5) substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 604\(2\)](#) (with [Sch. 2](#))
- F3** S. 7(5)(b) omitted (with effect in accordance with Sch. 1 para. 65 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 1 para. 64\(a\)](#)
- F4** Words in s. 7(5)(c) substituted (with effect in accordance with Sch. 1 para. 65 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 1 para. 64\(b\)](#)
- F5** Words in s. 7(5)(d) inserted (with effect in accordance with Sch. 2 para. 25 of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 2 para. 24\(a\)](#)
- F6** S. 7(5)(e) inserted (with effect in accordance with Sch. 2 para. 25 of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 2 para. 24\(b\)](#)
- F7** S. 7(9) inserted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 604\(3\)](#) (with [Sch. 2](#))

8 Meaning of “applicable year of assessment” in section 7

- (1) For the purposes of section 7 “the applicable year of assessment” has the meaning given by this section.
- (2) Subject to subsections (5) to (7), the applicable year of assessment is—
- (a) the year of assessment in which the first benefit payment day falls, or
 - (b) if P dies before the beginning of that year of assessment, the year of assessment in which P dies.
- (3) For the purposes of subsection (2) “the first benefit payment day” is, subject to subsection (4), the day as from which P's—
- (a) Category A or Category B retirement pension,
 - (b) shared additional pension, or
 - (c) graduated retirement benefit,
- becomes payable following the period of deferment by virtue of which P's entitlement to the lump sum arises.
- (4) But where—

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- (a) the lump sum is a state pension lump sum to which P is entitled under paragraph 7A of Schedule 5 to SSCBA 1992 or paragraph 7A of Schedule 5 to SSCB(NI)A 1992 or a graduated retirement benefit lump sum to which P is entitled under a provision corresponding to either of those paragraphs, and
- (b) at the time of S's death, P was entitled to a Category A or Category B retirement pension or (as the case may be) graduated retirement benefit,
- the first benefit payment day is the day on which S died; and for this purpose “S” is the person by virtue of whose period of deferment P's entitlement to the lump sum arises.
- (5) Subsections (6) and (7) apply where social security regulations make provision enabling the making of an election for a social security pension lump sum to be paid in the year of assessment (“the later year of assessment”) next following that given by subsection (2).
- (6) If such an election is made by P and is not revoked, the applicable year of assessment is—
- (a) the later year of assessment, or
- (b) if P dies before the beginning of that year of assessment, the year of assessment in which P dies.
- (7) If—
- (a) P dies after the beginning of the later year of assessment,
- (b) by the time of P's death, P has not notified the Secretary of State as to whether or not P wishes to make such an election,
- (c) social security regulations make provision enabling the making of such an election in such a case by the personal representatives of P, and
- (d) P's personal representatives make such an election in accordance with the regulations,
- the applicable year of assessment is the later year of assessment.
- (8) For the purposes of determining the applicable year of assessment, it does not matter when the lump sum is actually paid.
- (9) In this section—
- “Category A or Category B retirement pension” means Category A or Category B retirement pension under Part 2 of SSCBA 1992 or Part 2 of SSCB(NI)A 1992;
- “graduated retirement benefit” means graduated retirement benefit under section 36 or 37 of NIA 1965 or section 35 or 36 of NIA(NI) 1966;
- “shared additional pension” means shared additional pension under Part 2 of SSCBA 1992 or Part 2 of SSCB(NI)A 1992;
- “social security regulations” means any regulations under—
- (a) the Social Security Administration Act 1992 (c. 5), or
- (b) the Social Security Administration (Northern Ireland) Act 1992 (c. 8).
- (10) This section is to be construed as one with section 7.

9 Interpretation and commencement

- (1) In sections 7 and 8 “social security pension lump sum” means—
- (a) a state pension lump sum,

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- (b) a shared additional pension lump sum, or
 - (c) a graduated retirement benefit lump sum.
- (2) In section 8 and this section—
- “graduated retirement benefit lump sum” means a lump sum payable under—
 - (a) section 36 or 37 of NIA 1965, or
 - (b) section 35 or 36 of NIA(NI) 1966;
 - “shared additional pension lump sum” means a lump sum payable under—
 - (a) section 55C of, and Schedule 5A to, SSCBA 1992, or
 - (b) section 55C of, and Schedule 5A to, SSCB(NI)A 1992;
 - “state pension lump sum” means a lump sum payable under—
 - (a) section 55 of, and Schedule 5 to, SSCBA 1992, or
 - (b) section 55 of, and Schedule 5 to, SSCB(NI)A 1992.
- (3) In section 8 and this section—
- “NIA 1965” means the National Insurance Act 1965 (c. 51);
 - “NIA(NI) 1966” means the National Insurance Act (Northern Ireland) 1966 (c. 6 (N.I.));
 - “SSCBA 1992” means the Social Security Contributions and Benefits Act 1992 (c. 4);
 - “SSCB(NI)A 1992” means the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7).
- (4) Sections 7 and 8 and this section have effect in relation to the year 2006-07 and subsequent years of assessment.

