



# Income and Corporation Taxes Act 1988

## 1988 CHAPTER 1

### PART XIX

#### SUPPLEMENTAL

##### *Miscellaneous*

#### **817 Deductions not to be allowed in computing profits or gains**

- (1) In arriving at the amount of profits or gains for tax purposes—
  - (a) no other deductions shall be made than such as are expressly enumerated in the Tax Acts; and
  - (b) no deduction shall be made on account of any annuity or other annual payment (not being interest) to be paid out of such profits or gains in regard that a proportionate part of income tax is allowed to be deducted on making any such payment.
- (2) In arriving at the amount of profits or gains from any property described in the Tax Acts, or from any office or employment, no deduction shall be made on account of diminution of capital employed, or of loss sustained, in any trade or in any profession, employment or vocation.

#### **818 Arrangements for payments of interest less tax or of fixed net amount**

- (1) It is hereby declared that any provision made before or after the passing of this Act, whether orally or in writing, for the payment of interest “less tax”, or using words to that effect, is to be construed, in relation to interest payable without deduction of tax, as if the words “less tax”, or the equivalent words, were not included.
- (2) In relation to interest on which the recipient is chargeable to tax under Case III of Schedule D, and which is payable without deduction of tax, any provision, made before or after the passing of this Act, whether orally or in writing, and however worded, for the payment of interest at such a rate (“the gross rate”) as shall, after the

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deduction of income tax, be equal to a stated rate, shall be construed as if it were a provision requiring the payment of interest at the gross rate.

### **819 Old references to standard rate tax**

- (1) Where any provision, however worded, contained in an instrument (of whatever nature) made on or after 3rd September 1939 or in a will or codicil taking effect on or after that date provides for the payment, whether periodically or otherwise—
  - (a) of a stated amount free of income tax other than surtax; or
  - (b) of an amount which, after deduction of income tax at the standard rate, is equal to a stated amount;it shall have effect as follows.
- (2) If it is such a provision as is mentioned in subsection (1)(a) above it shall have effect as if it provided for the payment of the stated amount free of income tax other than such as exceeds the amount to which the person to whom the payment is made would be liable if all income tax were charged at the basic rate to the exclusion of any higher rate.
- (3) If it is such a provision as is mentioned in subsection (1)(b) above it shall have effect as if it provided for the payment of an amount which after deduction of income tax at the basic rate is equal to the stated amount.
- (4) Any instrument however worded conferring on any person a right to receive a dividend or interest the amount of which depends on the standard rate of income tax shall have effect as if instead of referring to the standard rate it referred to the basic rate.
- (5) Any reference in a statutory instrument made under the Tax Acts to the standard rate of income tax shall have effect as if it were a reference to the basic rate.

### **820 Application of Income Tax Acts from year to year**

In order to ensure the collection in due time of income tax which may be granted for any year commencing on 6th April, all such provisions contained in the Income Tax Acts as were in force on the preceding day shall have full force and effect with respect to tax which may be so granted, in the same manner as if that tax had been actually granted by Act of Parliament and those provisions had been applied thereto by the Act.

### **821 Under-deductions from payments made before passing of annual Act**

- (1) Where, in any year of assessment, any half-yearly or quarterly payments have been made on account of any interest, dividends or other annual profits or gains, previously to the passing of the Act imposing income tax for that year, and tax has not been charged thereon or deducted therefrom or has not been charged thereon or deducted therefrom at the rate ultimately imposed for that year—
  - (a) the amount not so charged or deducted shall be charged under Schedule D in respect of those payments, as profits or gains not charged by virtue of any other Schedule, under Case VI of Schedule D; and
  - (b) the agents entrusted with the payment of the interest, dividends or other annual profits or gains shall furnish to the Board a list containing the names and addresses of the persons to whom payments have been made and the amount of those payments, upon a requisition made by the Board in that behalf.

- (2) Any person liable to pay any rent, interest or annuity, or to make any other annual payment—
- (a) shall be authorised—
    - (i) to make any deduction on account of income tax for any year of assessment which he has failed to make previously to the passing of the Act imposing the tax for that year, or
    - (ii) to make up any deficiency in any such deduction which has been so made,on the occasion of the next payment of the rent, interest or annuity or making of the other annual payment after the passing of the Act so imposing the tax, in addition to any other deduction which he may be by law authorised to make; and
  - (b) shall also be entitled, if there is no future payment from which the deduction may be made, to recover the sum which might have been deducted as if it were a debt due from the person as against whom the deduction could originally have been made if the Act imposing the tax for the year had been in force.
- (3) Subsection (2) above shall apply with respect to—
- (a) any payment for or in respect of copyright to which section 536 applies or of public lending right to which that section applies by virtue of section 537; and
  - (b) any royalty or other sum paid in respect of the user of a patent; and
  - (c) any rent, royalty or other payment which by section 119 or 120 is declared to be subject to deduction of tax under section 348 or 349 as if it were a royalty or other sum paid in respect of the user of a patent;
- as it applies with respect to any rent, interest, annuity or other annual payment.
- (4) In this section “interest” and “dividends” do not include any interest or dividend which is a distribution.

## **822 Over-deductions from interest on loan capital etc. made before passing of annual Act**

- (1) If in any year of assessment (“the year”) a resolution having statutory effect under the Provisional Collection of Taxes Act 1968 provides for the charging of income tax at a basic rate lower than that charged for the previous year, the following provisions of this section shall have effect with respect to deductions in respect of income tax by any body corporate, from payments of interest (not being a distribution) on any of its securities.
- (2) Any deduction which was made before the expiration of one month from the passing of the resolution and which would, if the tax had been renewed at the rate imposed for the previous year, have been a legal deduction, shall be deemed to be a deduction rendered legal by section 2 of the Provisional Collection of Taxes Act 1968 and that section shall, subject to this section, apply accordingly.
- (3) Any over-deduction to be made good under that section may be made good by a reduction of the amount of tax deducted from the next payment of like nature made on the security in question after the passing of the Act imposing the tax for the year.
- (4) Any amount made good under section 2 of the Provisional Collection of Taxes Act 1968 shall—

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- (a) in the case of an over-deduction which is made good under subsection (3) above, enure to the benefit of the person entitled to the payment on the occasion of which the over-deduction is made good; and
  - (b) in any other case, enure to the benefit of the person entitled to the security in question at the date when the amount is made good,
- irrespective, in either case, of whether or not he is the person who was entitled to the payment, or to the security at the date when the original deduction was made.
- (5) Subsection (3) above shall not authorise the retention of any part of the amount over-deducted for more than one year from the passing of the Act imposing the tax for the year.

