

Status: Point in time view as at 01/02/1991.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 1944, FOURTH SCHEDULE. (See end of Document for details)

FOURTH SCHEDULE

Section 42.

ENEMY PROPERTY

PART I

INCOME TAX

Tax on income payable to custodian

- 1 Where any income which, but for the operation of the law relating to trading with the enemy, would be chargeable to income tax for any year of assessment apart from this paragraph becomes payable to a custodian, the same assessments to income tax (other than surtax) shall be made for that year on the custodian in respect of income from the source from which that income arose as might have been made on any person if the person who, but for the operation of the said law, would have been entitled to the income had been so entitled.
- 2 Where an assessment is made on a custodian under paragraph 1 of this Part of this Schedule in respect of any income, or any income which is paid subject to deduction of income tax is received by a custodian, and, in either case, it is shown to the satisfaction of the Commissioners of Inland Revenue that, but for the operation of the law relating to trading with the enemy, the person who, but for the operation of that law, would have been assessable to, or would have borne, the tax on that income, would, if a claim were made in that behalf, have been granted relief from all or any of the tax the same relief shall be granted to the custodian by repayment or otherwise.
- 3 Where an assessment is made on a custodian under paragraph 1 of this Part of this Schedule in respect of any income, or any income which is paid subject to deduction of income tax is received by a custodian, and, in either case, it appears that, but for the operation of the law relating to trading with the enemy, the income would have been taken into account in computing the total income of an individual for surtax purposes, that income shall be deemed for surtax purposes to be income of that individual and the same assessments to surtax may, without any notice to make a return being served on the custodian or that individual, be made on the custodian in respect of the income as might have been made on that individual or his executors or administrators if it had been his income and, where that individual has other income, if it were treated as the highest part of his total income:

Provided that where, in the case of any individual, assessments to surtax under this paragraph for any year of assessment could, apart from this proviso, be made on two or more custodians, one of those custodians (to be selected by the Special Commissioners) shall be assessed to surtax for that year in respect of all income to which this paragraph applies in relation to that individual.
- 4 Where, in the case of any individual who, but for the operation of the law relating to trading with the enemy, would be entitled to any income which is payable to a custodian, the Special Commissioners, on any information before them, are of opinion that any income (not being income to which the preceding paragraphs of this Part of this Schedule apply) would, if notice to make a return were served on that individual, fall to be included in his total income for surtax purposes, they may, without any notice to make a return being served on him or any notice of assessment, make an assessment to surtax upon that individual in respect of that income.

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Payment of tax by custodian

- 5 A custodian shall, save as expressly provided in this Part of this Schedule, pay or cause to be paid, out of money in his hands to which some other person would be entitled but for the operation of the law relating to trading with the enemy, any income tax (including surtax) assessed on a custodian by virtue of paragraph 1 or paragraph 3 of this Part of this Schedule, which, but for the operation of that law, would have been chargeable on or borne by that other person.
- 6 (1) A custodian shall, on demand of the Commissioners of Inland Revenue as respects tax other than surtax, and on demand of the Special Commissioners as respects surtax, pay or cause to be paid, out of money in his hands to which some other person would be entitled but for the operation of the law relating to trading with the enemy, any sum stated in the demand to be due from that person in respect of income tax other than surtax, or in respect of surtax, as the case may be, for whatever year of assessment (including years before the year 1939-40).
- (2) Any sum paid by a custodian in pursuance of such a demand shall be deemed for the purposes of the Income Tax Acts to have been paid by the person who is stated in the demand to be the person from whom it is due.
- (3) A sum may be included in any such demand as aforesaid notwithstanding that the relevant assessment is, or is still capable of being, the subject of an appeal.

Effect of release of property or income by custodian

- 7 Where a custodian releases to or for the benefit of, or to the personal representatives of, any person who has ceased to be an enemy or has died everything in the custodian's hands to which that person or his personal representatives, as the case may be, would, but for the operation of the law relating to trading with the enemy, be entitled—
- (a) any income which, but for the operation of that law, would have belonged to that person or to some person under whom he claims, shall thereafter be treated for all the purposes of the Income Tax Acts as having been income of the person whose income it would have been for those purposes but for the operation of the said law;
- (b) all income tax (including surtax) paid by deduction or otherwise by a custodian in respect of any such income shall thereafter be treated as having been paid by, and all reliefs allowed to a custodian in respect of any such income shall thereafter be treated as having been allowed to, the last-mentioned person; and
- (c) appeals may thereafter be brought by the last-mentioned person or his personal representatives against any assessment (including any assessment to surtax) made on a custodian in respect of any such income as if the assessment had been made on him.
- 8 Where an assessment is made under any of the preceding provisions of this Part of this Schedule on a custodian and, whether before or after the making of the assessment, the income or any part thereof is paid, transferred or released, or permitted to be paid or transferred, to any other person by the custodian, so much, if any, of the tax payable by virtue of the assessment as cannot, under the preceding provisions of this Part of this Schedule, be paid by the custodian shall be a debt due to the Crown—

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- (a) in a case to which the last preceding paragraph applies, from the person whose income it is, under that paragraph, treated as having been, or his personal representatives; and
- (b) in any other case, from the person to whom the income is so paid, transferred or released,

and may be recovered accordingly, and the custodian shall cease to be liable in respect of the tax.

