



Finance Act 1989

1989 CHAPTER 26

PART II

INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

CHAPTER I

GENERAL

Receipts basis etc.

36 Schedule E: revised Cases.

- (1) The Taxes Act 1988 shall be amended as follows.
- (2) In paragraph 1 of section 19(1) the following Cases shall be substituted for Cases I, II and III—

“Case I: any emoluments for any year of assessment in which the person holding the office or employment is resident and ordinarily resident in the United Kingdom, subject however to section 192 if the emoluments are foreign emoluments (within the meaning of that section) and to section 193(1) if in the year of assessment concerned he performs the duties of the office or employment wholly or partly outside the United Kingdom;

Case II: any emoluments, in respect of duties performed in the United Kingdom, for any year of assessment in which the person holding the office or employment is not resident (or, if resident, not ordinarily resident) in the United Kingdom, subject however to section 192 if the emoluments are foreign emoluments (within the meaning of that section);

Case III: any emoluments for any year of assessment in which the person holding the office or employment is resident in the United Kingdom

Status: Point in time view as at 27/07/1993.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 1989, Cross Heading: Receipts basis etc.. (See end of Document for details)

(whether or not ordinarily resident there) so far as the emoluments are received in the United Kingdom;”.

(3) The following paragraph shall be inserted after paragraph 4 of section 19(1)—

Where (apart from this paragraph) emoluments from an office or employment would be for a year of assessment in which a person does not hold the office or employment, the following rules shall apply for the purposes of the Cases set out in paragraph 1 above—

- (a) if in the year concerned the office or employment has never been held, the emoluments shall be treated as emoluments for the first year of assessment in which the office or employment is held;
- (b) if in the year concerned the office or employment is no longer held, the emoluments shall be treated as emoluments for the last year of assessment in which the office or employment was held.”

(4) Subsection (2) above shall apply where the year of assessment mentioned in the substituted Case I, II or III is 1989-90 or a subsequent year of assessment.

(5) Subsection (3) above shall apply where each of the years mentioned in the new paragraph 4A(a) or (b) (as the case may be) is 1989-90 or a subsequent year of assessment.

37 Schedule E: assessment on receipts basis.

(1) The following sections shall be inserted immediately before section 203 of the Taxes Act 1988—

“202A Assessment on receipts basis.

(1) As regards any particular year of assessment—

- (a) income tax shall be charged under Cases I and II of Schedule E on the full amount of the emoluments received in the year in respect of the office or employment concerned;
- (b) income tax shall be charged under Case III of Schedule E on the full amount of the emoluments received in the United Kingdom in the year in respect of the office or employment concerned.

(2) Subsection (1) above applies—

- (a) whether the emoluments are for that year or for some other year of assessment;
- (b) whether or not the office or employment concerned is held at the time the emoluments are received or (as the case may be) received in the United Kingdom.

(3) Where subsection (1) above applies in the case of emoluments received, or (as the case may be) received in the United Kingdom, after the death of the person who held the office or employment concerned, the charge shall be a charge on his executors or administrators; and accordingly income tax—

- (a) shall be assessed and charged on the executors or administrators, and
- (b) shall be a debt due from and payable out of the deceased’s estate.

Status: Point in time view as at 27/07/1993.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 1989, Cross Heading: Receipts basis etc.. (See end of Document for details)

(4) Section 202B shall have effect for the purposes of subsection (1)(a) above.

202B Receipts basis: meaning of receipt.

