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# Income and Corporation Taxes Act 1988

## 1988 CHAPTER 1

### PART IV

#### PROVISIONS RELATING TO THE SCHEDULE D CHARGE

#### CHAPTER II

#### INCOME TAX: BASIS OF ASSESSMENT ETC.

#### *Cases I and II*

#### **60 Assessment on preceding year basis.**

- (1) <sup>M1</sup> Subject to the provisions of this section and sections 61 to 63, income tax shall be charged under Cases I and II of Schedule D on the full amount of the profits or gains of the year preceding the year of assessment.
- (2) <sup>M2</sup> Subsection (3) or (4) below shall apply where, in the case of a trade, profession or vocation, an account has, or accounts have, been made up to a date or dates within the period of three years immediately preceding the year of assessment.
- (3) <sup>M3</sup> If—
  - (a) an account was made up to a date within the year preceding the year of assessment, and
  - (b) that account was the only account made up to a date in that year, and
  - (c) it was for a period of one year beginning either—
    - (i) at the commencement of the trade, profession or vocation, or
    - (ii) at the end of the period on the profits or gains of which the assessment for the last preceding year of assessment was to be computed,the profits or gains of the year ending on that date shall be taken to be the profits or gains of the year preceding the year of assessment.

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- (4) <sup>M4</sup>If subsection (3) does not apply, the Board shall decide what period of 12 months ending on a date within the year preceding the year of assessment shall be deemed to be the year the profits or gains of which are to be taken to be the profits or gains of the year preceding the year of assessment.
- (5) <sup>M5</sup>Where—
- (a) the Board have given a decision under subsection (4) above, and
  - (b) it appears to them that, in consequence of that decision, income tax for the last preceding year of assessment in respect of the profits or gains from the same source should be computed on the profits or gains of a corresponding period, they may give a direction to that effect, and an assessment or, on a claim therefor, repayment of tax shall be made accordingly.
- (6) The decision whether or not to give a direction under subsection (5) above shall be subject to an appeal which shall lie to the General Commissioners unless the appellant elects (in accordance with section 46(1) of the Management Act) to bring it before the Special Commissioners, and the Commissioners hearing the appeal shall grant such relief, if any, as is just.
- (7) An appeal under subsection (6) above shall be brought within 30 days of receipt of notice of the decision, save that, if the decision is to give a direction and an assessment is made in accordance with the direction, the appeal against the decision shall be by way of an appeal against the assessment.
- (8) In the case of the death of a person who, if he had not died, would under subsections (2) to (5) above have become chargeable to income tax for any year, the tax which would have been so chargeable shall be assessed and charged on his executors or administrators, and shall be a debt due from and payable out of his estate.

#### **Marginal Citations**

- M1** SOURCE-1970 s. 115(1)  
**M2** SOURCE-1970 s. 115(2)  
**M3** SOURCE-1970 s. 115(2)(a)  
**M4** SOURCE-1970 s. 115(2)(b)  
**M5** SOURCE-1970 s. 115(3)–(6)

## **61 Special basis at commencement of trade, profession or vocation.**

- (1) <sup>M6</sup>Subject to subsection (4) below, where the trade, profession or vocation has been set up and commenced within the year of assessment, the computation of the profits or gains chargeable to income tax under Case I or Case II of Schedule D shall be made either on the full amount of the profits or gains arising in the year of assessment or according to the average of such period, not being greater than one year, as the case may require and as may be directed by the inspector.
- (2) On an appeal to the General or Special Commissioners, the Commissioners shall have jurisdiction to review the inspector's decision under subsection (1) above.
- (3) Where the trade, profession or vocation has been set up and commenced within the year preceding the year of assessment, the computation of the profits or gains chargeable to income tax under Case I or Case II of Schedule D shall be made on the profits or gains for one year from its first being set up.

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- (4) Subsections (1) to (3) above shall not apply in any case where [<sup>F1</sup>there is a change in the persons engaged in carrying on a trade, profession or vocation in partnership and] section 113(1) and (2) apply but no election is made under section 113(2), but in such a case the computation of the profits or gains chargeable to income tax under Case I or II of Schedule D for the year of assessment in which the new trade, profession or vocation is treated as having been set up and commenced, and for each of the three years following that year of assessment, shall be made on the full amount of the profits or gains arising in the year of assessment in question.

