
STATUTORY INSTRUMENTS

2006 No. 959

INCOME TAX

CORPORATION TAX

The Income Tax (Trading and Other Income) Act
2005 (Consequential Amendments) Order 2006

<i>Made</i>	- - - -	<i>29th March 2006</i>
<i>Laid before the House of Commons</i>	- - - -	<i>29th March 2006</i>
<i>Coming into force</i>	- -	<i>30th March 2006</i>

The Treasury make the following Order in exercise of the powers conferred by section 882(2) to (5) of the Income Tax (Trading and Other Income) Act 2005⁽¹⁾.

Citation, commencement and effect

1.—(1) This Order may be cited as the Income Tax (Trading and Other Income) Act 2005 (Consequential Amendments) Order 2006.

(2) This Order shall come into force on 30th March 2006.

(3) This Order has effect—

- (a) for income tax purposes for the tax year 2006-07 and subsequent tax years, and
- (b) for corporation tax purposes, for accounting periods ending after 5th April 2006.

(4) This Order shall be deemed to have had effect—

- (a) for income tax purposes, for the tax year 2005-06, and
- (b) for corporation tax purposes, for accounting periods ending after 5th April 2005 and before 6th April 2006.

Consequential amendments to legislation

2.—(1) In section 836B(2) of the Income and Corporation Taxes Act 1988⁽²⁾ (table of provisions to which that section applies), in Part 3 of the Table—

(1) 2005 c. 5.

(2) 1988 c. 1; section 836B was inserted by paragraph 340 of Schedule 1 to the Income Tax (Trading and Other Income) Act 2005.

- (a) in column 1, after the entry “Section 71(4) of the Finance Act 1989”, insert the following entry—
- “Paragraph 3(1) of Schedule 12 to the Finance (No. 2) Act 1992”, and
- (b) in column 2, after the entry “Employee share ownership trust (borrowing)”, insert the following entry—
- “Banks etc. in compulsory liquidation (taxation of certain receipts)”.
- 3.—**(1) The Taxation of Chargeable Gains Act 1992(3) is amended as follows.
- (2) In section 143(1) (commodity and financial futures and qualifying options)—
- (a) after “section 128 of the Taxes Act” insert “and section 779 of ITTOIA 2005”, and
- (b) for “chargeable to tax under Schedule D otherwise than as the profits of a trade, then” substitute—
- “chargeable to tax—
- (a) under Schedule D otherwise than as the profits of a trade, or
- (b) under Chapter 8 of Part 5 of ITTOIA 2005,
- then”
- (3) In section 161(3) (appropriations to and from stock) for the words from “if” to “, and elects” substitute—
- “if—
- (a) he is chargeable to corporation tax in respect of the profits of the trade under Case I of Schedule D, or
- (b) he is chargeable to income tax in respect of the profits of the trade under Chapter 2 of Part 2 of ITTOIA 2005 and the trade is carried on wholly or partly in the United Kingdom,
- and he elects”.
- 4.—**(1) In the Finance (No. 2) Act 1992(4) amend paragraph 3 of Schedule 12 (banks etc. in compulsory liquidation: taxation of certain receipts) as follows.
- (2) In sub-paragraph (1) for “under Case VI of Schedule D” substitute “(in the case of corporation tax, under Case VI of Schedule D)”.
- (3) In sub-paragraph (3)(b) after “under section 100 of the Taxes Act 1988” insert “or section 173 of the Income Tax (Trading and Other Income) Act 2005”.
- 5.—**(1) In the Finance Act 2002(5) amend Schedule 12 (tax relief for expenditure on research and development) as follows.
- (2) In paragraph 4(6)(b)—
- (a) after “trade, profession or vocation” insert “(i)”, and
- (b) after “Schedule D” insert—
- “, or
- (ii) which is carried on wholly or partly in the United Kingdom and the profits of which are chargeable to tax under Chapter 2 of Part 2 of the Income Tax (Trading and Other Income) Act 2005”.

(3) 1992 c. 12.

(4) 1992 c. 48; paragraph 3 of Schedule 12 was amended by section 107 of the Finance Act 2002 (c. 23).

(5) 2002 c. 23; paragraph 4 of Schedule 12 was amended by Schedule 31 to the Finance Act 2003 (c. 14) and by section 141 of the Finance Act 2004 (c. 12).