10 Consequential amendments

- (1) ITEPA 2003 is amended as follows.
- (2) In section 577 (UK social security pensions) after subsection (1) insert—
- “(1A) But this section does not apply to any social security pension lump sum (within the meaning of section 7 of F(No.2)A 2005).”.
- (3) In section 683 (PAYE income) in subsection (3) (meaning, subject to subsection (4), of “PAYE pension income”) in the opening words, for “subsection (4)” substitute “subsections (3A) and (4)”.
- (4) In that section, after subsection (3) insert—
- “(3A) “PAYE pension income” for a tax year also includes any social security pension lump sum (within the meaning of section 7 of F(No.2)A 2005) in respect of which a charge to income tax arises under that section for that tax year.”.
- (5) In section 686 (meaning of “payment”) in subsection (1) (rules as to when payment of, or on account of, PAYE income is to be treated as made for the purposes of PAYE regulations) at the end of the subsection insert— “ But this is subject to subsection (5) (PAYE pension income: social security pension lump sums). ”.
- (6) In that section, after subsection (4) insert—

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“(5) For the purposes of PAYE regulations, a payment of, or on account of, an amount which is PAYE pension income of a person by virtue of section 683(3A) (social security pension lump sums) is to be treated as made at the time when the payment is made.”.

^{F8}(7)

Textual Amendments

F8 S. 10(7) omitted (21.7.2009) by virtue of [Finance Act 2009 \(c. 10\)](#), s. **126(6)(b)**

Gift aid

^{F9}**11 Donations to charity by individuals**

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Textual Amendments

F9 S. 11 repealed (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), **Sch. 3 Pt. 1** (with [Sch. 2](#))

Employee securities

12 Employee securities: anti-avoidance

Schedule 2 contains amendments relating to employee securities.

CHAPTER 2

SCIENTIFIC RESEARCH ORGANISATIONS

^{F10}**13 Corporation tax exemption for organisations**

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Textual Amendments

F10 S. 13 repealed (1.4.2010, with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), **Sch. 3 Pt. 1** (with [Sch. 2](#))

14 Income tax deduction for payments to organisations

- (1) Section 88 of ITTOIA 2005 (income tax deduction for payments to research associations etc.) is amended as follows.
- (2) In subsection (1) (conditions for deduction), for the words from the beginning of paragraph (a) to “research” in paragraph (b) substitute—

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- “(a) pays any sum to an Association in the case of which exemption may be claimed under section 508 of ICTA and which has as its object the undertaking of research and development which may lead to or facilitate an extension of the class of trade to which the trade carried on by the person belongs, or
 - (b) pays any sum to be used for scientific research related to that class of trade”.
- (3) In subsection (4), omit paragraph (a) (meaning of “approved” in relation to scientific research association).
- (4) In subsection (5) (references to scientific research related to a class of trade), for “references in this section” substitute “reference in subsection (1)(b)”.
- (5) This section has effect in relation to sums paid to an Association during any accounting period of the Association beginning on or after the day appointed under section 13(6).

15 Corporation tax deduction for payments to organisations

- (1) Section 82B of ICTA (corporation tax deduction for payments to research associations etc.) is amended as follows.
- (2) In subsection (1) (conditions for deduction), for the words from the beginning of paragraph (a) to “above” in paragraph (b) substitute—
- “(a) pays any sum to an Association in the case of which exemption may be claimed under section 508 and which has as its object the undertaking of research and development which may lead to or facilitate an extension of the class of trade to which the trade carried on by the company belongs, or
 - (b) pays any sum to be used for scientific research related to that class of trade”.
- (3) In subsection (3) (reference to scientific research related to a class of trade), for “this section” substitute “subsection (1)(b) above”.
- (4) This section has effect in relation to sums paid to an Association during any accounting period of the Association beginning on or after the day appointed under section 13(6).

CHAPTER 3

AUTHORISED INVESTMENT FUNDS ETC

F11 16 Open-ended investment companies

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Textual Amendments

- F11** S. 16 repealed (1.4.2010, with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 3 Pt. 1** (with Sch. 2)

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17 Authorised unit trusts and open-ended investment companies

- (1) The following provisions shall cease to have effect—
 - (a) sections 468H to 468Q of ICTA (authorised unit trusts),
 - ^{F12}(b)
 - ^{F12}(c)
 - (d) section 373(4) and (6) of ITTOIA 2005 (open-ended investment company: interest distributions), and
 - (e) section 376(4) and (6) of ITTOIA 2005 (authorised unit trust: interest distributions).
- (2) In this Chapter “authorised investment funds” means—
 - (a) authorised unit trust schemes, and
 - (b) open-ended investment companies.
- (3) The Treasury may, by regulations—
 - (a) make provision about the treatment of authorised investment funds for the purposes of an enactment relating to taxation;
 - (b) provide for the modification of an enactment relating to taxation in its application in relation to—
 - (i) authorised investment funds,
 - (ii) shareholders or unit holders in authorised investment funds, or
 - (iii) transactions involving authorised investment funds;
 - (c) impose requirements on persons responsible for the management of an authorised investment fund in relation to the provision of information, the form of accounts, the keeping of records or other administrative matters.
- (4) For the purposes of this Chapter—
 - (a) “unit trust scheme” has the meaning given by section 237 of the Financial Services and Markets Act 2000 (c. 8),
 - (b) a unit trust scheme is authorised in relation to an accounting period if an order under section 243 of the Financial Services and Markets Act 2000 is in force in relation to that scheme during the whole or part of that accounting period,
 - (c) “unit holder” means a person entitled to a share of the investments subject to the trusts of a unit trust scheme,
 - (d) a reference to a shareholder or unit holder includes a person beneficially entitled to shares or units (and a reference to owning units or shares shall be construed accordingly),
 - (e) “open-ended investment company” means a company incorporated in the United Kingdom to which section 236 of the Financial Services and Markets Act 2000 applies,
 - (f) “associate” has the meaning given by section 417 of ICTA,
 - (g) “net asset value” means the value of the assets of the authorised investment fund, after the deduction of specified liabilities,
 - (h) a reference to a distribution includes investing an amount on behalf of a unit holder or shareholder in respect of his accumulation units or accumulation shares,
 - (i) “distribution accounts” means accounts showing—
 - (i) the total amount available for distribution to unit holders or shareholders, and