#### Textual Amendments

**F1** 1988(F) s.146 and Sch.13 para.2 (*deemed always to have had effect*).

#### Marginal Citations

**M6** SOURCE-1970 s. 116

## 62 Special basis for early years following commencement.

- (1) <sup>M7</sup>In this section—
- “charged” means charged to income tax in respect of the profits or gains of a trade, profession or vocation;
- “the second year of assessment” and “the third year of assessment” means respectively the year next after, and the year next but one after, the year of assessment in which the trade, profession or vocation in question was set up and commenced; and
- “the fifth year of assessment” and “the sixth year of assessment” mean respectively the year next but three after, and the year next but four after, the year of assessment in which the trade, profession or vocation in question was set up and commenced.
- (2) <sup>M8</sup>Subject to subsection (4) below, the person charged, or liable to be charged, shall be entitled, on giving notice to the inspector within seven years after the end of the second year of assessment, to require that tax shall be charged for both the second year of assessment and the third year of assessment (but not for one or other only of those years) on the amount of the profits or gains for each such year respectively.
- [<sup>F2</sup>(2A) Where—
- (a) the second year of assessment is the year 1989-90,
- (b) the person charged, or liable to be charged, for that year is a married man, and
- (c) the person charged, or liable to be charged, for the year 1990-91 is his wife,
- subsection (2) above shall have effect as if it conferred the right to give notice on her and not on him.]
- (3) A notice under subsection (2) above may be revoked by the person who gave it by notice given to the inspector within six years after the end of the third year of assessment and, where it is so revoked, tax shall be charged for both the second year of assessment and the third year of assessment as if the first notice had never been given.
- (4) <sup>M9</sup>Subsections (2) and (3) above shall not apply in any case where—

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- (a) section 113(1) and (2) apply and the change in the persons engaged in carrying on the trade, profession or vocation in partnership occurs after 19th March 1985; but
- (b) no election is made under section 113(2);
- but in such a case the person charged, or liable to be charged, shall be entitled, on giving notice to the inspector within seven years after the end of the fifth year of assessment, to require that tax shall be charged for both the fifth year of assessment and the sixth year of assessment (but not for one or other only of those years) on the amount of the profits or gains for each such year respectively.
- (5) A notice under subsection (4) above may be revoked by the person who gave it by notice given to the inspector within six years after the end of the sixth year of assessment and, where it is so revoked, tax shall be charged for both the fifth year of assessment and the sixth year of assessment as if the first notice had never been given.
- (6) <sup>M10</sup>If at any time during the second or third year of assessment—
- (a) a change occurs, by reason of retirement or death, in a partnership of persons engaged in the trade, profession or vocation, or the dissolution of the partnership as to one or more of the partners, or the admission of a new partner, in such circumstances that one or more of the persons who until that time were engaged in the trade, profession or vocation continue to be engaged in it; or
- (b) a change occurs such that a person who until that time was engaged in the trade, profession or vocation on his own account continues to be engaged in it but as a partner in a partnership;
- a notice given for the purposes of subsection (2) above must, if given after the occurrence of the change and after notice has been given as respects the change under section 113(2), comply with the requirements of subsection (7) or (8) below, as the case may require.
- (7) A notice given within 12 months after the end of the second year of assessment must be signed by—
- (a) each of the individuals who were engaged in the trade, profession or vocation at any time between the commencement of that year and the giving of the notice; or
- (b) in the case of a deceased person, his personal representatives.
- (8) A notice given after the end of the third year of assessment must be signed by—
- (a) each of the individuals who were engaged in the trade, profession or vocation at any time during the second or third year of assessment; or
- (b) in the case of a deceased person, his personal representatives.
- (9) <sup>M11</sup>In the case of the death of a person who, if he had not died, would under the provisions of this section have become chargeable to income tax for any year, the tax which would have been so chargeable shall be assessed and charged on his personal representatives, and shall be a debt due from and payable out of his estate.
- (10) There shall be made such assessments, reductions of assessments or, on a claim in that behalf, repayments of tax as may in any case be required in order to give effect to the preceding provisions of this section.

#### Textual Amendments

**F2** 1988(F) s.35 and Sch.3 para.2.

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#### Marginal Citations

- M7** SOURCE-1970 s. 117(1); 1985 s. 47(2), (4)(a)  
**M8** SOURCE-1970 s. 117(2)  
**M9** SOURCE-1970 S. 117(2); 1985 S. 47(2), (4)(b)  
**M10** SOURCE-1970 s. 117(3); 1987 Sch. 15 para. 2(8)  
**M11** SOURCE-1970 s. 117(4), (5); 1987 Sch. 15 para. 2(8)

