

INCOME TAX (TRADING AND OTHER INCOME) ACT 2005

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 5: Miscellaneous income

Chapter 5: Settlements: amounts treated as income of settlor

Section 634: Meaning of “capital sum” and “sums paid to settlor”

2431. This section provides the meaning of two terms used in section 633. It is based on section 677 of ICTA.
2432. *Subsection (1)* explains what is meant by “capital sum”. It includes sums paid as a loan, loans repaid or sums paid to the settlor or his or her spouse (see *subsection (7)*) in excess of the market value of goods or services. Settlers cannot therefore avoid tax by extracting income from a settlement in the form of a capital payment by the receiving of loans from the settlement, by the making of loans which are invested by the trustees and then receiving repayment of those loans, or by selling to the trustees of the settlement an item in excess of market value.
2433. *Subsection (3)* excludes sums from being treated as capital sums which are broadly outside the control of the settlor (see commentary on section 625(2)).
2434. *Subsection (5)* prevents a settlor from avoiding a charge under this section by arranging for the trustees to pay a capital sum to a third party from which the settlor may benefit.