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- (ii) how that amount is computed,
- (j) the “distribution date” for a distribution period in relation to an authorised investment fund means—
 - (i) the date specified by or in accordance with the terms of the trust or the instrument of incorporation of the company for any distribution for that distribution period, or
 - (ii) if no date is specified, the last day of that distribution period,
- (k) “distribution period” in relation to an authorised investment fund means a period by reference to which the total amount available for distribution to unit holders or shareholders is ascertained,
- (l) “umbrella company” has the meaning given by [^{F13}section 615 of the Corporation Tax Act 2010],
- (m) “umbrella scheme” has the meaning given by [^{F14}section 619 of the Corporation Tax Act 2010], and
- (n) [^{F15}section 1122 of the Corporation Tax Act 2010] (connected persons) applies.

Textual Amendments

- F12** S. 17(1)(b)(c) repealed (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), **Sch. 3 Pt. 1** (with [Sch. 2 Pts. 1, 2](#))
- F13** Words in s. 17(4)(l) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), **Sch. 1 para. 479(a)** (with [Sch. 2](#))
- F14** Words in s. 17(4)(m) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), **Sch. 1 para. 479(b)** (with [Sch. 2](#))
- F15** Words in s. 17(4)(n) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), **Sch. 1 para. 479(c)** (with [Sch. 2](#))

Commencement Information

- I1** S. 17 partly in force; s. 17(2)-(4) in force at Royal Assent, see s. 19(1)
- I2** S. 17(1) in force at 1.4.2006 for the purposes of corporation tax, with effect as specified in art. 2(3) of the commencing S.I. and 6.4.2006 for the purposes of income tax, with effect as specified in art. 2(2) of the commencing S.I. by [S.I. 2006/982](#), **art. 2**

18 Section 17(3): specific powers

- (1) Regulations under section 17(3)(a) or (b) may make provision about distributions which may, in particular—
 - (a) require an authorised investment fund to comply with prescribed rules for determining (whether by reference to a formula or otherwise) what proportion of an amount shown in distribution accounts as available for distribution is to be distributed by way of dividends and what proportion is to be distributed by way of yearly interest;
 - (b) permit persons responsible for the management of an authorised investment fund to elect to distribute entirely by way of dividends;
 - (c) require distribution accounts to show the amount available for distribution—
 - (i) by way of dividends;
 - (ii) by way of yearly interest;

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- (d) allow a distribution of yearly interest for a distribution period to be deducted, in the prescribed manner, in computing the profits of the authorised investment fund for the accounting period in which the last day of that distribution period falls;
 - (e) make provision for determining the distribution date in relation to a distribution period of an authorised investment fund;
 - (f) permit distributions to be made, in prescribed circumstances, to or for the benefit of a person not ^{F16}... resident in the United Kingdom without deducting tax;
 - (g) permit distributions to be made without deducting tax, in prescribed circumstances, to a person ^{F16}... resident in the United Kingdom who is unlikely to be liable to pay an amount by way of income tax for the year of assessment in which the distribution is made;
 - (h) include provision, in respect of a unit holder or shareholder who is within the charge to corporation tax, about—
 - (i) the liability to corporation tax resulting from receipt of a distribution, and
 - (ii) the method of computing that liability.
- (2) Regulations under section 17(3)(a) or (b) may, in particular—
- (a) make special provision for loan relationships held by an authorised investment fund;
 - (b) make special provision for derivative contracts held by an authorised investment fund;
 - ^{F17}(c) modify the meaning of “relevant holding” for the purposes of—
 - (i) sections 490 and 492 of the Corporation Tax Act 2009 (loan relationships), and
 - (ii) section 587 of that Act (derivative contracts).]
 - (d) make special provision in relation to the treatment of umbrella companies and umbrella schemes (or shareholders or unit holders in umbrella companies or umbrella schemes);
 - (e) prohibit action which favours a class of unit holders or shareholders.
- (3) Regulations under section 17(3)(a) or (b) may, in particular—
- (a) make special provision in relation to a person who, alone or together with associates or connected persons, owns (otherwise than as a nominee) units or shares, in a fund designated by the [^{F18}Financial Conduct Authority] as a Qualified Investor Scheme, which represent 10% or more (or such other percentage as the regulations may specify) of the net asset value of the fund;
 - (b) include exceptions from provision made by virtue of paragraph (a) above including, in particular, an exception relating to units or shares held—
 - (i) by a charity ^{F19}...,
 - (ii) by a registered pension scheme (within the meaning of section 150 of FA 2004),
 - ^{F20}(iii) by an insurance company (within the meaning of section 65 of FA 2012) as assets for the purposes of its long-term business (within the meaning of section 63 of that Act),]or
 - (iv) by such other persons, in such circumstances, as the regulations may specify.