VALID FROM 03/05/1994

#### **[<sup>F3</sup>62A Conditions for such a change.**

- (1) This section applies in relation to an accounting change if the following are fulfilled, namely—
  - (a) the first and second conditions mentioned below, and
  - (b) either the third or the fourth condition so mentioned.
- (2) The first condition is that the first accounting period ending with the new date does not exceed 18 months.
- (3) The second condition is that notice of the accounting change is given to an officer of the Board on or before the 31st January next following the year of assessment.
- (4) The third condition is that no accounting change as respects which section 62(2) has applied has been made or treated as made in any of the five years immediately preceding the year of assessment.
- (5) The fourth condition is that—
  - (a) the notice required by the second condition sets out the reasons for which the change is made; and
  - (b) either the officer is satisfied that the change is made for bona fide commercial reasons or he does not, within 60 days of receiving the notice, give notice to the person carrying on the trade, profession or vocation that he is not so satisfied.
- (6) An appeal may be brought against the giving of a notice under subsection (5)(b) above within the period of 30 days beginning with the date on which the notice is given.
- (7) Subject to subsection (8) below, the provisions of the Management Act relating to appeals shall have effect in relation to an appeal under subsection (6) above as they have effect in relation to an appeal against an assessment to tax.
- (8) On an appeal under subsection (6) above section 50(6) to (8) of the Management Act shall not apply but the Commissioners may—
  - (a) if they are satisfied that the change is made for bona fide commercial reasons, set the notice under subsection (5)(b) above aside; or
  - (b) if they are not so satisfied, confirm that notice.
- (9) Obtaining a tax advantage shall not be regarded as a bona fide commercial reason for the purposes of subsections (5) and (8) above.
- (10) In this section—

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- (a) “accounting period” means a period for which accounts are made up, and  
 (b) expressions which are also used in section 62 have the same meanings as in that section.]

#### Textual Amendments

- F3** S. 62A inserted (with effect in accordance with s. 218 of the amending Act) by Finance Act 1994 (c. 9), s. 203 (with Sch. 20)

### 63 Special basis on discontinuance.

- (1)<sup>M12</sup>Where in any year of assessment a trade, profession or vocation is permanently discontinued, then notwithstanding anything in sections 60 to 62—
- (a) the person charged or chargeable with income tax in respect thereof shall be charged for that year on the amount of the profits or gains of the period beginning on the 6th April in that year and ending on the date of the discontinuance, but subject to any deduction or set-off to which he may be entitled under section 385 in respect of any loss; and
- (b) if the aggregate of the profits or gains (if any) of the years ending on the 5th April in each of the two years preceding the year of assessment in which the discontinuance occurs exceeds—
- (i) the aggregate of the amounts on which [<sup>F4</sup>income tax] has been charged for each of those two years; or
- (ii) the aggregate of the amounts on which [<sup>F4</sup>income tax] would have been so charged if no deduction or set-off under section 385 had been allowed;
- [<sup>F4</sup>income tax] may be charged instead, for each of those two years, but subject to any such deduction or set-off, on the amount of the profits or gains of the year ending on the 5th April in that year.
- (2) Where [<sup>F4</sup>income tax has been charged] otherwise than in accordance with subsection (1) above, any such assessment to tax, reduction or discharge of an assessment to tax, or on a claim therefor, repayment of tax shall be made as may be necessary to give effect to that subsection.
- (3) In the case of the death of a person who, if he had not died, would under the provisions of this section have become chargeable to income tax for any year, the tax which would have been so chargeable shall be assessed and charged on his executors or administrators, and shall be a debt due from and payable out of his estate.
- (4) Subsection (1)(b) above shall not apply where a trade is permanently discontinued in consequence of the nationalisation of any property constituting the assets of the trade.

For the purposes of this subsection “nationalisation” means, in relation to any property, a transfer of the property for which provision is made by any Act passed after the beginning of August 1945 and embodying a scheme for the carrying on of any industry or part of an industry, or of any undertaking, under national ownership or control, being a transfer, as part of the initial putting into force of the scheme, either to the Crown or to a body corporate constituted for the purposes of the scheme or of some previous scheme for such national ownership or control.

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### Textual Amendments

- F4** 1988(F) s.35 and Sch.3 para.3. *Previously*  
“that person”, “he”, and “a person has been charged with income tax”  
*respectively.*

### Marginal Citations

- M12** SOURCE-1970 s. 118

VALID FROM 03/05/1994

## <sup>F5</sup> 63A Overlap profits and overlap losses.

- (1) Where, in the case of any trade, profession or vocation, the basis period for a year of assessment is given by section 62(2)(b), a deduction shall be made in computing the profits or gains of that year of an amount equal to that given by the formula in subsection (2) below.
- (2) The formula referred to in subsection (1) above is—

$$A \times \frac{B - C}{D}$$

where—

A = the aggregate of any overlap profits less the aggregate of any amounts previously deducted under subsection (1) above;

B = the number of days in the basis period;

C = the number of days in the year of assessment;

D = the aggregate of the overlap periods of any overlap profits less the aggregate number of days given by the variable “B — C” in any previous applications of this subsection.

