



# Income Tax (Trading and Other Income) Act 2005

## 2005 CHAPTER 5

### PART 5

#### MISCELLANEOUS INCOME

#### CHAPTER 5

#### SETTLEMENTS: AMOUNTS TREATED AS INCOME OF SETTLOR [<sup>F1</sup>OR FAMILY]

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

#### **637 Qualifications to section 636**

- (1) Section 636(2) does not apply—
  - (a) to any interest paid by the trustees of the settlement, or
  - (b) to any sums paid to—
    - (i) a body corporate connected with the settlement, or
    - (ii) the trustees of another settlement made by the settlor or by the trustees of the settlement.
- (2) Section 636(4) applies to any [<sup>F2</sup>relevant] interest paid by the trustees of the settlement subject to subsections (3) to (7).
- (3) The whole of any [<sup>F3</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>F4</sup>or civil partner] of the settlor.
- (4) If any sum within section 636(2) was so paid, the relevant fraction of any [<sup>F5</sup>relevant] interest paid by the trustees of the settlement is excluded from section 636(4).
- (5) The relevant fraction is—

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

where—

A is the whole of the [<sup>F6</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>F7</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>F8</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>F9</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

- F2** 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\(a\)](#)
- F3** 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\(a\)](#)
- F4** Words in s. 637(3) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1, [195\(2\)](#)
- F5** 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\(a\)](#)
- F6** 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\(b\)](#)
- F7** Words in s. 637(5) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1, [195\(3\)](#)
- F8** 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\(4\)](#)
- F9** 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\(c\)](#)

**Changes to legislation:**

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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\(7\)\(a\)](#)