



Finance Act 1997

1997 CHAPTER 16

PART V

INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

Relieved expenditure, losses etc.

64 Postponed company donations to charity

- (1) In section 339 of the Taxes Act 1988 (company donations to charity), after subsection (7) there shall be inserted the following subsections—

“(7AA) Where—

- (a) a covenanted donation to a charity is made by a company which is wholly owned by a charity,
- (b) the requirements of subsection (7) above for that donation to be regarded as a charge on income are satisfied,
- (c) the disposition or covenant under which the donation is made required it to be made in an accounting period of the company which ended before the time when it is in fact made, and
- (d) the donation is made within nine months of the end of that period,

the donation shall be deemed for the purposes of section 338 to be a charge on income paid in the accounting period in which it was required to be made, and not in any later period.

- (7AB) For the purposes of this section a company is wholly owned by a charity if it is either—

- (a) a company with an ordinary share capital every part of which is owned by a charity (whether or not the same charity); or
- (b) a company limited by guarantee in whose case every person who—
 - (i) is beneficially entitled to participate in the divisible profits of the company, or

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(ii) will be beneficially entitled to share in any net assets of the company available for distribution on its winding up, is or must be a charity or a company wholly owned by a charity.

(7AC) For the purposes of subsection (7AB) above ordinary share capital of a company shall be taken to be owned by a charity if there is a charity which—

- (a) within the meaning of section 838 directly or indirectly owns that share capital; or
- (b) would be taken so to own that share capital if references in that section to a body corporate included references to a charity which is not a body corporate.”

(2) This section has effect in relation to donations made in accounting periods beginning on or after 1st April 1997.

65 National Insurance contributions

(1) Section 617 of the Taxes Act 1988 (social security benefits and contributions) shall be amended as follows.

(2) In subsection (3) (which provides that, subject to subsection (4) and (5), no relief or deduction shall be given in respect of National Insurance contributions) the words “and (5)” shall be omitted in consequence of the repeal of subsection (5) by section 147 of the Finance Act 1996.

(3) For subsection (4) (exception from subsection (3) for secondary Class 1 contributions which are allowable as a deduction in certain computations) there shall be substituted—

“(4) Subsection (3) above shall not apply to a contribution if it is a secondary Class 1 contribution or Class 1A contribution (within the meaning of Part I of either of those Acts) and is allowable—

- (a) as a deduction in computing profits or gains;
- (b) as expenses of management deductible under section 75 or under that section as applied by section 76;
- (c) as expenses of management or supervision deductible under section 121;
- (d) as a deduction under section 198 from the emoluments of an office or employment; or
- (e) as a deduction under section 332(3)(a) from the profits, fees or emoluments of the profession or vocation of a clergyman or minister of any religious denomination.”

(4) Subsection (2) above has effect in relation to the year 1996-97 and subsequent years of assessment.

(5) Subsection (3) above has effect in relation to contributions paid on or after 26th November 1996.

66 Expenditure on production wells etc

(1) After section 91B of the Taxes Act 1988 there shall be inserted the following section—

“91C Mineral exploration and access

Where—

- (a) a person carrying on a trade incurs expenditure on mineral exploration and access as defined in section 121(1) of the Capital Allowances Act 1990 in an area or group of sands in which the presence of mineral deposits in commercial quantities has already been established, and
 - (b) if the presence in that area or group of sands of mineral deposits in commercial quantities had not already been established, that expenditure would not have been allowed to be deducted in computing the profits or gains of the trade for the purposes of tax, that expenditure shall not be so deducted.”
- (2) In section 115 of the Capital Allowances Act 1990 (certain expenditure on purchased assets treated as expenditure on mineral exploration and access if attributable to previous trader’s expenditure on mineral exploration and access), after subsection (2) there shall be inserted the following subsection—
- “(2A) Expenditure incurred by the previous trader which is or has been deducted in computing, for the purposes of tax, the profits or gains of a trade carried on by him shall not be treated as expenditure on mineral exploration and access for the purposes of subsection (1)(b).”
- (3) Subsection (1) above applies to expenditure which—
- (a) is incurred on or after 26th November 1996; but
 - (b) is not incurred before 26th November 1997 in pursuance of a contract entered into before 26th November 1996.
- (4) The reference in subsection (3) above to expenditure incurred in pursuance of a contract entered into before 26th November 1996 does not, in the case of a contract varied on or after that date, include a reference to so much of any expenditure of the sort described in section 91C of the Taxes Act 1988 as exceeds the amount of expenditure of that sort that would have been incurred if that contract had not been so varied.
- (5) Subsection (2) above applies in relation to claims made on or after 26th November 1996.