- (3) Where, in the case of any trade, profession or vocation, the basis period for a year of assessment is given by section 63, a deduction shall be made in computing the profits or gains of that year of an amount equal to—
  - (a) the aggregate of any overlap profits, less
  - (b) the aggregate of any amounts deducted under subsection (1) above.
- (4) Where, in the case of any trade, profession or vocation, an amount of a loss would, apart from this subsection, fall to be included in the computations for two successive years of assessment, that amount shall not be included in the computation for the second of those years.
- (5) In this section—

“overlap profit” means an amount of profits or gains which, by virtue of sections 60 to 62, is included in the computations for two successive years of assessment; and

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“overlap period”, in relation to an overlap profit, means the number of days in the period in which the overlap profit arose.]

#### Textual Amendments

- F5** S. 63A inserted (with effect in accordance with s. 218 of the amending Act) by Finance Act 1994 (c. 9), s. 205 (with Sch. 20)

#### Modifications etc. (not altering text)

- C1** Ss. 61-63A excluded (1.12.1997 with effect in accordance with reg. 1 of the excluding S.I.) by The Lloyd's Underwriters (Scottish Limited Partnerships) (Tax) Regulations 1997 (S.I. 1997/2681), reg. 6(1)(a)

### *Cases III, IV and V*

#### 64 Case III assessments: general.

<sup>M13</sup>Subject to sections 66 and 67, income tax under Case III of Schedule D shall be computed on the full amount of the income arising within the year preceding the year of assessment, and shall be paid on the actual amount of that income, without any deduction.

#### Modifications etc. (not altering text)

- C2** See 1990 s.56 and Sch.10 para.12(4)—tax on income in respect of chargeable securities on income of year of assessment.
- C3** See 1989(F) s.94 and Sch. 11 para.5—deep gain securities.

#### Marginal Citations

- M13** SOURCE-1970 s. 119

#### 65 Cases IV and V assessments: general.

- (1) <sup>M14</sup>subject to the provisions of this section and sections 66 and 67, income tax chargeable under Case IV or Case V of Schedule D shall be computed on the full amount of the income arising in the year preceding the year of assessment, whether the income has been or will be received in the United Kingdom or not, subject in the case of income not received in the United Kingdom—
- (a) to the same deductions and allowances as if it had been so received, and
  - (b) to a deduction on account of any annuity or other annual payment (not being interest) payable out of the income to a person not resident in the United Kingdom.
- (2) <sup>M15</sup>Subject to section 330, income tax chargeable under Case IV or V of Schedule D on income arising from any pension shall be computed on the amount of that income subject to a deduction of one-tenth of the amount of the income.
- (3) <sup>M16</sup>Income tax chargeable under Case IV or V of Schedule D on income which is immediately derived by a person from the carrying on by him of any trade, profession or vocation either solely or in partnership shall be computed in accordance with the



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rules applicable to Cases I and II of Schedule D; and subsection (1)(a) above shall not apply.

Nothing in this subsection shall be taken to apply sections 60 to 63 or 113 in relation to income chargeable under Case V of Schedule D but computed in accordance with this subsection.

- (4) <sup>M17</sup>Subsections (1), (2) and (3) above shall not apply to any person who, on a claim made to the Board, satisfies the Board that he is not domiciled in the United Kingdom, or that, being a Commonwealth citizen or a citizen of the Republic of Ireland, he is not ordinarily resident in the United Kingdom.
- (5) <sup>M18</sup>Where subsection (4) above applies the tax shall, subject to sections 66 and 67, be computed—
- (a) in the case of tax chargeable under Case IV, on the full amount, so far as the same can be computed, of the sums received in the United Kingdom in the year preceding the year of assessment, without any deduction or abatement; and
  - (b) in the case of tax chargeable under Case V, on the full amount of the actual sums received in the United Kingdom in the year preceding the year of assessment from remittances payable in the United Kingdom, or from property imported, or from money or value arising from property not imported, or from money or value so received on credit or on account in respect of any such remittances, property, money or value brought or to be brought into the United Kingdom, without any deduction or abatement other than is allowed under the provisions of the Income Tax Acts in respect of profits or gains charged under Case I of Schedule D.
- (6) For the purposes of subsection (5) above, any income arising from securities or possessions out of the United Kingdom which is applied outside the United Kingdom by a person ordinarily resident in the United Kingdom in or towards satisfaction of—
- (a) any debt for money lent to him in the United Kingdom or for interest on money so lent, or
  - (b) any debt for money lent to him outside the United Kingdom and received in or brought to the United Kingdom, or
  - (c) any debt incurred for satisfying in whole or in part a debt falling within paragraph (a) or (b) above,
- shall be treated as received by him in the United Kingdom (and, for the purposes of subsection (5)(b) above, as so received from remittances payable in the United Kingdom).
- (7) Where a person ordinarily resident in the United Kingdom receives in or brings to the United Kingdom money lent to him outside the United Kingdom, but the debt for that money is wholly or partly satisfied before he does so, subsection (6) above shall apply as if the money had been received in or brought to the United Kingdom before the debt was so satisfied, except that any sums treated by virtue of that subsection as received in the United Kingdom shall be treated as so received at the time when the money so lent is actually received in or brought to the United Kingdom.
- (8) Where—
- (a) a person (“the borrower”) is indebted for money lent to him, and
  - (b) income is applied by him in such a way that the money or property representing it is held by the lender on behalf of or to the account of the