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- (4) Regulations under section 17(3)(c) may, in particular, require persons responsible for the management of an authorised investment fund to supply information to, and make available books, documents and other records for inspection by, the Commissioners for Her Majesty's Revenue and Customs.
- (5) Regulations under section 17(3) may, in particular—
- (a) amend a reference in an enactment to a provision repealed by section 17(1);
 - (b) make different provision for different circumstances;
 - (c) make incidental, consequential, supplemental or transitional provision.

Textual Amendments

- F16** Word in s. 18(1)(f)(g) omitted (17.7.2013) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 136](#)
- F17** S. 18(2)(c) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), [Sch. 1 para. 669](#) (with [Sch. 2 Pts. 1, 2](#))
- F18** Words in s. 18(3)(a) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 18 para. 108](#) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)
- F19** Words in s. 18(3)(b)(i) omitted (1.4.2012) by virtue of [Finance Act 2010 \(c. 13\)](#), [Sch. 6 paras. 22, 34\(2\)](#); [S.I. 2012/736](#), art. 16
- F20** S. 18(3)(b)(iii) substituted (17.7.2012) by [Finance Act 2012 \(c. 14\)](#), [Sch. 16 para. 124](#)

19 Section 17: commencement and procedure

- (1) Section 17(1) shall come into force on such day as the Treasury may appoint by order.
- (2) An order under subsection (1) may—
- (a) commence only a specified repeal;
 - (b) commence different repeals at different times;
 - (c) commence a repeal at different times for different purposes;
 - (d) include savings.
- (3) Regulations under section 17(3) shall be subject to annulment by a resolution of the House of Commons.
- (4) But the first set of regulations under section 17(3) may not be made unless a draft has been laid before and approved by resolution of the House of Commons.

20 Unauthorised unit trusts: chargeable gains

- (1) Section 100 of TCGA 1992 (exemption for authorised unit trusts, etc) shall be amended as follows.
- (2) After subsection (2) insert—
- “(2A) In determining whether subsection (2) applies no account shall be taken of units in a scheme which—
- (a) have been disposed of by a unit holder, and
 - (b) are held by the managers of the scheme (in that capacity) pending disposal.

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(2B) In determining whether subsection (2) applies no account shall be taken of the possibility of a charge to corporation tax on income in respect of a gain accruing on a disposal by—

- (a) an insurance company (within the meaning given by section 431 of the Taxes Act), or
- (b) a friendly society (being an incorporated friendly society or registered friendly society within the meaning given by section 466(2) of the Taxes Act).”

(3) This section shall have effect for the year 2005-06 and subsequent years of assessment.

21 Unit trusts: treatment of accumulation units

(1) In Chapter 3 of Part 3 of TCGA 1992 (collective investment schemes, etc) after section 99A insert—

“99B Calculation of the disposal cost of accumulation units

(1) For the purposes of computing the gain accruing on a disposal by a unit holder of units in a unit trust scheme and for the purposes of all other provisions of this Act, an amount shall be treated as expenditure falling within section 38(1)

(b) if—

- (a) it represents income from the investments subject to the unit trust scheme,
- (b) it has been reinvested in respect of the units on behalf of the unit holder (without an issue of new units), and
- (c) it is either—
 - (i) charged to income tax as income of the unit holder (or would be charged to income tax as his income but for a relief which has effect in respect of it) for the purposes of the Income Tax Acts, or
 - (ii) taken into account as a receipt in calculating profits, gains or losses of the unit holder for the purposes of the Income Tax Acts.

(2) Where an amount is treated as expenditure by virtue of subsection (1), the expenditure shall be treated for the purposes of this Act as having been incurred—

- (a) in relation to an authorised unit trust, on the distribution date for the distribution period in respect of which the amount is reinvested, and
- (b) in relation to any other unit trust scheme, on the date on which the amount is reinvested.

(3) In subsection (2)(a) “distribution date” and “distribution period” shall have the meaning given by section 468H of the Taxes Act.”

(2) This section shall have effect in relation to a disposal of units on or after 16th March 2005.

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22 Section 349B ICTA: exemption for distributions to PEP/ISA managers

- (1) Section 349B(4) of ICTA (requirement for individual to be entitled to income tax exemption) shall be amended as follows.
- (2) In paragraph (a) after “of a plan” insert “ of a kind to which regulations under Chapter 3 of Part 6 of ITTOIA 2005 (income from individual investment plans) apply ”.
- (3) Paragraph (b) shall cease to have effect.
- (4) This section shall have effect in relation to payments made on or after 6th April 2005.