- (1) For the purposes of section 202A(1)(a) emoluments shall be treated as received at the time found in accordance with the following rules (taking the earlier or earliest time in a case where more than one rule applies)—
- (a) the time when payment is made of or on account of the emoluments;
 - (b) the time when a person becomes entitled to payment of or on account of the emoluments;
 - (c) in a case where the emoluments are from an office or employment with a company, the holder of the office or employment is a director of the company and sums on account of the emoluments are credited in the company's accounts or records, the time when sums on account of the emoluments are so credited;
 - (d) in a case where the emoluments are from an office or employment with a company, the holder of the office or employment is a director of the company and the amount of the emoluments for a period is determined before the period ends, the time when the period ends;
 - (e) in a case where the emoluments are from an office or employment with a company, the holder of the office or employment is a director of the company and the amount of the emoluments for a period is not known until the amount is determined after the period has ended, the time when the amount is determined.
- (2) Subsection (1)(c), (d) or (e) above applies whether or not the office or employment concerned is that of director.
- (3) Paragraph (c), (d) or (e) of subsection (1) above applies if the holder of the office or employment is a director of the company at any time in the year of assessment in which the time mentioned in the paragraph concerned falls.
- (4) For the purposes of the rule in subsection (1)(c) above, any fetter on the right to draw the sums is to be disregarded.
- (5) In subsection (1) above “director” means—
- (a) in relation to a company whose affairs are managed by a board of directors or similar body, a member of that board or similar body,
 - (b) in relation to a company whose affairs are managed by a single director or similar person, that director or person, and
 - (c) in relation to a company whose affairs are managed by the members themselves, a member of the company.
- (6) In subsection (1) above “director”, in relation to a company, also includes any person in accordance with whose directions or instructions the company's directors (as defined in subsection (5) above) are accustomed to act; and for this purpose a person is not to be deemed to be a person in accordance with whose directions or instructions the company's directors are accustomed to act by reason only that the directors act on advice given by him in a professional capacity.
- (7) Subsections (1) to (6) above shall have effect subject to subsections (8) to (11) below.

Status: Point in time view as at 27/07/1993.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 1989, Cross Heading: Receipts basis etc.. (See end of Document for details)

- (8) In a case where section 141(1)(a), 142(1)(a), 143(1)(a) or 148(4) treats a person as receiving or being paid an emolument or emoluments at a particular time, for the purposes of section 202A(1)(a) the emolument or emoluments shall be treated as received at that time; and in such a case subsections (1) to (6) above shall not apply.
- (9) In a case where section 145(1) treats a person as receiving emoluments, for the purposes of section 202A(1)(a) the emoluments shall be treated as received in the period referred to in section 145(1); and in such a case subsections (1) to (6) above shall not apply.
- (10) In a case where section 154(1), 157(1), 158(1), 160(1), 160(2), 162(6) or 164(1) treats an amount as emoluments, for the purposes of section 202A(1)(a) the emoluments shall be treated as received in the year referred to in section 154(1) or the other provision concerned; and in such a case subsections (1) to (6) above shall not apply.
- (11) In a case where—
- (a) emoluments take the form of a benefit not consisting of money, and
 - (b) subsection (8), (9) or (10) above does not apply,
- for the purposes of section 202A(1)(a) the emoluments shall be treated as received at the time when the benefit is provided; and in such a case subsections (1) to (6) above shall not apply.”
- (2) This section shall apply where the year of assessment mentioned in the new section 202A(1) is 1989-90 or a subsequent year of assessment even if the emoluments concerned are for a year of assessment before 1989-90.
- (3) This section shall not apply in the case of emoluments of an office or employment held by a person who died before 6th April 1989.

38 Schedule E: unpaid emoluments.

- (1) This section applies to emoluments of an office or employment if—
- (a) they are emoluments for a year of assessment (a relevant year) before 1989-90,
 - (b) they fall within Case I or II of Schedule E as the Case applies for years before 1989-90,
 - (c) they have not been paid before 6th April 1989, and
 - (d) they have been received on or after 6th April 1989 and before 6th April 1991;
- and section 202B of the Taxes Act 1988 shall apply for the purposes of paragraph (d) above as it applies for the purposes of section 202A(1)(a) of that Act.
- (2) The emoluments shall be charged to income tax only by reference to the year of assessment in which they are received.
- (3) Any adjustments consequential on this section (such as the amendment of assessments or the repayment or setting-off of tax paid) shall be made.
- (4) This section shall not apply to emoluments of an office or employment held by a person who died before 6th April 1989.