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borrower in such circumstances as to be available to the lender for the purpose of satisfying or reducing the debt by set-off or otherwise,

that income shall be treated as applied by the borrower in or towards satisfaction of the debt if, under any arrangement between the borrower and the lender, the amount for the time being of the borrower's indebtedness to the lender, or the time at which the debt is to be repaid in whole or in part, depends in any respect directly or indirectly on the amount or value so held by the lender.

(9) For the purposes of subsections (6) to (8) above—

- (a) a debt for money lent shall, to the extent to which that money is applied in or towards satisfying another debt, be deemed to be a debt incurred for satisfying that other debt, and a debt incurred for satisfying in whole or in part a debt falling within paragraph (c) of subsection (6) above shall itself be treated as falling within that paragraph; and
- (b) “lender” includes, in relation to any money lent, any person for the time being entitled to repayment.

#### **Modifications etc. (not altering text)**

- C4** See 1990 s.56 and Sch.10 para.12(4)—*tax on income in respect of chargeable securities on income of year of assessment.*
- C5** See—1979(C) s.14(2)—*capital gains tax on gains applied outside the United Kingdom in payment of certain debts.* 1989 s.94 and Sch.11 paras.5, 13—*deep gain securities.*
- C6** See 1988(F) s.38(9)—*no deduction under s.65(1)(b) on account of a payment to which s.38 (maintenance payments) applies.*
- C7** [S. 65\(6\)-\(9\)](#) applied (6.3.1992 with effect as mentioned in [s. 289\(1\)\(2\)](#) of the amending Act) by [Taxation of Chargeable Gains Act 1992 \(c. 12\)](#), **ss. 12(2)**, 289 (with [ss. 60](#), [101\(1\)](#), [171](#), [201\(3\)](#)).

#### **Marginal Citations**

- M14** SOURCE-1970 s. 122(1)(a), (b)
- M15** SOURCE-1974 S. 22(1)
- M16** SOURCE-1974 s. 23(1), 6(b)
- M17** SOURCE-1970 s. 122(2)(a)
- M18** SOURCE-1970 s. 122(3)-(7)

VALID FROM 01/05/1995

#### **[<sup>F6</sup>65A Case V income from land overseas etc.**

- (1) Notwithstanding anything in section 21(4), subsection (2A) of section 65 shall require the rules referred to in that subsection to be applied separately in relation to—
  - (a) any business which is treated for the purposes of that subsection as if it were a Schedule A business, and
  - (b) any actual Schedule A business of the person chargeable,
 as if, in each case, that business were the only Schedule A business carried on by that person.
- (2) Section 21(3), so far as applied by virtue of section 65(2A) for the purposes of the computation of the amount of any income chargeable to tax under Case V of Schedule D, shall have effect as if it required sections 80 and 81 to be disregarded

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in the computation of the amount of any profits or gains, or losses, of a Schedule A business.

- (3) Sections 503 and 504 of this Act and section 29 of the 1990 Act (furnished holiday accommodation) shall be disregarded in the computation in accordance with section 65(2A) of any income chargeable to tax under Case V of Schedule D.
- (4) Section 65(2A) and this section shall not apply for the purposes of corporation tax.]

