



# Finance Act 2005

## 2005 CHAPTER 7

### PART 2

#### INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

### CHAPTER 1

#### INCOME TAX AND CORPORATION TAX CHARGE AND RATE BANDS

#### *Income tax*

#### **<sup>F1</sup>8 Charge and rates for 2005-06**

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#### **Textual Amendments**

**F1** S. 8 repealed (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 3 Pt. 1](#) (with Sch. 2)

#### **<sup>F2</sup>9 Personal allowances for those aged 65 or more**

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#### **Textual Amendments**

**F2** S. 9 repealed (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 3 Pt. 1](#) (with Sch. 2)

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*Corporation tax*

**10 Charge and main rate for financial year 2006**

Corporation tax shall be charged for the financial year 2006 at the rate of 30%.

**F<sup>3</sup>11 Small companies' rate and fraction for financial year 2005**

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**Textual Amendments**

**F3** S. 11 repealed (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), **Sch. 3 Pt. 1** (with [Sch. 2](#))

**12 Corporation tax starting rate and fraction for financial year 2005**

For the financial year 2005—

- (a) the corporation tax starting rate shall be 0%, and
- (b) the fraction mentioned in section 13AA of ICTA (marginal relief for small companies) shall be 19/400ths.

**13 Non-corporate distribution rate for financial year 2005**

The non-corporate distribution rate for the financial year 2005 shall be 19%.

*Trusts*

**F<sup>4</sup>14 Special trust rates not to apply to first slice of trust income**

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**Textual Amendments**

**F4** S. 14 repealed (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), **Sch. 3 Pt. 1** (with [Sch. 2](#))

**CHAPTER 2**

PERSONAL TAXATION

*Taxable benefits*

**15 Childcare vouchers: exempt amount**

- (1) Section 270A of ITEPA 2003 (limited exemption for qualifying childcare vouchers) is amended as follows.

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- (2) In subsection (6) (exempt amount), for “£50 for each qualifying week in that year” substitute “the sum of—
- (a) £50 for each qualifying week in that year, and
  - (b) the voucher administration costs for that year.”
- (3) After that subsection insert—
- “(6A) The “voucher administration costs” for any tax year in respect of which qualifying childcare vouchers are provided for an employee means the difference between the cost of provision of the vouchers and their face value.
- The face value of a voucher is the amount stated on or recorded in the voucher as the value of the provision of care for a child that may be obtained by using it.”
- (4) After subsection (10) insert—
- “(10A) In this section “cost of provision”, in relation to a childcare voucher, has the meaning given in section 87(3) and (3A).”
- (5) This section has effect for the year 2005-06 and subsequent years of assessment.

## **16 Extension of exemptions for childcare, workplace parking, cycles etc**

- (1) ITEPA 2003 is amended as follows.
- (2) In section 237(1) (exemption for provision of workplace parking), for “No liability to income tax arises by virtue of Chapter 10 of Part 3 (taxable benefits: residual liability to charge)” substitute “No liability to income tax arises”.
- (3) In section 244(1) (exemption for provision of cycles and cyclist's safety equipment), for “No liability to income tax arises by virtue of Chapter 10 of Part 3 (taxable benefits: residual liability to charge)” substitute “No liability to income tax arises”.
- (4) In section 270A(1) (limited exemption for qualifying childcare vouchers), for “employee, liability” substitute “employee—
- (a) no liability to income tax arises by virtue of section 62 (general definition of earnings), and
  - (b) liability”.
- (5) In section 318(1) (childcare: exemption for employer-provided care), for “No liability to income tax arises by virtue of Chapter 10 of Part 3 (taxable benefits: residual liability to charge)” substitute “No liability to income tax arises”.
- (6) In section 318A(1) (childcare: limited exemption for other care), for “child, liability” substitute “child—
- (a) no liability to income tax arises by virtue of section 62 (general definition of earnings), and
  - (b) liability”.
- (7) This section has effect for the year 2005-06 and subsequent years of assessment.

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## **17 Transfer of previously loaned computer or cycle etc**

- (1) Section 206 of ITEPA 2003 (cost of the benefit: transfer of used or depreciated asset) is amended as follows.
- (2) In subsection (3)(a), for “a car (within the meaning of Chapter 6)” substitute “an excluded asset (see subsection (6))”.
- (3) After subsection (5) insert—
  - “(6) An excluded asset is—
    - (a) a car (within the meaning of Chapter 6),
    - (b) computer equipment that has previously been applied as mentioned in subsection (3)(b) in circumstances in which the conditions set out in section 320 were met, or
    - (c) a cycle or cyclist's safety equipment that has previously been so applied in circumstances in which the conditions set out in section 244 were met.”
- (4) This section has effect for the year 2005-06 and subsequent years of assessment.

## **18 Extension of outplacement services etc exemption: part-time employees**

- (1) ITEPA 2003 is amended as follows.
- (2) In section 310 (counselling and other outplacement services) in subsection (4) (person to have been employed full-time in the employment which is ceasing for a specified period) omit “full-time”.
- (3) In section 311 (retraining courses) in subsection (3) (conditions to be satisfied in relation to the course)—
  - (a) at the end of paragraph (b) insert “and”;
  - (b) in paragraph (c) (course to last no more than one year) for “one year” substitute “two years”;
  - (c) omit paragraph (d) (employee to attend the course on a full-time or substantially full-time basis) and the word “and” before it.
- (4) In that section, in subsection (4)(c) (person to be employed full-time in the employment which is ceasing for a specified period) omit “full-time”.
- (5) This section has effect in relation to the year 2005-06 and subsequent years of assessment.

### *Armed forces*

## **19 Armed forces pensions and compensation schemes**

- (1) ITEPA 2003 is amended as follows.
- (2) In subsection (1) of section 393 as originally enacted (application of Chapter 2 of Part 6) after “non-approved retirement benefits scheme” insert “other than a scheme established by an order under section 1(2) of the Armed Forces (Pensions and Compensation) Act 2004 (armed and reserve forces compensation schemes)”.

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- (3) In paragraph (a) of section 639 (exemption from income tax for pensions due to military service etc)—
- (a) for “the Department of Work and Pensions” substitute “ the Ministry of Defence ”;
  - (b) for “any Order in Council, Royal Warrant, order or scheme” substitute “ instrument specified in subsection (2), ”.
- (4) At the end of section 639 (which becomes subsection (1)) insert—
- “(2) The instruments referred to in subsection (1)(a) are—
- Defence (Local Defence Volunteers) Regulations 1940 (S.R. & O. 1940/748),
  - War Pensions (Coastguards) Scheme 1944 (S.R. & O. 1944/500),
  - War Pensions (Naval Auxiliary Personnel) Scheme 1964 (S.I. 1964/1985),
  - Pensions (Polish Forces) Scheme 1964 (S.I. 1964/2007),
  - War Pensions (Mercantile Marine) Scheme 1964 (S.I. 1964/2058),
  - Order by Her Majesty concerning pensions and other grants in respect of disablement or death due to service in the Home Guard (1964 Cmnd. 2563),
  - Order by Her Majesty concerning pensions and other grants in respect of disablement or death due to service in the Home Guard after 27th April 1952 (1964 Cmnd. 2564),
  - Order by Her Majesty concerning pensions and other grants in respect of disablement or death due to service in the Ulster Defence Regiment (1971 Cmnd. 4567),
  - Personal Injuries (Civilians) Scheme 1983 (S.I. 1983/686),
  - Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 1983 (S.I. 1983/883).
- (3) The Treasury may by order amend subsection (2).”.
- (5) After section 640 insert—
- “640A Lump sums provided under armed forces early departure scheme**
- No liability to income tax arises on a lump sum provided under a scheme established by the Armed Forces Early Departure Payments Scheme Order 2005 (S.I. 2005/437).”.
- (6) In section 641 (exemption from income tax for armed forces disability pensions etc), after paragraph (g) of subsection (1) insert—
- “(h) a benefit under a scheme established by an order under section 1(2) of the Armed Forces (Pensions and Compensation) Act 2004 payable to a person by reason of his illness or injury—
    - (i) by way of a lump sum, or
    - (ii) following the termination of the person's service in the armed forces or reserve forces.”.
- (7) The amendment made by subsection (2) has effect for the year 2005-06.

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- (8) The amendments made by subsections (3) and (4) are deemed always to have had effect.
- (9) The amendments made by subsections (5) and (6) have effect for the year 2005-06 and subsequent years of assessment.

### CHAPTER 3

#### EMPLOYMENT-RELATED SECURITIES

#### 20 **Research institution spin-out companies**

- (1) In Part 7 of ITEPA 2003 (employment income: income and exemptions relating to securities), after Chapter 4 insert—

#### “CHAPTER 4A

#### SHARES IN RESEARCH INSTITUTION SPIN-OUT COMPANIES

##### *Introduction*

#### 451 **Application of this Chapter**

- (1) This Chapter applies where—
  - (a) an agreement is made for one or more transfers of intellectual property (an “intellectual property agreement”) from one or more research institutions to a company (a “spin-out company”),
  - (b) a person acquires shares (or an interest in shares) in the spin-out company before the intellectual property agreement is made or within the period of 183 days beginning with the date on which it is made,
  - (c) the right or opportunity to acquire the shares (or interest in shares) was available by reason of employment by the research institution (or any of them) or by the spin-out company, and
  - (d) the person is involved in research in relation to any of the intellectual property that is the subject of the intellectual property agreement.
- (2) But this Chapter does not apply if the avoidance of tax or national insurance is the main purpose (or one of the main purposes) of the arrangements under which the right or opportunity to acquire the shares (or interest in shares) is made available.

##### *Tax relief on acquisition*

#### 452 **Market value on acquisition**

- (1) For the relevant tax purposes the market value of the shares (or interest in shares) at the time of the acquisition is to be calculated disregarding the effect on that market value of the intellectual property agreement and any transfer of intellectual property pursuant to it.

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- (2) For the purposes of subsection (1) “the relevant tax purposes” are—
- (a) determining any amount that is to constitute earnings from the employment under Chapter 1 of Part 3 (earnings),
  - (b) determining the amount of any gain realised on the occurrence of an event that is a chargeable event by virtue of section 439(3)(a) (conversion),
  - (c) operating Chapter 3C of this Part (acquisition of securities for less than market value), and
  - (d) determining any amount that counts as employment income of the employee under Chapter 5 of this Part (securities acquired pursuant to securities option).