F21 23 Offshore funds

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Textual Amendments

- F21** S. 23 repealed (with effect in accordance with reg. 1(2)(3), Sch. 1 of the amending S.I.) by [The Offshore Funds \(Tax\) Regulations 2009 \(S.I. 2009/3001\)](#), reg. 1(1), [Sch. 2](#)

CHAPTER 4

AVOIDANCE INVOLVING TAX ARBITRAGE

F22 24 Deduction cases

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Textual Amendments

- F22** Ss. 24-28 repealed (1.4.2010, with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), s. 381(1), Sch. 8 para. 152, [Sch. 10 Pt. 3](#) (with Sch. 9 paras. 1-9, 22)

F22 25 Rules relating to deductions

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Textual Amendments

- F22** Ss. 24-28 repealed (1.4.2010, with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), s. 381(1), Sch. 8 para. 152, [Sch. 10 Pt. 3](#) (with Sch. 9 paras. 1-9, 22)

F22 26 Receipts cases

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Status: Point in time view as at 17/07/2013.

Changes to legislation: There are currently no known outstanding effects for the Finance (No. 2) Act 2005, Part 2. (See end of Document for details)

Textual Amendments

F22 Ss. 24-28 repealed (1.4.2010, with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), s. 381(1), Sch. 8 para. 152, **Sch. 10 Pt. 3** (with Sch. 9 paras. 1-9, 22)

F22 27 Rule as to qualifying payment

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Textual Amendments

F22 Ss. 24-28 repealed (1.4.2010, with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), s. 381(1), Sch. 8 para. 152, **Sch. 10 Pt. 3** (with Sch. 9 paras. 1-9, 22)

F22 28 Notices under sections 24 and 26

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Textual Amendments

F22 Ss. 24-28 repealed (1.4.2010, with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), s. 381(1), Sch. 8 para. 152, **Sch. 10 Pt. 3** (with Sch. 9 paras. 1-9, 22)

F23 29 Amendments relating to company tax returns

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Textual Amendments

F23 S. 29 repealed (1.4.2010, with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), s. 381(1), **Sch. 10 Pt. 3** (with Sch. 9 paras. 1-9, 22)

F24 30 Interpretation

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Textual Amendments

F24 S. 30 repealed (1.4.2010, with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), s. 381(1), Sch. 8 para. 153, **Sch. 10 Pt. 3** (with Sch. 9 paras. 1-9, 22)

Status: Point in time view as at 17/07/2013.

Changes to legislation: There are currently no known outstanding effects for the Finance (No. 2) Act 2005, Part 2. (See end of Document for details)

F25 31 Commencement

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Textual Amendments

F25 S. 31 repealed (1.4.2010, with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 8 para. 154, Sch. 10 Pt. 3](#) (with Sch. 9 paras. 1-9, 22)

CHAPTER 5

CHARGEABLE GAINS

Residence, location of assets etc

32 Temporary non-residents

- (1) Section 10A of TCGA 1992 is amended as follows.
- (2) In subsection (3) (certain gains or losses to be excluded from being treated by virtue of subsection (2) as accruing to the taxpayer in year of return)—
 - (a) in paragraph (a), for “he was neither resident nor ordinarily resident in the United Kingdom” substitute—
 - “(i) he was neither resident nor ordinarily resident in the United Kingdom, or
 - (ii) he was resident or ordinarily resident in the United Kingdom but was Treaty non-resident;”;
 - (b) in paragraph (d), after “152(1)(b)” insert “, 153(1)(b) ”.
- (3) In subsection (8) (definitions) in the definition of “relevant disposal”, after “United Kingdom” insert “ and was not Treaty non-resident ”.
- (4) For subsection (9) substitute—
 - “(9) For the purposes of this section an individual satisfies the residence requirements for a year of assessment—
 - (a) if, during any part of that year of assessment, he is resident in the United Kingdom and not Treaty non-resident, or
 - (b) if he is ordinarily resident in the United Kingdom during that year of assessment, unless he is Treaty non-resident during that year of assessment.
 - (9A) For the purposes of this section an individual is Treaty non-resident at any time if, at that time, he falls to be regarded as resident in a territory outside the United Kingdom for the purposes of double taxation relief arrangements having effect at that time.
 - (9B) Where this section applies in the case of any individual in circumstances in which one or more intervening years would, but for his being Treaty non-resident during some or all of that year or those years, not be an intervening year, this section shall have effect in the taxpayer's case—

Status: Point in time view as at 17/07/2013.

Changes to legislation: There are currently no known outstanding effects for the Finance (No. 2) Act 2005, Part 2. (See end of Document for details)