### **823 Adjustments of reliefs where given at different times**

Where under the provisions of the Income Tax Acts an individual—

- (a) is entitled to claim relief from income tax (other than relief in respect of life insurance premiums), by repayment or otherwise, in respect of—
  - (i) any amount which is paid or borne by him out of his income or which is allowable or may be deducted from his income; or
  - (ii) any reduction of an assessment relating to his income or any part of his income; or
  - (iii) any adjustment or set-off with regard to a loss; and
- (b) claims that relief for any year of assessment,

any relief granted shall not extend so as to make the total income tax paid or payable by him for that year less than it would have been if the amount in respect of which relief is claimed had been deducted in computing his total income for that year and the amount of any other deductions or reliefs to which he is entitled for that year had been determined accordingly.

### **824 Repayment supplements: individuals and others**

- (1) Subject to the provisions of this section, where—
- (a) income tax has been paid by or on behalf of an individual for a year of assessment for which he was resident in the United Kingdom; and
  - (b) a repayment of that tax of not less than £25 is made by the Board or an inspector after the end of the 12 months following that year of assessment;
- the repayment shall be increased under this section by an amount (a “repayment supplement”) equal to interest on the amount repaid at the rate of 8.25 per cent. per annum for the period (if any) between the relevant time and the end of the tax month in which the order for the repayment is issued.
- (2) Subsection (1) above shall with the necessary modifications apply to a payment of the whole or part of a tax credit as it applies to a repayment falling within that subsection of income tax paid in the year of assessment to which the tax credit relates.
- (3) For the purposes of subsection (1) above—
- (a) if the repayment is of tax that was paid after the end of the 12 months following the year of assessment for which it was payable, the relevant time is the end of the year of assessment in which that tax was paid;
  - (b) in any other case, the relevant time is the end of the 12 months mentioned in that subsection;

and, subject to subsection (5) below, where a repayment to which subsection (1) above applies is of tax paid in two or more years of assessment, the repayment shall as far as possible be treated for the purposes of this subsection as a repayment of tax paid in a later rather than an earlier year among those years.

- (4) For the purposes of subsections (1) and (3) above, income tax deducted by virtue of regulations made under section 203 from a person's emoluments during any year of assessment shall (without prejudice to subsection (5) below) be treated as paid by him for that and no other year of assessment.
- (5) Where in consequence of an assessment under Schedule E for any year of assessment there is made by the Board or an inspector a repayment of income tax of not less than £25, being an amount which takes account of tax overpaid or remaining unpaid for one or more earlier years of assessment, then—
  - (a) the repayment shall for the purposes of this subsection be attributable to such of the years in question, and in such proportions, as may be determined in accordance with regulations made under and for the purposes of this subsection by the Board; and
  - (b) subsections (1) and (3) above shall have effect in relation to so much of the repayment as is by virtue of paragraph (a) above attributed to any particular year of assessment as if in subsection (1) the words "of not less than £25" were omitted.
- (6) The Treasury may by order from time to time increase or decrease the rate of interest by reference to which—
  - (a) repayment supplements are calculated under subsection (1) above; and
  - (b) repayment supplements are calculated under section 47 of the Finance (No. 2) Act 1975.
- (7) A repayment supplement shall not be payable under this section in respect of a repayment or payment made in consequence of an order or judgment of a court having power to allow interest on the repayment or payment, or in respect of a repayment of a post-war credit within the meaning of the Income Tax (Repayment of Post-War Credits) Act 1959.
- (8) A repayment supplement paid to any person under this section or under section 47 of the Finance (No. 2) Act 1975 shall not be income of that person for any tax purposes.
- (9) Subsections (1) to (8) above shall apply in relation to a partnership, or a United Kingdom trust (as defined in section 231), or, in the case of a United Kingdom estate, the personal representatives of a deceased person as such (within the meaning of section 701) as they apply in relation to an individual.
- (10) In this section—

"tax month" means the period beginning with the 6th day of any calendar month and ending with the 5th day of the following calendar month;

"United Kingdom estate" has the meaning given by section 701.

## **825 Repayment supplements: companies**

- (1) This section applies to the following payments made to a company in connection with any accounting period for which the company was resident in the United Kingdom ("the relevant accounting period"), that is to say—

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- (a) a repayment of corporation tax paid by the company for that accounting period (including advance corporation tax paid in respect of distributions made by the company in that accounting period and any sum paid in respect of that period on an assessment under section 430(7)(a)); or
  - (b) a repayment of income tax in respect of a payment received by the company in that accounting period on which the company bore income tax by deduction; or
  - (c) a payment of the whole or part of the tax credit comprised in any franked investment income received by the company in that accounting period.
- (2) Subject to the following provisions of this section, where a payment of not less than £100 to which this section applies is made by the Board or an inspector after the end of the 12 months beginning with the material date, the payment shall be increased under this section by an amount (a (“repayment supplement”) equal to interest on the amount paid at the rate of 8.25 per cent. per annum for each complete tax month contained in the period (if any) beginning with the relevant date and ending at the end of the tax month in which the order for the payment is issued.
- (3) For the purposes of subsection (2) above—
- (a) if the payment is a repayment of corporation tax that was paid on or after the first anniversary of the material date, the relevant date is the anniversary of the material date that occurs next after the date on which that tax was paid;
  - (b) in any other case, the relevant date is the first anniversary of the material date;
- and where a payment to which this section applies is a repayment of corporation tax paid by a company on different dates, the payment shall as far as possible be treated for the purposes of this subsection as a repayment of tax paid on a later rather than an earlier date among those dates.
- (4) For the purposes of this section—
- (a) a repayment of corporation tax made in consequence of a claim by a company under section 239(3) to have the whole or any part of an amount of surplus advance corporation tax arising in the case of any accounting period treated as if it were advance corporation tax paid in respect of distributions made by the company in any earlier accounting period shall be treated as a repayment of corporation tax paid for the accounting period in the case of which that amount of surplus advance corporation tax arose; and
  - (b) a repayment of income tax or corporation tax made on a claim under subsection (4) of section 419 shall be treated as if it were a repayment of corporation tax paid for the accounting period in which the repayment of, or of the part in question of, the loan or advance mentioned in that subsection was made.
- (5) The Treasury may by order from time to time increase or decrease the rate of interest by reference to which repayment supplements are calculated under subsection (2) above.
- (6) A repayment supplement shall not be payable under this section in respect of a payment made in consequence of an order or judgment of a court having power to allow interest on the payment.
- (7) A repayment supplement paid under this section shall be disregarded for all purposes of income tax and corporation tax.
- (8) In this section—