#### *Tax relief following acquisition*

### **453 Taxable amount under Chapter 4**

- (1) If the shares are (or interest in shares is) acquired before the intellectual property agreement is made, or before any transfer of intellectual property pursuant to it, and any benefit deriving from the intellectual property agreement or any such transfer is received by the employee in connection with the shares (or interest in shares), the taxable amount determined under section 448 (post-acquisition benefits from securities: amount of charge) is to be treated as nil.
- (2) But this section does not apply if something which affects the shares (or interest in shares) has been done (at or before the time when the intellectual property agreement is made or intellectual property is transferred) as part of a scheme or arrangement the main purpose (or one of the main purposes) of which is the avoidance of tax or national insurance contributions.

#### *Disapplication of Chapters 2 and 3B*

### **454 Deemed election for disapplication of Chapter 2**

- (1) If the shares are restricted securities (or the interest in shares is a restricted interest in securities), the employer and the employee are to be treated as making an election under section 431(1) (election for disapplication of Chapter 2) in relation to the shares (or interest in shares).
- (2) But the employer and the employee may agree that subsection (1) is not to apply in relation to the shares (or interest in shares).
- (3) An agreement under subsection (2) is irrevocable and—
- (a) must be made in a form approved by the Board of the Inland Revenue, and
  - (b) may not be made more than 14 days after the acquisition.
- (4) If the employer and the employee make an agreement under subsection (2) in relation to the shares (or interest in shares), subsection (5) applies for the purposes of determining the taxable amount for the purposes of section 426

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(charge on occurrence of chargeable event) on the occurrence on any chargeable event in relation to the shares (or interest in shares).

- (5) In determining under section 428(3) (amount of charge) what would have been the market value of the shares (or interest in shares) at the time of the acquisition but for any restrictions (IUMV), that market value is to be calculated disregarding the effect on that market value of the intellectual property agreement and any transfer of intellectual property pursuant to it.

#### 455 **Disapplication of Chapter 3B**

For the purposes of Chapter 3B (securities with artificially enhanced market value) neither the intellectual property agreement nor any transfer of intellectual property pursuant to it are things done otherwise than for genuine commercial purposes.

#### *Supplementary*

#### 456 **Meaning of “intellectual property” and “transfer”**

- (1) In this Chapter “intellectual property” means—
- (a) any patent, trade mark, registered design, copyright or design right, plant breeders' rights or rights under section 7 of the Plant Varieties Act 1997,
  - (b) any right under the law of a country or territory outside the United Kingdom corresponding to, or similar to, a right within paragraph (a),
  - (c) any information or technique not protected by a right within paragraph (a) or (b) but having industrial, commercial or other economic value,
  - (d) any licence or other right in respect of anything within paragraph (a), (b) or (c), or
  - (e) any goodwill (having the meaning that it has for accounting purposes) associated with anything within paragraphs (a) to (d).
- (2) The Treasury may by order amend the definition of “intellectual property” in subsection (1).
- (3) For the purposes of this Chapter a transfer of intellectual property includes—
- (a) a sale of the intellectual property,
  - (b) the grant of a licence or other right in respect of it, and
  - (c) the assignment of a licence or other right in respect of it.

#### 457 **Meaning of “research institution”**

- (1) In this Chapter “research institution” means—
- (a) any university or other institution that is a publicly funded institution as defined in section 41(2) of the Higher Education Act 2004, or
  - (b) any institution that carries out research activities otherwise than for profit and that is neither controlled nor wholly or mainly funded by a person who carries on activities for profit.



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- (2) The Treasury may by order amend subsection (1) to include in or exclude from the definition of “research institution” a person specified in the order or persons of a description specified in the order.

#### 458 **Meaning of “involved in research”**

For the purposes of this Chapter a person is involved in research in relation to any intellectual property transferred or to be transferred from one or more research institutions if—

- (a) he has been actively engaged for the research institution (or any of them) in connection with research (whether as an employee or otherwise), and
- (b) that research is relevant to anything to which the intellectual property relates.

#### 459 **Transfer of intellectual property by controlled company**

- (1) For the purposes of this Chapter where a research institution has control of a company, a transfer of intellectual property from the company is to be treated as a transfer from the research institution.
- (2) For the purposes of this Chapter where two or more research institutions together have control of a company, a transfer of intellectual property from the company is to be treated as a transfer from those research institutions.
- (3) In this section “control” means control within the meaning of section 416 of ICTA.

#### 460 **Definitions**

- (1) In this Chapter—
  - “interest”, in relation to shares, and
  - “shares”,have the meaning indicated in section 420.
- (2) In this Chapter “market value” has the meaning indicated in section 421(1).
- (3) In this Chapter—
  - “the acquisition”,
  - “the employee”, and
  - “the employer”,have the meaning indicated in section 421B(8).
- (4) In this Chapter—
  - “restricted interest in securities”, and
  - “restricted securities”,have the meaning indicated in sections 423 and 424.”

- (2) In consequence of the amendment made by subsection (1), Chapter 1 of Part 7 of ITEPA 2003 (income and exemptions relating to securities: introduction) is amended as follows.

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- (3) Substitute “ 4A ” for “4” in—
  - (a) subsections (1), (4) and (8) of section 421B,
  - (b) the heading of and the heading above that section, and
  - (c) subsections (5) and (6) of section 421D.
- (4) In section 421K(3)(g) (reportable events), after “securities)” insert “ or would give rise to such an amount but for Chapter 4A (shares in research institution spin-out companies) ”.
- (5) The amendments made by this section have effect in relation to shares (or an interest in shares) acquired before an agreement for the transfer of intellectual property is made, or within the period of 183 days beginning with the date on which such an agreement is made, if—
  - (a) the date of acquisition of the shares (or interest in shares), or
  - (b) the date on which the agreement was made,
or both, fell on or after 2nd December 2004.
- (6) Where section 454 of ITEPA 2003 (as inserted by subsection (1)) has effect (by virtue of subsection (5)) in relation to shares (or an interest in shares) acquired before 2nd December 2004, it applies in relation to them (or it) so as to treat the election under section 431(1) as made on that date.
- (7) Where section 454 of ITEPA 2003 (as inserted by subsection (1)) has effect (by virtue of subsection (5)) in relation to shares (or an interest in shares) acquired before 1st October 2005, it has effect with the substitution in subsection (3)(b) of that section of “later than 15th October 2005” for “more than 14 days after the acquisition of the shares (or interest in shares)”.

## **21 Research institution spin-out companies: pre-2nd December 2004 cases**

- (1) Subsections (2) to (7) have effect where—
  - (a) Chapter 4A of Part 7 of ITEPA 2003 (as inserted by section 20) would apply but for subsection (5) of that section (commencement), and
  - (b) an election is made under this subsection by the employee and the employer no later than 15th October 2005.
- (2) Section 452(1) and (2)(a), (c) and (d) and section 453(1) of ITEPA 2003 apply.
- (3) But when the chargeable event occurs in relation to the shares (or interest in shares), the taxable amount counts as employment income of the employee for the tax year in which the chargeable event occurs.
- (4) The chargeable event occurs in relation to the shares (or interest in shares) on the earlier of—
  - (a) the day on which there is a disposal for consideration of the shares, or any interest in them, by an associated person otherwise than to another associated person, and
  - (b) the day specified in any election made by an employee under this subsection.
- (5) The taxable amount for the purposes of subsection (3) is—

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## MV – DA

where—

MV is the market value of the shares (or interest in shares) immediately before the occurrence of the chargeable event, and

DA is the total of any deductible amounts.

- (6) Each of the following is a deductible amount—
- (a) the amount of any consideration given for the acquisition of the shares (or interest in shares),
  - (b) any amount that constituted earnings from the employee's employment under Chapter 1 of Part 3 of ITEPA 2003 (earnings) in respect of the acquisition of the shares (or interest in shares),
  - (c) any amount that counted as employment income in relation to the shares (or interest in shares) under Chapter 2 or 4 of Part 7 of that Act as originally enacted otherwise than by virtue of section 457 of that Act (as originally enacted) (charge on receipt of chargeable benefit),
  - (d) if the shares (or interest in shares) were (or was) acquired on a conversion of other shares (or of another interest in shares), any amount that counted as employment income of the employee under Chapter 3 of that Part (including that Chapter as originally enacted) (convertible securities) by reason of the conversion,
  - (e) if the acquisition of the shares (or interest in shares) was pursuant to a securities option, any amount that counted as employment income of the employee under section 476 of that Act (or section 476 or 477 as originally enacted) (acquisition of securities pursuant to securities option) by reason of the acquisition, and
  - (f) in the case of a chargeable event under subsection (4)(a), the amount of any expenses incurred by the holder of the shares (or interest in shares) in connection with the disposal.
- (7) An election under subsection (1) or (4) is irrevocable and must be made in a form approved by the Board of Inland Revenue.
- (8) The Treasury may by regulations modify—
- (a) this section,
  - (b) any provision of Part 4 of TCGA 1992, and
  - (c) any provision of Part 7 of ITEPA 2003,
- in relation to shares (or interests in shares) to which Chapter 4A of that Part would apply but for section 20(5) and which are restricted securities (or restricted interests in securities) or convertible securities (or interests in convertible securities).
- (9) The power conferred by subsection (8) is exercisable by statutory instrument.
- (10) A statutory instrument containing regulations under subsection (8) is subject to annulment in pursuance of a resolution of the House of Commons.
- (11) In this section—
- “associated person” has the same meaning as in Chapters 1 to 5 of Part 7 of ITEPA 2003 (see section 421C of that Act),

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“Board of Inland Revenue” has the same meaning as in that Act (see section 720(2) of that Act), and

“convertible securities” has the same meaning as in Chapter 3 of Part 7 of that Act (see section 436 of that Act),

and expressions used in this section and in Chapter 4A of Part 7 of that Act have the same meaning in this section as in that Chapter.