Relaxation of time limits

- 9 Notwithstanding anything in the Income Tax Acts limiting the time for making assessments, assessments may be made under paragraphs 1, 3 and 4 of this Part of this Schedule at any time before such date as Parliament may hereafter determine, and any appeal against any such assessment, and any claim made either by a custodian or by virtue of paragraph 7 of this Part of this Schedule to relief from tax, may, notwithstanding anything in the Income Tax Acts restricting the time for bringing appeals or making claims for relief, be brought or made at any time before the said date.

Supplementary

- 10 For the purposes of paragraphs 1 to 4 of this Part of this Schedule it shall, except so far as the contrary is proved, be assumed that nothing has occurred since the third day of September, nineteen hundred and thirty-nine, to change the persons who, but for the operation of the law relating to trading with the enemy, would be entitled to any money or property, or to income therefrom, and any assessment under paragraph 1 or paragraph 3 of this Part of this Schedule shall specify the person who has been taken to be the person who, but for the operation of the said law, would have been entitled to the relevant income.

- 11 Where income from any source for any year of assessment would become payable to a custodian but for the fact that no income from that source is available for payment in that year, but, apart from the operation of the law relating to trading with the enemy, income tax would nevertheless be chargeable in respect of income from that source for that year, the provisions of this Part of this Schedule shall have effect as if income from that source had been available for payment in that year and become payable to the custodian.

- 12 In this Part of this Schedule, the expression “income” means income for the purposes of the Income Tax Acts:

Provided that the said expression includes any rents, profits or other sums arising from any land, and any tax under Schedule A or Schedule B in respect of any land shall be treated as tax in respect of income from that land.

Years to which this Part of this Schedule applies

- 13 This Part of this Schedule shall have effect with respect to income tax (including surtax) for the year 1939-40 and subsequent years of assessment and, to the extent expressly provided by paragraph 6 of this Part of this Schedule, with respect also to income tax (including surtax) for previous years of assessment.

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[^{F1}PART II

ESTATE DUTY

Textual Amendments

- F1** Sch. 4 Pt. II repealed in relation to any death occurring after 15.4. 1969 subject to s. 40(2) of the repealing Act, by Finance Act 1969 (c. 32), s. 61(6), Sch. 21 Pt. V

Modifications etc. (not altering text)

- C1** The text of Sch. 4 Pts. II and III is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

- 1 Property which, but for the operation of the law relating to trading with the enemy, would, for the purposes of the enactments relating to estate duty, pass on the death of a person or be included to a particular extent in property so passing shall, on the death of that person, be deemed for those purposes to pass or to be included to that extent in property so passing, as the case may be.
- 2 Where, but for the operation of the law relating to trading with the enemy, there would have existed at the death of the deceased a debt for which an allowance would have been made under subsection (1) of section seven of the Finance Act, 1894, by deduction from the value of any property deemed to pass as aforesaid, an allowance of the like amount shall be made, and deducted from the value of that property.
- 3 On the death of a person who, immediately before his death, would, but for the operation of the law relating to trading with the enemy, have been entitled to any property in the hands of or money payable to a custodian, the custodian shall be accountable for any estate duty in respect of any property of which the deceased would, but for the operation of the said law, have been competent to dispose at his death, but shall not be liable for any duty in excess of the amount which can be raised from, or from the proceeds of, property which is in his hands when he first receives notice of the death or which thereafter comes into his hands, being in either case property of which the deceased would have been competent to dispose as aforesaid.
- 4 No property shall be deemed for the purposes of section four of the Finance Act, 1894, to be property in which the deceased never had an interest if the deceased would at some time have had an interest therein but for the operation of the law relating to trading with the enemy.
- 5 A custodian shall, on demand of the Commissioners of Inland Revenue, pay or cause to be paid, out of property in his hands or money payable to him, any sum stated in the demand to be due in respect of, or of interest on, estate duty, being duty for the satisfaction of which that property or money is, or would, but for the operation of the law relating to trading with the enemy be, available.
- 6 Where a custodian releases to the executor of any person everything in his hands to which the executor would, but for the operation of the law relating to trading with the enemy, be entitled, the executor shall be accountable for all estate duty and interest on estate duty for the satisfaction of which the property released is, or but for the operation of the said law would have been, available, in so far as that duty and interest remains unpaid and the custodian shall cease to be accountable therefor.

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- 7 This Part of this Schedule shall have effect, and be deemed always to have had effect, in relation to deaths occurring on or after the third day of September, nineteen hundred and thirty-nine:

Provided that, where before the passing of this Act a trustee or executor has distributed any property, his maximum liability for duty and interest remaining unpaid shall not exceed the amount which can be raised from, or from the proceeds of, property in his hands at the passing of this Act or coming into his hands thereafter, being in either case property which he received as trustee or executor.]