67 Annuity business of insurance companies

- (1) In section 437 of the Taxes Act 1988 (extent to which payments in respect of new annuities are to be treated as charges on income), for subsections (1A) and (1B) there shall be substituted the following subsection—
- “(1A) In the computation, otherwise than in accordance with the provisions applicable to Case I of Schedule D, of the profits for any accounting period of a company’s life assurance business, new annuities paid by the company in that period shall be brought into account by treating an amount equal to the income limit for that period as a sum disbursed as expenses of management of the company for that period.”
- (2) In subsection (1C) of that section (interpretation of section), after “this section” there shall be inserted “(but subject to subsections (1CA) to (1CD) below)”; and after that subsection there shall be inserted the following subsections—

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“(1CA) Where a new annuity (“the actual annuity”) is a steep-reduction annuity, the income limit for an accounting period of the company paying the annuity shall be computed for the purposes of this section as if—

- (a) the contract providing for the actual annuity provided instead for the annuities identified by subsections (1CB) and (1CC) below; and
- (b) the consideration for each of those annuities were to be determined by the making of a just and reasonable apportionment of the consideration for the actual annuity.

(1CB) The annuities mentioned in subsection (1CA)(a) above are—

- (a) an annuity the payments in respect of which are confined to the payments in respect of the actual annuity that fall to be made before the earliest time for the making in respect of the actual annuity of a reduced payment such as is mentioned in section 437A(1)(c); and
- (b) subject to subsection (1CC) below, an annuity the payments in respect of which are all the payments in respect of the actual annuity other than those mentioned in paragraph (a) above.

(1CC) Where an annuity identified by paragraph (b) of subsection (1CB) above (“the later annuity”) would itself be a steep-reduction annuity, the annuities mentioned in subsection (1CA)(a) above—

- (a) shall not include the later annuity; but
- (b) shall include, instead, the annuities which would be identified by subsection (1CB) above (with as many further applications of this subsection as may be necessary for securing that none of the annuities mentioned in subsection (1CA)(a) above is a steep-reduction annuity) if references in that subsection to the actual annuity were references to the later annuity.

(1CD) Subsections (1CA) to (1CC) above shall be construed in accordance with section 437A.”

(3) After that section there shall be inserted the following section—

“437A Meaning of “steep-reduction annuity” etc

- (1) For the purposes of section 437 an annuity is a steep-reduction annuity if—
 - (a) the amount of any payment in respect of the annuity (but not the term of the annuity) depends on any contingency other than the duration of a human life or lives;
 - (b) the annuitant is entitled in respect of the annuity to payments of different amounts at different times; and
 - (c) those payments include a payment (“a reduced payment”) of an amount which is substantially smaller than the amount of at least one of the earlier payments in respect of that annuity to which the annuitant is entitled.
- (2) Where there are different intervals between payments to which an annuitant is entitled in respect of any annuity, the question whether or not the conditions in subsection (1)(b) and (c) above are satisfied in the case of that annuity shall be determined by assuming—

