



Finance Act 2004

2004 CHAPTER 12

PART 3

INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

CHAPTER 7

SAVINGS INCOME: DOUBLE TAXATION ARISING FROM WITHHOLDING TAX

Credit etc for special withholding tax

108 Income tax credit etc for special withholding tax

- (1) This section applies where—
 - (a) a person is chargeable to income tax for a year of assessment in respect of a payment of savings income or would be so chargeable but for any exemption or relief which has effect in respect of that payment,
 - (b) special withholding tax is levied in respect of the payment, and
 - (c) the person is resident in the United Kingdom for that year of assessment.
- (2) On the making of a claim, income tax (“the deemed tax”) of an amount equal to the amount of the special withholding tax levied is to be treated as having been—
 - (a) paid by or on behalf of the person for that year of assessment, and
 - (b) deducted at source for that year of assessment for the purposes of the provisions in subsection (3).
- (3) The provisions are—
 - section 7 of the Taxes Management Act 1970 (c. 9) (notice of liability to income tax and capital gains tax);
 - section 8 of that Act (personal return);
 - section 8A of that Act (trustee’s return);
 - section 9 of that Act (returns to include self-assessment);

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- section 59A of that Act (payments on account of income tax);
 section 59B of that Act (payments of income tax and capital gains tax);
 section 824(3) of the Taxes Act 1988 (repayment supplements: determination of relevant time).
- (4) Where the amount of the deemed tax exceeds the amount (which may be nil) of income tax for which the person is liable for the year of assessment (before any set-off for the deemed tax), then, to the extent that it would not otherwise be the case,—
- (a) the excess is to be set against any capital gains tax for which he is liable for the year of assessment, and
 - (b) he is entitled to a repayment of income tax in respect of any remaining balance of that excess.
- (5) But subsection (2) does not apply in relation to an amount of special withholding tax levied if—
- (a) the person has obtained relief from double taxation in respect of that special withholding tax under the law of a territory outside the United Kingdom, and
 - (b) the person was resident in that territory, or was treated as being so resident under any double taxation arrangements, in the year of assessment in question.

109 Capital gains tax credit etc for special withholding tax

- (1) This section applies where—
- (a) a person makes a disposal of assets in a year of assessment,
 - (b) on the assumption that a chargeable gain were to accrue on the disposal,—
 - (i) it would accrue to the person, and
 - (ii) he would be chargeable to capital gains tax in respect of it,
 - (c) the consideration for the disposal consists of or includes an amount of savings income,
 - (d) special withholding tax is levied in respect of the whole or any part of the consideration for the disposal, and
 - (e) the person is resident in the United Kingdom for that year of assessment.
- (2) For the purposes of subsection (1)(b)(ii), there are to be disregarded—
- (a) any deductions that fall to be made from the total amount referred to in section 2(2) of the Taxation of Chargeable Gains Act 1992 (c. 12) (deductions for allowable losses),
 - (b) section 3 of that Act (annual exempt amount), and
 - (c) section 77(1) of that Act (settlor with interest in settlement: trustees not to be chargeable in certain circumstances).
- (3) On the making of a claim, capital gains tax (“the deemed tax”) of an amount equal to the amount of the special withholding tax levied is to be treated as having been paid—
- (a) by or on behalf of the person for that year of assessment, and
 - (b) for the purposes of section 283(2) of the Taxation of Chargeable Gains Act 1992 (repayment supplements: determination of relevant time), on 31st January next following that year of assessment.
- (4) For the purposes of the application of the following provisions in relation to the person for that year of assessment, references in those provisions to income tax deducted at

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source for that year of assessment are to be taken to include the amount of the deemed tax—

section 7 of the Taxes Management Act 1970 (c. 9) (notice of liability to income tax and capital gains tax);

section 8 of that Act (personal return);

section 8A of that Act (trustee's return);

section 9 of that Act (returns to include self-assessment);

section 59B of that Act (payments of income tax and capital gains tax).

(5) Where the amount of the deemed tax exceeds the amount (which may be nil) of capital gains tax for which the person is liable for the year of assessment (before any set-off for the deemed tax), then, to the extent that it would not otherwise be the case,—

(a) the excess is to be set against any income tax for which he is liable for the year of assessment, and

(b) he is entitled to a repayment of capital gains tax in respect of any remaining balance of that excess.

(6) But subsection (3) does not apply in relation to an amount of special withholding tax levied if—

(a) the person has obtained relief from double taxation in respect of that special withholding tax under the law of a territory outside the United Kingdom, and

(b) he was resident in that territory, or was treated as being so resident under any double taxation arrangements, in the year of assessment in question.

(7) To the extent that section 108 of this Act applies in relation to an amount of special withholding tax levied (or would so apply on the making of a claim), this section does not apply in relation to that amount.

110 Credit under Part 18 of Taxes Act 1988 to be allowed first

(1) Any credit for foreign tax that falls to be allowed under Chapters 1 and 2 of Part 18 of the Taxes Act 1988 (double taxation relief) against income tax or capital gains tax is to be so allowed before effect is given to section 108 or 109.

(2) In this section “foreign tax” has the same meaning as in Chapter 2 of Part 18 of the Taxes Act 1988 (see section 792(1) of that Act).

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