“tax month” means the period beginning with the 6th day of any calendar month and ending with the 5th day of the following calendar month;

“the material date” in relation to a payment to which this section applies, means the last date on which corporation tax on any of the profits of the company in question arising in the relevant accounting period could have been paid—

- (a) in a case where section 10(1) applies, within the nine months there mentioned;
- (b) in a case where section 478 applies, within the time limit imposed by subsection (2)(a) of that section, but subject to subsection (6) of that section.

(9) This section has effect subject to section 826(8).

## **826 Interest on tax overpaid**

(1) In any case where—

- (a) a repayment falls to be made of corporation tax paid by a company for an accounting period which ends after the appointed day; or
- (b) a repayment of income tax falls to be made in respect of a payment received by a company in such an accounting period; or
- (c) a payment falls to be made to a company of the whole or part of the tax credit comprised in any franked investment income received by the company in such an accounting period,

then, from the material date until that repayment or payment is made, the repayment or payment shall carry interest at the rate which, under section 89 of the Management Act, is for the time being the prescribed rate for the purposes of this section.

- (2) In relation to corporation tax paid by a company for an accounting period, the material date for the purposes of this section is the date on which corporation tax was paid or, if it is later, the date on which corporation tax for that accounting period became (or, as the case may be, would have become) due and payable in accordance with section 10.
- (3) In relation to a repayment of income tax falling within subsection (1)(b) above or a payment of the whole or part of a tax credit falling within subsection (1)(c) above, the material date is the date on which corporation tax became (or, as the case may be, would have become) due and payable for the accounting period in which the payment referred to in subsection (1)(b) above or, as the case may be, the franked investment income referred to in subsection (1)(c) above was received by the company.
- (4) For the purposes of this section a repayment of tax made on a claim under section 419(4) shall be treated as if it were a repayment of corporation tax for the accounting period in which the repayment of, or of the part in question of, the loan or advance mentioned in section 419(4) was made but, in relation to such a repayment of tax, the material date for the purposes of this section is—
  - (a) the date on which the loan or advance (or part thereof) is repaid; or
  - (b) if it is later, the date on which the tax which is to be repaid was in fact paid.
- (5) Interest paid under this section shall be paid without any deduction of income tax and shall not be brought into account in computing any profits or income.
- (6) Where a repayment of corporation tax is a repayment of tax paid by a company on different dates, the repayment shall so far as possible be treated for the purposes of

this section as a repayment of tax paid on a later rather than an earlier date among those dates.

- (7) In any case where—
- (a) there is in any accounting period of a company (“the later period”) an amount of surplus advance corporation tax, as defined in section 239(3); and
  - (b) pursuant to a claim under section 239(3), the whole or any part of that amount is treated for the purposes of section 239 as discharging liability for an amount of corporation tax for an earlier accounting period (“the earlier period”); and
  - (c) a repayment falls to be made of corporation tax made for the earlier period,
- then, in determining the amount of interest (if any) payable under this section on the repayment of corporation tax for the earlier period, no account shall be taken of any increase in the amount of the repayment resulting from section 239(3) except so far as concerns interest for any time after the date on which any corporation tax for the later period became due and payable (as mentioned in subsection (2) above).
- (8) In consequence of the preceding provisions of this section, no repayment supplement (within the meaning of section 825) shall be paid in respect of any repayment of tax or payment of tax credit where the relevant accounting period (within the meaning of that section) ends after the appointed day.
- (9) In this section “the appointed day” means such day or days, not being earlier than 31st March 1992, as the Treasury may by order appoint for the purposes of this section.

## **827 VAT penalties etc**

- (1) Where, under Chapter II of Part I of the Finance Act 1985 (value added tax), a person is liable to make a payment by way of—
- (a) penalty under any of sections 13 to 17; or
  - (b) interest under section 18; or
  - (c) surcharge under section 19;
- the payment shall not be allowed as a deduction in computing any income, profits or losses for any tax purposes.
- (2) A sum paid to any person by way of supplement under section 20 of the Finance Act 1985 (VAT repayment supplements) shall be disregarded for all purposes of corporation tax and income tax.

## **828 Orders and regulations made by the Treasury or the Board**

- (1) Subject to subsection (2) below, any power of the Treasury or the Board to make any order or regulations under this Act or under any other provision of the Tax Acts (including enactments passed after this Act) shall be exercisable by statutory instrument.
- (2) Subsection (1) above shall not apply in relation to any power conferred by section 124(6) or 841(1)(b) or paragraph 15(4) of Schedule 3.
- (3) Subject to subsection (4) below and to any other provision to the contrary, any statutory instrument containing any order or regulations made by the Treasury or the Board under this Act or under any other provision of the Tax Acts (including enactments passed after this Act) shall be subject to annulment in pursuance of a resolution of the House of Commons.



- (4) Subsection (3) above shall not apply in relation to an order or regulations made under section 1(6), 257(11), 324, 376(5), 377(8), 658(3) or 791 or paragraph 7 of Schedule 14 or—
- (a) if any other Parliamentary procedure is expressly provided;
  - (b) if the order in question is an order appointing a day for the purposes of any provision of the Tax Acts, being a day as from which the provision will have effect, with or without amendments, or will cease to have effect.