- (a) as if subsection (2)(a) above did not apply in the case of any amount treated by virtue of section 87 or 89(2) as an amount of chargeable gains accruing to the taxpayer in any such intervening year, and
 - (b) as if any such intervening year were not an intervening year for the purposes of subsections (2)(b) and (c) and (6) above.”.
- (5) After subsection (9B) (as inserted by subsection (4) above) insert—
- “(9C) Nothing in any double taxation relief arrangements shall be read as preventing the taxpayer from being chargeable to capital gains tax in respect of any of the chargeable gains treated by virtue of subsection (2)(a) above as accruing to the taxpayer in the year of return (or as preventing a charge to that tax from arising as a result).”.
- (6) Omit subsection (10) (section to be without prejudice to right to claim relief under double taxation relief arrangements).
- (7) The amendments in subsections (2)(a), (4), (5) and (6) have effect—
- (a) in any case in which the year of departure is, or (on the assumption that the amendment in subsection (4) had always had effect) would be, the year 2005-06 or a subsequent year of assessment; and
 - (b) in any case in which—
 - (i) the year of departure is, or (on that assumption) would be, the year 2004-05, and
 - (ii) at a time in that year on or after 16th March 2005, the taxpayer was resident or ordinarily resident in the United Kingdom and was not Treaty non-resident (within the meaning given by section 10A(9A) of TCGA 1992, as inserted by subsection (4)).
- (8) The amendment in subsection (2)(b) has effect in relation to relevant disposals made on or after 16th March 2005.
- (9) The amendment in subsection (3) has effect for determining whether a disposal of an asset is a relevant disposal for the purposes of section 10A of TCGA 1992 in any case in which the person making the disposal acquired the asset on or after 16th March 2005.

33 Trustees both resident and non-resident in a year of assessment

- (1) After section 83 of TCGA 1992 insert—

“83A Trustees both resident and non-resident in a year of assessment

- (1) This section applies if a chargeable gain accrues to the trustees of a settlement on the disposal by them of an asset in a year of assessment and the trustees—
 - (a) are within the charge to capital gains tax in that year of assessment, but
 - (b) are non-UK resident at the time of the disposal.
- (2) Where this section applies, nothing in any double taxation relief arrangements shall be read as preventing the trustees from being chargeable to capital gains tax (or as preventing a charge to tax arising, whether or not on the trustees) by virtue of the accrual of that gain.

Status: Point in time view as at 17/07/2013.

Changes to legislation: There are currently no known outstanding effects for the Finance (No. 2) Act 2005, Part 2. (See end of Document for details)

- (3) For the purposes of this section the trustees of a settlement are within the charge to capital gains tax in a year of assessment—
- (a) if, during any part of that year of assessment, they are resident in the United Kingdom and not Treaty non-resident, or
 - (b) if they are ordinarily resident in the United Kingdom during that year of assessment, unless they are Treaty non-resident during that year of assessment.
- (4) For the purposes of this section the trustees of a settlement are non-UK resident at a particular time if, at that time,—
- (a) they are neither resident nor ordinarily resident in the United Kingdom, or
 - (b) they are resident or ordinarily resident in the United Kingdom but are Treaty non-resident.
- (5) For the purposes of this section the trustees of a settlement are Treaty non-resident at any time if, at that time, they fall to be regarded as resident in a territory outside the United Kingdom for the purposes of double taxation relief arrangements having effect at that time.”
- (2) The amendment made by this section has effect in relation to disposals made on or after 16th March 2005.

34 Location of assets etc

Schedule 4 (which makes provision in relation to the situation of assets for the purposes of TCGA 1992 and which makes minor amendments in that Act in relation to non-resident companies with United Kingdom permanent establishments) has effect.

Miscellaneous

35 Exercise of options etc

Schedule 5 (which makes provision, for the purposes of the taxation of chargeable gains, in relation to options) has effect.

^{F26}36 Notional transfers within a group

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Textual Amendments

- F26** S. 36 omitted (with effect in accordance with Sch. 12 para. 5 of the amending Act) by virtue of [Finance Act 2009 \(c. 10\)](#), [Sch. 12 para. 4\(d\)](#)

Status: Point in time view as at 17/07/2013.

Changes to legislation: There are currently no known outstanding effects for the Finance (No. 2) Act 2005, Part 2. (See end of Document for details)

CHAPTER 6

MISCELLANEOUS

Accounting practice and related matters

37 Accounting practice and related matters

Schedule 6 (accounting practice and related matters) has effect.

Financial avoidance etc

38 Charges on income for the purposes of corporation tax

- (1) Section 338A of ICTA (meaning of “charges on income” for the purposes of corporation tax) is amended as follows.
- (2) In subsection (2) (what are charges on income) paragraph (a) (annuities or other annual payments that meet the conditions in section 338B) shall cease to have effect.
- ^{F27}(3)
- (4) In section 434A(2)(a) of ICTA (loss resulting to insurance company from computation in accordance with Case I of Schedule D: reduction by specified amounts) omit subparagraph (i) (which relates to charges on income).
- ^{F28}(5)
- (6) The amendment made by subsection (4) has effect for accounting periods beginning on or after 1st April 2004.
- (7) The other amendments made by this section have effect in relation to payments made on or after the commencement date in respect of annuities or other annual payments.
- (8) Where—
 - (a) an accounting period of a company begins before, and ends on or after, the commencement date,
 - (b) a payment in respect of an annuity or other annual payment is made by the company in that period but before the commencement date, and
 - (c) the payment is deductible as a charge on income for the purposes of corporation tax,subsection (9) applies.
- (9) In any such case, so much of any amount as represents that payment—
 - (a) is not deductible under section 75 of ICTA (expenses of management), and
 - (b) is not to be brought into account under section 76 of that Act (expenses of insurance companies) as expenses payable,for that or any subsequent accounting period.
- (10) Subsection (12) applies in any case where—
 - (a) a payment in respect of an annuity or other annual payment is made by a company on or after the commencement date, and
 - (b) the condition in subsection (11) is satisfied.

