



# Income and Corporation Taxes Act 1970

## 1970 CHAPTER 10

### PART I

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

### CHAPTER V

#### AGGREGATION OF INCOME—PARENT AND CHILD

#### **43 General rule for aggregation of investment etc. income of unmarried infants not regularly working**

- (1) Subject to the following provisions of this section, an infant's income, so far as it is income for a year of assessment or part of a year of assessment during which he or she is unmarried and not regularly working, shall, in the circumstances specified in section 44 below, be treated in accordance with that section as income of his or her parent or parents.

An infant is to be treated for the purposes of this subsection as working regularly if, and only if, he or she—

- (a) is engaged in a full-time occupation, not being one entered into during an interval not exceeding fifteen months between two periods of full-time education, and
  - (b) intends to be regularly engaged in that or another such occupation,
- and in this provision " occupation " means any office, employment, trade, profession or vocation.
- (2) Subsection (1) above does not apply to—
- (a) earned income, or
  - (b) income derived from any sum, or from assets representing any sum, paid by way of, or in satisfaction of a claim for, damages in respect of personal injury to the infant (including any disease, and any impairment of his or her physical or mental condition) or paid in respect of any such personal injury

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by a body established for charitable purposes only, or by the Criminal Injuries Compensation Board or under any enactment of the Parliament of Northern Ireland providing for compensation in respect of criminal injuries, or

- (c) income consisting of payments made to a female infant by the putative father of a child of the infant and for the benefit, maintenance or education of that child,

but, subject to those exclusions and to subsection (3) below, applies to all such amounts as would fall to be included in computing the infant's total income apart therefrom, and so applies notwithstanding anything in any other enactment (including, except so far as the contrary is expressly provided, any enactment passed after this Act) requiring any amount not to be treated as income of anyone other than the infant.

- (3) Subsection (1) above shall not have effect in relation to an infant for any year of assessment for which his or her aggregate income, so far as it would fall within that subsection or within section 437(1) of this Act (settlements on children: treatment of income as settlor's) but for this exception and the corresponding exception in subsection (3) of the said section 437, does not exceed £5.
- (4) Income of an infant falling to be treated as income of a parent by virtue of the provisions of this Chapter shall be so treated for all income tax purposes, or for the purposes of income tax other than surtax, or for the purposes of surtax only, according to the purposes for which it would have constituted income of the infant but for those provisions.
- (5) Any tax falling to be assessed in respect of income which is to be treated by virtue of this Chapter as income of an infant's parent shall, instead of being assessed on the infant, or on the infant's trustee, guardian, curator, receiver or committee, or on the infant's executors or administrators, be assessable on the parent, or, in the appropriate cases, on the parent's trustee, guardian, curator, receiver or committee, or on the parent's executors or administrators.
- (6) This section shall be disregarded for the purposes of section 21 of the Finance Act 1965 (calculation of capital gains tax by reference to liability to income tax).

#### **44 Detailed rules**

- (1) Subject to the following provisions of this section, income to which section 43(1) above applies shall be treated as follows—
- (a) so far as it is income for a year of assessment, or part of a year of assessment, during which both parents of the infant are alive and are married to and living with each other, as income for that year of the father,
  - (b) so far as it is income for a year or part during which both parents are alive, but are either not married to each other or not living with each other, as income for that year of the father or, for any period during which the mother has actual custody of the infant, as income for that year of the mother, and
  - (c) so far as it is income for a year or part during which one only of the parents is alive, as income for the year of that parent.
- (2) So far as any income to which the said section 43(1) applies is income for a year of assessment, or part of a year of assessment, of an infant who is illegitimate and has not been adopted, subsection (1) above shall not apply to the income, but it shall be treated instead as income for that year of the mother, or, for any period during which the father has actual custody of the infant, as income for that year of the father.