### **829 Application of Income Tax Acts to public departments and avoidance of exempting provisions**

- (1) Subject to subsections (2) and (3) below, all the provisions of the Income Tax Acts relating to the assessment, charge, deduction and payment of income tax shall apply in relation to public offices and departments of the Crown.
- (2) Nothing in those provisions of the Income Tax Acts shall require the payment by any such office or department of any tax which would be ultimately borne by the Crown.
- (3) Subsection (1) above shall not apply to public offices and departments of any country, state, province or colony within section 320(3)(b) or (c) and nothing in subsection (1) above shall exempt any government from taxation to which it is liable in connection with any office or department by virtue of section 25 of the Finance Act 1925 (liability in respect of trading operations of Dominion governments and others).
- (4) No letters patent granted or to be granted by the Crown to any person, city, borough or town corporate of any liberty, privilege or exemption from subsidies, tolls, taxes, assessments or aids, and no statute which grants any salary, annuity or pension to any person free of any taxes, deductions or assessments, shall be construed or taken to exempt any person, city, borough or town corporate, or any inhabitant of any city, borough or town corporate, from income tax, and all non-obstantes in any such letters patent or statute made or to be made to the contrary effect shall be void.

### **830 Territorial sea and designated areas**

- (1) The territorial sea of the United Kingdom shall for all purposes of income tax and corporation tax (including the following provisions of this section) be deemed to be part of the United Kingdom.
- (2) In this section—
  - (a) “exploration or exploitation activities” means activities carried on in connection with the exploration or exploitation of so much of the seabed and subsoil and their natural resources as is situated in the United Kingdom or a designated area;
  - (b) “exploration or exploitation rights” means rights to assets to be produced by exploration or exploitation activities or to interests in or to the benefit of such assets; and
  - (c) “designated area” means an area designated by Order in Council under section 1(7) of the Continental Shelf Act 1964.
- (3) Any profits or gains from exploration or exploitation activities carried on in a designated area or from exploration or exploitation rights shall be treated for the purposes of income tax or corporation tax as profits or gains from activities or property in the United Kingdom.

- (4) Any profits or gains arising to any person not resident in the United Kingdom from exploration or exploitation activities or rights shall for the purposes of corporation tax be treated as profits or gains of a trade carried on by that person in the United Kingdom through a branch or agency.
- (5) Any emoluments from an office or employment in respect of duties performed in a designated area in connection with exploration or exploitation activities shall be treated for the purposes of income tax as emoluments in respect of duties performed in the United Kingdom.

### *Interpretation*

#### **831 Interpretation of this Act**

- (1) In this Act, except so far as the context otherwise requires—
  - (a) “the Corporation Tax Acts” means the enactments relating to the taxation of the income and chargeable gains of companies and of company distributions (including provisions relating also to income tax); and
  - (b) “the Income Tax Acts” means the enactments relating to income tax, including any provisions of the Corporation Tax Acts which relate to income tax.
- (2) In this Act “the Tax Acts”, except so far as the context otherwise requires, means this Act and all other provisions of the Income Tax Acts and the Corporation Tax Acts.
- (3) In this Act—
  - “the Management Act” means the Taxes Management Act 1970;
  - “the 1968 Act” means the Capital Allowances Act 1968;
  - “the 1970 Act” means the Income and Corporation Taxes Act 1970; and
  - “the 1979 Act” means the Capital Gains Tax Act 1979.
- (4) Section 1 of the Family Law Reform Act 1987, the paragraph inserted in Schedule 1 to the Interpretation Act 1978 by paragraph 73 of Schedule 2 to that Act and section 1(3) of the Law Reform (Parent and Child) (Scotland) Act 1986 (legal equality of illegitimate children) shall be disregarded in construing references in this Act to a child or to children (however expressed).
- (5) This Act, so far as it relates to capital gains tax, shall be construed as one with the 1979 Act.
- (6) Any reference in this Act to a section, Part or Schedule is a reference to that section, Part or Schedule of or to this Act, unless the context otherwise requires.

#### **832 Interpretation of the Tax Acts**

- (1) In the Tax Acts, except in so far as the context otherwise requires—
  - “Act” includes an Act of the Parliament of Northern Ireland and a Measure of the Northern Ireland Assembly;
  - “additional rate”, in relation to income tax for any year of assessment, means the rate of income tax determined by subtracting the basic rate for that year from the rate of tax which for that year is applicable to the second higher rate band;
  - “authorised unit trust” has the meaning given by section 468(6);

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“basic rate”, in relation to the charging of income tax for any year of assessment, means the rate of income tax determined in pursuance of section 1(2)(a), and any reference to the basic rate limit shall be construed in accordance with section 1(3);

“the Board” means the Commissioners of Inland Revenue;

“body of persons” means any body politic, corporate or collegiate, and any company, fraternity, fellowship and society of persons whether corporate or not corporate;

“building society” means a building society within the meaning of the Building Societies Act 1986;

“capital allowance” means any allowance under the Capital Allowances Acts;

“the Capital Allowances Acts” means the 1968 Act, Chapter I of Part III of the Finance Act 1971 and Part III of Schedule 13 and Schedule 15 to the Finance Act 1986 (including enactments which under this Act or the 1970 Act are to be treated as contained in Part I of the 1968 Act);

“chargeable gain” has the same meaning as in the 1979 Act;

“chargeable period” means an accounting period of a company or a year of assessment;

“close company” has the meaning given by sections 414 and 415;

“collector” means any collector of taxes;

“company” means, subject to subsection (2) below, any body corporate or unincorporated association but does not include a partnership, a local authority or a local authority association;

“distribution” has the meaning given by Part VI with section 418;

“farm land” means land in the United Kingdom wholly or mainly occupied for the purposes of husbandry, but excluding any dwelling or domestic offices, and excluding market garden land, and “farming” shall be construed accordingly;