Status: Point in time view as at 17/07/2013.

Changes to legislation: There are currently no known outstanding effects for the Finance (No. 2) Act 2005, Part 2. (See end of Document for details)

- (11) The condition is that the payment represents an amount which (apart from subsection (12))—
- (a) would not be deductible under section 75 of ICTA, or
 - (b) would not fall to be brought into account under section 76 of that Act,
- by reason only of section 337A(1)(b) of that Act (company's income from any source to be computed without any deduction in respect of charges on income) as it applies by virtue of section 338A(2)(a) of that Act.
- (12) In any such case, the amount represented by the payment—
- (a) is deductible under section 75 of ICTA, or
 - (b) falls to be brought into account under section 76 of that Act as expenses payable,
- for the accounting period in which the payment is made.
- (13) In this section “the commencement date” means 16th March 2005.

Textual Amendments

- F27** S. 38(3) repealed (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), **Sch. 3 Pt. 1** (with [Sch. 2](#))
- F28** S. 38(5) repealed (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), **Sch. 3 Pt. 1** (with [Sch. 2](#))

39 Avoidance involving financial arrangements

Schedule 7 (which makes provision in relation to tax avoidance involving financial arrangements) has effect.

Financing of companies etc

40 Transfer pricing and loan relationships

Schedule 8 (which amends Schedule 28AA to ICTA and Schedule 9 to FA 1996) has effect.

Intangible fixed assets

^{F29}41 Intangible fixed assets

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Textual Amendments

- F29** S. 41 repealed (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), **Sch. 3 Pt. 1** (with [Sch. 2 Pts. 1, 2](#))

Status: Point in time view as at 17/07/2013.

Changes to legislation: There are currently no known outstanding effects for the Finance (No. 2) Act 2005, Part 2. (See end of Document for details)

Insurance companies etc

42 Insurance companies etc

Schedule 9 (which makes provision about insurance companies etc) has effect.

International matters

F30 43 Implementation of the amended Parent/Subsidiary Directive

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Textual Amendments

F30 S. 43 repealed (1.4.2010, with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), s. 381(1), [Sch. 10 Pt. 1](#) (with [Sch. 9 paras. 1-9, 22](#))

44 Territories with a lower level of taxation: reduction of amount of local tax

(1) Section 750 of ICTA (controlled foreign companies: territories with a lower level of taxation) is amended as follows.

(2) In subsection (1), after “if” insert “, after giving effect to subsections (1A) and (1B) below,”.

(3) After subsection (1) insert—

“(1A) If in the case of that accounting period there is any income, or any income and any expenditure, of the company—

(a) which is brought into account in determining the profits of the company in respect of which tax is paid under the law of that territory, but

(b) which does not also fall to be brought into account in determining the chargeable profits of the company,

the local tax shall be treated for the purposes of this Chapter as reduced to what it would have been had that income and any such expenditure not been so brought into account.

(1B) If—

(a) under the law of that territory any tax (“the company's tax”) falls to be paid by the company in respect of profits of the company arising in that accounting period,

(b) under that law, any repayment of tax, or any payment in respect of a credit for tax, is made to a person other than the company, and

(c) that payment or repayment is directly or indirectly in respect of the company's tax,

the local tax shall be treated for the purposes of this Chapter as reduced (or further reduced) by the amount of that payment or repayment.”.

Status: Point in time view as at 17/07/2013.

Changes to legislation: There are currently no known outstanding effects for the Finance (No. 2) Act 2005, Part 2. (See end of Document for details)

- (4) The amendments made by this section have effect in relation to accounting periods of companies resident outside the United Kingdom beginning on or after 2nd December 2004.
- (5) Where an accounting period of a company resident outside the United Kingdom—
- (a) would, without amendment, have ended on or after 2nd December 2004, but
 - (b) is amended on or after that date so as to end before that date,
- an accounting period of the company shall be deemed for the purposes of Chapter 4 of Part 17 of ICTA to have ended with 1st December 2004.
- (6) In this section “accounting period” has the same meaning as in Chapter 4 of Part 17 of ICTA (see section 751).

Miscellaneous

45 Lloyd's underwriters: assessment and collection of tax

- (1) Omit section 173 of, and Schedule 19 to, FA 1993 (Lloyd's underwriters: assessment and collection of tax).
- (2) In section 182 of that Act (regulations) in subsection (1)(a) (power of Commissioners for Her Majesty's Revenue and Customs to make regulations providing for assessment and collection of tax charged in accordance with section 171 of FA 1993, so far as not provided for by Schedule 19 to that Act) omit “(so far as not provided for by Schedule 19 to this Act)”.
- (3) In that section, at the end insert—
- “(6) Any power to make regulations conferred by this section includes power to make—
- (a) different provision for different cases or different purposes, and
 - (b) incidental, supplemental or transitional provision and savings.”.

(4) Omit section 221 of FA 1994 (Lloyd's underwriters: corporations etc: assessment and collection of tax).