(3) In paragraph 5(6)(b)—

(a) after “trade, profession or vocation” insert “(i)”, and

(b) after “Schedule D” insert—

“, or

(ii) which is carried on wholly or partly in the United Kingdom and the profits of which are chargeable to tax under Chapter 2 of Part 2 of the Income Tax (Trading and Other Income) Act 2005”.

(4) In paragraph 8(a) after “Schedule D” insert—

“, or

(iii) by any person otherwise than in the course of carrying on wholly or partly in the United Kingdom a trade, profession or vocation the profits of which are chargeable to tax under Chapter 2 of Part 2 of the Income Tax (Trading and Other Income) Act 2005”.

29th March 2006

Gillian Merron
Joan Ryan
Two of the Lords Commissioners of Her
Majesty’s Treasury

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EXPLANATORY NOTE

(This note is not part of the Order)

Section 882(2) of the Income Tax (Trading and Other Income) Act 2005 (c. 5) (“the 2005 Act”) provides that the Treasury may by order make such modifications of any enactment as the Treasury consider appropriate in consequence of that Act. This Order exercises the powers contained in section 882 of the 2005 Act in relation to the provisions of paragraph 3 of Schedule 12 to the Finance (No. 2) Act 1992 (c. 48), sections 143 and 161 Taxation of Chargeable Gains Act 1992 (c. 12) and Schedule 3 to the Finance Act 2002 (c. 23).

The consequential amendments made in this Order were inadvertently omitted from Schedule 1 (consequential amendments) to the 2005 Act. They result from the abolition of Schedule D for income tax purposes, and the enactment of equivalent rewritten provisions, in the 2005 Act. They ensure that, where Schedule D previously applied for income tax purposes, the equivalent provision in the 2005 Act will apply instead.

The continuity of the law provisions in Schedule 2 to the 2005 Act ensure that the omission of these amendments has had no effect on the law. The amendments made in this Order are made for the purpose of clarifying the law. They take effect retrospectively as if they had been made in Schedule 1 to the 2005 Act. This is to ensure that users of the Act are in no doubt that the law continued unchanged after the 2005 Act came into force.

Schedule 12 to the Finance (No. 2) Act 1992 Act applies where an insolvent company, whose trade involved the carrying on of deposit-taking business, is being wound up by the court in the United Kingdom. It operates by charging loan interest to tax under Case VI of Schedule D, and by permitting expenses and losses to be deducted from the sums brought into charge in this way. The abolition of Schedule D for income tax purposes, by the 2005 Act, however, meant that Schedule D ceased to apply to foreign companies for income tax purposes. This Order makes amendments which show that Schedule 12 continues to apply to foreign companies for income tax purposes following the enactment of the 2005 Act (see Articles 2 and 4).

Section 143(1) of the Taxation of Chargeable Gains Act 1992 (“TCGA”) was enacted in order to provide that futures and options whose profits and gains were exempted from either income tax or corporation tax, by section 128 ICTA, would come within the rules relating to chargeable gains. As a result of the abolition of Schedule D for income tax purposes, by the 2005 Act, section 128 now only applies to corporation tax. This Order makes amendments which show that section 143(1) continues to apply in respect of futures and options the profits and gains of which are exempt from income tax (as well as those exempt from corporation tax) following the enactment of the 2005 Act (see Article 3(2)).

Section 161(3) of the TCGA imposes a charge when a person appropriates an asset to use as trading stock. If such a person is chargeable to tax under Case I of Schedule D he may elect that any such asset should feature in the calculation of his profits. But the 2005 Act abolished Schedule D for income tax purposes. This Order makes amendments which show that section 161 continues to apply to persons chargeable to income tax following the enactment of the 2005 Act (see Article 3(3)).

Schedule 12 to the Finance Act 2002 is intended to enhance the income and corporation tax relief given to companies in respect of qualifying expenditure on research and development where certain conditions apply. One such condition is that where a person contracts out research and development in certain circumstances the contractor’s profits are not chargeable to tax under Case I or II of Schedule D. But the 2005 Act abolished Schedule D for income tax purposes. This Order contains

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amendments which show that the above condition continues to apply for income tax purposes following the enactment of the 2005 Act (see Article 5).

A full regulatory impact assessment has not been made for this Order as it has no impact on the costs for business.