



# Income and Corporation Taxes Act 1970

## 1970 CHAPTER 10

### PART I

#### CHARGE OF INCOME TAX, AND GENERAL PROVISIONS RELATING ONLY TO INCOME TAX

### CHAPTER III

#### SURTAX

##### *Other special provisions*

#### **34 Surtax to be charged on consideration for certain restrictive covenants etc.**

(1) Where—

- (a) an individual who holds, has held, or is about to hold, an office or employment gives in connection with his holding thereof an undertaking (whether absolute or qualified, and whether legally valid or not) the tenor or effect of which is to restrict him as to his conduct or activities, and
- (b) in respect of the giving of that undertaking by him, or of the total or partial fulfilment of that undertaking by him, any sum is paid either to him or to any other person, and
- (c) apart from this section, the sum paid would neither fall to be treated as income of any person for the purposes of income tax for any year of assessment nor fall to be taken into account as a receipt in computing, for the purposes of income tax for any year of assessment, the amount of any income of, or loss incurred by, any person,

the same results shall follow in relation to surtax for the year of assessment in which the said sum is paid as would have followed if the said sum had been paid to the said individual (and not to any other person) as and for the net amount of an annual payment to which the said individual was entitled, being an annual payment chargeable to income tax from the gross amount of which income tax at the standard rate for that year had been duly deducted under section 52 or 53 of this Act:

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Provided that, where the individual has died before the payment of the said sum, so much of the preceding provisions of this subsection as relates to the results which are to follow from the matters specified in paragraphs (a) to (c) thereof shall have effect as if the said sum had been paid immediately before the death.

- (2) Where valuable consideration otherwise than in the form of money is given in respect of the giving of, or of the total or partial fulfilment of, any undertaking, subsection (1) above shall apply as if a sum had instead been paid equal to the value of that consideration.
- (3) Subsections (1) and (2) above shall not apply to any sum paid or consideration given if either—
  - (a) the undertaking in question was given on or before 6th April 1948, or
  - (b) the sum or consideration is or was paid or given at or after the time of the retirement of the individual in question from the service of the person under whom the office or employment in question was held, and is or was so paid or given in pursuance of a provision in that behalf which expressly provides for the payment or giving thereof at or after that time and is embodied in a contract made in writing on or before 18th April 1950, or reduced to writing on or before that date, or
  - (c) the sum or consideration is or was paid or given in pursuance of an express provision in that behalf embodied in a contract made in writing on or before the said 18th April, or reduced to writing on or before that date, being a contract the main purpose of which was to provide for the transfer of a trade or part of a trade, or for the transfer of the controlling interest in any body corporate.

For the purposes of this subsection, a director of a company shall be deemed to be in the service of that company and to hold his office as such under that company.

- (4) Where any sum is paid or valuable consideration given to any person in any year of assessment in respect of the giving of, or of the total or partial fulfilment of, an undertaking given after 6th April 1948 and satisfying the conditions specified in subsection (1)(a) above (not being a sum from which income tax is duly deducted under any provision of the Income Tax Acts), it shall be the duty of the person paying over the sum or giving the consideration to deliver particulars thereof in writing to the inspector not later than one month after the end of that year, identifying the recipient of the payment or consideration, the undertaking in connection with which it was made or given and the individual who gave that undertaking.
- (5) In this section " office or employment" means any office or employment whatsoever such that the emoluments thereof, if any, are or would be chargeable to income tax under Case I or II of Schedule E ; and references in this section to the giving of valuable consideration do not include references to the mere assumption of an obligation to make over or provide valuable property, rights or advantages, but do include references to the doing of anything in or towards the discharge of such an obligation.

### **35 Expenses of Crown servants abroad**

For the purpose of charging surtax, there shall be deducted from the total income of an individual in the service of the Crown abroad any such sum as the Minister for the Civil Service may allow for expenses which, in the Minister's opinion, are necessarily

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incidental to the discharge of the functions of the individual's office and for which an allowance has not already been made.

### **36 Recovery of surtax due from beneficiary under discretionary trust**

- (1) The provisions of this section shall have effect in relation to surtax due from any person (in this section referred to as "the beneficiary") to whom, or for whose benefit, any income or any capital may in the discretion of some other person be paid or applied under a trust.
- (2) If any surtax charged in respect of the income of the beneficiary is not paid before the expiry of six months from the date when it became due and payable, the Board may at any time thereafter, so long as the said surtax remains unpaid, cause to be served on the trustees of the trust a notice in writing that the said surtax remains unpaid.
- (3) Where such a notice as aforesaid is served in accordance with the provisions of this section on the trustees of the trust, it shall be the duty of the trustees, as soon as may be, and if necessary from time to time, to pay to the Board in or towards satisfaction of the said surtax from time to time remaining unpaid any income or capital which, by virtue of any exercise of the discretion under the trust, the beneficiary may become entitled to receive or to have applied for his benefit.
- (4) Any payments made out of income by trustees on account of surtax in respect of which a notice under this section has been served shall be deemed for all the purposes of the Income Tax Acts to represent income paid to the beneficiary.
- (5) Any sum which the trustees are liable to pay by virtue of the provisions of this section shall be recoverable from them as a debt due to the Crown.
- (6) Where there are two or more trustees under the trust, a notice under this section shall be deemed to have been validly served upon the trustees if served upon any one of them, but nothing in this section shall render a trustee personally liable for anything done by him in good faith and in ignorance of the fact that such a notice has been served.