



# Income Tax (Trading and Other Income) Act 2005

## 2005 CHAPTER 5

### PART 5

#### MISCELLANEOUS INCOME

#### CHAPTER 5

#### SETTLEMENTS: AMOUNTS TREATED AS INCOME OF SETTLOR [F<sup>1</sup>OR FAMILY]

#### *Capital sums treated as income of settlor: trustees' payments*

#### **633 Capital sums paid to settlor by trustees of settlement**

- (1) Any capital sum paid directly or indirectly in any tax year by the trustees of a settlement to the settlor is treated for income tax purposes as follows.
- (2) The sum is treated as the income of the settlor for the tax year so far as the amount of the sum falls within the amount of income available up to the end of the year.
- (3) The sum is treated as the income of the settlor for the following year so far as the amount of the sum—
  - (a) is not treated under subsection (2) as the settlor's income for the tax year in which it is paid, and
  - (b) falls within the amount of the income available up to the end of the following year.
- (4) Subsection (3) also applies for each subsequent year up to a maximum of 10 years subsequent to the tax year in which the sum is paid.
- (5) For this purpose the reference in subsection (3)(a) to being treated under subsection (2) as the settlor's income for the tax year in which the capital sum is paid is a reference to

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being treated under subsection (2) or (3) as the settlor's income for that year and any other year before the subsequent year in question.

(6) For the meaning of certain expressions used in this section, see—  
 section 634 (meaning of “capital sum” and “sums paid to settlor”),  
 section 635 (amount of available income),  
 section 636 (calculation of undistributed income), and  
 section 637 (qualifications to section 636).

(7) For other provisions, see—  
 section 638 (capital sums paid by way of loan or repayment of loan),  
 section 639 (loans to participators in close companies), and  
 section 640 (grossing-up of deemed income).

#### **634 Meaning of “capital sum” and “sums paid to settlor”**

- (1) In this Chapter “capital sum” means—
- (a) any sum paid by way of loan or repayment of a loan, and
  - (b) any other sum which—
    - (i) is paid otherwise than as income, and
    - (ii) is not paid for full consideration in money or money's worth.
- (2) But this is subject to subsections (3) to (6).
- (3) It does not include any sum which could not have become payable to the settlor except—
- (a) in one of the circumstances mentioned in subsection (2) of section 625, or
  - (b) on the death under the age of 25 of any person of the kind mentioned in subsection (3) of that section.
- (4) It does include a sum treated as a capital sum by subsection (5) below.
- (5) Any sum which—
- (a) is paid by the trustees of a settlement to a third party—
    - (i) at the settlor's direction, or
    - (ii) as a result of the assignment by the settlor of the settlor's right to receive the sum, or
  - (b) is otherwise paid, or applied by, the trustees for the benefit of the settlor, is treated as a capital sum paid to the settlor by the trustees.
- (6) Subsection (5) does not apply to any sum which would, apart from that subsection, be treated as a capital sum paid to the settlor.
- (7) References in sections 633 to 638 to sums paid to the settlor include references to sums paid to—
- (a) the spouse [F<sup>2</sup> or civil partner] of the settlor, or
  - (b) the settlor (or the spouse [F<sup>2</sup> or civil partner] of the settlor) jointly with another person.

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### Textual Amendments

- F2** Words in s. 634(7) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1, **194**

## 635 Amount of available income

- (1) For the purposes of section 633 the amount of income available up to the end of any tax year is, in relation to any capital sum paid as mentioned in subsection (1) of that section by the trustees of a settlement, calculated as follows.
- (2) Add together the amount of [<sup>F3</sup>unprotected] income arising under the settlement in that year and any previous year which has not been distributed.
- (3) Deduct from that figure—
  - (a) the amount of that income taken into account under section 633 in relation to that sum in any previous year or years,
  - (b) the amount of that income taken into account under section 633 in relation to any other capital sums paid to the settlor in any year before that sum was paid,
  - (c) any income arising under the settlement in that year or any previous year which has been treated as income of the settlor under section 624 or 629, and
  - (d) an amount equal to the sum of tax at the [<sup>F4</sup>trust rate] on—
    - (i) the total amount of [<sup>F5</sup>unprotected] income arising under the settlement in that year and any previous year which has not been distributed, less
    - (ii) any income of the kind mentioned in paragraph (c).
- (4) See sections 636 and 637 for how to calculate amounts of undistributed income.

[<sup>F6</sup>(5) In [<sup>F7</sup>this section and sections 636 and 637] “unprotected income” means income which is not protected foreign-source income, and sections 628A(2) to (13) and 628B (meaning of “protected foreign-source income”) have effect also for this purpose.]

