

INCOME TAX (TRADING AND OTHER INCOME) ACT 2005

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Schedule 2: Transitionals and savings etc.

Part 7: Savings and investment income: gains from contracts for life insurance etc. (personal portfolio bonds)

Overview

3647. This part of this Schedule is wholly concerned with that part of the Personal Portfolio Bonds (Tax) Regulations [SI 1999/1029](#) (abbreviated in this commentary as “PPB(T)R”) which applies to policies and contracts in existence before 17 March 1998. It is based on regulation 3 of PPB(T)R. It also takes into account part of ESC B53 as it applies to such policies and contracts.

Paragraph 119: Pre-17th March 1998 contract or policy: conditions to be met for contract or policy not to be a personal portfolio bond

3648. This paragraph sets out the conditions to be satisfied if such a pre-17 March 1998 policy or contract is to avoid being a personal portfolio bond. It is based on regulation 3 of PPB(T)R. The “date condition” and the “non-variation condition” are similar to the commencement provisions commonly met when the scope of the chargeable event gains regime has been amended. See the notes on those paragraphs in Part 6 of this Schedule where such similar conditions apply (for example: paragraph 96 (pre-20th March 1968 policies and contracts excluded from Chapter 9 of Part 4)).

Paragraph 120: The date condition

3649. This paragraph is based on regulation 3 of PPB(T)R.

Paragraph 121: The non-variation condition

3650. This paragraph is based on regulation 3 of PPB(T)R.

Paragraph 122: The first selection condition

3651. A policy or contract must meet the first or second selection condition. This paragraph sets out the simpler of the two, that any index or property used to determine benefits under the policy or contract has, at all times in the period from 6 April 1994 (or from the commencement of the policy or contract, if later) to the date the policy or contract is being assessed against the conditions, fallen within permitted categories. The 1994 terminal date is a pragmatic reflection of the potential difficulty of establishing compliance with this condition in more distant periods. This paragraph is based on regulation 3 of PPB(T)R.

Paragraph 123: The second selection condition

3652. This paragraph is based on regulation 3 of PPB(T)R. The second selection condition applies where a policy:
- which does not meet the first selection condition; but
 - whose benefits have not in fact been determined by reference to an index or property outside the permitted categories;
 - is varied by the end of the first insurance year beginning on or after 6 April 1999 to eliminate from the determination of benefits any such index or property outside the permitted categories.
3653. In effect, the second selection condition provides a period of grace for a policy or contract to put itself into a comparable state to one meeting the first selection condition.

Paragraph 124: Policy holders becoming UK resident after 17th March 1998

3654. This paragraph defines and may extend the period of grace in the second selection condition where the holder of the policy or contract is non-UK resident on 17 March 1998 but subsequently becomes so, although *not* then intending to become permanently UK resident or to stay at least two years. It is based on regulations 3 and 5 of PPB(T)R.
3655. Where such a holder is an individual, Part 1 of ESC B53 (rewritten in part in section 465(1)) would excuse such a holder from the income tax for which that holder is liable on a gain for a tax year in which the holder is not UK resident.
3656. This paragraph (which incorporates material from Part 3 of ESC B53) seeks to give a newly UK resident holder of a policy or contract time in which to make the necessary variation to the policy or contract, so as to meet the second selection condition.
3657. *Sub-paragraph (2)* provides the terminal date by which the policy must be varied if it is to meet condition C of the second selection condition (see paragraph 123 (the second selection condition)).
3658. As the holder does not intend to become permanently UK resident, or to stay for at least two years, the variation must be carried out before the end of the first insurance year to begin after UK residence first begins by virtue of arrival after 17 March 1998 (or the first insurance year ending on 5 April 2000 or later, where that is more beneficial). Given that residence is in strictness for a year, UK residence will begin on 6 April preceding arrival. The holder may have as little as a day or two in which to make the variation. Although ESC A11 splits income in that first year of United Kingdom residence, treating income up to the day of arrival as not chargeable, and uses similar criteria regarding a person's intentions for UK residence, it has no bearing on the operation of the rule here.
3659. *Sub-paragraph (3)* further relaxes the incidence of the special personal portfolio bond charge where a policy or contract meets the second selection condition (and otherwise meets the terms of paragraph 119) by virtue of the extended period of grace given by the modification of the second selection condition (see paragraph 123 (the second selection condition)).
3660. Until the required variation is made, and the second selection condition is met, the policy or contract may be a personal portfolio bond. An insurance year may end after the relevant date and before the variation is made, so triggering a gain under section 525 if there has been a chargeable event in that year.
3661. This sub-paragraph sets aside that gain, so that no chargeable event under section 525 occurs, and no-one is liable under sections 465 to 468. If need be, corrective action will be taken under the Self Assessment system to negate any assessment made before the variation took effect.

3662. See *Change 157* in Annex 1.

Paragraph 125: Policy holders becoming permanently UK resident after 17th March 1998

3663. This paragraph performs the same function as the preceding paragraph, with the difference that it deals with policyholders who intend to become permanently UK resident or to stay at least two years. It is based on regulation 3 of PPB(T)R.

3664. The effect of that difference of intention shows up in *sub-paragraph (2)(b)*. The terminal date by which the policy must be varied if it is to meet condition C of the second selection condition is reckoned from the policy year beginning after the relevant date of arrival in the United Kingdom, rather than that beginning after the commencement of UK residence. The holder will therefore have at least 12 months from arrival, perhaps nearly two years, in which to effect the necessary variation.

3665. *Sub-paragraph (3)* has the same effect as the equivalent sub-paragraph in paragraph 124 (policy holders becoming UK resident after 17th March 1998), but with effect over a longer period.

3666. See *Change 157* in Annex 1.

Paragraph 126: Meaning of “permitted index”

3667. This paragraph is based on regulation 3 of PPB(T)R.

Paragraph 127: Meaning of “permitted property”

3668. This paragraph is based on regulation 3 of PPB(T)R.

3669. It extends the categories of permitted property, for the purposes of paragraphs 122 and 123 (the first and second selection conditions), beyond those listed in section 520. The added categories are all stocks and shares listed or dealt with in open markets after the beginning of the period mentioned in those paragraphs. (The Alternative Investment Market succeeded the Unlisted Securities Market.)

3670. *Sub-paragraph (2)* puts a cap on stocks and shares listed on those markets which are not a recognised stock exchange, where the investment in the company exceeds 10% of:

- the issued share capital of the company; or
- the total amount of premiums paid under the policy or contract.

3671. The reference to “the total amount of premiums paid” in *sub-paragraph (2)(b)* is to be construed in accordance with the definitions in section 545.

Paragraph 128: Other definitions

3672. This paragraph is based on regulations 2 and 3 of PPB(T)R.