## 22 Capital gains

- (1) TCGA 1992 is amended as follows.
- (2) In section 119A(3) (increase in expenditure by reference to tax charged in relation to employment-related securities: events giving rise to relevant income tax charge)—
  - (a) after “employment income” insert “ in respect of the employment-related securities ”,
  - (b) for the word “or” at the end of paragraph (c) substitute—
    - “(ca) under section 447 of ITEPA 2003 (receipt of benefit) in a case where the benefit is an increase in the market value of the employment-related securities,”,
  - (c) after paragraph (d) insert “or—
    - (e) under subsection (3) of section 21 of the Finance Act 2005 (transitional charge in relation to shares in spin-out companies) by virtue of subsection (4)(b) of that section (election by employee).”, and
  - (d) omit the words following the paragraphs.
- (3) After section 149AA insert—

### **“149AB Shares in research institution spin-out companies**

- (1) Where an individual has acquired shares (or an interest in shares) in circumstances where section 452(1) and (2)(a) of ITEPA 2003 (shares in research institution spin-out companies: market value on acquisition) apply (and section 149AA does not apply in relation to those shares (or interest in shares)) the consideration for the acquisition shall (subject to section 119A) be taken to be equal to the aggregate of—
  - (a) the actual amount or value given for the shares (or interest in shares), and
  - (b) any amount that constituted earnings under Chapter 1 of Part 3 of ITEPA 2003 (earnings) in respect of the acquisition.
- (2) Subsection (1) above applies only to the individual making the acquisition and, accordingly, is to be disregarded in calculating the consideration received by the person from whom the shares (or interest in shares) are (or is) acquired.”
- (4) The amendment made by paragraph (b) of subsection (2) has effect only in relation to disposals on or after 6th April 2005; but the other amendments made by that subsection have effect in relation to any disposal (whether before or after the passing of this Act).
- (5) The amendment made by subsection (3) has effect in relation to any acquisition (whether before or after the passing of this Act).

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## CHAPTER 4

### TRUSTS WITH VULNERABLE BENEFICIARY

#### *Introductory*

#### 23 Introduction

- (1) This Chapter contains tax provision in connection with—
  - (a) income arising to [<sup>F5</sup>the trustees of a settlement] from property held on qualifying trusts for the benefit of a vulnerable person, and
  - (b) chargeable gains accruing to [<sup>F6</sup>the trustees of a settlement] from the disposal of such property.
- (2) Section 24 contains provision as to the making of claims for special tax treatment under this Chapter.
- (3) Sections 25 to 29 contain provision relating to income tax.
- (4) Sections 30 to [<sup>F7</sup>32] contain provision relating to capital gains tax.
- (5) Sections 34 to 36 apply for the purpose of determining whether trusts on which property is held for the benefit of a vulnerable person are qualifying trusts.
- (6) In this Chapter “vulnerable person election” means an election under section 37.
- (7) In this Chapter “vulnerable person” means—
  - (a) a disabled person (see section 38), or
  - (b) a relevant minor (see section 39).

#### **Textual Amendments**

- F5** Words in s. 23(1)(a) substituted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), [Sch. 13 para. 35\(2\)\(a\)\(7\)](#)
- F6** Words in s. 23(1)(b) substituted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), [Sch. 13 para. 35\(2\)\(a\)\(7\)](#)
- F7** Word in s. 23(4) substituted (with effect in accordance with Sch. 2 para. 22 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 12](#)

#### 24 Entitlement to make claim for special tax treatment

A claim for special tax treatment under this Chapter for a tax year may be made by [<sup>F8</sup>the trustees of a settlement] if—

- (a) in the tax year they hold property on qualifying trusts for the benefit of a vulnerable person, and
- (b) a vulnerable person election has effect for all or part of the tax year in relation to those trusts and that person.

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#### Textual Amendments

- F8** Words in s. 24(1) substituted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), [Sch. 13 para. 35\(2\)\(b\)\(7\)](#)

### Income tax

## 25 Qualifying trusts income: special income tax treatment

- (1) This section has effect in relation to a tax year if—
- (a) in the tax year income arises (or is treated as arising) to [<sup>F9</sup>the trustees of a settlement] from property held on qualifying trusts for the benefit of a vulnerable person (“qualifying trusts income”), and
  - (b) a claim for special tax treatment under this Chapter for the tax year is made by the trustees.
- (2) Special income tax treatment applies for the tax year in accordance with sections 26 to 29.
- (3) But this section does not have effect in relation to the tax year if the property from which the qualifying trusts income arises (or is treated as arising) is property in which a person who is a settlor (within the meaning given by [<sup>F10</sup>section 620(1) of ITTOIA 2005]) is regarded as having an interest for the purposes of [<sup>F11</sup>sections 624 and 625 of that Act] (income arising under settlement where settlor retains an interest).

#### Textual Amendments

- F9** Words in s. 25(1)(a) substituted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), [Sch. 13 para. 35\(2\)\(c\)\(7\)](#)
- F10** Words in s. 25(3) substituted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), [Sch. 13 para. 35\(3\)\(a\)\(7\)](#)
- F11** Words in s. 25(3) substituted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), [Sch. 13 para. 35\(3\)\(b\)\(7\)](#)

## 26 Amount of relief

- [<sup>F12</sup>(1)] The trustees' liability to income tax for the tax year is to be reduced by an amount equal to—

$$TQTI - VQTI$$

where—

TQTI is an amount determined in accordance with section 27 (income tax liability of trustees in respect of qualifying trusts income), and

VQTI is an amount determined in accordance with section 28 (extra [<sup>F13</sup> income] tax to which vulnerable person would be liable if qualifying trusts income were income of his).

*Status: Point in time view as at 01/04/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2005, Part 2. (See end of Document for details)*

[<sup>F14</sup>(2) The tax reduction is given effect at Step 6 of the calculation in section 23 of ITA 2007.]

#### Textual Amendments

- F12** S. 26(1) renumbered (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 594](#) (with [Sch. 2](#))
- F13** Word in s. 26(1) inserted (with effect in accordance with Sch. 2 para. 22 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 13](#)
- F14** S. 26(2) inserted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 594](#) (with [Sch. 2](#))

## 27 Trustees' liability: TQTI

(1) For the purposes of section 26, TQTI is the amount of income tax to which the trustees would (apart from this Chapter) be liable for the tax year in respect of the qualifying trusts income arising (or treated as arising) to them in that year (or to which they would be so liable if their liability were computed in accordance with subsection (2) in a case to which that subsection applies).

(2) In a case where—

- (a) income arising (or treated as arising) to the trustees in the tax year (“total income”) includes income (“other income”) which is not qualifying trusts income, and
- (b) the trustees have [<sup>F15</sup>allowable expenses],

there shall be disregarded, in computing the income tax liability of the trustees for the tax year in respect of the qualifying trusts income arising (or treated as arising) to them in that year, such part of the [<sup>F16</sup>allowable] expenses as bears the same proportion to all those expenses as other income bears to total income.

[<sup>F17</sup>(2A) References in subsection (2) to allowable expenses are to expenses which can be set against the total income in accordance with Chapter 4 of Part 9 of ITA 2007.]

(3) This section is subject to section 29 (vulnerable person election having effect for only part of tax year).

#### Textual Amendments

- F15** Words in s. 27(2)(b) substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 595\(2\)\(a\)](#) (with [Sch. 2](#))
- F16** Word in s. 27(2) substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 595\(2\)\(b\)](#) (with [Sch. 2](#))
- F17** S. 27(2A) inserted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 595\(3\)](#) (with [Sch. 2](#))

## 28 Vulnerable person's liability: VQTI

(1) For the purposes of section 26, VQTI is an amount equal to—

TLV1 – TLV2

*Status: Point in time view as at 01/04/2010.*

*Changes to legislation: There are currently no known outstanding effects  
for the Finance Act 2005, Part 2. (See end of Document for details)*

where—

TLV2 is an amount determined in accordance with subsection (2) (and subsection (4) where it applies) (total [<sup>F18</sup> income] tax liability of vulnerable person), and

TLV1 is an amount determined in accordance with subsection (3) (and subsection (4) where it applies) (what total [<sup>F18</sup> income] tax liability of vulnerable person would be if his income included qualifying trusts income).

- (2) TLV2 is the total amount of income tax <sup>F19</sup>... to which the vulnerable person would be liable for the tax year if his income tax liability were computed in accordance with subsections (5) and (6).
- (3) TLV1 is what TLV2 would be if the qualifying trusts income arising (or treated as arising) to the trustees in the tax year in respect of which the trustees are liable to income tax were income of the vulnerable person for the tax year.
- (4) Where the vulnerable person is non-UK resident during the tax year—
  - (a) his income tax liability for the purposes of determining TLV1 and TLV2 is to be computed in accordance with the Income Tax Acts on the assumption that he is resident and domiciled in the United Kingdom throughout the tax year, and
  - <sup>F20</sup>(b) .....
- (5) For the purposes of this section, in a case where income which has arisen to the trustees (whenever it arose) is distributed to the vulnerable person in the tax year, that income is to be disregarded in computing income tax to which he would be liable for the tax year for the purposes of determining TLV1 and TLV2.
- (6) For the purposes of this section, in computing income tax to which the vulnerable person would be liable for the tax year for the purposes of determining TLV1 and TLV2, there is to be disregarded any relief which is given by way of a reduction in the amount of income tax to which the vulnerable person would be liable apart from that relief.
- (7) For the purposes of this section—
  - (a) whether or not a vulnerable person is non-UK resident is to be determined in accordance with section 41(2), and
  - <sup>F21</sup>(b) .....
- (8) This section is subject to section 29 (vulnerable person election having effect for only part of tax year).

#### **Textual Amendments**

- F18** Word in s. 28(1) inserted (with effect in accordance with Sch. 2 para. 22 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 14\(2\)](#)
- F19** Words in s. 28(2) omitted (with effect in accordance with Sch. 2 para. 22 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 14\(3\)](#)
- F20** S. 28(4)(b) omitted (with effect in accordance with Sch. 2 para. 22 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 14\(4\)](#)
- F21** S. 28(7)(b) omitted (with effect in accordance with Sch. 2 para. 22 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 14\(5\)](#)



*Status: Point in time view as at 01/04/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2005, Part 2. (See end of Document for details)*

## [<sup>F22</sup>28A Disapplication of section 629 of ITTOIA 2005

- (1) In a case where this section applies, section 629(1) of ITTOIA 2005 shall not apply in respect of a payment by the trustees of a settlement to a beneficiary under the settlement.
- (2) This section applies if in a year of assessment—
  - (a) the trustees make a payment to a vulnerable person,
  - (b) the payment is made out of qualifying trusts income,
  - (c) the vulnerable person is a relevant child (within the meaning given by section 629 of ITTOIA 2005) of a settlor in relation to the settlement, and
  - (d) the trustees have made a successful claim for special income tax treatment under section 25.]

