



Income and Corporation Taxes Act 1970

1970 CHAPTER 10

PART I

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

CHAPTER IV

AGGREGATION OF INCOME—HUSBAND AND WIFE

37 General rule for aggregation of wife's income

- (1) Subject to the provisions of this Chapter, a woman's income chargeable to income tax shall, so far as it is income for a year of assessment or part of a year of assessment during which she is a married woman living with her husband, be deemed for income tax purposes to be his income and not to be her income:

Provided that the question whether there is any income of hers chargeable to income tax for any year of assessment and, if so, what is to be taken to be the amount thereof for income tax purposes shall not be affected by the provisions of this subsection.

- (2) Any tax falling to be assessed in respect of any income which, under subsection (1) above, is to be deemed to be the income of a woman's husband shall, instead of being assessed on her, or on her trustee, guardian, curator, receiver or committee, or on her executors or administrators, be assessable on him or, in the appropriate cases, on his trustee, guardian, curator, receiver or committee, or on his executors or administrators:

Provided that nothing in this subsection shall affect the operation of section 152 of this Act (assessment of partnership income).

- (3) The personal reliefs allowed in the case of a man for any year of assessment shall be so allowed that an amount not less than the total of the following—
- any deduction falling to be made under section 8(2) of this Act (special relief where a man's income includes earned income of his wife), and

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- (b) so much of any deduction falling to be made under section 9(1) of this Act (earned income relief) as could not have been made but for the existence of earned income of his wife, and
 - (c) any deduction falling to be made by virtue of section 22(2) of this Act (increase in reduced rate relief in certain cases where a man's income includes earned income of his wife),
- goes to reduce the income tax chargeable on the earned income of his wife.
- (4) References in this section to a woman's income include references to any sum which, apart from the provisions of this section, would fall to be included in computing her total income, and this subsection has effect in relation to any such sum notwithstanding that some enactment (including, except so far as the contrary is expressly provided, an enactment passed after the passing of this Act) requires that that sum should not be treated as income of any person other than her.
- (5) In this section " personal relief " means any relief under Chapter II of this Part of this Act.

38 Options for separate assessment

- (1) If, within six months before the 6th July in any year of assessment, a husband or a wife makes an application for the purpose in such manner and form as the Board may prescribe, income tax other than surtax for that year shall be assessed, charged and recovered on the income of the husband and on the income of the wife as if they were not married, and all the provisions of the Income Tax Acts with respect to the assessment, charge and recovery of income tax other than surtax shall, save as otherwise provided by those Acts, apply as if they were not married:
- Provided that, in the case of persons married during the course of a year of assessment, an application under this subsection may be made as regards that year at any time before the 6th July in the following year.
- (2) If, before the 6th July in the year next following the year of assessment, a husband or a wife makes an application for the purpose in such manner and form as the Board may prescribe—
- (a) surtax for that year shall be assessed, charged and recovered on the income of the husband and on the the income of the wife as if they were not married, and all the provisions of the Income Tax Acts with respect to the assessment, charge and recovery of surtax shall apply as if they were not married, and
 - (b) the income of the husband and wife shall be treated as one in estimating total income for the purposes of surtax, and, subject to section 39(4) below, the amount of surtax payable in respect of the total income shall be divided between the husband and wife in proportion to the amounts of their respective incomes and the total amount payable shall not be less than it would have been if an application had not been made under this subsection.
- (3) Subject to subsection (4) below, an application duly made by a husband or wife under subsection (1) or (2) above shall have effect, not only as respects the year of assessment for which it is made, but also for any subsequent year of assessment.
- (4) A person who has made any such application for any year of assessment may give, for any subsequent year of assessment, a notice to withdraw that application; and where such a notice is given the application shall not have effect with respect to the year for which the notice is given or any subsequent year.

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- (5) A notice of withdrawal under subsection (4) above shall be in such form, and be given in such manner, as may be prescribed by the Board, and shall not be valid unless it is given within the period allowed by law for making, for the year for which the notice is given, applications similar to that to which the notice relates.

39 Effect of separate assessment on personal reliefs (including those running for surtax)

- (1) Where, by virtue of an application under section 38(1) above, income tax other than surtax for any year of assessment is to be assessable and chargeable on the incomes of a husband and wife as if they were not married, the total relief given to the husband and the wife by way of personal reliefs (meaning, in this subsection, the reliefs provided for by Chapter II of this Part of this Act) shall be the same as if the application had not had effect with respect to the year and, subject to the proviso to this subsection and to subsection (2) below, the reduction of tax flowing from the personal reliefs shall be allocated to the husband and the wife—
- (a) so far as it flows from relief under section 9(1) in the said Chapter II (earned income relief), in proportion to the amounts of their respective earned incomes,
 - (b) so far as it flows from relief under section 6 or 9(2) (relief for small incomes, and old age relief), in proportion to the amounts of their respective total incomes,
 - (c) so far as it flows from relief under section 19 or 20 (relief for life insurance premiums and other payments), to the husband or the wife according as he or she made the payment giving rise to the relief,
 - (d) so far as it flows from relief in respect of a child under section 10(1)(b), or relief in respect of a dependent relative under section 16, or relief in respect of a daughter under section 17, to the husband or the wife according as he or she maintains the child, relative or daughter, and
 - (e) as to the balance, in proportion to the amounts of tax which would have been payable by them respectively if the only personal reliefs allowable had been the reliefs referred to in paragraphs (a) and (b) above:

Provided that, subject to subsection (2) below, the amount of reduction of tax allocated to the wife by virtue of paragraphs (a) to (e) above shall not be less than the minimum amount which, if no application under the said section 38(1) had had effect for that year, would under section 37(3) above have had to go to reduce the tax chargeable in respect of her earned income, and the amount of reduction of tax allocated to the husband shall be correspondingly reduced.

- (2) Where the amount of reduction of tax allocated to the husband under subsection (1) above exceeds the tax (other than surtax) chargeable on the income of the husband for the year of assessment, the balance shall be applied to reduce the tax chargeable on the income of the wife for that year; and where the amount of reduction of tax allocated to the wife under that subsection exceeds the tax (other than surtax) chargeable on her income for the year of assessment, the balance shall be applied to reduce the tax chargeable on the income of the husband for that year.
- (3) Returns of the total incomes of the husband and the wife may be made for the purposes of subsections (1) and (2) above either by the husband or by the wife, but, if the Board are not satisfied with any such return, they may obtain a return from the wife or the husband, as the case may be.

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- (4) Where for any year of assessment a husband and wife are separately assessed by virtue of an application under section 38(1) or 38(2) above—
- (a) whether or not they are separately assessed to surtax, the total relief resulting from section 28 above (surtax reliefs) shall be the same as if there were no separate assessment, and
 - (b) if they are separately assessed to surtax, the relief resulting from paragraphs (a) and (b) of section 28(1) above (earned income) shall be allocated between them by apportioning the aggregate deduction under those paragraphs from total income in proportion to their respective earned incomes, and
 - (c) if they are separately assessed to surtax, the relief resulting from paragraph (c) of section 28(1) above shall be allocated between them as follows—
 - (i) the amount (if any) added to the deduction from their total income under that paragraph in respect of relief under section 10(1)(b), 16 or 17 of this Act shall be treated as reducing the income of the husband or the wife according to whether he or she maintains the child, relative or daughter in respect of whom that relief is given, and
 - (ii) subject to sub-paragraph (i) above, the said deduction shall be treated as reducing their respective incomes rateably, or, where relief is given under paragraph (a) or (b) of the said section 28(1), as reducing rateably those incomes as first reduced in accordance with paragraph (b) of this subsection, and
 - (d) in so far as any deduction to which paragraph (b) or (c) of this subsection applies cannot be applied for the benefit of the one for whose benefit it would be applicable under the paragraph in question, it shall be applied for the benefit of the other.

40 Collection from wife of tax assessed on husband but attributable to her income

- (1) Where—
- (a) an assessment to income tax (hereafter in this section referred to as " the original assessment") is made on a man, or on a man's trustee, guardian, curator, receiver or committee, or on a man's executors or administrators, and
 - (b) the Board are of opinion that, if an application for separate assessment under section 38(1) or 38(2) of this Act had been in force with respect to the year for which the assessment is made, an assessment in respect of, or of part of, the same income would have fallen to be made on, or on the trustee, guardian, curator, receiver or committee of, or on the executors or administrators of, a woman who is the said man's wife, or was his wife in that year of assessment, and
 - (c) the whole or part of the amount payable under the original assessment has remained unpaid at the expiration of twenty-eight days from the time when it became due,
- the Board may serve on her, or, if she is dead, on her executors or administrators, or, if such an assessment as is referred to in paragraph (b) above could in the event therein referred to have been made on her trustee, guardian, curator, receiver or committee, on her or on her trustee, guardian, curator, receiver or committee, a notice—
- (i) giving particulars of the original assessment and of the amount remaining unpaid thereunder, and
 - (ii) giving particulars, to the best of their judgment, of the assessment which would have fallen to be made as aforesaid,

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and requiring the person on whom the notice is served to pay the amount which would have been payable under the last-mentioned assessment if it conformed with those particulars, or the amount remaining unpaid under the original assessment, whichever is the less.