### Textual Amendments

- F3** Word in s. 635(2) inserted (16.11.2017) (with effect in accordance with Sch. 8 para. 39 of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 8 para. 24\(2\)](#)
- F4** Words in s. 635(3)(d) substituted (6.4.2007 with effect as stated in [s. 1034\(1\)](#) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), ss. 1027, 1034, [Sch. 1 para. 557](#) (with transitional provisions and savings in [Sch. 2](#))
- F5** Word in s. 635(3)(d)(i) inserted (with effect in accordance with Sch. 10 para. 21 of the amending Act) by [Finance Act 2018 \(c. 3\)](#), [Sch. 10 para. 8\(a\)](#)
- F6** S. 635(5) inserted (16.11.2017) (with effect in accordance with Sch. 8 para. 39 of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 8 para. 24\(3\)](#)
- F7** Words in s. 635(5) substituted (with effect in accordance with Sch. 10 para. 21 of the amending Act) by [Finance Act 2018 \(c. 3\)](#), [Sch. 10 para. 8\(b\)](#)

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### 636 Calculation of undistributed income

- (1) For the purposes of section 635, [<sup>F8</sup>unprotected] income arising under a settlement in any tax year is treated as [<sup>F8</sup>unprotected] income which has not been distributed so far as it exceeds the total amount of—
  - (a) the sums to which subsection (2) applies,
  - (b) the expenses to which subsection (4) applies, and
  - (c) if the trustees of the settlement are trustees for charitable purposes, the amount to which subsection (6) applies.
- (2) This subsection applies to <sup>F9</sup>... sums paid in the tax year to any persons by the trustees of the settlement [<sup>F10</sup>that are payments of unprotected income, or sums treated as representing unprotected income, and that]—
  - (a) are treated in that year (otherwise than under section 633) as the income of those persons for income tax purposes, or
  - (b) would be [<sup>F11</sup>treated as mentioned in paragraph (a)] if those persons were domiciled [<sup>F12</sup>and resident] in the United Kingdom and the sums had been paid to them there.
- (3) Subsection (2) is subject to section 637(1).
- (4) This subsection applies to any expenses of the trustees of the settlement paid in the tax year which, in the absence of any express provision of the settlement, would be properly chargeable to [<sup>F13</sup>unprotected] income.
- (5) Subsection (4)—
  - (a) does not apply to expenses so far as they are included in the sums mentioned in subsection (2), and
  - (b) is subject to section 637(2) to (7).
- (6) This subsection applies to the amount by which—

$$A > B$$

where—

A is any [<sup>F14</sup>unprotected] income arising under the settlement in the tax year in respect of which exemption from tax may be granted under [<sup>F15</sup>any provision to which subsection (7) applies], and

B is the total amount of any such sums or expenses as are mentioned in subsections (2) and (4) paid in that year which are properly chargeable to the income.

- [<sup>F16</sup>(7) This subsection applies to the following provisions of ITA 2007—
- section 521(4) (gifts entitling donor to gift-aid relief),
  - section 522(5) (gifts of money from companies),
  - section 523(5) (payments from other charities),
  - section 524 (profits etc of charitable trades),
  - section 529 (profits from fund-raising events),
  - section 530 (profits from lotteries),
  - section 531 (property income etc),
  - section 532 (savings and investment income),

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section 533 (public revenue dividends),  
section 536 (miscellaneous income), and  
section 537 (income from estates in administration).]

#### Textual Amendments

- F8** Word in s. 636(1) inserted (16.11.2017) (with effect in accordance with Sch. 8 para. 39 of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 8 para. 25](#)
- F9** Word in s. 636(2) omitted (with effect in accordance with Sch. 10 para. 21 of the amending Act) by virtue of [Finance Act 2018 \(c. 3\)](#), [Sch. 10 para. 9\(a\)\(i\)](#)
- F10** Words in s. 636(2) substituted (with effect in accordance with Sch. 10 para. 21 of the amending Act) by [Finance Act 2018 \(c. 3\)](#), [Sch. 10 para. 9\(a\)\(ii\)](#)
- F11** Words in s. 636(2)(b) substituted (with effect in accordance with Sch. 10 para. 21 of the amending Act) by [Finance Act 2018 \(c. 3\)](#), [Sch. 10 para. 9\(a\)\(iii\)](#)
- F12** Words in s. 636(2)(b) substituted (with effect in accordance with Sch. 46 para. 72 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 48\(1\)](#) (with [Sch. 46 para. 48\(2\)](#))
- F13** Word in s. 636(4) inserted (with effect in accordance with Sch. 10 para. 21 of the amending Act) by [Finance Act 2018 \(c. 3\)](#), [Sch. 10 para. 9\(b\)](#)
- F14** Word in s. 636(6) inserted (with effect in accordance with Sch. 10 para. 21 of the amending Act) by [Finance Act 2018 \(c. 3\)](#), [Sch. 10 para. 9\(c\)](#)
- F15** Words in s. 636(6) substituted (with effect as stated in [s. 1034\(1\)](#) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), ss. 1027, 1034, [Sch. 1 para. 558\(2\)](#) (with transitional provisions and savings in [Sch. 2](#))
- F16** S. 636(7) inserted (with effect as stated in [s. 1034\(1\)](#) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), ss. 1027, 1034, [Sch. 1 para. 558\(3\)](#) (with transitional provisions and savings in [Sch. 2](#))