### Textual Amendments

**F22** S. 28A inserted (with effect in accordance with Sch. 13 para. 36(2) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [Sch. 13 para. 36\(1\)](#)

## 29 Part years

- (1) Where the vulnerable person election has effect for only part of the tax year (“the elected part of the tax year”) sections 26, 27 and 28 apply with the modifications in subsection (2).
- (2) Those modifications are—
  - (a) that references to the qualifying trusts income arising (or treated as arising) to the trustees in the tax year are to be treated as references to the qualifying trusts income arising (or treated as arising) to them in the elected part of the tax year, and
  - (b) that the references in section 27(2) to income arising (or treated as arising) to the trustees in the tax year and expenses of the trustees in the tax year are to be treated as (respectively) references to income arising (or treated as arising) to the trustees in the elected part of the tax year and expenses of the trustees in that part of the tax year.

### *Capital gains tax*

## 30 Qualifying trusts gains: special capital gains tax treatment

- (1) This section has effect in relation to a tax year if—
  - (a) in the tax year chargeable gains accrue to the trustees of a settlement from the disposal of settled property which is held on qualifying trusts for the benefit of a vulnerable person (“the qualifying trusts gains”),
  - (b) the trustees would (apart from this Chapter) be chargeable to capital gains tax in respect of those gains,
  - (c) the trustees are either resident in the United Kingdom during any part of the tax year or ordinarily resident in the United Kingdom during the tax year, and
  - (d) a claim for special tax treatment under this Chapter for the tax year is made by the trustees.

*Status: Point in time view as at 01/04/2010.*

*Changes to legislation: There are currently no known outstanding effects  
 for the Finance Act 2005, Part 2. (See end of Document for details)*

<sup>F23</sup>(1A) .....

- (2) Special capital gains tax treatment applies for the tax year in accordance with—
- (a) section 31 (vulnerable person UK resident during the tax year), or
  - (b) section 32 (vulnerable person non-UK resident during the tax year).
- (3) But this section does not have effect in relation to the tax year if the vulnerable person dies during that year.

<sup>F24</sup>(3A) .....

- (4) The reference in subsection (1)(a) to chargeable gains accruing to the trustees from the disposal of settled property includes a reference to chargeable gains treated as accruing to them under section 13 of TCGA 1992 (attribution of gains to members of non-resident companies).
- (5) For the purposes of this section and sections 31 and 32 whether a vulnerable person is UK resident or non-UK resident during a tax year is to be determined in accordance with section 41(2).

**Textual Amendments**

**F23** S. 30(1A) omitted (with effect in accordance with Sch. 2 para. 22 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 15](#)

**F24** S. 30(3A) omitted (with effect in accordance with Sch. 2 para. 22 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 15](#)

**31 UK resident vulnerable persons: [<sup>F25</sup> amount of relief]**

- (1) Special capital gains tax treatment applies for the tax year in accordance with this section if the vulnerable person is UK resident during the tax year.
- [<sup>F26</sup>(2) The trustees' liability to capital gains tax for the tax year is to be reduced by an amount equal to—

$$\text{AdjustedOldTaxValue} \times \frac{\text{NewAccountingValue}}{\text{AggregateNewAccountingValue}}$$

where—

TQTG is the amount of capital gains tax to which the trustees would (apart from this Chapter) be liable for the tax year in respect of the qualifying trust gains, and  
 VQTG is the amount arrived at under subsection (3).

- (3) That amount is—

$$\text{OldTaxValue} \times \frac{\text{NewAccountingValue}}{\text{AggregateNewAccountingValue}}$$

where—

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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2005, Part 2. (See end of Document for details)*

TLVB is the total amount of capital gains tax to which the vulnerable person is liable for the tax year, and  
TLVA is what TLVB would be if the qualifying trust gains accrued to the vulnerable person (instead of to the trustees) and no allowable losses were deducted from the qualifying trust gains.]

#### Textual Amendments

- F25** Words in s. 31 heading substituted (with effect in accordance with Sch. 2 para. 22 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 16\(3\)](#)
- F26** S. 31(2)(3) substituted (with effect in accordance with Sch. 2 para. 22 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 16\(2\)](#)

### 32 Non-UK resident vulnerable persons: amount of relief

- (1) Special capital gains tax treatment applies for the tax year in accordance with this section if the vulnerable person is non-UK resident during the tax year.
- (2) The trustees' liability to capital gains tax for the tax year is to be reduced by an amount equal to—

**TQTG – VQTG**

where—

TQTG is the amount of capital gains tax to which the trustees would (apart from this Chapter) be liable for the tax year in respect of the qualifying trusts gains, and

[<sup>F27</sup>VQTG is the amount arrived at under subsection (3). ]

[<sup>F28</sup>(3) That amount is—

**PreviousDebits – PreviousCredits**

where—

TLVB is the total amount of capital gains tax to which the vulnerable person would be liable for the tax year if the vulnerable person's taxable amount for the tax year for the purposes of section 3 of TCGA 1992 were equal to the vulnerable person's deemed CGT taxable amount for the tax year (if any), and

TLVA is what TLVB would be if the vulnerable person's taxable amount for the tax year for the purposes of section 3 of TCGA 1992 were equal to the aggregate of the vulnerable person's deemed CGT taxable amount for the tax year (if any) and the amount of the qualifying trust gains.

- (4) For the purposes of this section the vulnerable person's deemed CGT taxable amount for the tax year is to be determined in accordance with Schedule 1.]

#### Textual Amendments

- F27** Words in s. 32(2) substituted (with effect in accordance with Sch. 2 para. 22 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 17\(2\)](#)

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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2005, Part 2. (See end of Document for details)*

**F28** S. 32(3)(4) inserted (with effect in accordance with Sch. 2 para. 22 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 17\(3\)](#)

### **F29** 33 **Vulnerable person's liability: VQTG**

.....

#### **Textual Amendments**

**F29** S. 33 omitted (with effect in accordance with Sch. 2 para. 22 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 18](#)

### *Qualifying trusts*

### **34 Disabled persons**

- (1) For the purposes of this Chapter where property is held on trusts for the benefit of a disabled person those trusts are qualifying trusts if they secure that the conditions in subsection (2) are met—
  - (a) during the lifetime of the disabled person, or
  - (b) until the termination of the trusts (if that occurs before his death).
- (2) Those conditions are—
  - (a) that if any of the property is applied for the benefit of a beneficiary, it is applied for the benefit of the disabled person, and
  - (b) either that the disabled person is entitled to all the income (if there is any) arising from any of the property or that no such income may be applied for the benefit of any other person.
- (3) The trusts on which property is held are not to be treated as failing to secure that the conditions in subsection (2) are met by reason only of <sup>F30</sup>—
  - (a) a power conferred on the trustees by section 32 of the Trustee Act 1925 or section 33 of the Trustee Act (Northern Ireland) 1958) (powers of advancement),
  - (b) a power conferred on the trustees by the law of a jurisdiction other than England and Wales or Northern Ireland which makes provision similar to the provisions specified in paragraph (a), or
  - (c) a power of advancement which is conferred on the trustees by the instrument creating the settlement, or by another instrument made in accordance with the terms of the settlement, and which is subject to the same restrictions as those specified in section 32(1)(a) and (c) of the Trustee Act 1925 (c. 19).]
- (4) The reference in subsection (1) to the lifetime of the disabled person is, where property is held for his benefit on trusts of the kind described in section 33 of the Trustee Act 1925 (protective trusts), to be construed as a reference to the period during which such property is held on trust for him.

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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2005, Part 2. (See end of Document for details)*

### Textual Amendments

**F30** S. 34(3)(a)-(c) substituted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), [Sch. 12 para. 48\(2\)\(5\)](#)

## 35 Relevant minors

- (1) For the purposes of this Chapter where property is held on trusts for the benefit of a relevant minor those trusts are qualifying trusts if they are—
  - (a) statutory trusts for the relevant minor under sections 46 and 47(1) of the Administration of Estates Act 1925 (c. 23) (succession on intestacy and statutory trusts in favour of relatives of intestate), or
  - (b) trusts to which subsection (2) below applies.
- (2) This subsection applies to trusts—
  - (a) established under the will of a deceased parent of the relevant minor, or
  - (b) established under the Criminal Injuries Compensation Scheme,which secure that the conditions in subsection (3) are met.
- (3) Those conditions are—
  - (a) that the relevant minor will, on attaining the age of 18, become absolutely entitled to the property, any income arising from it and any income that has arisen from property held on the trusts for his benefit and been accumulated before that time,
  - (b) that, until that time, for so long as the relevant minor is living, if any of the property is applied for the benefit of a beneficiary, it is applied for the benefit of the relevant minor, and
  - (c) that, until that time, for so long as the relevant minor is living, either—
    - (i) the relevant minor is entitled to all the income (if there is any) arising from any of the property, or
    - (ii) no such income may be applied for the benefit of any other person.
- (4) Trusts to which subsection (2) applies are not to be treated as failing to secure that the conditions in subsection (3) are met by reason only of <sup>F31</sup>—
  - (a) a power conferred on the trustees by section 32 of the Trustee Act 1925 or section 33 of the Trustee Act (Northern Ireland) 1958) (powers of advancement),
  - (b) a power conferred on the trustees by the law of a jurisdiction other than England and Wales or Northern Ireland which makes provision similar to the provisions specified in paragraph (a), or
  - (c) a power of advancement which is conferred on the trustees by the instrument creating the settlement, or by another instrument made in accordance with the terms of the settlement, and which is subject to the same restrictions as those specified in section 32(1)(a) and (c) of the Trustee Act 1925 (c. 19).]
- (5) In this section “the Criminal Injuries Compensation Scheme” means—
  - (a) the schemes established by arrangements made under the Criminal Injuries Compensation Act 1995 (c. 53),
  - (b) arrangements made by the Secretary of State for compensation for criminal injuries in operation before the commencement of those schemes, or

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- (c) the scheme established under the Criminal Injuries (Northern Ireland) Order 2002 (S.I. 2002/796 (N.I. 1)).