- (2) The same consequences as respects—
- (a) the imposition of a liability to pay, and the recovery of, the tax, with or without interest, and
 - (b) priority for the tax in bankruptcy, or in the administration of the estate of a deceased person, and
 - (c) appeals to the General or Special Commissioners, and the stating of cases for the opinion of the High Court, and
 - (d) the ultimate incidence of the liability imposed,

shall follow on the service of a notice under subsection (1) above on a woman, or on her trustee, guardian, curator, receiver or committee, or on her executors or administrators, as would have followed on the making on her, or on her trustee, guardian, curator, receiver or committee, or on her executors or administrators, as the case may be, of such an assessment as is referred to in paragraph (b) of that subsection, being an assessment which—

- (i) was made on the day of the service of the notice, and
- (ii) charged the same amount of income tax as is required to be paid by the notice, and
- (iii) fell to be made, and was made, by the authority who made the original assessment, and
- (iv) was made by that authority to the best of their judgment,

and the provisions of the Income Tax Acts relating to the matters specified in paragraphs (a) to (d) of this subsection shall, with the necessary adaptations, have effect accordingly:

Provided that, where an appeal against the original assessment has been heard in whole or in part by the Special Commissioners, any appeal from the notice shall be an appeal to the Special Commissioners, and where an appeal against the original assessment has been heard in whole or in part by the General Commissioners for any division, any appeal from the notice shall be an appeal to the General Commissioners for that division.

- (3) Where a notice is given under subsection (1) above, income tax up to the amount required to be paid by the notice shall cease to be recoverable under the original assessment, and, where the tax charged by the original assessment carried interest under section 86 of the Taxes Management Act 1970, such adjustment shall be made of the amount payable under that section in relation to that assessment, and such repayment shall be made of any amounts previously paid under that section in relation thereto, as are necessary to secure that the total sum, if any, paid or payable under that section in relation to that assessment is the same as it would have been if the amount which ceases to be recoverable had never been charged.
- (4) Where the amount payable under a notice given under subsection (1) above is reduced as the result of an appeal, or of the stating of a case for the opinion of the High Court—
- (a) the Board shall, if in the light of that result they are satisfied that the original assessment was excessive, cause such relief to be given by way of repayment or otherwise as appears to them to be just, but

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- (b) subject to any relief so given, a sum equal to the reduction in the amount payable under the notice shall again become recoverable under the original assessment.
- (5) The Board and the inspector shall have the like powers of obtaining information with a view to the giving of, and otherwise in connection with, a notice under subsection (1) above as they would have had with a view to the making of, and otherwise in connection with, such an assessment as is referred to in paragraph (b) of that subsection if the necessary conditions had been fulfilled for the making of such an assessment.

41 Right of husband to disclaim liability for tax on deceased wife's income

- (1) Where a woman dies who, at any time before her death, was a married woman living with her husband, he or, if he is dead, his executors or administrators, may, not later than two months from the date of the grant of probate or letters of administration in respect of her estate or, with the consent of her executors or administrators, at any later date, serve on her executors or administrators and on the inspector a notice in writing declaring that, to the extent permitted by this section, he or they disclaims or disclaim responsibility for unpaid income tax in respect of all income of hers for any year of assessment or part of a year of assessment during which he was her husband and she was living with him:

Provided that a notice under this section shall not be deemed to be validly served on the inspector unless it specifies the names and addresses of the woman's executors or administrators.

- (2) Where such a notice has been duly served on a woman's executors or administrators and on the inspector—
 - (a) it shall be the duty of the Board to exercise such powers as they may then or thereafter be entitled to exercise under section 40 above in connection with any assessment made on or before the date when the service of the notice is completed, being an assessment in respect of any of the income to which the notice relates, and
 - (b) the assessments (if any), whether to income tax other than surtax or to surtax, which may be made after that date shall in all respects, and in particular as respects the persons assessable and the tax payable, be the assessments which would have fallen to be made if—
 - (i) an application for separate assessment under section 38(1) or 38(2) above, as the case may be, had been in force in respect of the year of assessment in question, and
 - (ii) all assessments previously made had been made accordingly.
- (3) In the application of this section to Scotland, the reference to the date of the grant of probate or letters of administration shall be construed as a reference to the date of confirmation.

42 Construction of references to married women living with their husbands, etc.

- (1) A married woman shall be treated for income tax purposes as living with her husband unless—
 - (a) they are separated under an order of a court of competent jurisdiction, or by deed of separation, or

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- (b) they are in fact separated in such circumstances that the separation is likely to be permanent.
- (2) Where a married woman is living with her husband and either—
- (a) one of them is, and one of them is not, resident in the United Kingdom for a year of assessment, or
 - (b) both of them are resident in the United Kingdom for a year of assessment, but one of them is, and one of them is not, absent from the United Kingdom throughout that year,

the same consequences shall follow for income tax purposes as would have followed if, throughout that year of assessment, they had been in fact separated in such circumstances that the separation was likely to be permanent:

Provided that, where this subsection applies and the net aggregate amount of income tax (including surtax) falling to be borne by the husband and the wife for the year is greater than it would have been but for the provisions of this subsection, the Board shall cause such relief to be given (by the reduction of such assessments on the husband or the wife or the repayment of such tax paid (by deduction or otherwise) by the husband or the wife as the Board may direct) as will reduce the said net aggregate amount by the amount of the excess.