Status: Point in time view as at 27/07/1993.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 1989, Cross Heading: Receipts basis etc.. (See end of Document for details)

- (5) This section shall not apply if the only emoluments of the office or employment not paid before 6th April 1989 are emoluments for a period consisting of or falling within the period beginning with 5th March 1989 and ending with 5th April 1989.
- (6) This section shall not apply unless—
- (a) written notice that it is to apply is given to the inspector before 6th April 1991,
 - (b) the notice is given by or on behalf of the person who holds or held the office or employment concerned, and
 - (c) the notice states the amount of the emoluments falling within subsection(1) above.
- (7) Subsection (8) below applies where emoluments of an office or employment have been or fall to be computed by reference to the accounts basis as regards the year 1987-88 or years of assessment including that year.
- (8) In deciding for the purposes of subsection (1)(a) above whether emoluments are emoluments for a particular year, the emoluments of the office or employment for the year or (as the case may be) years mentioned in subsection(7) above, and for the year 1988-89, shall be computed by reference to that basis.
- (9) In deciding whether subsection (8) above applies in a particular case, any request to revoke the application of the accounts basis shall be ignored if—
- (a) it is made after 5th April 1989, or
 - (b) it is made before 6th April 1989 otherwise than in writing.
- (10) In the application of this section to emoluments of an office or employment under or with a person carrying on business as an authorised Lloyd’s underwriting agent, the references in subsections (1)(d) and (6)(a) above to 6th April 1991 shall be construed as references to 6th April 1994.
- (11) Subsection (10) above shall not apply unless the duties of the office or employment relate wholly or mainly to the underwriting agency business.
- (12) The reference in subsection (10) above to an authorised Lloyd’s underwriting agent is to a person permitted by the Council of Lloyd’s to act as an underwriting agent at Lloyd’s.
- (13) If in a particular case it appears to the Board reasonable to do so they may direct that subsections (1)(d) and (6)(a) above shall have effect in relation to that case as if for the references to 6th April 1991 or (as the case may be) 6th April 1994 there were substituted references to such later date as they may specify in the direction.
- (14) In this section “the accounts basis” means the basis commonly so called (under which emoluments for a year of assessment are computed by reference to the emoluments for a period other than the year of assessment).

39 Schedule E: unremitted emoluments.

- (1) This section applies to emoluments of an office or employment if—
- (a) they are emoluments for a year of assessment (a relevant year) before 1989-90,
 - (b) they are received in the United Kingdom after 5th April 1989, and
 - (c) had this Act not been passed they would have fallen within Case III of Schedule E.

Status: Point in time view as at 27/07/1993.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 1989, Cross Heading: Receipts basis etc.. (See end of Document for details)

- (2) The emoluments shall be treated as if they were not emoluments for the relevant year.
- (3) But they shall be treated as if they were emoluments for the year of assessment in which they are received in the United Kingdom and as if they fell within Case III as substituted by section 36 above; and accordingly income tax shall be charged, in accordance with section 202A of the Taxes Act 1988, by reference to the year of assessment in which the emoluments are received in the United Kingdom.

40 Schedule E: emoluments already paid.

- (1) Subsection (2) below applies to emoluments of an office or employment if—
 - (a) they are emoluments for a year of assessment after 1988-89,
 - (b) they have been paid before 6th April 1989, and
 - (c) they fall within Case I or II of Schedule E as substituted by section 36 above.
- (2) The emoluments shall be treated as if they were received, within the meaning of section 202B of the Taxes Act 1988, on 6th April 1989; and accordingly income tax shall be charged, in accordance with section 202A of that Act, by reference to the year 1989-90.
- (3) Subsection (4) below applies to emoluments of an office or employment if—
 - (a) they are emoluments for a year of assessment after 1988-89,
 - (b) they have been received in the United Kingdom before 6th April 1989, and
 - (c) they fall within Case III of Schedule E as substituted by section 36 above.
- (4) The emoluments shall be treated as if they were received in the United Kingdom on 6th April 1989; and accordingly income tax shall be charged, in accordance with section 202A of the Taxes Act 1988, by reference to the year 1989-90.