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- (a) that the annuitant's entitlement, after the first payment, to payments in respect of that annuity is an entitlement to payments at yearly intervals on the anniversary of the first payment; and
 - (b) that the amount to which the annuitant is assumed to be entitled on each such anniversary is equal to the annuitant's assumed entitlement for the year ending with that anniversary.
- (3) For the purposes of subsection (2) above an annuitant's assumed entitlement for any year shall be determined as follows—
 - (a) the annuitant's entitlement to each payment in respect of the annuity shall be taken to accrue at a constant rate during the interval between the previous payment and that payment; and
 - (b) his assumed entitlement for any year shall be taken to be equal to the aggregate of the amounts which, in accordance with paragraph (a) above, are treated as accruing in that year.
- (4) In the case of an annuity to which subsection (2) above applies, the reference in section 437(1CB)(a) to the making of a reduced payment shall be construed as if it were a reference to the making of a payment in respect of that annuity which (applying subsection (3)(a) above) is taken to accrue at a rate that is substantially less than the rate at which at least one of the earlier payments in respect of that annuity is taken to accrue.
- (5) Where—
 - (a) any question arises for the purposes of this section whether the amount of any payment in respect of any annuity—
 - (i) is substantially smaller than the amount of, or
 - (ii) accrues at a rate substantially less than,an earlier payment in respect of that annuity, and
 - (b) the annuitant or, as the case may be, every annuitant is an individual who is beneficially entitled to all the rights conferred on him as such an annuitant,that question shall be determined without regard to so much of the difference between the amounts or rates as is referable to a reduction falling to be made as a result of the occurrence of a death.
- (6) Where the amount of any one or more of the payments to which an annuitant is entitled in respect of an annuity depends on any contingency, his entitlement to payments in respect of that annuity shall be determined for the purposes of section 437(1CA) to (1CC) and this section according to whatever (applying any relevant actuarial principles) is the most likely outcome in relation to that contingency.
- (7) Where any agreement or arrangement has effect for varying the rights of an annuitant in relation to a payment in respect of any annuity, that payment shall be taken, for the purposes of section 437(1CA) to (1CC) and this section, to be a payment of the amount to which the annuitant is entitled in accordance with that agreement or arrangement.
- (8) References in this section to a contingency include references to a contingency that consists wholly or partly in the exercise by any person of any option.”

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- (4) Section 434B(2) of that Act (treatment of annuities paid by an insurance company) shall cease to have effect and accordingly—
- (a) in section 76(2A)(b) of that Act (limit on expenses of management of insurance companies), the word “and” shall be inserted at the end of sub-paragraph (ii), and sub-paragraph (iv) (together with the word “and” immediately preceding it) shall be omitted; and
 - (b) in section 337(2B) of that Act, for “the references in sections 338(2) and 434B(2)” there shall be substituted “the reference in section 338(2)”.
- (5) In paragraph 9B of Schedule 19AC to that Act (subsection (3) inserted in section 434B in relation to overseas life insurance companies), for the words from the beginning to “An” there shall be substituted—

“9B The following section shall be treated as inserted after section 434A—

“434AA Treatment of annuities

An”.”

- (6) In sub-paragraph (1) of paragraph 16 of Schedule 7 to the Finance Act 1991 (which makes transitional provision for annuities under contracts made in accounting periods beginning before 1st January 1992), for the words before paragraph (a) there shall be substituted—
- “(1) In the computation, otherwise than in accordance with the provisions applicable to Case I of Schedule D, of the profits for any accounting period of an insurance company’s life assurance business, an amount equal to the lesser of the following amounts shall be treated (if it is not nil) as a sum disbursed as expenses of management of the company for that period, that is to say—”.
- (7) Subsections (1) and (4) to (6) above have effect in relation to accounting periods beginning after 5th March 1997.
- (8) Subsections (2) and (3) above have effect in relation to accounting periods ending on or after 5th March 1997 but do not affect the computation of the capital elements contained in any annuity payments made before that date.

68 Consortium claims for group relief

In section 410 of the Taxes Act 1988 (group relief not available in certain cases including those where a person, either alone or with connected persons, controls 75% or more of the voting rights in a company owned by a consortium), in the definition of “connected persons” in subsection (5) after “in accordance with section 839” there shall be inserted “but as if subsection (7) of that section (persons acting together to control a company are connected) were omitted”.