#### Textual Amendments

**F31** S. 35(4)(a)-(c) substituted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), [Sch. 12 para. 48\(3\)\(5\)](#)

### 36 Parts of assets

For the purposes of this Chapter references to property being held on trusts include references to a part of an asset being held on trusts if—

- (a) that part of the asset, and
- (b) any income arising from it (or treated as arising from it),

can be identified for the purpose of determining whether the trusts on which it is held are qualifying trusts.

#### *Vulnerable persons*

### 37 Vulnerable person election

- (1) Where [<sup>F32</sup>the trustees of a settlement] hold property on trusts for the benefit of a person, the trustees and that person may jointly make a vulnerable person election in relation to those trusts and that person if—
  - (a) the person in relation to whom the election is made is a vulnerable person, and
  - (b) the trusts in relation to which the election is made are qualifying trusts.
- (2) A vulnerable person election is an election in such form as the Board of Inland Revenue may require—
  - (a) specifying the date from which it is to have effect (“the effective date”),
  - (b) made by notice to the Inland Revenue no later than 12 months after 31st January next following the tax year in which the effective date falls, or within such further time, if any, as the Board of Inland Revenue may by notice have allowed, and
  - (c) containing the items specified in subsection (3).
- (3) Those items are—
  - (a) such information as the Board of Inland Revenue may require, including in particular information relating to the trusts, the trustees, the vulnerable person and his entitlement under the trusts and any other person connected with the trusts,
  - (b) a statement that the trusts in relation to which the election is made are qualifying trusts,
  - (c) a declaration that all the information contained in the election is correct to the best of the knowledge and belief of the trustees and vulnerable person,
  - (d) a declaration by the vulnerable person that he authorises the trustees to make any claim under this Chapter for any tax year as they consider appropriate, and
  - (e) such other declarations as the Board of Inland Revenue may reasonably require.

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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2005, Part 2. (See end of Document for details)*

- (4) A vulnerable person election is irrevocable.
- (5) A vulnerable person election has effect from the effective date until one of the following events occurs—
- (a) the person in relation to whom the election is made ceases to be a vulnerable person,
  - (b) the trusts in relation to which the election is made cease to be qualifying trusts, and
  - (c) the trusts are terminated.
- (6) If the trustees become aware that an event mentioned in subsection (5) has occurred—
- (a) they must inform the Inland Revenue that the vulnerable person election has ceased to have effect, and
  - (b) they must do so by giving notice containing particulars of the event within the period of 90 days beginning on the date on which they first become aware that the event has occurred.

[<sup>F33</sup>(7) Where—

- (a) a vulnerable person election has effect in relation to qualifying trusts,
- (b) the property held on those trusts is treated for the purposes of TCGA 1992 and of the Tax Acts as comprised in a sub-fund settlement, and
- (c) the vulnerable person election was not made by the trustees of the sub-fund settlement,

the vulnerable person election shall have effect, in relation to the trusts mentioned in paragraph (a), in respect of matters arising at or after the time when the sub-fund election is treated as having taken effect, as if it had been made by the trustees of the sub-fund settlement and the vulnerable person.

- (8) In relation to matters arising before the time when the sub-fund election is treated as having taken effect, nothing in subsection (7)—
- (a) relieves the trustees of the settlement which is the principal settlement in relation to the sub-fund settlement of their obligation under subsection (6), or
  - (b) prevents a notice from being given to those trustees under section 40(1) or (3).
- (9) In this section—
- (a) “principal settlement” has the meaning given by paragraph 1 of Schedule 4ZA to TCGA 1992,
  - (b) “sub-fund election” has the meaning given by paragraph 2 of that Schedule,
  - (c) “sub-fund settlement” has the meaning given by paragraph 1 of that Schedule, and
  - (d) the time when a sub-fund election is treated as having taken effect shall be the time when it is treated as having taken effect under paragraph 2 of that Schedule.]

#### Textual Amendments

**F32** Words in s. 37(1) substituted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\), Sch. 13 para. 35\(2\)\(d\)\(7\)](#)

**F33** S. 37(7)-(9) inserted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\), Sch. 12 para. 48\(4\)\(5\)](#)

*Status: Point in time view as at 01/04/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2005, Part 2. (See end of Document for details)*

### **38 Meaning of “disabled person”**

- (1) In this Chapter “disabled person” means—
- (a) a person who by reason of mental disorder within the meaning of the Mental Health Act 1983 (c. 20) is incapable of administering his property or managing his affairs, or
  - (b) a person in receipt of attendance allowance or of a disability living allowance by virtue of entitlement to the care component at the highest or middle rate.
- (2) A person is to be treated as a disabled person under subsection (1)(b) if he satisfies the Inland Revenue—
- (a) that if he were to meet the prescribed conditions as to residence under section 64(1) of SSCBA 1992 or section 64(1) of SSCB(NI)A 1992 he would be entitled to receive attendance allowance, or
  - (b) that if he were to meet the prescribed conditions as to residence under section 71(6) of SSCBA 1992 or section 71(6) of SSCB(NI)A 1992 he would be entitled to receive a disability living allowance by virtue of entitlement to the care component at the highest or middle rate.
- (3) A person who is (or is treated as) a disabled person under subsection (1)(b) is not to cease to be (or to be treated as) such a disabled person by reason only of provision made by—
- (a) regulations under section 67(1) or (2) of SSCBA 1992 or section 67(1) or (2) of SSCB(NI)A 1992 (non-satisfaction of conditions for attendance allowance where person is undergoing treatment for renal failure in a hospital or is provided with certain accommodation), or
  - (b) regulations under section 72(8) of SSCBA or section 72(8) SSCB(NI)A 1992 (no payment of disability allowance for persons for whom certain accommodation is provided).
- (4) In this section “attendance allowance” means an allowance under—
- (a) section 64 of SSCBA 1992, or
  - (b) section 64 of SSCB(NI)A 1992.
- (5) In this section “disability living allowance” means a disability living allowance under—
- (a) section 71 of SSCBA 1992, or
  - (b) section 71 of SSCB(NI)A 1992.
- (6) In this section—
- “SSCBA 1992” means the Social Security Contributions and Benefits Act 1992 (c. 4), and
- “SSCB(NI)A 1992” means the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7).

### **39 Meaning of “relevant minor”**

For the purposes of this Chapter a person is a “relevant minor” if—

- (a) he has not yet attained the age of 18, and
- (b) at least one of his parents has died.



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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2005, Part 2. (See end of Document for details)*

### *Miscellaneous and supplementary*

#### **40 Power to make enquiries**

- (1) Where a vulnerable person election has been made the Inland Revenue may by notice require the trustees or the vulnerable person by whom the election was made to furnish them with such particulars as they may reasonably require for the purposes of determining—
  - (a) whether the requirements mentioned in subsection (1)(a) and (b) of section 37 were met at the time the election was made, and
  - (b) whether an event mentioned in subsection (5) of that section has occurred since the effective date.
- (2) The notice must specify the time within which the information must be furnished (not being less than 60 days).
- (3) If the Board of Inland Revenue determine—
  - (a) that either or both of the requirements mentioned in subsection (1)(a) and (b) of section 37 were not met at the time the election was made, or
  - (b) that an event mentioned in subsection (5) of that section has occurred since the effective date of the election,they may give notice to the trustees and the person in relation to whom the vulnerable person election was made that the election never had effect or ceased to have effect from a date specified in the notice.
- (4) A person aggrieved by a determination of the Board of Inland Revenue under subsection (3) may by notice appeal <sup>F34</sup>....
- (5) The notice of appeal must be given to the Board of Inland Revenue within 30 days after the notice of the determination was given under subsection (3).
- (6) All such adjustments shall be made, whether by discharge or repayment of tax, the making of assessments or otherwise, as are required to give effect to a determination under subsection (3) (despite any limitation on the time within which any adjustment may be made).
- (7) In subsection (6) “tax” means income tax or capital gains tax.

#### **Textual Amendments**

**F34** Words in s. 40(4) omitted (1.4.2009) by virtue of [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), [Sch. 1 para. 445](#)

#### **41 Interpretation etc.**

- (1) In this Chapter—
    - “the Board of Inland Revenue” means the Commissioners of Inland Revenue (as to which, see in particular the Inland Revenue Regulation Act 1890 (c. 21)),
    - “the Inland Revenue” means any officer of the Board of Inland Revenue,
    - “notice” means notice in writing, and
- <sup>F35</sup>  
...

*Status: Point in time view as at 01/04/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2005, Part 2. (See end of Document for details)*

- (2) For the purposes of this Chapter—
- (a) a vulnerable person is UK resident during a tax year if he is either resident in the United Kingdom during any part of the tax year or ordinarily resident in the United Kingdom during the tax year, and
  - (b) a vulnerable person is non-UK resident during a tax year if he is neither resident in the United Kingdom during any part of the tax year nor ordinarily resident in the United Kingdom during the tax year.
- (3) Sections 30 to [F<sup>36</sup>32] and Schedule 1 are to be construed as one with TCGA 1992.
- (4) To the extent that any provision of this Chapter would not, apart from this subsection, form part of Income Tax Acts, the provisions of the Income Tax Acts are to apply for the purposes of any references in the provision relating to income arising (or treated as arising) to a person or to the income tax liability of a person.

#### Textual Amendments

- F35** Words in s. 41(1) omitted (21.7.2008) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 102\(a\)](#)
- F36** Word in s. 41(3) substituted (with effect in accordance with Sch. 2 para. 22 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 19](#)

## 42 Application in relation to Scotland

- (1) This Chapter applies in relation to Scotland with the following modifications.
- (2) In section 23(5), for “trusts on which property is held for the benefit of a vulnerable person are qualifying trusts” substitute “ property held in trust for the benefit of a vulnerable person is held in qualifying trust ”.
- (3) In section 31(3)(a), for “on the qualifying trusts” substitute “ in qualifying trust (in the same trust as the settled property disposed of) ”.
- (4) In section 34—
- (a) in subsection (1), for “those trusts are qualifying trusts if they” substitute “ the property is held in qualifying trust if the trust purposes ”, and
  - (b) in subsection (4), for “on trusts” substitute “ in a trust ”.
- (5) In section 35—
- (a) in subsection (1), for “those trusts are qualifying trusts if they are” substitute “ the property is held in qualifying trust if the trust is ”,
  - <sup>F37</sup>(b) .....
  - (c) in subsection (2), before “which” insert “ the purposes of ”.
- (6) In section 36, for “the trusts on which it is held are qualifying trusts” substitute “ it is held in qualifying trust ”.
- (7) In section 37—
- (a) in subsection (1), for paragraph (b) substitute—
    - “(b) property held in the trust in relation to which the election is made is held in qualifying trust.”,

*Status: Point in time view as at 01/04/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2005, Part 2. (See end of Document for details)*

- (b) in subsection (3)(b), for “the trusts in relation to which the election is made are qualifying trusts” substitute “property held in the trust in relation to which the election is made is held in qualifying trust”, and
  - (c) in subsection (5), for paragraph (b) substitute—
    - “(b) property held in the trust in relation to which the election is made ceases to be held in qualifying trust”,.
- (8) Sections 34(3) and 35(4) do not apply to Scotland
- (9) Unless otherwise modified by this section, any reference to anything being held on trusts is to be construed as a reference to it being held in trust.
- (10) Unless otherwise modified or disapplied by this section, any reference to trusts is to be construed as a reference to a trust or the trust (as appropriate).