(5) Renumber section 229 of that Act (regulations) as subsection (1) of that section.

(6) In subsection (1) of that section (as amended by subsection (5) above), in paragraph (a) (power of Commissioners for Her Majesty's Revenue and Customs to make regulations providing for assessment and collection of tax charged in accordance with section 219 of FA 1994, so far as not provided for by Schedule 19 to FA 1993 as applied by section 221 of FA 1994) omit “(so far as not provided for by Schedule 19 to the 1993 Act as applied by section 221 above)”.

(7) In that section, at the end insert—

“(2) Any power to make regulations conferred by this section includes power to make—

 - (a) different provision for different cases or different purposes, and
 - (b) incidental, supplemental or transitional provision and savings.”.

(8) For the purpose of enabling the making of any regulations under—

 - (a) section 182(1)(a) of FA 1993 (as amended by subsection (2)), or

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Changes to legislation: There are currently no known outstanding effects for the Finance (No. 2) Act 2005, Part 2. (See end of Document for details)

- (b) section 229(1)(a) of FA 1994 (as amended by subsection (6)), subsections (1) to (7) come into force on the day on which this Act is passed.
- (9) Subject to that, those subsections come into force in accordance with provision made by the Treasury by order.
- (10) Section 828(3) of ICTA shall not apply in relation to an order under subsection (9).
- (11) The Commissioners for Her Majesty's Revenue and Customs may by regulations make such amendments, repeals or revocations in any enactment (including an enactment amended by this section) as appear to them to be appropriate in consequence of any one or more of the following—
- (a) any amendment made by this section;
 - (b) the exercise by them of the power in section 182(1)(a) of FA 1993 (as amended by subsection (2));
 - (c) the exercise by them of the power in section 229(1)(a) of FA 1994 (as amended by subsection (6)).
- (12) Any power conferred by this section to make an order or regulations includes power to make—
- (a) different provision for different cases or different purposes, and
 - (b) incidental, supplemental or transitional provision and savings.
- (13) In this section—
- “enactment” includes an enactment comprised in subordinate legislation;
 - “subordinate legislation” has the same meaning as in the Interpretation Act 1978 (c. 30) (see section 21 of that Act).

Commencement Information

- I3** S. 45 partly in force; s. 45(1)-(7) in force for certain purposes at Royal Assent and s. 45(8)-(13) in force at Royal Assent, see s. 45(8)(9)
- I4** S. 45(1)-(3) in force at 6.4.2006 in so far as not already in force by [S.I. 2005/3337, art. 3](#)
- I5** S. 45(4)-(7) in force at 1.1.2006 in so far as not already in force by [S.I. 2005/3337, art. 2](#)

46 Energy Act 2004 and Health Protection Agency Act 2004

- (1) This section provides for certain enactments to cease to have effect which relate to—
- (a) the United Kingdom Atomic Energy Authority (“UKAEA”),
 - (b) the National Radiological Protection Board (“NRPB”), or
 - (c) pension schemes run by UKAEA.
- (2) In ICTA the following provisions shall cease to have effect—
- (a) section 349B(3)(g) (no deduction of tax from certain payments to UKAEA);
 - (b) section 349B(3)(h) (no deduction of tax from certain payments to NRPB);
 - (c) section 512(1) and (3) (certain exemptions from income tax and corporation tax for UKAEA and NRPB);
 - (d) section 512(2) (treatment of certain income of pension schemes run by UKAEA).

Status: Point in time view as at 17/07/2013.

*Changes to legislation: There are currently no known outstanding effects
for the Finance (No. 2) Act 2005, Part 2. (See end of Document for details)*

- (3) In section 271(7) of TCGA 1992 (miscellaneous exemptions from tax in respect of chargeable gains)—
- (a) for “Memorial Fund, the” substitute “ Memorial Fund and the ”;
 - (b) omit “, the United Kingdom Atomic Energy Authority”;
 - (c) omit “and the National Radiological Protection Board”;
 - (d) omit from “; and for the purposes” to the end of the subsection (treatment of gains accruing to pension schemes run by UKAEA).
- (4) In subsection (2)—
- (a) paragraph (a) has effect in relation to payments made on or after 1st April 2005;
 - (b) paragraph (b) has effect in relation to payments made after 1st April 2005;
 - (c) paragraph (c), so far as relating to UKAEA, has effect on and after 1st April 2005;
 - (d) paragraph (c), so far as relating to NRPB, has effect after 1st April 2005;
 - (e) paragraph (d) has effect in relation to income arising on or after 1st April 2005.
- (5) In subsection (3)—
- (a) paragraphs (a) and (c) have effect in relation to gains accruing after 1st April 2005;
 - (b) paragraphs (b) and (d) have effect in relation to gains accruing on or after 1st April 2005.
- (6) The repeal of subsection (3)(g) of section 349B of ICTA does not affect the application of any other provision of that section in relation to UKAEA.
- (7) Nothing in this section affects—
- (a) any accounting period of UKAEA ending before 1st April 2005, or
 - (b) any accounting period of NRPB ending on or before 1st April 2005.

Status:

Point in time view as at 17/07/2013.

Changes to legislation:

There are currently no known outstanding effects for the Finance (No. 2) Act 2005, Part 2.