41 Schedule E: pensions etc.

- (1) This section applies in relation to the following pensions and other benefits—
 - (a) a pension, stipend or annuity chargeable to income tax under Schedule E by virtue of paragraph 2, 3 or 4 of section 19(1) of the Taxes Act 1988;
 - (b) a pension or annual payment chargeable to income tax under Schedule E by virtue of section 133 of that Act (voluntary pensions);
 - (c) income support chargeable to income tax under Schedule E by virtue of section 151 of that Act;
 - (d) a pension chargeable to income tax under Schedule E by virtue of section 597 of that Act (retirement benefit schemes);
 - (e) a benefit chargeable to income tax under Schedule E by virtue of section 617(1) of that Act (social security benefits).
- (2) As regards any particular year of assessment income tax shall be charged on the amount of the pension or other benefit accruing in respect of the year; and this shall apply irrespective of when any amount is actually paid in respect of the pension or other benefit.
- (3) This section shall apply where the year of assessment mentioned in subsection (2) above is 1989-90 or a subsequent year of assessment.

Status: Point in time view as at 27/07/1993.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 1989, Cross Heading: Receipts basis etc.. (See end of Document for details)

Modifications etc. (not altering text)

C1 S. 41 extended (3.5.1994) by 1994 c. 9, s. 139(3)

42 Schedule E: supplementary.

- (1) The Taxes Act 1988 shall be amended as follows.
- (2) In section 131(2) (interaction of Cases) the words “for the same or another chargeable period” shall be omitted.
- (3) In section 149(1) (sick pay chargeable as emoluments of employment for a certain period) the words “for that period” and the words “for that or any other period” shall be omitted.
- (4) Section 170 (profit-related pay charged for year of assessment in which it is paid) shall cease to have effect.
- (5) In paragraph 2(2) of Schedule 12 (foreign earnings) for the words from “emoluments from” to “year of assessment” there shall be substituted the words “emoluments for the year of assessment from the relevant employment in respect of which such a deduction is allowed”.
- (6) This section shall apply for the year 1989-90 and subsequent years of assessment.

43 Schedule D: computation.

- (1) Subsection (2) below applies where—
 - (a) a calculation is made of profits or gains which are to be charged under Schedule D and are for a period of account ending after 5th April 1989,
 - (b) relevant emoluments would (apart from that subsection) be deducted in making the calculation, and
 - (c) the emoluments are not paid before the end of the period of nine months beginning with the end of that period of account.
- (2) The emoluments—
 - (a) shall not be deducted in making the calculation mentioned in subsection(1) (a) above, but
 - (b) shall be deducted in calculating profits or gains which are to be charged under Schedule D and are for the period of account in which the emoluments are paid.
- (3) Subsections (4) and (5) below apply where—
 - (a) a calculation such as is mentioned in subsection (1)(a) above is made,
 - (b) the calculation is made before the end of the period of nine months beginning with the end of the period of account concerned,
 - (c) relevant emoluments would (apart from subsection (2) above) be deducted in making the calculation, and
 - (d) the emoluments have not been paid when the calculation is made.
- (4) It shall be assumed for the purpose of making the calculation that the emoluments will not be paid before the end of that period of nine months.

Status: Point in time view as at 27/07/1993.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 1989, Cross Heading: Receipts basis etc.. (See end of Document for details)

- (5) But the calculation shall be adjusted if—
- (a) the emoluments are paid after the calculation is made but before the end of that period of nine months,
 - (b) a claim to adjust the calculation is made to the inspector, and
 - (c) the claim is made before the end of the period of two years beginning with the end of the period of account concerned.

^{F1}(6)

^{F1}(7)

- (8) In a case where the period of account mentioned in subsection (1)(a) above begins before 6th April 1989 and ends before 6th April 1990, the references in subsections (1)(c), (3)(b), (4) and (5)(a) above to nine months shall be construed as references to eighteen months.

- (9) In this section “period of account” means a period for which an account is made up.

