



Finance (No. 2) Act 2005

2005 CHAPTER 22

PART 2

INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

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.
- (3) In section 125(1) of ICTA (annual payments for non-taxable consideration) for “income tax,” substitute “ income tax and ”.
- (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).

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- (5) The side-note to section 494 of ICTA (charges on income) becomes “ Loan relationships etc. ”.
- (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.
- (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.

39 Avoidance involving financial arrangements

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

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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

41 Intangible fixed assets

(1) Schedule 29 to FA 2002 (gains and losses of a company from intangible fixed assets) is amended as set out in subsections (2) to (4).

(2) In paragraph 92 (transfer between company and related party treated as being at market value)—

- (a) in sub-paragraph (1), for “the following two exceptions” substitute “ the following four exceptions ”;
- (b) after sub-paragraph (4) insert—

“(4A) The third exception is where—

- (a) the asset is transferred from the company at less than its market value, or to the company at more than its market value,
- (b) the related party—
 - (i) is not a company, or
 - (ii) is a company in relation to which the asset is not a chargeable intangible asset immediately after the transfer to it or (as the case may be) immediately before the transfer from it,

and

- (c) by virtue of any provision of—
 - (i) section 209 of the Taxes Act 1988 (meaning of “distribution”), or
 - (ii) Part 3 of the Income Tax (Earnings and Pensions) Act 2003 (employment income: earnings and benefits etc treated as earnings),

the transfer gives rise (or would give rise but for sub-paragraph (1)) to an amount to be taken into account in computing any person's income, profits or losses for tax purposes.

(4B) Where the third exception applies, sub-paragraph (1) does not apply, in relation to the computation mentioned in sub-paragraph (4A)(c), for the purposes of any such provision as is mentioned there.

(4C) The fourth exception is where—

- (a) the asset is transferred to the company, and
- (b) on a claim for relief under section 165 of the Taxation of Chargeable Gains Act 1992 (relief for gifts of business

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assets) in respect of the transfer, a reduction is made under subsection (4)(a) of that section.

(4D) Where the fourth exception applies—

- (a) the transfer is treated for the purposes of this Schedule as being at market value less the amount of the reduction;
- (b) all such adjustments as may be required, by way of assessment, amendment of returns or otherwise, may be made (notwithstanding any time limit on the making of an assessment or the amendment of a return)."

(3) In paragraph 95 (meaning of "related party") for Case Three substitute—

"Case Three C is a close company and P is, or is an associate of—

- (a) a participator in C, or
- (b) a participator in a company that has control of, or holds a major interest in, C."

(4) In paragraph 132 (roll-over relief: transitory interaction with relief on replacement of business asset), in sub-paragraph (5) (disapplication for certain corporation tax purposes of Classes 4 to 7 in section 155 of TCGA 1992)—

- (a) for "4 to 7" substitute " 4 to 7A ";
- (b) for "(goodwill and various types of quota)" substitute " (goodwill and certain other intangible assets) ".

(5) In section 86(2) of FA 1993 (roll-over relief: power to amend section 155 of TCGA 1992 by order) for the words after "may make such consequential amendments" substitute "of—

- (a) Schedule 7AB to the Taxation of Chargeable Gains Act 1992, or
- (b) paragraph 132 of Schedule 29 to the Finance Act 2002,

as appear to the Treasury to be appropriate. "

(6) The amendments made by subsection (2) have effect in relation to any transfer of an asset made on or after 16th March 2005.

(7) The amendment made by subsection (3) has effect, for the purposes of paragraph 92 of Schedule 29 to FA 2002 as it applies otherwise than for determining the debits or credits to be brought into account under that Schedule, in relation to any transfer of an asset made on or after 16th March 2005.

(8) That amendment has effect, for all other purposes of that Schedule, in relation to the debits or credits to be brought into account for accounting periods beginning on or after 16th March 2005 (and, in relation to the debits or credits to be brought into account for any such period, shall be deemed always to have had effect).

(9) An accounting period beginning before, and ending on or after, that date is treated for the purposes of subsection (8) as if so much of that period as falls before that date, and so much of that period as falls on or after that date, were separate accounting periods.

(10) The amendments made by subsection (4) have effect in relation to any such acquisition as is referred to in paragraph 132(5) of Schedule 29 to FA 2002 made on or after 22nd March 2005.

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Insurance companies etc

42 Insurance companies etc

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

International matters

43 Implementation of the amended Parent/Subsidiary Directive

(1) Section 801 of ICTA (dividends paid between related companies: relief for UK and third country taxes) is amended as follows.

(2) After subsection (5) (meaning of one company being related to another) insert—

“(5A) For the purposes of subsections (2) and (3) above (including any determination of the extent to which underlying tax paid by the third, fourth or subsequent company in question would be taken into account under this Part if the conditions specified for the purpose in subsection (2) above were satisfied) a company is also related to another company if that other company—

(a) controls directly or indirectly, or

(b) is a subsidiary of a company which controls directly or indirectly, not less than 10% of the ordinary share capital of the first-mentioned company.”.

(3) The amendment made by this section has effect where the dividend mentioned in section 799(1) of ICTA is paid on or after 1st January 2005.

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,

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- (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.”.
- (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—

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- “(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
 - (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

- II** 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)

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);

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- (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).
- (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.

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