#### Textual Amendments

- F6** S. 65A inserted (with effect in accordance with s. 41(5)-(10) of the amending Act) by Finance Act 1995 (c. 4), s. 41(2)

## 66 Special rules for fresh income.

- (1) <sup>M19</sup>Income tax under Case III, IV or V of Schedule D shall, in the following cases, be computed on the following amounts, and, where the tax is charged under Case III, paid on those actual amounts without any deduction—
  - (a) as respects the year of assessment in which the income first arises, on the full amount of the income arising within that year;
  - (b) where the income first arose on some day in the year preceding the year of assessment other than 6th April, on the amount of the income of the year of assessment; and
  - (c) where the income first arose on 6th April in the year preceding the year of assessment, or on some day in the year next before the year preceding the year of assessment other than 6th April, and the person charged so requires by notice given to the inspector at any time within six years after the end of the year of assessment, on the amount of the income of that year.
- (2) <sup>M20</sup>Where subsection (1)(c) above applies, and income tax charged otherwise than in accordance with that provision has been paid, any amount overpaid shall be repaid.
- (3) <sup>M21</sup>If at any time a person acquires a new source of any income in respect of which he is chargeable under Case III, IV or V of Schedule D, or an addition to any source of any such income, then, for the year of assessment in which income first arises from the source or addition and the two following years of assessment, income tax in respect of the income from the source or addition shall, notwithstanding section 73, be computed separately and subsection (1) above shall apply.
- (4) <sup>M22</sup>For the purposes of the charge under Case III, if at any time interest on a debt ceases to be payable subject to deduction of income tax, subsection (3) above shall apply as if the debt were a new source of income acquired by the creditor at that time.
- (5) <sup>M23</sup>Where income arising to any person from any security or possession in any place out of the United Kingdom ceases at any time to be chargeable to income tax by deduction under the provisions of section 123, subsection (3) above shall apply as if that security or possession were a new source of income acquired by that person at that time.
- (6) In any case where tax is to be charged under Case IV or V by reference to the amount of income received in the United Kingdom, references in this section to income which arises or arose shall have effect as references to income which is or was so received.

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**Modifications etc. (not altering text)**

**C8** See 1989 s.94 and Sch.11 para.5—*deep gain securities*

**Marginal Citations**

**M19** SOURCE-1970 SS. 120(1), 123(1)

**M20** SOURCE-1970 ss. 120(2), 123(2)

**M21** SOURCE-1970 ss. 120(3), 123(3)

**M22** SOURCE-1970 s. 120(4)

**M23** SOURCE-1970 s. 123(4), (5)

**67 Special rules where source of income disposed of or yield ceases.**

- (1) <sup>M24</sup>Subject to the provisions of this section, if in any year of assessment a person charged or chargeable to income tax in respect of any income chargeable under Case III, IV or V of Schedule D ceases to possess any particular source of any such income or any part of any such source, the following provisions shall apply to the tax in respect of the income from that source or part—
- (a) notwithstanding section 73, the tax shall for that year, and (if necessary) for the preceding year, be computed separately;
  - (b) subject to paragraph (c) below, the tax shall for that year be computed on the amount of the income arising within the year (instead of the income arising within the preceding year), and shall for that preceding year also be computed on the amount of the income arising within it if greater than the amount on which tax is to be computed for that preceding year apart from this provision; and
  - (c) if no income arose within those two years and the person charged or chargeable makes a claim under this section not later than two years after the end of them, then, subject to subsection (4) below—
    - (i) paragraphs (a) and (b) above shall apply to the year of assessment in which income did last arise and the year preceding it as, apart from this paragraph, they would apply to the year in which he ceases to possess the source or part and the year preceding it, and
    - (ii) tax for the year of assessment following that in which income did last arise shall not be chargeable on the amount of the income so arising.
- (2) <sup>M25</sup>For the purposes of the charge under Case III, if at any time interest on a debt begins to be payable subject to deduction of income tax, subsection (1) above shall apply as if the debt were a source of income which the creditor ceased to possess at that time.
- (3) <sup>M26</sup>Where income in respect of which a person has previously been charged or chargeable to income tax under Case IV or V of Schedule D becomes at any time chargeable to income tax by deduction under the provisions of section 123, subsection (1) above shall apply as if the security or possession in question were a source of income which he ceased to possess at that time.
- (4) <sup>M27</sup>Without prejudice to subsection (5) below, a person shall not be entitled by virtue of subsection (1)(c) above to make a claim under this section in respect of any source of income or any part of such a source more than eight years after the end of the year of assessment in which income last arose from that source.

