



Finance Act 2005

2005 CHAPTER 7

PART 2

INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

CHAPTER 4

TRUSTS WITH VULNERABLE BENEFICIARY

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,

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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 to the General Commissioners.
- (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.

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
 - “tax year”—
 - (a) in relation to income tax, means a year of assessment within the meaning of ICTA (see section 832(1) of that Act), and
 - (b) in relation to capital gains tax, means a year of assessment within the meaning of TCGA 1992 (see section 288(1) of that Act).
- (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 33 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.

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”.

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- (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”,
 - (b) in that subsection, for paragraph (a) substitute—
 - “(a) constituted by the appointment of an executor dative to administer an intestate estate where the relevant minor has a right to any of the estate,”, and
 - (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.”,
 - (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).

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;”.

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- (4) For the purposes of that section, any information, statements or declarations given or made jointly by trustees and a vulnerable person are to be treated as given or made by the trustees.

44 Consequential amendments

- (1) In section 687(3) of ICTA (payments under discretionary trusts: amounts to be set off against income tax assessable on trustees in respect of tax credit), after paragraph (k) insert—
- “(1) the amount of any income tax determined in accordance with section 26 of the Finance Act 2005.”
- (2) In Schedule 4B to TCGA 1992 (transfers of value by trustees linked with trustee borrowing), in paragraph 3(2), after “in that year” insert “(otherwise than by virtue of section 31 of the Finance Act 2005)”.

45 Commencement

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