



# Finance (No. 2) Act 2005

## 2005 CHAPTER 22

### PART 2

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

### CHAPTER 1

#### PERSONAL TAXATION

#### *Social security pension lump sums*

#### **7 Charge to income tax on lump sum**

- (1) A charge to income tax arises where a person becomes entitled to a social security pension lump sum.
- (2) For the purposes of the Tax Acts (including subsection (5)) a social security pension lump sum—
  - (a) is to be treated as income, but
  - (b) is not to be taken into account in determining the total income of any person.
- (3) The person liable to a charge under this section is the person (“P”) entitled to the lump sum, whether or not P is resident, ordinarily resident or domiciled in the United Kingdom.
- (4) The charge is imposed on P for the applicable year of assessment (see subsection (6)).
- (5) A charge under this section is a charge in respect of the amount of the lump sum at the following rate—
  - (a) if P’s total income for the applicable year of assessment is nil, 0%;
  - (b) if P’s total income for that year of assessment is greater than nil but does not exceed the starting rate limit for that year, the starting rate for that year;

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- (c) if P's total income for that year of assessment exceeds the starting rate limit but does not exceed the basic rate limit for that year, the basic rate for that year;
  - (d) if P's total income for that year of assessment exceeds the basic rate limit for that year, the higher rate for that year.
- (6) Section 8 makes provision as to the meaning of “the applicable year of assessment” for the purposes of this section.
- (7) Section 9 contains further definitions and makes provision as to commencement.
- (8) Section 10 contains consequential amendments.

## **8 Meaning of “applicable year of assessment” in section 7**

- (1) For the purposes of section 7 “the applicable year of assessment” has the meaning given by this section.
- (2) Subject to subsections (5) to (7), the applicable year of assessment is—
- (a) the year of assessment in which the first benefit payment day falls, or
  - (b) if P dies before the beginning of that year of assessment, the year of assessment in which P dies.
- (3) For the purposes of subsection (2) “the first benefit payment day” is, subject to subsection (4), the day as from which P's—
- (a) Category A or Category B retirement pension,
  - (b) shared additional pension, or
  - (c) graduated retirement benefit,
- becomes payable following the period of deferment by virtue of which P's entitlement to the lump sum arises.
- (4) But where—
- (a) the lump sum is a state pension lump sum to which P is entitled under paragraph 7A of Schedule 5 to SSCBA 1992 or paragraph 7A of Schedule 5 to SSCB(NI)A 1992 or a graduated retirement benefit lump sum to which P is entitled under a provision corresponding to either of those paragraphs, and
  - (b) at the time of S's death, P was entitled to a Category A or Category B retirement pension or (as the case may be) graduated retirement benefit,
- the first benefit payment day is the day on which S died; and for this purpose “S” is the person by virtue of whose period of deferment P's entitlement to the lump sum arises.
- (5) Subsections (6) and (7) apply where social security regulations make provision enabling the making of an election for a social security pension lump sum to be paid in the year of assessment (“the later year of assessment”) next following that given by subsection (2).
- (6) If such an election is made by P and is not revoked, the applicable year of assessment is—
- (a) the later year of assessment, or
  - (b) if P dies before the beginning of that year of assessment, the year of assessment in which P dies.
- (7) If—
- (a) P dies after the beginning of the later year of assessment,

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- (b) by the time of P’s death, P has not notified the Secretary of State as to whether or not P wishes to make such an election,
  - (c) social security regulations make provision enabling the making of such an election in such a case by the personal representatives of P, and
  - (d) P’s personal representatives make such an election in accordance with the regulations,
- the applicable year of assessment is the later year of assessment.
- (8) For the purposes of determining the applicable year of assessment, it does not matter when the lump sum is actually paid.
- (9) In this section—
- “Category A or Category B retirement pension” means Category A or Category B retirement pension under Part 2 of SSCBA 1992 or Part 2 of SSCB(NI)A 1992;
  - “graduated retirement benefit” means graduated retirement benefit under section 36 or 37 of NIA 1965 or section 35 or 36 of NIA(NI) 1966;
  - “shared additional pension” means shared additional pension under Part 2 of SSCBA 1992 or Part 2 of SSCB(NI)A 1992;
  - “social security regulations” means any regulations under—
    - (a) the Social Security Administration Act 1992 (c. 5), or
    - (b) the Social Security Administration (Northern Ireland) Act 1992 (c. 8).
- (10) This section is to be construed as one with section 7.