#### Textual Amendments

**F37** S. 42(5)(b) repealed (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), [Sch. 13 para. 35\(5\)\(7\)](#), [Sch. 26 Pt. 3\(15\)](#)

### 43 Penalties under TMA 1970

- (1) Section 98 of TMA 1970 (special returns, etc) is amended as follows.
- (2) In the first column of the table insert at the appropriate place— “ section 40(1) of the Finance Act 2005 ”.
- (3) In the second column of the table insert at the appropriate place— “ section 37(3) of the Finance Act 2005; ”, and “ section 37(6) of the Finance Act 2005; ”.
- (4) For the purposes of that section, any information, statements or declarations given or made jointly by [<sup>F38</sup>the trustees of a settlement] and a vulnerable person are to be treated as given or made by the trustees.

#### Textual Amendments

**F38** Words in s. 43(4) substituted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), [Sch. 13 para. 35\(6\)\(7\)](#)

### 44 Consequential amendments

- <sup>F39</sup>(1) .....
- <sup>F40</sup>(2) .....

#### Textual Amendments

**F39** S. 44(1) repealed (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 3 Pt. 1](#) (with [Sch. 2](#))

**F40** S. 44(2) omitted (with effect in accordance with [Sch. 2 para. 22](#) of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 21\(i\)](#)

*Status: Point in time view as at 01/04/2010.*

*Changes to legislation: There are currently no known outstanding effects  
for the Finance Act 2005, Part 2. (See end of Document for details)*

## 45 Commencement

This Chapter has effect for the tax year beginning on 6th April 2004 and subsequent tax years.

## CHAPTER 5

### ALTERNATIVE FINANCE ARRANGEMENTS

#### *Introductory*

#### <sup>F41</sup> 46 Alternative finance arrangements

.....

##### **Textual Amendments**

**F41** Ss. 46-47A repealed (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), s. 381(1), Sch. 8 para. 214, **Sch. 10 Pt. 7** (with Sch. 9 paras. 1-9, 22)

#### *Arrangements giving rise to alternative finance return*

#### <sup>F41</sup> 47 Alternative finance arrangements: purchase and re-sale

.....

##### **Textual Amendments**

**F41** Ss. 46-47A repealed (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), s. 381(1), Sch. 8 para. 214, **Sch. 10 Pt. 7** (with Sch. 9 paras. 1-9, 22)

#### <sup>F41</sup> 47A Alternative finance arrangements: diminishing shared ownership

.....

##### **Textual Amendments**

**F41** Ss. 46-47A repealed (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), s. 381(1), Sch. 8 para. 214, **Sch. 10 Pt. 7** (with Sch. 9 paras. 1-9, 22)

#### <sup>F42</sup> 48 Arrangements within section 47: foreign currency and non-residents

.....

*Status: Point in time view as at 01/04/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2005, Part 2. (See end of Document for details)*

**Textual Amendments**

**F42** S. 48(1)(3) repealed (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 8 para. 214, Sch. 10 Pts. 7, 11](#) (with [Sch. 9 paras. 1-9, 22](#)); s. 48(2) repealed (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), Sch. 3 Pt. 1 (with Sch. 2)

**<sup>F43</sup> 48A Alternative finance arrangements: alternative finance investment bond: introduction**

.....

**Textual Amendments**

**F43** S. 48A repealed (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 8 para. 214, Sch. 10 Pt. 7](#) (with [Sch. 9 paras. 1-9, 22](#))

**<sup>F44</sup> 48B Alternative finance arrangements: alternative finance investment bond: effects**

.....

**Textual Amendments**

**F44** S. 48B repealed (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 8 paras. 214, 304, Sch. 10 Pts. 7, 13](#) (with [Sch. 9 paras. 1-9, 22](#))

*Arrangements giving rise to profit share return*

**<sup>F45</sup> 49 Alternative finance arrangements: deposit**

.....

**Textual Amendments**

**F45** [Ss. 49-57](#) repealed (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 8 para. 214, Sch. 10 Pt. 7](#) (with [Sch. 9 paras. 1-9, 22](#))

**<sup>F45</sup> 49A Alternative finance arrangements: profit share agency**

.....

*Status: Point in time view as at 01/04/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2005, Part 2. (See end of Document for details)*

**Textual Amendments**

**F45** Ss. 49-57 repealed (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), s. 381(1), [Sch. 8 para. 214](#), **Sch. 10 Pt. 7** (with [Sch. 9 paras. 1-9, 22](#))

*Treatment of alternative finance arrangements*

**F45 50 Treatment of alternative finance arrangements: companies**

.....

**Textual Amendments**

**F45** Ss. 49-57 repealed (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), s. 381(1), [Sch. 8 para. 214](#), **Sch. 10 Pt. 7** (with [Sch. 9 paras. 1-9, 22](#))

**F45 51 Treatment of alternative finance arrangements: persons other than companies**

.....

**Textual Amendments**

**F45** Ss. 49-57 repealed (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), s. 381(1), [Sch. 8 para. 214](#), **Sch. 10 Pt. 7** (with [Sch. 9 paras. 1-9, 22](#))

**F45 51A Discount**

.....

**Textual Amendments**

**F45** Ss. 49-57 repealed (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), s. 381(1), [Sch. 8 para. 214](#), **Sch. 10 Pt. 7** (with [Sch. 9 paras. 1-9, 22](#))

**F45 52 Provision not at arm's length**

.....

**Textual Amendments**

**F45** Ss. 49-57 repealed (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), s. 381(1), [Sch. 8 para. 214](#), **Sch. 10 Pt. 7** (with [Sch. 9 paras. 1-9, 22](#))

*Status: Point in time view as at 01/04/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2005, Part 2. (See end of Document for details)*

**F45 53 Treatment of section 47 , 47A or 48A arrangements: sale and purchase of asset**  
.....

**Textual Amendments**

**F45** Ss. 49-57 repealed (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 8 para. 214, Sch. 10 Pt. 7](#) (with Sch. 9 paras. 1-9, 22)

**F45 54 Return not to be treated as distribution**  
.....

**Textual Amendments**

**F45** Ss. 49-57 repealed (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 8 para. 214, Sch. 10 Pt. 7](#) (with Sch. 9 paras. 1-9, 22)

**F46 54A. Treatment of section 47, 49 and 49A arrangements as loans: Community Investment Tax Relief**  
.....

**Textual Amendments**

**F46** S. 54A repealed (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), s. 1184\(1\), Sch. 1 para. 475\(1\), Sch. 3 Pt. 2](#) (with Sch. 1 para. 475(2), Sch. 2)

*Supplementary*

**F45 55 Further provisions**  
.....

**Textual Amendments**

**F45** Ss. 49-57 repealed (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 8 para. 214, Sch. 10 Pt. 7](#) (with Sch. 9 paras. 1-9, 22)

**F45 56 Application of Chapter**  
.....

*Status: Point in time view as at 01/04/2010.*

*Changes to legislation: There are currently no known outstanding effects  
for the Finance Act 2005, Part 2. (See end of Document for details)*

**Textual Amendments**

**F45** Ss. 49-57 repealed (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), s. 381(1), Sch. 8 para. 214, **Sch. 10 Pt. 7** (with Sch. 9 paras. 1-9, 22)

**<sup>F45</sup>57 Interpretation of Chapter**

.....

**Textual Amendments**

**F45** Ss. 49-57 repealed (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), s. 381(1), Sch. 8 para. 214, **Sch. 10 Pt. 7** (with Sch. 9 paras. 1-9, 22)

## CHAPTER 6

### FILM RELIEF

#### *Tax relief for limited-budget films*

**<sup>F47</sup>58 Relief for production and acquisition expenditure on limited-budget films**

.....

**Textual Amendments**

**F47** Ss. 58-71 repealed (with effect in accordance with Sch. 26 Pt. 3(4) Note 1 of the amending Act) by [Finance Act 2006 \(c. 25\)](#), **Sch. 26 Pt. 3(4)**

#### *Restrictions on relief*

**<sup>F47</sup>59 Restrictions on relief for production and acquisition expenditure**

.....

**Textual Amendments**

**F47** Ss. 58-71 repealed (with effect in accordance with Sch. 26 Pt. 3(4) Note 1 of the amending Act) by [Finance Act 2006 \(c. 25\)](#), **Sch. 26 Pt. 3(4)**



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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2005, Part 2. (See end of Document for details)*

### *Deferred income agreements*

#### **F47 60 Deferred income agreements which exist when relief claimed**

.....

##### **Textual Amendments**

**F47** Ss. 58-71 repealed (with effect in accordance with Sch. 26 Pt. 3(4) Note 1 of the amending Act) by Finance Act 2006 (c. 25), **Sch. 26 Pt. 3(4)**

#### **F47 61 Meaning of “deferred income agreement in respect of a film”**

.....

##### **Textual Amendments**

**F47** Ss. 58-71 repealed (with effect in accordance with Sch. 26 Pt. 3(4) Note 1 of the amending Act) by Finance Act 2006 (c. 25), **Sch. 26 Pt. 3(4)**

#### **F47 62 Deferred income agreements entered into after relief claimed**

.....

##### **Textual Amendments**

**F47** Ss. 58-71 repealed (with effect in accordance with Sch. 26 Pt. 3(4) Note 1 of the amending Act) by Finance Act 2006 (c. 25), **Sch. 26 Pt. 3(4)**

#### **F47 63 Sections 60 to 62: supplementary**

.....

