

INCOME TAX (TRADING AND OTHER INCOME) ACT 2005

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Schedule 2: Transitionals and savings etc.

Part 5: Savings and investment income: general

Paragraph 78: Open-ended investment companies: saving for powers to make provision corresponding to provisions applicable to unit trusts

3562. Section 152 of FA 1995 enables regulations to be made for securing that the Tax Acts and TCGA and some other enactments have effect in relation to open-ended investment companies, their holdings and assets and transactions relating to them in a way corresponding to that in which they have effect in relation to unit trusts. However, this Act rewrites the effect of some of the regulations made under this power as free-standing provisions without reference to unit trusts. (See sections 373 to 375 and sections 386 to 388). So this saving is necessary to preserve the power in section 152 of FA 1995 so that regulations may continue to be made for achieving any purpose that could be achieved by such regulations before enactment of those sections, because after their enactment they will not be provisions that relate to unit trusts.

Paragraph 80: Deeply discounted securities: deemed transfers of strips on 5th April

3563. Paragraph 14(4) of Schedule 13 to FA 1996 provides that a strip of a government security is deemed to be transferred on 5 April and reacquired the following day. This is rewritten in section 445 of this Act as a disposal and reacquisition on the same day. See *Change 87* in Annex 1. This change will not work as it should for the tax year beginning 6 April 2005, when this Act first has effect, because while paragraph 14(4) of Schedule 13 to FA 1996 will deem a disposal on 5 April it will have been repealed on 6 April. There will therefore be no deemed reacquisition.

3564. This provision ensures that the strip will be deemed to have been reacquired on 6 April 2005.

Paragraphs 82 and 83: Profits from deeply discounted securities: saving for charities' losses and Profits from deeply discounted securities: saving for pension trustees' losses

3565. These two provisions rewrite paragraph 7(1) and (3) of Schedule 13 to FA 1996. These sub-paragraphs deal with losses on deeply discounted securities incurred by charities and pension trustees where the securities have been held since 26 March 2003 and are listed on a recognised stock exchange. Because these provisions are likely to be of extremely limited application they have been relegated from Chapter 8 of Part 4 of this Act (deeply discounted securities) of this Schedule.

Paragraph 84: Exclusion of deeply discounted securities from section 711 to 718 of ICTA (accrued income profits)

3566. Section 710(3) of ICTA lists securities which are excluded from the accrued income scheme in Chapter 2 of Part 17 of ICTA. Section 710(3)(f) of ICTA (securities which are relevant discounted securities within Schedule 13 to FA 1996) has been consequentially amended by Schedule 1 to this Act to refer to deeply discounted securities within Chapter 8 of Part 4 of this Act.
3567. Before FA 2003, paragraph 11 of Schedule 13 to FA 1996 was the only exclusion of relevant discounted securities from the accrued interest scheme. As part of the provisions for removing loss relief on relevant discounted securities, paragraph 5(2)(c) of Schedule 39 to FA 2003 repealed paragraph 11 of Schedule 13 to FA 1996 and added relevant discounted securities to the list of securities outside the accrued income scheme in section 710(3)(f) of ICTA.
3568. But paragraph 6(1)(b) of Schedule 39 to FA 2003 repeals paragraph 11 of Schedule 13 to FA 1996 only in relation to a *loss* on a relevant discounted security on or after 26 March 2003 and applies section 710(3)(f) of ICTA only in relation to *losses* on or after that date.
3569. Moreover paragraph 6(2)(b) of Schedule 13 to FA 1996 provides a saving for changes introduced by paragraphs 5(2) and (4) of that Schedule if the security is quoted on a recognised stock exchange and has been held continuously since before 27 March 2003. In those circumstances paragraph 7 of Schedule 13 to FA 1996 continues to apply.
3570. The complex position that emerges is:
- section 710(3)(f) of ICTA applies only where losses arise unless the loss arises on a quoted security held since before 27 March 2003; and
 - paragraph 11 of Schedule 13 to FA 1996 continues to apply for all gains but also for losses arising on a quoted security held since before 27 March 2003.
3571. It serves no purpose to have one provision applying to gains and another to losses and the repeal of paragraph 11 of Schedule 13 to FA 1996 and insertion of section 710(3)(f) of ICTA suggest that this was not the intention.
3572. This paragraph therefore applies section 710(3)(f) of ICTA for all disposals after 6 April 2005.

