
EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes consequential amendments to various provisions of income tax legislation following the introduction of a “starter rate” and “intermediate rate” of income tax that will apply to Scottish taxpayers’ non-savings, non-dividend income for the tax year 2018/19. These rates were set by a rate resolution made by the Scottish Parliament on 20th February 2018 in exercise of their power to set rates and thresholds for non-savings non-dividend income provided for in section 80C of the Scotland Act 1998 (c. 26), as amended by the Scotland Act 2016 (c. 11).

The amendments made by this Order ensure that the income tax system works as intended in relation to Scottish taxpayers.

Article 2 amends the Taxes Management Act 1970 (c. 9). Section 7(6) (which specifies one of the situations in which a person is not required to notify chargeability to income tax) is amended so that the condition also operates by reference to the new Scottish rates. Article 2(3) consequentially amends section 91(3)(c) (which makes provision for the effect of relief) to take into account the Scottish rates.

Article 3 amends section 192 of the Finance Act 2004 (c. 12) which deals with relief at source for contributions to registered pension schemes. Scottish taxpayers who pay income tax at a rate higher than the Scottish basic rate will (on the making of a claim) be entitled to have their Scottish basic rate limit and any other Scottish rate limit above the Scottish basic rate limit increased by the amount of the grossed up contribution.

Article 4 makes consequential changes to section 669 of the Income Tax (Trading and Other Income) Act 2005 (c. 5). Section 669, which provides for a reduction in the residuary income of a deceased’s estate in certain circumstances, is amended to reflect the new intermediate rate.

Article 5 amends section 7(5A) of the Finance (No. 2) Act 2005 (c. 22) so that Scottish taxpayers who receive a social security pension lump sum can be taxed at the new Scottish starter rate where appropriate.

Article 6(2) amends sections 55B(2)(b) and 55C(1)(c) of the Income Tax Act 2007 (c. 3) (“ITA”) so that a Scottish taxpayer who is taxed at the new Scottish rates is eligible to make an election to transfer marriage allowance to their spouse or civil partner, or to receive this allowance.

Articles 6(3), (4) and (5) deal with reliefs for gifts to charity under Chapter 2 of Part 8 of ITA (gift aid). Article 6(3) amends the definition of “adjusted net income” in section 58 of ITA to provide that the reference in that section to the “grossed up amount of a gift” is to the amount of that gift grossed up by reference to the main UK basic rate only, and removes a reference to the default basic rate that applies to individuals who are not subject to either a Scottish rate or a main UK rate of income tax. Section 414(2)(a) of ITA is amended to remove references to the Scottish basic rate and the default basic rate. Section 414(2)(b) of ITA is amended to ensure that the rate limit for any Scottish rate above the Scottish basic rate limit (including the new intermediate rate) is increased by the grossed up amount of a qualifying gift, as is currently the case for the basic and higher rate limits applicable across the rest of the UK. Section 415 of ITA is amended in a corresponding manner to section 58 of ITA.

Article 6(6) amends section 745 of ITA, which provides that income tax at the basic rate under sections 720 or 727 is not to be charged where income mentioned in 721(2) or 728(1)(a) has borne tax at the basic rate. Subsection (1A) is inserted to provide for treatment equivalent to subsection (1) in respect of income tax under sections 720 or 727 for a Scottish taxpayer.

Draft Legislation: This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument: *The Scottish Rates of Income Tax (Consequential Amendments) Order 2018 No. 459*

Article 6(7) amends section 828B(5) of ITA, which sets out the conditions which need to be met for an individual who is UK resident but not domiciled in the UK to obtain an exemption from liability to income tax. The section is amended so that condition E refers also to income tax at a Scottish rate below the Scottish basic rate and at the Scottish intermediate rate.

Article 6(8) and (9) makes consequential changes to the definitions provisions contained in section 989 and Schedule 4 of ITA.

Articles 7 and 8 make housekeeping amendments to the Finance Act 2016 (c. 24) and to the Scottish Rate of Income Tax (Consequential Amendments) Order 2015 (S.I. 2015/1810).

An Impact Assessment covering this instrument was published on 28th May 2015 alongside the draft clauses and explanatory notes for the Scotland Bill and revised on 9th November 2015. It is available on the website at <https://www.parliament.uk/documents/impact-assessments/IA15-004A.pdf>. It remains an accurate summary of the impacts that apply to this instrument.