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- (5) A person possessing a source of income chargeable to income tax under Case III, IV or V of Schedule D and having possessed it for six consecutive years of assessment without any income arising from it, shall be entitled, if income did arise from it in the year preceding those six years, to make a claim under this section not later than two years after the end of those six years; and if he does so—
- (a) subsection (1) above shall apply as if he had ceased to possess the source of income immediately before the end of those six years; and
  - (b) section 66(3) shall apply in relation to later years of assessment as if he had acquired the source as a new source immediately after the end of those six years.
- (6) <sup>M28</sup>References in this section to income arising shall, in cases where tax under Case IV or V is to be computed by reference to the amount of income received in the United Kingdom, be construed as references to income being so received.
- (7) <sup>M29</sup>There shall be made all such adjustments, whether by way of repayment of tax, assessment or otherwise, as may be necessary to give effect to this section.
- (8) <sup>M30</sup>A person's executors or administrators may make any claim under this section which he might have made, if he had not died, in respect of any source of income, or part of such a source, which he ceased to possess before his death, and may also make a claim under this section in respect of sources of income which he ceased to possess by dying; and after a person's death—
- (a) any tax paid by him and repayable by virtue of a claim under this section (whether made by him or by his executors or administrators) shall be repaid to his executors or administrators, and
  - (b) any additional tax chargeable by virtue of such a claim shall be assessed and charged on his executors or administrators, and shall be a debt due from and payable out of his estate.

**Modifications etc. (not altering text)**

**C9** See 1989 s.94 and Sch.11 para.5—*deep gain securities.*

**C10** See—1989 s.80 for amendment in case of certain gilt unit trusts. 1990 s.52(3), (4) modification of subs. (1)(b) in the case of certain assessments under Case III Sch. Don unit trusts.

**Marginal Citations**

**M24** SOURCE-1970 ss. 121(1), 124(1)

**M25** SOURCE-1970 s. 121(2)

**M26** SOURCE-1970 s. 124(2)

**M27** SOURCE-1970 SS. 121(3), 124(3)

**M28** SOURCE-1970 s. 124(4)

**M29** SOURCE-1970 ss. 121(4), 124(5)

**M30** SOURCE-1970 ss. 121(5), 124(6)

**68 Special rules where property etc. situated in Republic of Ireland.**

- (1) <sup>M31</sup>Notwithstanding anything in sections 65 or 66, but subject to the provisions of this section, income tax chargeable under Case IV or V of Schedule D shall, in the case of property situated and profits or gains arising in the Republic of Ireland, be computed on the full amount of the income arising in the year of assessment, whether the income

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has been or will be received in the United Kingdom or not, subject in the case of income not received in the United Kingdom—

- (a) to the same deductions and allowances as if it had been so received; and
- (b) to a deduction on account of any annuity or other annual payment (not being interest) payable out of the income to a person not resident in the United Kingdom.

(2) Subsection (1) above shall not apply—

- (a) to any income which is immediately derived by a person from the carrying on by him of any trade, profession or vocation, either solely or in partnership; or
- (b) to any income which arises from any pension.

(3) The tax in respect of any such income as is mentioned in subsection (2) above arising in the Republic of Ireland shall be computed either—

- (a) on the full amount thereof arising in the year of assessment; or
- (b) on the full amount thereof on an average of such period as the case may require and as may be directed by the inspector;

so that, according to the nature of the income, the tax may be computed on the same basis as that on which it would have been computed if the income had arisen in the United Kingdom, and subject in either case to a deduction on account of any annuity or other annual payment (not being interest) payable out of the income to a person not resident in the United Kingdom; and the person chargeable and assessable shall be entitled to the same allowances, deductions and reliefs as if the income had arisen in the United Kingdom.

The jurisdiction of the General or Special Commissioners on any appeal shall include jurisdiction to review the inspector's decision under this subsection.

[<sup>F7</sup>(3A) The fact that the allocations of shares in the company to which persons who are not directors or employees of the company are entitled are smaller than those to which directors or employees of the company are entitled shall not be regarded for the purposes of subsection (2)(b) above as meaning that they are not entitled on similar terms if—

- (a) each of the first-mentioned persons is also entitled, by reason of his office or employment and in priority to members of the public, to an allocation of shares in another company or companies which are offered to the public (at a fixed rate or by tender) at the same time as the shares in the company, and
- (b) in the case of each of those persons the aggregate value (measured by reference to the fixed price or the lowest price successfully tendered) of all the shares included in the allocations to which he is entitled is the same, or as nearly the same as is reasonably practicable, as that of the shares in the company included in the entitlement of a comparable director or employee of the company.]

(4) In charging any income which is excluded from subsection (1) above by subsection (2) (a) above there shall be the same limitation on reliefs as under section 391(2) in the case of income computed by virtue of section 65(3) in accordance with the rules applicable to Cases I and II of Schedule D.

(5) In charging income arising from a pension under subsection (3) above, a deduction of one-tenth shall be allowed unless it is the income of a person falling within section 65(4).