## **9 Interpretation and commencement**

- (1) In sections 7 and 8 “social security pension lump sum” means—
- (a) a state pension lump sum,
  - (b) a shared additional pension lump sum, or
  - (c) a graduated retirement benefit lump sum.
- (2) In section 8 and this section—
- “graduated retirement benefit lump sum” means a lump sum payable under—
    - (a) section 36 or 37 of NIA 1965, or
    - (b) section 35 or 36 of NIA(NI) 1966;
  - “shared additional pension lump sum” means a lump sum payable under—
    - (a) section 55C of, and Schedule 5A to, SSCBA 1992, or
    - (b) section 55C of, and Schedule 5A to, SSCB(NI)A 1992;
  - “state pension lump sum” means a lump sum payable under—
    - (a) section 55 of, and Schedule 5 to, SSCBA 1992, or
    - (b) section 55 of, and Schedule 5 to, SSCB(NI)A 1992.
- (3) In section 8 and this section—
- “NIA 1965” means the National Insurance Act 1965 (c. 51);
  - “NIA(NI) 1966” means the National Insurance Act (Northern Ireland) 1966 (c. 6 (N.I.));
  - “SSCBA 1992” means the Social Security Contributions and Benefits Act 1992 (c. 4);

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“SSCB(NI)A 1992” means the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7).

- (4) Sections 7 and 8 and this section have effect in relation to the year 2006-07 and subsequent years of assessment.

## 10 Consequential amendments

- (1) ITEPA 2003 is amended as follows.

- (2) In section 577 (UK social security pensions) after subsection (1) insert—

“(1A) But this section does not apply to any social security pension lump sum (within the meaning of section 7 of F(No.2)A 2005).”.

- (3) In section 683 (PAYE income) in subsection (3) (meaning, subject to subsection (4), of “PAYE pension income”) in the opening words, for “subsection (4)” substitute “subsections (3A) and (4)”.

- (4) In that section, after subsection (3) insert—

“(3A) “PAYE pension income” for a tax year also includes any social security pension lump sum (within the meaning of section 7 of F(No.2)A 2005) in respect of which a charge to income tax arises under that section for that tax year.”.

- (5) In section 686 (meaning of “payment”) in subsection (1) (rules as to when payment of, or on account of, PAYE income is to be treated as made for the purposes of PAYE regulations) at the end of the subsection insert—

“But this is subject to subsection (5) (PAYE pension income: social security pension lump sums).”.

- (6) In that section, after subsection (4) insert—

“(5) For the purposes of PAYE regulations, a payment of, or on account of, an amount which is PAYE pension income of a person by virtue of section 683(3A) (social security pension lump sums) is to be treated as made at the time when the payment is made.”.

- (7) In Schedule 1 (abbreviations and defined expressions) in Part 1 (abbreviations of Acts and instruments) insert at the end—

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“F(No.2)A 2005

The Finance (No. 2) Act 2005 (c. 22)”.

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## *Gift aid*

## 11 Donations to charity by individuals

- (1) For section 25(5E) to (5G) of FA 1990 (donations to charity by individuals: benefits: disregard of certain rights of admission) substitute—

“(5E) In determining whether a gift to a charity is a qualifying donation the benefit of any right of admission received in consequence of the gift shall be disregarded if subsections (5F) to (5H) are satisfied in relation to the right.

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- (5F) This subsection is satisfied if the opportunity to make a gift and to receive the right of admission in consequence is available to the public.
- (5G) This subsection is satisfied if the right of admission is a right granted by the charity for the purpose of viewing property preserved, maintained, kept or created by a charity in pursuance of its charitable purposes, including, in particular—
- (a) buildings,
  - (b) grounds or other land,
  - (c) plants,
  - (d) animals,
  - (e) works of art (but not performances),
  - (f) artefacts, and
  - (g) property of a scientific nature.
- (5H) This subsection is satisfied if—
- (a) the right of admission applies, during a period of at least one year, at all times at which the public can obtain admission, or
  - (b) a member of the public could purchase the same right of admission and the amount of the gift is greater by at least 10% than the amount which he would have to pay.
- (5I) In subsection (5E) “right of admission” means a right of admission—
- (a) of the person who makes the gift or of that person and one or more members of his family (whether or not the right must be exercised by all those persons at the same time),
  - (b) to premises or property to which the public are admitted on payment of an admission fee, and
  - (c) without payment of the admission fee or on payment of a reduced fee;
- and in the application of subsection (5H)(b) “the same right of admission” means a right relating to the same property, classes of person and periods of time as the right received in consequence of the gift.
- (5J) For the purposes of subsection (5H)(a) a right of admission shall be treated as applying at all times at which the public can obtain admission despite the fact that the right does not apply on days specified by the charity, being days on each of which an event is to take place on the premises to which the right relates; provided that no more than 5 days are specified for that purpose in relation to—
- (a) the period during which the right applies, in the case of a period of one year, or
  - (b) each calendar year during all or part of which the right applies, in the case of a right applying for a period of more than one year.”
- (2) This section shall have effect in relation to gifts made on or after 6th April 2006.

### *Employee securities*

## **12 Employee securities: anti-avoidance**

Schedule 2 contains amendments relating to employee securities.