“franked investment income” shall be construed in accordance with section 238, but subject to section 247(1);

“franked payment” shall be construed in accordance with section 238, but subject to section 247(1);

“group income” has the meaning given by section 247(2);

“higher rate”, in relation to the charging of income tax for any year of assessment, means any rate of income tax determined in pursuance of section 1(2)(b), and any reference to any higher rate band shall be construed in accordance with section 1(3);

“industrial assurance business” has the meaning given by section 1(2) of the Industrial Assurance Act 1923 or Article 3(1) of the Industrial Assurance (Northern Ireland) Order 1979;

“inspector” means any inspector of taxes;

“interest” means both annual or yearly interest and interest other than annual or yearly interest;

“local authority” and “local authority association” have the meanings given by section 519;

“market garden land” means land in the United Kingdom occupied as a nursery or garden for the sale of the produce (other than land used for the growth of hops) and “market gardening” shall be construed accordingly;

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“notice” means notice in writing;

“ordinary share capital”, in relation to a company, means all the issued share capital (by whatever name called) of the company, other than capital the holders of which have a right to a dividend at a fixed rate but have no other right to share in the profits of the company;

“preference dividend” means a dividend payable on a preferred share or preferred stock at a fixed rate per cent. or, where a dividend is payable on a preferred share or preferred stock partly at a fixed rate per cent. and partly at a variable rate, such part of that dividend as is payable at a fixed rate per cent.;

“qualifying distribution” has the meaning given by section 14(2);

“qualifying policy” means a policy of insurance which is a qualifying policy for the purposes of Chapter I of Part VII;

“the rate of advance corporation tax” means the rate referred to in section 14(3);

“recognised clearing system” has the meaning given by section 124(6);

“surplus of franked investment income” has the meaning given by section 238;

“tax credit” means a tax credit under section 231;

“trade” includes every trade, manufacture, adventure or concern in the nature of trade;

“Ulster Savings Certificates” means savings certificates issued or treated as issued under section 15 of the Exchequer and Financial Provisions Act (Northern Ireland) 1950;

“unit holder” has the meaning given by section 468(6);

“unit trust scheme” has the meaning given by section 469;

“year of assessment” means, with reference to any income tax, the year for which such tax was granted by any Act granting income tax;

“the year 1988-89” means the year of assessment beginning on 6th April 1988, and any corresponding expression in which two years are similarly mentioned means the year of assessment beginning on 6th April in the first-mentioned of those two years;

and a source of income is within the charge to corporation tax or income tax if that tax is chargeable on the income arising from it, or would be so chargeable if there were any such income, and references to a person, or to income, being within the charge to tax, shall be similarly construed.

- (2) The definition of “company” is subject to section 468, and does not apply in the following provisions of this Act, that is to say—

Chapter I of Part XVII;

sections 774 to 777;

section 839;

paragraph 15 of Schedule 3;

(and also does not apply where the context otherwise requires because some other definition of “company” applies).

- (3) Except so far as the context otherwise requires, in the Tax Acts, and in any enactment passed after 12th March 1970 which by any express provision is to be construed as one with the Tax Acts, the Corporation Tax Acts or the Income Tax Acts, “tax”, where neither income tax nor corporation tax is specified, means either of those taxes.

- (4) Subsection (3) above is without prejudice to the provisions of section 9 which apply income tax law for certain purposes of corporation tax, and accordingly the employment of “income tax” rather than “tax” in any provision of the Tax Acts is not a conclusive indication that that provision is not applied to corporation tax by that section.
- (5) In the Tax Acts any reference to a child, however expressed, shall be construed as including a reference to an adopted child.

This subsection does not apply for the purposes of paragraph 10 of Schedule 30.

### **833 Interpretation of Income Tax Acts**

- (1) In the Income Tax Acts references to profits or gains shall not include references to chargeable gains.
- (2) References in the Income Tax Acts to the retail prices index are references to the general index of retail prices (for all items) published by the Department of Employment; and if that index is not published for a month which is relevant for the purposes of any provision of those Acts that provision shall be construed as referring to any substituted index or index figures published by that Department.
- (3) For the purposes of any provision of the Income Tax Acts (other than section 550 or Schedule 2) requiring income of any description to be treated as the highest part of a person’s income, his income shall be calculated without regard to—
- (a) any payment chargeable to tax by virtue of section 148; or
  - (b) any amount included in his total income by virtue of section 547(1)(a); or
  - (c) any chargeable sum as defined in paragraph 2 of Schedule 2.
- (4) Subject to subsections (5) and (6) below, in the Income Tax Acts “earned income” means, in relation to any individual—
- (a) any income arising in respect of—
    - (i) any remuneration from any office or employment held by the individual, or
    - (ii) any pension, superannuation or other allowance, deferred pay or compensation for loss of office, given in respect of the past services of the individual or of the husband or parent of the individual in any office or employment, or given to the individual in respect of past services of any deceased person, whether the individual or husband or parent of the individual shall have contributed to such pension, superannuation allowance or deferred pay or not; and
  - (b) any income from any property which is attached to or forms part of the emoluments of any office or employment held by the individual; and
  - (c) any income which is charged under Schedule A, B or D and is immediately derived by the individual from the carrying on or exercise by him of his trade, profession or vocation, either as an individual or, in the case of a partnership, as a partner personally acting in the partnership.

In cases where the income of a wife is deemed to be income of the husband, any reference in this subsection to the individual includes either the husband or the wife.

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- (5) Without prejudice to the generality of the provisions of subsection (4) above, in the Income Tax Acts, except so far as is otherwise expressly provided, “earned income” also includes, in relation to any individual—
- (a) any income arising in respect of Civil List pensions granted under the Civil List Act 1837 as amended by any subsequent enactment; and
  - (b) any annuity, pension or annual payment to which section 58(2) or 133 applies; and
  - (c) any payments chargeable to income tax under Schedule E by virtue of section 150, 151 or 617;
  - (d) any sum payable by way of annuity to an individual by virtue of a scheme under section 27 of the Agriculture Act 1967 (grants for relinquishing occupation of uncommercial agricultural units), unless the annuity was granted to the individual by reason of his having relinquished occupation before attaining the age of 55; and
  - (e) income which is earned income by virtue of section 529.
- (6) The provisions of this section are without prejudice to any other provision of the Income Tax Acts directing income to be treated as earned income.