##### **Textual Amendments**

**F47** Ss. 58-71 repealed (with effect in accordance with Sch. 26 Pt. 3(4) Note 1 of the amending Act) by Finance Act 2006 (c. 25), **Sch. 26 Pt. 3(4)**

#### **F47 64 Transitional provision for years of assessment before the year 2005-06**

.....

##### **Textual Amendments**

**F47** Ss. 58-71 repealed (with effect in accordance with Sch. 26 Pt. 3(4) Note 1 of the amending Act) by Finance Act 2006 (c. 25), **Sch. 26 Pt. 3(4)**

*Status: Point in time view as at 01/04/2010.*

*Changes to legislation: There are currently no known outstanding effects  
 for the Finance Act 2005, Part 2. (See end of Document for details)*

**F47 65 Corresponding provision in ITTOIA 2005**

.....

**Textual Amendments**

**F47** Ss. 58-71 repealed (with effect in accordance with Sch. 26 Pt. 3(4) Note 1 of the amending Act) by Finance Act 2006 (c. 25), **Sch. 26 Pt. 3(4)**

*Companies benefited by film relief: exit charges*

**F47 66 When a chargeable event occurs**

.....

**Textual Amendments**

**F47** Ss. 58-71 repealed (with effect in accordance with Sch. 26 Pt. 3(4) Note 1 of the amending Act) by Finance Act 2006 (c. 25), **Sch. 26 Pt. 3(4)**

**F47 67 Consequences of a chargeable event: exit event X or Y**

.....

**Textual Amendments**

**F47** Ss. 58-71 repealed (with effect in accordance with Sch. 26 Pt. 3(4) Note 1 of the amending Act) by Finance Act 2006 (c. 25), **Sch. 26 Pt. 3(4)**

**F47 68 Exit event Z: a relevant disposal at an undervalue**

.....

**Textual Amendments**

**F47** Ss. 58-71 repealed (with effect in accordance with Sch. 26 Pt. 3(4) Note 1 of the amending Act) by Finance Act 2006 (c. 25), **Sch. 26 Pt. 3(4)**

**F47 69 Consequences of a chargeable event: exit event Z**

.....

**Textual Amendments**

**F47** Ss. 58-71 repealed (with effect in accordance with Sch. 26 Pt. 3(4) Note 1 of the amending Act) by Finance Act 2006 (c. 25), **Sch. 26 Pt. 3(4)**

*Status: Point in time view as at 01/04/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2005, Part 2. (See end of Document for details)*

**F4770 Valuation of the “rights to guaranteed income” and “disposed rights”**  
.....

**Textual Amendments**

**F47** Ss. 58-71 repealed (with effect in accordance with Sch. 26 Pt. 3(4) Note 1 of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [Sch. 26 Pt. 3\(4\)](#)

**F4771 Meaning of “company” and related terms**  
.....

**Textual Amendments**

**F47** Ss. 58-71 repealed (with effect in accordance with Sch. 26 Pt. 3(4) Note 1 of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [Sch. 26 Pt. 3\(4\)](#)

**CHAPTER 7**

**F48 AVOIDANCE INVOLVING PARTNERSHIP**

**Textual Amendments**

**F48** Pt. 2 Ch. 7 repealed (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 3 Pt. 1](#) (with [Sch. 2](#))

*Partners: restrictions on relief*

**F4872 Removal of restrictions on interest relief**  
.....

**F4873 Meaning of “contribution to the trade”**  
.....

*Partners: recovery of excess relief*

**F4974 Recovery of excess relief given under section 380 or 381 of ICTA**  
.....

**Textual Amendments**

**F49** Ss. 74-78 repealed (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 600](#), [Sch. 3 Pt. 1](#) (with [Sch. 2](#))

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*Changes to legislation: There are currently no known outstanding effects  
 for the Finance Act 2005, Part 2. (See end of Document for details)*

#### **F4975 Computing the chargeable amount**

.....

##### **Textual Amendments**

**F49** Ss. 74-78 repealed (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), Sch. 1 para. 600, **Sch. 3 Pt. 1** (with [Sch. 2](#))

#### **F4976 Meaning of “relevant loss”**

.....

##### **Textual Amendments**

**F49** Ss. 74-78 repealed (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), Sch. 1 para. 600, **Sch. 3 Pt. 1** (with [Sch. 2](#))

#### **F4977 Transitional provision for years of assessment before the year 2005-06**

.....

##### **Textual Amendments**

**F49** Ss. 74-78 repealed (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), Sch. 1 para. 600, **Sch. 3 Pt. 1** (with [Sch. 2](#))

#### **F4978 Consequential amendments**

.....

##### **Textual Amendments**

**F49** Ss. 74-78 repealed (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), Sch. 1 para. 600, **Sch. 3 Pt. 1** (with [Sch. 2](#))

*Partners benefited by film relief*

#### **F4879 Meaning of “capital contribution to the trade”**

.....

*Status: Point in time view as at 01/04/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2005, Part 2. (See end of Document for details)*

## CHAPTER 8

### ACCOUNTING PRACTICE AND RELATED MATTERS

#### 80 Accounting practice and related matters

- (1) Schedule 4 (accounting practice and related matters) has effect.
- (2) In that Schedule—
  - Part 1 makes provision about bad debts and related matters;
  - Part 2 makes other provision connected with accounting practice.
- (3) Part 1 of the Schedule, so far as it amends provisions that have effect both for income tax and corporation tax, has effect for the purposes of corporation tax only.
- (4) Except as otherwise provided, the provisions of the Schedule have effect for periods of account beginning on or after 1st January 2005.

#### <sup>F50</sup>81 Computation of profits: change of accounting basis

.....

#### Textual Amendments

- F50** S. 81 repealed (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), [Sch. 3 Pt. 1](#) (with [Sch. 2 Pts. 1, 2](#))

#### 82 Change of accounting practice: deferment of transitional adjustments

- (1) This section applies where—
  - (a) a company enters into a transaction on or after 14th December 2004, otherwise than in the ordinary course of its business,
  - (b) as a result of the transaction it incurs a loss in respect of a loan relationship or derivative contract in respect of which, apart from this section, a debit would fall to be brought into account for tax purposes in a period of account beginning before 1st January 2005,
  - (c) the sole or main purpose of the company in entering into the transaction at the time it did was to enable it to bring a debit into account for tax purposes in such a period, and
  - (d) if the company had continued to hold the asset or liability representing the loan relationship or derivative contract, as it was held immediately before the transaction referred to in paragraph (a), in its first period of account beginning on or after 1st January 2005, a debit would have arisen in respect of the loan relationship or derivative contract in that period that was a prescribed debit for the purposes of regulation 3 of the Loan Relationship and Derivative Contracts (Change of Accounting Practice) Regulations 2004 (S.I. 2004/3271) (debts not to be brought into account until the company's first period beginning on or after 1st January 2006).
- (2) Where this section applies no such debit as is mentioned in subsection (1)(b) shall be brought into account in the period of account mentioned there, but a debit of the same amount shall instead be brought into account as if it were a prescribed debit for the

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purposes of the regulation referred to in subsection (1)(d) (even though the loss giving rise to the debit was incurred before 1st January 2005).

- (3) In determining the sole or main purpose of a company for the purposes of subsection (1)(c) regard shall be had to anything done by a connected company that would be relevant for the purposes of that determination if done by the company in question.

For this purpose companies are connected if they are connected persons within the meaning of section 839 of ICTA.

- (4) For the purposes of subsection (1)(d) it shall be assumed that the loan relationship or derivative contract has the same value at the beginning of the company's first period of account beginning on or after 1st January 2005 as it had at the time of the transaction referred to in subsection (1)(a).
- (5) This section does not apply where the transaction is entered into in pursuance of legally binding arrangements entered into before 14th December 2004.
- (6) In this section, references to a company entering into a transaction include a reference to the company, or the directors of the company, taking a decision about a loan relationship or derivative contract that affects its treatment for accounting purposes (other than a decision to prepare some or all of the company's accounts in accordance with international accounting standards).

### **83 Application of accounting standards to securitisation companies**

- (1) For the purposes of the Corporation Tax Acts as they apply to a securitisation company in relation to a period of account—
- (a) beginning on or after 1st January 2005, and
  - (b) [<sup>F51</sup> (subject to subsection (7A)(a))] ending before [<sup>F52</sup> 1st January 2008],
- generally accepted accounting practice shall be taken to be UK generally accepted accounting practice as it applied for a period of account ending on 31st December 2004.
- (2) For the purposes of this section a “securitisation company” means a company that is—
- (a) a note-issuing company,
  - (b) an asset-holding company,
  - (c) an intermediate borrowing company,
  - (d) a warehouse company, or
  - (e) a commercial paper funded company,
- as defined below.
- (3) A “note-issuing company” means a company in relation to which the following conditions are met—
- (a) it is party as debtor to a capital market investment,
  - (b) the securities that represent the capital market investment are issued wholly or mainly to independent persons,
  - (c) the capital market investment is part of a capital market arrangement, <sup>F53</sup> . . .
  - (d) the total value of the capital market investments made under that capital market arrangement is at least £50 million [<sup>F54</sup>], and

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- (e) if it has any business apart from the activity mentioned in paragraph (a) (and any incidental activities) it consists in one or both of the following—
    - (i) acquiring, holding and managing assets forming the whole or part of the security for the capital market arrangement;
    - (ii) acting as guarantor in respect of loan relationships, derivative contracts, finance leases or other liabilities of other companies where the whole, or substantially the whole, of the company's rights in respect of the guarantee (including any right of subrogation) form the whole or part of the security for the capital market arrangement.]
  - (4) An “asset-holding company” means a company—
    - (a) whose business (apart from any incidental activities) consists in acquiring, holding and managing assets forming the whole or part of the security for a capital market arrangement entered into by a note-issuing company, and
    - (b) whose liabilities representing debtor relationships are owed wholly or mainly to a note-issuing company or intermediate borrowing company.
  - (5) An “intermediate borrowing company” means a company—
    - (a) whose only business is to enter into and be a party to creditor relationships with an asset-holding company [<sup>F55</sup>(or another intermediate borrowing company)], and
    - (b) whose liabilities representing debtor relationships are owed wholly, or substantially wholly, to a note-issuing company [<sup>F56</sup>(or another intermediate borrowing company)].
  - (6) A “warehouse company” means a company whose business consists wholly of acquiring and holding financial assets for the purpose—
    - (a) of transferring them to a company (whether or not yet in existence) that at the time of the transfer is, or as a result of the transfer will become, an asset-holding or note-issuing company, or
    - (b) of itself becoming an asset-holding or note-issuing company.
  - (7) A “commercial paper funded company” means—
    - (a) a company that was an asset-holding company but whose obligations under debtor relationships to a note-issuing company or intermediate borrowing company—
      - (i) have been transferred to, or
      - (ii) have been replaced by obligations under debtor relationships to, one or more companies carrying on a business of banking, or
    - (b) a company that was an intermediate borrowing company but whose obligations under debtor relationships to a note-issuing company—
      - (i) have been transferred to, or
      - (ii) have been replaced by obligations under debtor relationships to, one or more companies carrying on a business of banking.
- [<sup>F57</sup>(7A) The Treasury may by regulations—
- (a) make provision for subsection (1) to apply in relation to periods of account ending on or after 1st January 2008 but before a date specified by the regulations, and
  - (b) make provision modifying any provision of, or made under, the Corporation Tax Acts in relation to the first period of account of securitisation companies

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in the case of which subsection (1) does not apply (whether by virtue of that subsection itself or regulations under paragraph (a)).]