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#### Textual Amendments

**F7** 1990 s.79 in relation to offers made on or after 26 July 1990.

#### Marginal Citations

**M31** SOURCE-1970 Sch. 12 Pt. III 2; 1976 s. 49(4), (6)

VALID FROM 06/04/2003

### [<sup>F8</sup>68A Share incentive plans: application of section 68B

- (1) Section 68B applies for income tax purposes in connection with shares awarded under an approved share incentive plan.
- (2) But that section does not apply to an individual if, at the time of the award of shares in question—
  - (a) the earnings from the eligible employment are not (or would not be if there were any) general earnings to which any of the charging provisions of Chapter 4 or 5 of Part 2 of ITEPA 2003 apply, or
  - (b) in the case of an award made before 6th April 2003, he was not chargeable to tax under Schedule E in respect of the employment by reference to which he met the requirement of paragraph 14 of Schedule 8 to the Finance Act 2000 (employee share ownership plans: the employment requirement) in relation to the plan.
- (3) For the purposes of subsection (2)(a)—
  - (a) “the eligible employment” means the employment which results in the individual meeting the employment requirement in relation to the plan, and
  - (b) the reference to any of the charging provisions of Chapter 4 or 5 of Part 2 of ITEPA 2003 has the same meaning as it has in the employment income Parts of that Act (see sections 14(3) and 20(3) of that Act).]

#### Textual Amendments

**F8** Ss. 68A-68C inserted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\)](#), [Sch. 6 para. 10](#) (with [Sch. 7](#))

#### Modifications etc. (not altering text)

**C11** Ss. 68A-68C applied (6.4.2003 with effect in accordance with s. 723(1) of the affecting Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\)](#), [Sch. 2 para. 87](#) (with [Sch. 7](#))

VALID FROM 06/04/2003

### [<sup>F8</sup>68B Share incentive plans: cash dividends and dividend shares

- (1) Where a cash dividend is paid over to a participant under paragraph 68(4) of Schedule 2 to ITEPA 2003 (cash dividend paid over if not reinvested), the participant is chargeable to tax on the amount paid over, to the extent that it represents a foreign

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cash dividend, under Case V of Schedule D for the year of assessment in which the dividend is paid over to the participant.

- (2) If dividend shares cease to be subject to the plan before the end of the period of three years beginning with the date on which the shares were acquired on the participant's behalf, the participant is chargeable to tax on the amount of the relevant dividend, to the extent that it represents a foreign cash dividend, under Case V of Schedule D for the year of assessment in which the shares cease to be subject to the plan.

For this purpose “the relevant dividend” is the cash dividend applied to acquire those shares on the participant's behalf.

- (3) Where the participant is charged to tax under subsection (2) the tax due shall be reduced by the amount or aggregate amount of any tax paid on any capital receipts under section 501 of ITEPA 2003 in respect of those shares.
- (4) Subsection (2) has effect subject to section 498 of that Act (no charge on shares ceasing to be subject to plan in certain circumstances).]

#### Textual Amendments

**F8** Ss. 68A-68C inserted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\)](#), **Sch. 6 para. 10** (with Sch. 7)

#### Modifications etc. (not altering text)

**C12** Ss. 68A-68C applied (6.4.2003 with effect in accordance with s. 723(1) of the affecting Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\)](#), **Sch. 2 para. 87** (with Sch. 7)

VALID FROM 06/04/2003

#### [<sup>F8</sup>68C Share incentive plans: interpretation

- (1) Sections 68A and 68B and this section form part of the SIP code (see section 488 of ITEPA 2003 (approved share incentive plans)).
- (2) Accordingly, expressions used in those sections and contained in the index at the end of Schedule 2 to that Act (approved share incentive plans) have the meaning indicated by that index.
- (3) In section 68B, “foreign cash dividend” means a cash dividend paid in respect of plan shares in a company not resident in the United Kingdom.]

#### Textual Amendments

**F8** Ss. 68A-68C inserted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\)](#), **Sch. 6 para. 10** (with Sch. 7)

#### Modifications etc. (not altering text)

**C13** Ss. 68A-68C applied (6.4.2003 with effect in accordance with s. 723(1) of the affecting Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\)](#), **Sch. 2 para. 87** (with Sch. 7)



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### Case VI

#### 69 Assessment on current year basis unless otherwise directed.

- (1) <sup>M32</sup>Income tax under Case VI of Schedule D shall be computed either on the full amount of the profits or gains arising in the year of assessment or according to an average of such period, not being greater than one year, as the case may require and as may be directed by the inspector.
- (2) On an appeal to the General or Special Commissioners, the Commissioners shall have jurisdiction to review the inspector's decision under this section.

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#### Marginal Citations

**M32** SOURCE-1970 s. 125

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