- (10) For the purposes of this section “relevant emoluments” are emoluments for a period after 5th April 1989 allocated either—

- (a) in respect of particular offices or employments (or both), or
- (b) generally in respect of offices or employments (or both).

- (11) This section applies in relation to potential emoluments as it applies in relation to relevant emoluments, and for this purpose—

- (a) potential emoluments are amounts or benefits reserved in the accounts of an employer, or held by an intermediary, with a view to their becoming relevant emoluments;
- (b) potential emoluments are paid when they become relevant emoluments which are paid.

- (12) In deciding for the purposes of this section whether emoluments are paid at any time after 5th April 1989, section 202B of the Taxes Act 1988 (time when emoluments are treated as received) shall apply as it applies for the purposes of section 202A(1)(a) of that Act, but reading “paid” for “received” throughout.

- (13) In section 436(1)(b) of the Taxes Act 1988 (profits to be computed in accordance with provisions of that Act applicable to Case I of Schedule D) the reference to that Act shall be deemed to include a reference to this section.

Textual Amendments

- F1** S. 43(6)(7) repealed (27.7.1993 with effect in relation to periods of account ending on or after 30.6.1993) by 1993 c. 34, ss. 181, 184(3), 213, Sch. 23 Pt. III(12) Note 3

Modifications etc. (not altering text)

- C2** S. 43 applied (31.7.1998 with effect as mentioned in s. 38(2)(3) of 1998 c. 36) by 1988 c. 1, s. 21A(2) (as substituted by 1998 c. 36, s. 38(1), Sch. 5 Pt. I paras. 4, 73)
S. 43 excluded (31.7.1998) by 1998 c. 36, s. 38, Sch. 5 Pt. IV paras. 66(2), 69

44 Investment and insurance companies: computation.

- (1) Subsection (2) below applies where—

Status: Point in time view as at 27/07/1993.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 1989, Cross Heading: Receipts basis etc.. (See end of Document for details)

- (a) a calculation is made for the purposes of corporation tax of the profits of an investment company for an accounting period ending after 5th April 1989,
 - (b) relevant emoluments would (apart from that subsection) be deducted in making the calculation, and
 - (c) the emoluments are not paid before the end of the period of nine months beginning with the end of the relevant period of account.
- (2) The emoluments—
 - (a) shall not be deducted in making the calculation mentioned in subsection(1)(a) above, but
 - (b) shall be deducted in calculating for the purposes of corporation tax the profits of the company concerned for the accounting period in which the emoluments are paid.
- (3) Subsections (4) and (5) below apply where—
 - (a) a calculation such as is mentioned in subsection (1)(a) above is made,
 - (b) the calculation is made before the end of the period of nine months beginning with the end of the relevant period of account,
 - (c) relevant emoluments would (apart from subsection (2) above) be deducted in making the calculation, and
 - (d) the emoluments have not been paid when the calculation is made.
- (4) It shall be assumed for the purpose of making the calculation that the emoluments will not be paid before the end of that period of nine months.
- (5) But the calculation shall be adjusted if—
 - (a) the emoluments are paid after the calculation is made but before the end of that period of nine months,
 - (b) a claim to adjust the calculation is made to the inspector by or on behalf of the company concerned, and
 - (c) the claim is made before the end of the period of two years beginning with the end of the period of account concerned.
- (6) In a case where the accounting period mentioned in subsection (1)(a) above begins before 6th April 1989 and ends before 6th April 1990, the references in subsections (1)(c), (3)(b), (4) and (5)(a) above to nine months shall be construed as references to eighteen months.
- (7) In this section “investment company” has the same meaning as in Part IV of the Taxes Act 1988.
- (8) For the purposes of this section “relevant emoluments” are emoluments for a period after 5th April 1989 allocated either—
 - (a) in respect of particular offices or employments (or both), or
 - (b) generally in respect of offices or employments (or both).
- (9) This section applies in relation to potential emoluments as it applies in relation to relevant emoluments, and for this purpose—
 - (a) potential emoluments are amounts or benefits reserved in the accounts of an employer, or held by an intermediary, with a view to their becoming relevant emoluments;
 - (b) potential emoluments are paid when they become relevant emoluments which are paid.