[<sup>F57</sup>(7B) Regulations under subsection (7A)(a) may, in particular—

- (a) specify a date only in relation to specified descriptions of company,
- (b) specify different dates in relation to different descriptions of company, and
- (c) include provision for a company to elect that the regulations are to apply to it or provision for a company to elect that they are not to apply to it.]

(8) In this section—

“asset” includes any option, future or contract for differences as defined for the purposes of [<sup>F58</sup>Part 7 of CTA 2009 (derivative contracts) (see sections 580, 581 and 582 of that Act)];

“capital market investment” and “capital market arrangement” have the same meaning as in section 72B(1) of the Insolvency Act 1986 (c. 45) (see paragraphs 1, 2 and 3 of Schedule 2A to that Act);

“company” includes a partnership;

“financial asset” has the meaning it has for accounting purposes; and

“independent persons” means persons who are not connected with the company.

(9) Section 839 of ICTA (connected persons) applies for the purposes of the definition above of “independent persons”, except that in applying the definition of “control” in that section a person is not to be treated as a participator in a company by reason only that he is a loan creditor of the company.

#### Textual Amendments

- F51** Words in s. 83(1)(b) inserted (19.7.2007) by [Finance Act 2007 \(c. 11\), s. 59\(2\)](#)
- F52** Words in s. 83(1)(b) substituted (retrospectively) by [Finance Act 2006 \(c. 25\), s. 101\(2\)\(6\)](#) (with s. 101(7)-(8))
- F53** Word in s. 83(3)(c) repealed (retrospectively) by [Finance Act 2006 \(c. 25\), s. 101\(3\)\(a\)\(6\), Sch. 26 Pt. 3\(19\)](#) (with s. 101(7)-(8))
- F54** S. 83(3)(e) and word inserted (retrospectively) by [Finance Act 2006 \(c. 25\), s. 101\(3\)\(b\)\(6\)](#) (with s. 101(7)-(8))
- F55** Words in s. 83(5)(a) inserted (retrospectively) by [Finance Act 2006 \(c. 25\), s. 101\(4\)\(a\)\(6\)](#) (with s. 101(7)-(8))
- F56** Words in s. 83(5)(b) inserted (retrospectively) by [Finance Act 2006 \(c. 25\), s. 101\(4\)\(b\)\(6\)](#) (with s. 101(7)-(8))
- F57** S. 83(7A)(7B) inserted (19.7.2007) by [Finance Act 2007 \(c. 11\), s. 59\(3\)](#)
- F58** Words in s. 83(8) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 662](#) (with Sch. 2 Pts. 1, 2)

#### Modifications etc. (not altering text)

- C1** S. 83 excluded (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Taxation of Securitisation Companies Regulations 2006 \(S.I. 2006/3296\), regs. 1\(1\), 21](#)
- C2** S. 83(1) applied (27.12.2007) by [The Securitisation Companies \(Application of Section 83\(1\) of the Finance Act 2005: Accounting Standards\) Regulations 2007 \(S.I. 2007/3338\), regs. 1, 2](#)



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**F59 84 Taxation of securitisation companies**

.....

**Textual Amendments**

**F59** S. 84 repealed (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), [Sch. 1 para. 476](#) (with [Sch. 2](#))

**CHAPTER 9**

INTERNATIONAL MATTERS

*Double taxation relief: general*

**F60 85 Dividends by reference to which a deduction is allowed: no underlying tax**

.....

**Textual Amendments**

**F60** S. 85 repealed (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), s. 381(1), [Sch. 10 Pt. 1](#) (with [Sch. 9 paras. 1-9, 22](#))

*Double taxation relief: restrictions*

**86 Limits on credit: income tax and corporation tax: trading profits**

**F61**(1) .....

(2) In section 803 of ICTA (underlying tax reflecting interest on loans)—

**F61**(a) .....

(b) subsections (4) to (9) shall cease to have effect.

(3) Subsections (1) and (2) shall have effect—

(a) for the purposes of corporation tax, in relation to a credit for foreign tax which relates to—

(i) a payment of foreign tax on or after 16th March 2005, or

(ii) income received on or after that date in respect of which foreign tax has been deducted at source, and

(b) for the purposes of income tax, in relation to a credit for foreign tax which relates to—

(i) a payment of foreign tax on or after 6th April 2005, or

(ii) income received on or after that date in respect of which foreign tax has been deducted at source.

(4) In subsection (3) a reference to tax deducted at source is a reference to tax deducted or treated as deducted from income, or treated as paid in respect of income.

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- (5) In respect of dividends paid before 1st January 2006, the effect of section 798 or 798A of ICTA in respect of credit for foreign tax shall be disregarded to the extent that it would otherwise reduce the allowable credit to less than 50% of the foreign tax; but this subsection shall not apply to tax paid as part of a scheme or arrangement designed or entered into for the purposes of causing this subsection to apply.

**Textual Amendments**

- F61** S. 86(1)(2)(a) repealed (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), s. 381(1), **Sch. 10 Pt. 1** (with [Sch. 9 paras. 1-9, 22](#))

**F62** **87 Schemes and arrangements designed to increase relief**

.....

**Textual Amendments**

- F62** S. 87 repealed (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), s. 381(1), **Sch. 10 Pt. 1** (with [Sch. 9 paras. 1-9, 22](#))

**88 Self-assessment amendments**

- (1) In section 9A of TMA 1970 (notice of enquiry), in subsection (4) (matters to which an enquiry extends) after paragraph (b) insert—

“(c) consideration of whether to give the taxpayer a notice under section 804ZA of the principal Act (schemes and arrangements designed to increase relief).”

- (2) In section 29 of TMA 1970 (assessment where loss of tax discovered), after subsection (7) insert—

“(7A) The requirement to fulfil one of the two conditions mentioned above does not apply so far as regards any income or chargeable gains of the taxpayer in relation to which the taxpayer has been given, after any enquiries have been completed into the taxpayer's return, a notice under section 804ZA of the principal Act.”

**F63** (3) .....

- (4) In paragraph 42 of that Schedule (restrictions on power to make discovery assessment etc), after sub-paragraph (2) insert—

“(2A) Those restrictions, other than the restriction in paragraph 45, do not apply so far as regards any income or chargeable gains of the company in relation to which the company has been given, after any enquiries have been completed into the return, a notice under section 804ZA of the Taxes Act 1988.”

- (5) The amendments made by this section have effect in accordance with section 87(3).

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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2005, Part 2. (See end of Document for details)*

**Textual Amendments**

**F63** S. 88(3) repealed (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), s. 381(1), [Sch. 10 Pt. 1](#) (with [Sch. 9 paras. 1-9, 22](#))

*Controlled foreign companies*

**F64 89 ADP dividends and double taxation relief**

.....

**Textual Amendments**

**F64** S. 89 omitted (with effect in accordance with Sch. 16 para. 6 of the amending Act) by virtue of [Finance Act 2009 \(c. 10\)](#), [Sch. 16 para. 5\(h\)](#) (with [Sch. 16 para. 78](#))

**F65 90 Foreign taxation of group as single entity: exclusion of ADP CFCs**

.....

**Textual Amendments**

**F65** S. 90 omitted (with effect in accordance with Sch. 16 para. 6 of the amending Act) by virtue of [Finance Act 2009 \(c. 10\)](#), [Sch. 16 para. 5\(h\)](#) (with [Sch. 16 para. 78](#))

*Annual payments and double taxation relief*

**91 Tax avoidance involving annual payments and double taxation relief**

(1) ICTA is amended as follows.

**F66**(2) .....

**F66**(3) .....

(4) Section 801 (dividends paid between related companies: relief for UK and third country taxes) is amended as follows.

**F67**(5) .....

(6) Subsections (4A) to (4D) (which relate to cases where the amount given by the formula in section 799(1) exceeds U in that formula) shall cease to have effect.

**F68**(7) .....

(8) The amendments made by subsections (4) to (6) have effect in relation to dividends paid on or after 2nd December 2004.

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*Changes to legislation: There are currently no known outstanding effects  
for the Finance Act 2005, Part 2. (See end of Document for details)*

#### **Textual Amendments**

- F66** S. 91(2)(3) repealed (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)
- F67** S. 91(5) repealed (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), s. 381(1), **Sch. 10 Pt. 1** (with Sch. 9 paras. 1-9, 22)
- F68** S. 91(7) repealed (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

## **CHAPTER 10**

### MISCELLANEOUS

#### *Capital allowances*

#### **92 Capital allowances: renovation of business premises in disadvantaged areas**

Schedule 6 (capital allowances in respect of expenditure on the conversion or renovation of qualifying business premises in disadvantaged areas) has effect in relation to expenditure incurred on or after such day as the Treasury may by order appoint.

#### *Tonnage tax*

#### **93 Tonnage tax**

Schedule 7 (which makes provision amending Schedule 22 to FA 2000) has effect.

**Status:**

Point in time view as at 01/04/2010.

**Changes to legislation:**

There are currently no known outstanding effects for the Finance Act 2005, Part 2.