### **834 Interpretation of the Corporation Tax Acts**

- (1) For the purposes of the Corporation Tax Acts, except in so far as the context otherwise requires—
- “accounting date” means the date to which a company makes up its accounts and “period of account” means the period for which it does so;
  - “accounting period” shall be construed in accordance with section 12;
  - “allowable loss” does not include, for the purposes of corporation tax in respect of chargeable gains, a loss accruing to a company in such circumstances that if a gain accrued the company would be exempt from corporation tax in respect of it;
  - “branch or agency” means any factorship, agency, receivership, branch or management;
  - “charges on income” has the meaning given by section 338;
  - “the financial year 1988” means the financial year beginning with April 1988, and similarly with references embodying other dates;
  - “group relief” has the meaning given by section 402.
- (2) Section 6(4) shall also apply for the purposes of the following provisions of this Act, that is to say—
- Chapter II of Part X, except section 395;
  - sections 75 and 76;
  - section 490;
  - sections 768 and 769;
- and also for sections 73 and 74 of the 1968 Act.
- (3) For all the purposes of the Corporation Tax Acts dividends shall be treated as paid on the date when they become due and payable, except in so far as section 468(1) makes other provision as to amounts treated under that section as dividends.

- (4) Except as otherwise provided by the Corporation Tax Acts, any apportionment to different periods which falls to be made under those Acts shall be made on a time basis according to the respective lengths of those periods.

### **835 “Total income” in the Income Tax Acts**

- (1) In the Income Tax Acts “total income”, in relation to any person, means the total income of that person from all sources estimated in accordance with the provisions of the Income Tax Acts.
- (2) Any person who, on his own behalf or on behalf of another person, delivers a statement of the amount of his or that other person’s total income shall observe the rules and directions contained in section 836.
- (3) Where deductions reduce a person’s total income and the order in which they are made or in which income of different descriptions is reduced thereby may affect his liability to income tax the deductions shall be made and treated as reducing income in accordance with subsections (4) and (5) below.
- (4) Subject to any express provisions of the Income Tax Acts, any deductions allowable in computing a person’s total income or to be made from a person’s total income shall be treated as reducing income of different descriptions in the order which will result in the greatest reduction of his liability to income tax.
- (5) Deductions from total income under Chapter I of Part VII shall be made after any other deductions and shall not affect the amount to be taken as a person’s total income for the purposes of section 257(5) or 274 nor the amount determining whether a person is entitled to relief under section 263 or by how much relief under that section is reduced.
- (6) In estimating the total income of any person—
- (a) any income which is chargeable with income tax by way of deduction at the basic rate in force for any year or which for the purposes of Schedule F comprises an amount equal to a tax credit calculated by reference to the rate of advance corporation tax in force for any year shall be deemed to be income of that year; and
  - (b) any deductions which are allowable on account of sums payable under deduction of income tax at the basic rate in force for any year out of the property or profits of that person shall be allowed as deductions in respect of that year;
- notwithstanding that the income or sums, as the case may be, accrued or will accrue in whole or in part before or after that year.
- (7) Where an assessment has become final and conclusive for the purposes of income tax for any year of assessment—
- (a) that assessment shall also be final and conclusive in estimating total income; and
  - (b) no allowance or adjustment of liability, on the ground of diminution of income or loss, shall be taken into account in estimating total income unless that allowance or adjustment has previously been made on an application under the special provisions of the Income Tax Acts relating thereto.
- (8) Subsection (7) above shall apply in relation to—
- (a) any relief under section 353;

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- (b) any relief by reason of the operation of an election for the herd basis under Schedule 5; and
- (c) any allowance under Part I of the 1968 Act or Chapter I of Part III of the Finance Act 1971 to be given by way of discharge or repayment of tax and to be available or available primarily against a specified class of income (that is to say, any capital allowance to which section 71 of the 1968 Act applies, or as provided by section 532 of this Act, any capital allowance to which section 528(2) of this Act applies);

as it applies in relation to allowances or adjustments on the ground of diminution of income or loss.

### **836 Returns of total income**

The following rules and directions shall be observed in delivering returns of total income under section 835(2)—

First – Declaration of the amount of profits or gains returned, or for which the person in question has been or is liable to be assessed.

Second – Declaration of the amount of rents, interest, annuities or other annual payments, in respect of which the person in question is liable to allow the tax, with the names of the respective persons by whom such payments are to be made, distinguishing the amount of each payment.

Third – Declaration of the amount of annuities or other annual payments (not being interest) to be made out of the property or profits or gains assessed on the person in question, distinguishing each source.

Fourth – Statement of the amount of income derived according to the three preceding declarations.

Fifth – Statement of any tax which the person in question may be entitled to deduct, retain or charge against any other person.

### **837 “Annual value” of land**

- (1) For the purposes of, and subject to, the provisions of the Tax Acts which apply this section, the annual value of land shall be taken to be the rent which might reasonably be expected to be obtained on a letting from year to year if the tenant undertook to pay all usual tenant’s rates and taxes, and if the landlord undertook to bear the costs of the repairs and insurance, and the other expenses, if any, necessary for maintaining the subject of the valuation in a state to command that rent.
- (2) Section 23 of the General Rate Act 1967 (adjustment of gross value by reference to provision of or payment for services etc.) shall apply for the purpose of subsection (1) above, and in relation to land in Scotland or Northern Ireland shall apply as if it extended to the whole of the United Kingdom.
- (3) Where any question arises as to the annual value of land it shall be determined by the General Commissioners and those Commissioners shall hear and determine the question in like manner as an appeal.