Paragraph 85: Gains from contracts for life insurance etc: foreign policies of life insurance

3573. This paragraph preserves the status of certain foreign policies of life insurance as *qualifying policies* under Schedule 15 to ICTA where the policy had that status prior to the amendment of section 553(2) and (7) of ICTA by section 55(8) of FA 1995. That amendment removed qualifying policy status from policies which depended for it on satisfying the condition in paragraph 24(4) (rather than paragraph 24(3)) of Schedule 15 to ICTA. Some foreign policies were issued by insurers who were, at that time, subject to UK tax under section 445 of ICTA and such policies were only qualifying policies within the meaning of Schedule 15 to ICTA by virtue of paragraph 24(4) of that Schedule. This paragraph is based on section 55(8) of FA 1995.
3574. Where this paragraph applies, the provisions mentioned in section 474(2) apply to the policy in question. But an individual or trustee who is chargeable on a gain arising in respect of such a policy will get the income tax allowance provided by section 530 where condition B in section 531 is met.

Paragraph 86: Gains from contracts for life insurance etc: exclusion of pension policies

3575. Chapter 9 of Part 4 of this Act anticipates the amendment by FA 2004 of Part 14 of ICTA (pension schemes, social security benefits, life annuities etc.), so that it uses the descriptions which will be substituted from 6 April 2006. This paragraph preserves the original descriptions in the unamended source legislation for the tax year 2005-06.

Paragraphs 87 and 88: Gains from contracts for life insurance etc: rights partially assigned

3576. FA 2001 introduced rules, inserted as section 546A of ICTA, to determine what assignments are regarded as taking place when certain assignments of part or a share of the rights under a policy or contract are assigned. Paragraph 87 ensures that any question of what is or is not an assignment of such a part or share, in relation to times before section 546A of ICTA applies, is determined without regard to section 505 (which rewrites section 546A of ICTA). This paragraph is based on section 83 of FA 2001.

3577. FA 2001 also amended Chapter 2 of Part 13 of ICTA so that an assignment of rights under the policy or contract before 6 April 2001 which is not for money or money's worth is ignored. Paragraph 88 ensures that such assignments which occurred before that date continue to be valued as they were valued prior to the amendments of FA 2001 if the value of such an assignment is material to the operation of Chapter 9 of Part 4 of this Act. This paragraph is based on section 83 of FA 2001.

Paragraph 89: Gains from contracts for life insurance etc: regulations providing for relief where foreign tax chargeable

3578. This paragraph preserves the original scope of the powers in section 56(3) of FA 1995 which are rewritten in section 534. It is based on section 56(3) of FA 1995.

Paragraph 90: Gains from contracts for life insurance etc: pure protection group life policies

3579. FA 2003 amended the law in respect of group life policies to ensure that such policies do not give rise to gains chargeable under Chapter 2 of Part 13 of ICTA. Provision was also made to disregard as a chargeable event any event happening before 9 April 2003, if it happened in respect of a particular type of group life policy (a "pure protection group life policy"). This paragraph preserves that disregard should it be necessary to consider, for the purposes of Chapter 9 of Part 4 of this Act, whether any event happening before that date in relation to such a policy has been a chargeable event. This paragraph is based on paragraph 3 of Schedule 34 to FA 2003.

Paragraph 91: Gains from contracts for life insurance etc: assessment of trustees etc

3580. This paragraph preserves the commencement date for the FA 1998 amendments to Chapter 2 of Part 13 of ICTA (liability of trustees in respect of gains from life policies etc.), so that the FA 1989 rules on the assessment of trustees (as amended by paragraph 411 of Schedule 1 to this Act) do not refer to gains from chargeable events before 6 April 1998. This paragraph is based on paragraph 7 of Schedule 14 to FA 1998.

Paragraphs 92 and 93: Transactions in deposits

3581. Paragraph 92 is based on section 56(3) of ICTA. It preserves a commencement rule for the source legislation rewritten in Chapter 11 of Part 4 of this Act should there be any extant pre-7 March 1973 certificates of deposit. See the commentary on that Chapter in Volume 2 of these Explanatory Notes.

*These notes refer to the Income Tax (Trading and Other Income)
Act 2005 (c.5) which received Royal Assent on 24 March 2005*

3582. **Paragraph 93** is based on paragraph 6 of Schedule 8 to FA 1992. It preserves a commencement rule for the source legislation rewritten in Chapter 11 of Part 4 of this Act should there be any extant pre-16 July 1992 uncertificated deposits.

Paragraph 94: Disposals of futures and options involving guaranteed returns: certain pre-6th February 1998 transactions

3583. This paragraph ensures that section 564 (deemed disposal where futures run to delivery or options are exercised) will not apply where the transaction took place before 6 February 1998.

Paragraph 95: Disposals of futures and options involving guaranteed returns: rates of tax for pension trustees

3584. This paragraph modifies Condition C in section 568 (special rule for certain income of trustees) for the tax year 2005-06. It rewrites paragraph 7(2)(c) of Schedule 5AA to ICTA as it stands before the amendments made by FA 2004, which only apply for the tax year 2006-07 onwards.