#### 637 Qualifications to section 636

- (1) Section 636(2) does not apply—
- to any interest paid by the trustees of the settlement, or
  - to any sums paid to—
    - a body corporate connected with the settlement, or
    - the trustees of another settlement made by the settlor or by the trustees of the settlement.
- (2) Section 636(4) applies to any [<sup>F17</sup>relevant] interest paid by the trustees of the settlement subject to subsections (3) to (7).
- (3) The whole of any [<sup>F18</sup>relevant] interest paid by the trustees of the settlement is excluded from subsection (4) of section 636 if no sums within subsection (2) of that section were paid to any person other than the settlor or the spouse [<sup>F19</sup>or civil partner] of the settlor.
- (4) If any sum within section 636(2) was so paid, the relevant fraction of any [<sup>F20</sup>relevant] interest paid by the trustees of the settlement is excluded from section 636(4).
- (5) The relevant fraction is—

$$\frac{A - B}{A}$$

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where—

A is the whole of the [<sup>F21</sup>unprotected] income arising under the settlement in the tax year, less the sums referred to in subsection (4) of section 636 apart from subsections (2), (3) and (6) of this section, and

B is so much of the sums within subsection (2) of that section as is paid to persons other than the settlor or the spouse [<sup>F22</sup>or civil partner] of the settlor.

- (6) Subsections (2) to (5) do not apply to—
- (a) interest in respect of which relief from tax is allowable under any provision of the Income Tax Acts, or
  - (b) interest payable to the settlor or the spouse [<sup>F23</sup>or civil partner] of the settlor if living with the settlor.
- (7) Nothing in subsections (2) to (6) affects the liability to tax of the person receiving or entitled to the interest.

[<sup>F24</sup>(7A) In this section “relevant interest” means interest which, in the absence of any express provision of the settlement, would be properly chargeable to unprotected income.]

- (8) For the purposes of this Chapter, a body corporate is treated as connected with a settlement in any tax year if at any time in that year—
- (a) it is a close company (or only is not a close company because it is non-UK resident) and the participators then include the trustees of the settlement, or
  - (b) it is controlled by a company falling within paragraph (a).

#### **Textual Amendments**

- F17** Word in s. 637(2) inserted (with effect in accordance with Sch. 10 para. 21 of the amending Act) by [Finance Act 2018 \(c. 3\)](#), [Sch. 10 para. 10\(a\)](#)
- F18** Word in s. 637(3) inserted (with effect in accordance with Sch. 10 para. 21 of the amending Act) by [Finance Act 2018 \(c. 3\)](#), [Sch. 10 para. 10\(a\)](#)
- F19** Words in s. 637(3) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1, [195\(2\)](#)
- F20** Word in s. 637(4) inserted (with effect in accordance with Sch. 10 para. 21 of the amending Act) by [Finance Act 2018 \(c. 3\)](#), [Sch. 10 para. 10\(a\)](#)
- F21** Word in s. 637(5) inserted (with effect in accordance with Sch. 10 para. 21 of the amending Act) by [Finance Act 2018 \(c. 3\)](#), [Sch. 10 para. 10\(b\)](#)
- F22** Words in s. 637(5) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1, [195\(3\)](#)
- F23** Words in s. 637(6)(b) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1, [195\(4\)](#)
- F24** S. 637(7A) inserted (with effect in accordance with Sch. 10 para. 21 of the amending Act) by [Finance Act 2018 \(c. 3\)](#), [Sch. 10 para. 10\(c\)](#)

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 7A-7D inserted by [2022 c. 3 Sch. 1 para. 3](#)
- s. 31E(4) inserted by [2022 c. 3 Sch. 1 para. 7\(3\)](#)
- s. 649(1A)(1B) inserted by [2023 c. 30 Sch. 2 para. 11\(2\)](#)
- s. 679(3A) inserted by [2023 c. 30 Sch. 2 para. 11\(5\)\(b\)](#)
- s. 679A(3A) inserted by [2023 c. 30 Sch. 2 para. 11\(6\)\(b\)](#)
- s. 680(1A) inserted by [2023 c. 30 Sch. 2 para. 11\(7\)\(a\)](#)