### **838 Subsidiaries**

- (1) For the purposes of the Tax Acts a body corporate shall be deemed to be—



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- (a) a “51 per cent. subsidiary” of another body corporate if and so long as more than 50 per cent. of its ordinary share capital is owned directly or indirectly by that other body corporate;
  - (b) a “75 per cent. subsidiary” of another body corporate if and so long as not less than 75 per cent. of its ordinary share capital is owned directly or indirectly by that other body corporate;
  - (c) a “90 per cent. subsidiary” of another body corporate if and so long as not less than 90 per cent. of its ordinary share capital is owned directly by that other body corporate.
- (2) In subsection (1)(a) and (b) above “owned directly or indirectly” by a body corporate means owned, whether directly or through another body corporate or other bodies corporate or partly directly and partly through another body corporate or other bodies corporate.
- (3) In this section references to ownership shall be construed as references to beneficial ownership.
- (4) For the purposes of this section the amount of ordinary share capital of one body corporate owned by a second body corporate through another body corporate or other bodies corporate, or partly directly and partly through another body corporate or other bodies corporate, shall be determined in accordance with the following provisions of this section.
- (5) Where, in the case of a number of bodies corporate, the first directly owns ordinary share capital of the second and the second directly owns ordinary share capital of the third, then for the purposes of this section, the first shall be deemed to own ordinary share capital of the third through the second, and, if the third directly owns ordinary share capital of a fourth, the first shall be deemed to own ordinary share capital of the fourth through the second and third, and the second shall be deemed to own ordinary share capital of the fourth through the third and so on.
- (6) In this section—
- (a) any number of bodies corporate of which the first directly owns ordinary share capital of the next and the next directly owns ordinary share capital of the next but one, and so on, and, if they are more than three, any three or more of them, are referred to as “a series”;
  - (b) in any series—
    - (i) that body corporate which owns ordinary share capital of another through the remainder is referred to as the “first owner”;
    - (ii) that other body corporate the ordinary share capital of which is so owned is referred to as “the last owned body corporate”;
    - (iii) the remainder, if one only, is referred to as “an intermediary” and, if more than one, are referred to as “a chain of intermediaries”;
  - (c) a body corporate in a series which directly owns ordinary share capital of another body corporate in the series is referred to as “an owner”; and
  - (d) any two bodies corporate in a series of which one owns ordinary share capital of the other directly, and not through one or more of the other bodies corporate in the series, are referred to as being directly related to one another.
- (7) Where every owner in a series owns the whole of the ordinary share capital of the body corporate to which it is directly related, the first owner shall be deemed to own

through the intermediary or chain of intermediaries the whole of the ordinary share capital of the last owned body corporate.

- (8) Where one of the owners in a series owns a fraction of the ordinary share capital of the body corporate to which it is directly related, and every other owner in the series owns the whole of the ordinary share capital of the body corporate to which it is directly related, the first owner shall be deemed to own that fraction of the ordinary share capital of the last owned body corporate through the intermediary or chain of intermediaries.

- (9) Where—

- (a) each of two or more of the owners in a series owns a fraction, and every other owner in the series owns the whole, of the ordinary share capital of the body corporate to which it is directly related; or
- (b) every owner in a series owns a fraction of the ordinary share capital of the body corporate to which it is directly related;

the first owner shall be deemed to own through the intermediary or chain of intermediaries such fraction of the ordinary share capital of the last owned body corporate as results from the multiplication of those fractions.

- (10) Where the first owner in any series owns a fraction of the ordinary share capital of the last owned body corporate in that series through the intermediary or chain of intermediaries in that series, and also owns another fraction or other fractions of the ordinary share capital of the last owned body corporate, either—

- (a) directly, or
- (b) through an intermediary or intermediaries which is not a member or are not members of that series, or
- (c) through a chain or chains of intermediaries of which one or some or all are not members of that series, or
- (d) in a case where the series consists of more than three bodies corporate, through an intermediary or intermediaries which is a member or are members of the series, or through a chain or chains of intermediaries consisting of some but not all of the bodies corporate of which the chain of intermediaries in the series consists;

then, for the purpose of ascertaining the amount of the ordinary share capital of the last owned body corporate owned by the first owner, all those fractions shall be aggregated and the first owner shall be deemed to own the sum of those fractions.

### **839 Connected persons**

- (1) For the purposes of, and subject to, the provisions of the Tax Acts which apply this section, any question whether a person is connected with another shall be determined in accordance with the following provisions of this section (any provision that one person is connected with another being taken to mean that they are connected with one another).
- (2) A person is connected with an individual if that person is the individual's wife or husband, or is a relative, or the wife or husband of a relative, of the individual or of the individual's wife or husband.
- (3) A person, in his capacity as trustee of a settlement, is connected with any individual who in relation to the settlement is a settlor, with any person who is connected with such an individual and with a body corporate which, under section 681 is deemed to

be connected with that settlement (“settlement” and “settlor” having for the purposes of this subsection the meanings given by subsection (4) of that section).

- (4) Except in relation to acquisitions or disposals of partnership assets pursuant to bona fide commercial arrangements, a person is connected with any person with whom he is in partnership, and with the wife or husband or relative of any individual with whom he is in partnership.
- (5) A company is connected with another company—
  - (a) if the same person has control of both, or a person has control of one and persons connected with him, or he and persons connected with him, have control of the other; or
  - (b) if a group of two or more persons has control of each company, and the groups either consist of the same persons or could be regarded as consisting of the same persons by treating (in one or more cases) a member of either group as replaced by a person with whom he is connected.
- (6) A company is connected with another person if that person has control of it or if that person and persons connected with him together have control of it.
- (7) Any two or more persons acting together to secure or exercise control of a company shall be treated in relation to that company as connected with one another and with any person acting on the directions of any of them to secure or exercise control of the company.
- (8) In this section—

“company” includes any body corporate or unincorporated association, but does not include a partnership, and this section shall apply in relation to any unit trust scheme as if the scheme were a company and as if the rights of the unit holders were shares in the company;

“control” shall be construed in accordance with section 416; and

“relative” means brother, sister, ancestor or lineal descendant.

In relation to any period during which section 470(2) has effect the reference above to a unit trust scheme shall be construed as a reference to a unit trust scheme within the meaning of the Prevention of Fraud (Investments) Act 1958 or the Prevention of Fraud (Investments) Act (Northern Ireland) 1940.