PART III

LEGACY DUTY AND SUCCESSION DUTY

Modifications etc. (not altering text)

- C2** The text of Sch. 4 Pts. II and III is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

- 1 For the avoidance of doubt it is hereby declared that, where any money or other property is paid to or vested in a custodian and, but for the operation of the law relating to trading with the enemy, that money or property would have been paid to or become vested in some other person under such circumstances that legacy duty or succession duty would have become payable, the custodian is accountable for the duty, except so far as it is paid by any other person.
- 2 Where, whether before or after the passing of this Act, a custodian releases to a person property to which that person would, but for the operation of the law relating to trading with the enemy, have become beneficially entitled upon or by virtue of the death of any person, then, whether the death occurred before or after the passing of this Act, the title of the first-mentioned person to the property shall, for the purposes of the enactments relating to legacy duty and succession duty, be deemed to have been created by the same instrument or the same operation of law that would have created it if the law relating to trading with the enemy had not come into operation, the enactments relating to the said duties shall have effect accordingly and, as respects property released after the passing of this Act, the custodian shall be accountable for the duties in the like manner and to the like extent as the person who, if the said law had not come into operation, would have been accountable.
- 3 Where, whether before or after the passing of this Act, a custodian releases to a person property which thereupon becomes subject to trusts, express or implied, which secure the application or devolution of the property in the manner in which it would have been applied or would have devolved if the law relating to trading with the enemy had not come into operation, any title to property arising by virtue of the said trusts shall, for the purposes of the enactments relating to legacy duty and succession duty, be deemed (whether the relevant death took place before or after the passing of this Act) to have been created by the same instrument or the same operation of law that would have created it if the law relating to trading with the enemy had not come into operation, and the said enactments shall have effect accordingly:

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Provided that, where before the passing of this Act the trustee has distributed any property, his maximum liability for duty remaining unpaid shall not exceed the amount which can be raised from, or from the proceeds of, property in his hands at the passing of this Act or coming into his hands thereafter, being in either case property which he received as trustee.

- 4 Nothing in the last two preceding paragraphs shall render any legacy duty or succession duty payable in respect of any property in connection with any death if, under paragraph 1 of this Part of this Schedule, legacy duty or, as the case may be, succession duty is payable in respect of that property in connection with that death.

PART IV

GENERAL

- 1 (1) Any custodian and any person who holds any property to the order of any custodian, on being requested in writing by the Commissioners of Inland Revenue or the Special Commissioners so to do, shall furnish to the Commissioners making the request, within such time, not being less than twenty-eight days, as may be specified therein, such particulars as those Commissioners may require for the purpose of enabling any tax [^{F2}or duty] to be charged or recovered in accordance with the provisions of this Schedule.
- (2) If any person other than a custodian fails without reasonable excuse to comply with any request under this paragraph within the time specified in the request he shall be liable to a penalty not exceeding fifty pounds and, after judgment has been given for that penalty, to a further penalty of the like amount for every day during which the failure continues.

Textual Amendments

- F2** Words repealed in relation to deaths occurring after 13.4.1975 and, so far as regards the duties referred to in s. 52(2)(b) of the repealing Act, in relation to any death, by [Finance Act 1975 \(c.7, SIF 99:3\)](#), ss. [52\(2\)](#), [59](#), [Sch. 13 Pt. 1](#) note (with a saving in s. 52(3) in relation to repayment or allowance in respect of sums paid before 13.3.1975 on account of the said duties)

- 2 In this Schedule the following expressions have the meanings hereby respectively assigned to them, that is to say,—
- “the law relating to trading with the enemy” includes the Trading with the ^{M1}Enemy Act, 1939, the Defence (Trading with the Enemy) Regulations, 1940, and any orders made by the Treasury or the Board of Trade under or by virtue of that Act or those Regulations, and, except in relation to property in enemy territory within the meaning of that Act, includes also any corresponding law of any country or territory outside the United Kingdom;
- “custodian” means a custodian of enemy property appointed under the said Act;
- “property” has the meaning assigned to it by section seven of the said Act; and any reference in this Schedule to any money, property or income received by or in the hands of a custodian shall be construed as including a reference to money, property or income held to the order of a custodian.

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Marginal Citations

M1 1939 c. 89.

- 3 Part I of this Schedule shall be construed as one with the Income Tax Acts, [^{F3}Part II of this Schedule shall be construed as one with Part I of the ^{M2}Finance Act, 1894]
...
^{F4}

Textual Amendments

- F3** Words repealed in relation to deaths occurring after 13.4.1975 and, so far as regards the duties referred to in s. 52(2)(b) of the repealing Act, in relation to any death, by [Finance Act 1975 \(c.7, SIF 99:3\)](#), ss. [52\(2\)](#), [59](#), [Sch. 13 Pt. I](#) note (with saving in s. 52(3) in relation to repayment or allowances in respect of sums paid before 13.3.1975 on account of the said duties)
- F4** Words repealed with saving by [Finance Act 1949 \(c. 47\)](#), [Sch. 11 Pt. IV](#)

Marginal Citations

M2 1894 c. 30.

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