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- (3) Subsection (1) above shall not apply to any income so far as it is income for a year of assessment, or part of a year of assessment, during which the infant was in law in the custody of a person or persons other than a parent, and was not in the actual custody of a parent.
- (4) Where, in the case of any income falling within subsection (1)(a) above, one of the infant's parents is, and one is not, resident for the year in the United Kingdom, the said subsection (1)(a) shall have effect in relation thereto as if, instead of specifying the infant's father, it specified the parent resident for the year in the United Kingdom if the infant is so resident, and the other parent if the infant is not so resident.
- (5) Nothing in this section shall have effect so as to treat income of an infant resident in the United Kingdom for any year of assessment as income of a parent not so resident for that year, or income of an infant not so resident for any year as income of a parent so resident for that year.

#### **45 Consequences of aggregation as respects certain payments involving tax reliefs**

- (1) Where income of an infant for any period is treated by virtue of this Chapter as income of a parent, and the infant has made payments of either of the following descriptions—
  - (a) annual payments in respect of which a deduction is permitted in computing for that period total income for the purposes of income tax or surtax, or
  - (b) payments in that period of interest in respect of which income tax at the standard rate is repayable,the said payments shall, to the extent of that income, be treated as having been made thereout by the parent instead of by the infant, and in the order in which they are described above.
- (2) Where income of an infant for any period is so treated, and the infant has during that period made payments qualifying for relief under section 19 of this Act (life policy and annuity contract premiums), the deductions from tax to which the infant would apart from this subsection be entitled by reason of those payments shall, to the extent that the payments could have been made out of the income so treated (or, where subsection (1) above has effect, out of that income reduced by the payments falling within that subsection), be made instead from the tax with which the parent is chargeable.

#### **46 Right of parent to recover tax on aggregated income**

- (1) Where income of an infant is treated by virtue of this Chapter as income of a parent for any year of assessment, the parent shall be entitled to recover from the infant an amount equal to that by which the tax chargeable on and payable by the parent for the year exceeds that which would have been so chargeable and payable if the income had not been so treated:

Provided that, so far as the excess is attributable to trust income which has not been distributed, the right conferred by this subsection shall be exercisable against that income instead of against the infant.
- (2) A parent may require from the Board a certificate specifying in relation to any income the amount of tax which he or she is entitled to recover under subsection (1) above from trustees, and any such certificate shall be conclusive evidence of that amount.

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#### **47 Accountability of parent for tax repayments attributable to aggregation**

Where income of an infant is treated as income of a parent by virtue of this Chapter, and, by reason thereof, the parent obtains in respect of any allowance or relief a repayment of tax in excess of that to which he or she would have been entitled if the income had not been so treated, the parent shall pay an amount equal to the excess to the infant, or, if the income arose under a trust, to the trustees.

#### **48 Supplemental**

- (1) For the purposes of this Chapter, an infant's parents are to be treated as living with each other unless—
  - (a) they are separated under an order of a court of competent jurisdiction, or by deed of separation, or
  - (b) they are in fact separated in such circumstances that the separation is likely to be permanent.
- (2) Where a parent appeals against any assessment or decision on a claim on the grounds that an infant was not, or was, in his or her actual custody for any period, or was or was not for any period in the actual custody of the other parent, the other parent shall be entitled to appear and be heard on that question by the Commissioners hearing the appeal; and, as respects that question—
  - (a) if the other parent does so appear, the determination of the Commissioners shall for the purposes of income tax be final and conclusive against him or her, save that he or she shall have the same right as the appellant to require the statement of a case for the opinion of the High Court, and
  - (b) the determination of the Commissioners shall also be final and conclusive against the other parent if he or she fails without reasonable cause to appear.
- (3) A trustee shall, on being so required in writing by a parent of any beneficiary under the trust, give to the parent details of the trust income arising to the beneficiary for any year of assessment during or for any part of which the beneficiary is an infant.
- (4) In this Chapter—
  - " infant " means a person who has not attained the age of eighteen,
  - " parent " means, in relation to an infant who has been adopted, a parent by adoption (with references to the father and the mother of an infant construed accordingly), and references to adoption include references to adoption under the law of any territory outside the United Kingdom.