Status: Point in time view as at 27/07/1993.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 1989, Cross Heading: Receipts basis etc.. (See end of Document for details)

- (10) For the purpose of this section the relevant period of account is the period of account which—
- (a) includes the accounting period concerned, or
 - (b) begins when the accounting period concerned begins and ends when the accounting period concerned ends.
- (11) In deciding for the purposes of this section whether emoluments are paid at any time after 5th April 1989, section 202B of the Taxes Act 1988 (time when emoluments are treated as received) shall apply as it applies for the purposes of section 202A(1)(a) of that Act, but reading “paid” for “received” throughout.
- (12) Where the profits of a company carrying on life assurance business are not charged under Case I of Schedule D, this section shall apply in calculating the profits as it applies in calculating the profits of an investment company; but the effect of section 86 below shall be ignored in construing subsection(1)(b) above.
- (13) In a case where, apart from this subsection and by virtue of subsection(2)(b) above as it applies by virtue of subsection (12) above, emoluments fall to be deducted in calculating profits for a particular accounting period—
- (a) subsection (2)(b) above shall have effect subject to section 86 below;
 - (b) in construing section 86 the emoluments shall be treated as expenses for that accounting period.

Modifications etc. (not altering text)

- C3** S. 44 modified (23.3.1999 with effect with respect to accounting periods of insurance companies ending on or after 1.7.1999) by [S.I. 1999/498](#), [regs. 1, 9](#)

45 PAYE: meaning of payment.

- (1) The Taxes Act 1988 shall be amended as follows.
- (2) The following section shall be inserted after section 203—

“203A PAYE: meaning of payment.

- (1) For the purposes of section 203 and regulations under it a payment of, or on account of, any income assessable to income tax under Schedule E shall be treated as made at the time found in accordance with the following rules(taking the earlier or earliest time in a case where more than one rule applies)—
 - (a) the time when the payment is actually made;
 - (b) the time when a person becomes entitled to the payment;
 - (c) in a case where the income is income from an office or employment with a company, the holder of the office or employment is a director of the company and sums on account of the income are credited in the company’s accounts or records, the time when sums on account of the income are so credited;
 - (d) in a case where the income is income from an office or employment with a company, the holder of the office or employment is a director of

Status: Point in time view as at 27/07/1993.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 1989, Cross Heading: Receipts basis etc.. (See end of Document for details)

- the company and the amount of the income for a period is determined before the period ends, the time when the period ends;
- (e) in a case where the income is income from an office or employment with a company, the holder of the office or employment is a director of the company and the amount of the income for a period is not known until the amount is determined after the period has ended, the time when the amount is determined.
- (2) Subsection (1)(c), (d) or (e) above applies whether or not the office or employment concerned is that of director.
- (3) Paragraph (c), (d) or (e) of subsection (1) above applies if the holder of the office or employment is a director of the company at any time in the year of assessment in which the time mentioned in the paragraph concerned falls.
- (4) For the purposes of the rule in subsection (1)(c) above, any fetter on the right to draw the sums is to be disregarded.
- (5) Subsections (5) and (6) of section 202B shall apply for the purposes of subsection (1) above as they apply for the purposes of section 202B(1).”
- (3) Section 203(4) (regulations may define payment) shall cease to have effect.
- (4) Subsection (2) above shall have effect to determine whether anything occurring on or after the day on which this Act is passed constitutes a payment for the purposes mentioned in the new section 203A.
- (5) But if an event occurring before the day on which this Act is passed constituted a payment of or on account of income for the purposes mentioned in the new section 203A, nothing occurring on or after that day shall constitute a payment of or on account of the same income for those purposes.

Status:

Point in time view as at 27/07/1993.

Changes to legislation:

There are currently no known outstanding effects for the Finance Act 1989, Cross Heading: Receipts basis etc..