



Income Tax (Trading and Other Income) Act 2005

2005 CHAPTER 5

PART 5

MISCELLANEOUS INCOME

CHAPTER 5

SETTLEMENTS: AMOUNTS TREATED AS INCOME OF SETTLOR [^{F1}OR FAMILY]

Capital sums treated as income of settlor: trustees' payments

636 Calculation of undistributed income

- (1) For the purposes of section 635, [^{F2}unprotected] income arising under a settlement in any tax year is treated as [^{F2}unprotected] income which has not been distributed so far as it exceeds the total amount of—
 - (a) the sums to which subsection (2) applies,
 - (b) the expenses to which subsection (4) applies, and
 - (c) if the trustees of the settlement are trustees for charitable purposes, the amount to which subsection (6) applies.
- (2) This subsection applies to ^{F3}... sums paid in the tax year to any persons by the trustees of the settlement [^{F4}that are payments of unprotected income, or sums treated as representing unprotected income, and that]—
 - (a) are treated in that year (otherwise than under section 633) as the income of those persons for income tax purposes, or
 - (b) would be [^{F5}treated as mentioned in paragraph (a)] if those persons were domiciled [^{F6}and resident] in the United Kingdom and the sums had been paid to them there.

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- (3) Subsection (2) is subject to section 637(1).
- (4) This subsection applies to any expenses of the trustees of the settlement paid in the tax year which, in the absence of any express provision of the settlement, would be properly chargeable to [^{F7}unprotected] income.
- (5) Subsection (4)—
- (a) does not apply to expenses so far as they are included in the sums mentioned in subsection (2), and
 - (b) is subject to section 637(2) to (7).
- (6) This subsection applies to the amount by which—

$$A > B$$

where—

A is any [^{F8}unprotected] income arising under the settlement in the tax year in respect of which exemption from tax may be granted under [^{F9}any provision to which subsection (7) applies], and

B is the total amount of any such sums or expenses as are mentioned in subsections (2) and (4) paid in that year which are properly chargeable to the income.

- [^{F10}(7) This subsection applies to the following provisions of ITA 2007—
- section 521(4) (gifts entitling donor to gift-aid relief),
 - section 522(5) (gifts of money from companies),
 - section 523(5) (payments from other charities),
 - section 524 (profits etc of charitable trades),
 - section 529 (profits from fund-raising events),
 - section 530 (profits from lotteries),
 - section 531 (property income etc),
 - section 532 (savings and investment income),
 - section 533 (public revenue dividends),
 - section 536 (miscellaneous income), and
 - section 537 (income from estates in administration).]

Textual Amendments

- F2** Word in s. 636(1) inserted (16.11.2017) (with effect in accordance with Sch. 8 para. 39 of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 8 para. 25](#)
- F3** Word in s. 636(2) omitted (with effect in accordance with Sch. 10 para. 21 of the amending Act) by virtue of [Finance Act 2018 \(c. 3\)](#), [Sch. 10 para. 9\(a\)\(i\)](#)
- F4** Words in s. 636(2) substituted (with effect in accordance with Sch. 10 para. 21 of the amending Act) by [Finance Act 2018 \(c. 3\)](#), [Sch. 10 para. 9\(a\)\(ii\)](#)
- F5** Words in s. 636(2)(b) substituted (with effect in accordance with Sch. 10 para. 21 of the amending Act) by [Finance Act 2018 \(c. 3\)](#), [Sch. 10 para. 9\(a\)\(iii\)](#)
- F6** Words in s. 636(2)(b) substituted (with effect in accordance with Sch. 46 para. 72 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 48\(1\)](#) (with [Sch. 46 para. 48\(2\)](#))

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- F7** Word in s. 636(4) inserted (with effect in accordance with Sch. 10 para. 21 of the amending Act) by [Finance Act 2018 \(c. 3\)](#), [Sch. 10 para. 9\(b\)](#)
- F8** Word in s. 636(6) inserted (with effect in accordance with Sch. 10 para. 21 of the amending Act) by [Finance Act 2018 \(c. 3\)](#), [Sch. 10 para. 9\(c\)](#)
- F9** Words in s. 636(6) substituted (with effect as stated in [s. 1034\(1\)](#) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), ss. 1027, 1034, [Sch. 1 para. 558\(2\)](#) (with transitional provisions and savings in [Sch. 2](#))
- F10** S. 636(7) inserted (with effect as stated in [s. 1034\(1\)](#) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), ss. 1027, 1034, [Sch. 1 para. 558\(3\)](#) (with transitional provisions and savings in [Sch. 2](#))

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 7A-7D inserted by [2022 c. 3 Sch. 1 para. 3](#)
- s. 31E(4) inserted by [2022 c. 3 Sch. 1 para. 7\(3\)](#)
- s. 649(1A)(1B) inserted by [2023 c. 30 Sch. 2 para. 11\(2\)](#)
- s. 679(3A) inserted by [2023 c. 30 Sch. 2 para. 11\(5\)\(b\)](#)
- s. 679A(3A) inserted by [2023 c. 30 Sch. 2 para. 11\(6\)\(b\)](#)
- s. 680(1A) inserted by [2023 c. 30 Sch. 2 para. 11\(7\)\(a\)](#)