#### **840 Meaning of “control” in certain contexts**

For the purposes of, and subject to, the provisions of the Tax Acts which apply this section, “control”, in relation to a body corporate, means the power of a person to secure—

- (a) by means of the holding of shares or the possession of voting power in or in relation to that or any other body corporate; or
- (b) by virtue of any powers conferred by the articles of association or other document regulating that or any other body corporate,

that the affairs of the first-mentioned body corporate are conducted in accordance with the wishes of that person, and, in relation to a partnership, means the right to a share of more than one-half of the assets, or of more than one-half of the income, of the partnership.

**841 Recognised stock exchange and recognised investment exchanges**

- (1) In the Tax Acts “recognised stock exchange” means—
  - (a) the Stock Exchange; and
  - (b) any such stock exchange outside the United Kingdom as is for the time being designated for the purposes of this section as a recognised stock exchange by order made by the Board.
- (2) An order made by the Board under this section—
  - (a) may designate a stock exchange by name, or by reference to any class or description of stock exchanges including a class or description framed by reference to any authority or approval given in a country outside the United Kingdom;
  - (b) may contain such transitional and other supplemental provisions as appear to the Board to be necessary or expedient;
  - (c) may be varied or revoked by a subsequent order so made.
- (3) The Board may by regulations make provision securing that enactments in the Tax Acts containing references to the Stock Exchange have effect, for such purposes and subject to such modifications as may be prescribed by the regulations, in relation to all other recognised investment exchanges (within the meaning of the Financial Services Act 1986), or in relation to such of those exchanges as may be prescribed.

**842 Investment trusts**

- (1) In the Tax Acts “investment trust” means, as respects any accounting period, a company which is not a close company and which is approved for the purposes of this section for that accounting period by the Board, and the Board shall not approve any company unless it is shown to their satisfaction—
  - (a) that the company’s income is derived wholly or mainly from shares or securities; and
  - (b) subject to subsection (2) below, that no holding in a company, other than an investment trust or a company which would qualify as an investment trust but for paragraph (c) below, represents more than 15 per cent. by value of the investing company’s investments; and
  - (c) that the shares or securities of the company are quoted on the Stock Exchange; and
  - (d) that the distribution as dividend of surpluses arising from the realisation of investments is prohibited by the company’s memorandum or articles of association; and
  - (e) that the company does not retain in respect of any accounting period more than 15 per cent. of the income it derives from shares and securities.
- (2) Subsection (1)(b) above shall not apply—
  - (a) to a holding in a company acquired before 6th April 1965 which on that date represented not more than 25 per cent. by value of the investing company’s investments; or
  - (b) to a holding in a company which, when it was acquired, represented not more than 15 per cent. by value of the investing company’s investments;so long as no addition is made to the holding.
- (3) For the purposes of subsection (2) above—

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- (a) “holding” means the shares or securities (whether of one class or more than one class) held in any one company; and
  - (b) an addition is made to a holding whenever the investing company acquires shares or securities of that one company, otherwise than by being allotted shares or securities without becoming liable to give any consideration, and if an addition is made to a holding that holding is acquired when the addition or latest addition is made to the holding; and
  - (c) where in connection with a scheme of reconstruction or amalgamation, a company issues shares or securities to persons holding shares or securities in a second company in respect of and in proportion to (or as nearly as may be in proportion to) their holdings in the second company, without those persons becoming liable to give any consideration, a holding of the shares or securities in the second company and a corresponding holding of the shares or securities so issued shall be regarded as the same holding.
- (4) In this section “company” and “shares” shall be construed in accordance with sections 64, 93 and 155(1) of the 1979 Act.

*Commencement, savings, repeals etc.*

#### **843 Commencement**

- (1) Except as otherwise provided by the following provisions of this section, this Act shall come into force in relation to tax for the year 1988-89 and subsequent years of assessment, and for companies' accounting periods ending after 5th April 1988.
- (2) Except as otherwise provided by the following provisions of this section, such of the provisions of this Act as relate to capital gains tax (including the provisions of Part XVIII as applied to capital gains tax by section 10 of the 1979 Act) shall come into force in relation to that tax for the year 1988-89 and subsequent years of assessment.
- (3) The following provisions of this Act, that is to say—
  - (a) so much of any provision as authorises the making of any Order in Council or regulations or other instrument;
  - (b) so much of any provision as relates to the making of a return, the furnishing of a certificate or the giving of any other information, including any such provision which imposes a duty on the Board or an officer of the Board as well as any such provision which imposes a duty on any other person;
  - (c) so much of any provision as imposes any penalty;
  - (d) except where the tax concerned is all tax for years of assessment before the year 1988-89 or accounting periods ending before 6th April 1988, so much of any other provision as confers any power or imposes any duty the exercise or performance of which operates or may operate in relation to tax for more than one chargeable period,shall come into force for all purposes on 6th April 1988 to the exclusion of the corresponding enactments repealed by this Act.
- (4) This section has effect except as otherwise provided by any other provision of this Act, and in particular except as provided by sections 96, 380 to 384, 393, 394, 400, 703 and 812.

**844 Savings, transitional provisions, consequential amendments and repeals**

- (1) Schedule 29, which makes amendments to other enactments consequential on the passing of this Act, shall have effect.
- (2) Schedule 29, section 843 and this section are without prejudice to the provisions of the Interpretation Act 1978 as respects the effect of repeals.
- (3) Schedule 30 which contains savings and transitional provisions shall have effect.
- (4) The enactments mentioned in Schedule 31 are hereby repealed to the extent specified in the third column of that Schedule.
- (5) Subject to subsection (6) below, section 843(3), Schedule 30 and to any other provision of this Act by which any provision is brought into force to the exclusion of the corresponding enactments repealed by this Act, those repeals shall come into force in accordance with subsections (1) and (2) of section 843.
- (6) No provision mentioned in subsection (5) above shall be taken as bringing a repeal into force except to the extent that the repealed enactment is being superseded.

**845 Short title**

This Act may be cited as the Income and Corporation Taxes Act 1988.