



Income Tax Act 2007

2007 CHAPTER 3

PART 9

SPECIAL RULES ABOUT SETTLEMENTS AND TRUSTEES

CHAPTER 7

DISCRETIONARY PAYMENTS

[^{F1}Payments constituting income of beneficiary (other than employment income)]

Textual Amendments

- F1** S. 493 cross-heading inserted (with effect in accordance with art. 3(9) of the amending S.I.) by [The Enactment of Extra-Statutory Concessions Order 2010 \(S.I. 2010/157\)](#), arts. 1, **3(2)** (with art. 3(10))

493 Discretionary payments by trustees

- (1) Sections 494 and 495 apply for income tax purposes if—
- in a tax year the trustees of a settlement make an annual payment to a person (“the beneficiary”) in the exercise of a discretion (whether exercisable by the trustees or any other person),
 - the trustees are UK resident for the tax year, and
 - condition A or condition B is met.
- (2) Condition A is that what is paid to the beneficiary is, only because of the payment, income of the beneficiary for income tax or corporation tax purposes.
“Income” does not include employment income.
- (3) Condition B is that the payment is treated for income tax purposes as the income of a settlor under section 629 of ITTOIA 2005 (income paid to relevant children of settlor).

Status: Point in time view as at 19/07/2012.

Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Chapter 7. (See end of Document for details)

“Settlor” is to be read in accordance with section 620 of ITTOIA 2005.

- (4) The payment is referred to in sections 494 and 495 as “the discretionary payment”.
- (5) In this Chapter “payment” includes payment in money's worth.

494 Grossing up of discretionary payment and payment of income tax

- (1) The discretionary payment is treated as if it were made after the deduction of a sum representing income tax at the trust rate on the grossed up amount of the discretionary payment.
- (2) The grossed up amount of the discretionary payment is the actual amount of the discretionary payment grossed up by reference to the trust rate.
- (3) The person mentioned in subsection (4) is treated as having paid income tax of an amount equal to the sum deducted as mentioned in subsection (1).
- (4) That person is—
 - (a) if condition A in section 493 is met, the beneficiary, and
 - (b) if condition B in section 493 is met, the settlor.

495 Statement about deduction of income tax

- (1) If the person who is treated as having paid income tax requests it in writing, the trustees must provide that person with a statement showing—
 - (a) the grossed up amount of the discretionary payment,
 - (b) the sum deducted as mentioned in section 494(1), and
 - (c) the actual amount of the discretionary payment.
- (2) A statement under this section must be in writing.
- (3) The duty to comply with a request under this section is enforceable by the person who made it.

496 Income tax charged on trustees

- (1) Income tax is charged for a tax year if—
 - (a) in the tax year the trustees of a settlement make payments as a result of which income tax is treated as having been paid under section 494, and
 - (b) amount A is greater than amount B.
- (2) Amount A is the total amount of the income tax treated under section 494 as having been paid.
- (3) Amount B is the amount of the trustees' tax pool available for the tax year (see section 497).
- (4) The amount of the tax charged under this section is equal to the difference between amounts A and B.
- (5) The trustees are liable for the tax.

Status: Point in time view as at 19/07/2012.

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F²Payments constituting employment income of beneficiary

Textual Amendments

- F2** Ss. 496A, 496B and cross-heading inserted (with effect in accordance with art. 3(7) of the amending S.I.) by [The Enactment of Extra-Statutory Concessions Order 2010 \(S.I. 2010/157\)](#), arts. 1, **3(3)** (with art. 3(10))

496A Discretionary payments by trustees: employment income

- (1) Section 496B applies if—
 - (a) in a tax year the trustees of a settlement make a discretionary employment income payment, and
 - (b) the trustees are UK resident for the tax year.
- (2) In this section and section 496B, “discretionary employment income payment” means a payment to a person (“the beneficiary”) that—
 - (a) is made in the exercise of a discretion (whether exercisable by the trustees or any other person),
 - (b) is made out of income, and
 - (c) meets conditions A and B.
- (3) Condition A is that what is paid to the beneficiary—
 - (a) is, only because of the payment, employment income of the beneficiary, but
 - (b) is not exempt income (as defined in section 8 of ITEPA 2003).
- (4) Condition B is that the payment is made at a time when the settlement is an employee benefit settlement.
- (5) A settlement is an employee benefit settlement if the trusts on which the settled property is held do not permit the settled property to be applied otherwise than—
 - (a) for the benefit of persons of one or more relevant classes, or
 - (b) for the benefit of such persons and for charitable purposes.
- (6) “Relevant class” means a class defined by reference to one or more of the following—
 - (a) employment in a particular trade or profession,
 - (b) employment by, or holding office with, a body carrying on a trade, profession or undertaking, or
 - (c) marriage to or civil partnership with, or relationship to, or dependence on, persons of a class mentioned in paragraph (a) or (b).
- (7) Where the trusts on which the settled property is held do not permit the settled property to be applied otherwise than as described in subsection (5) during a period (however defined), the settlement is an employee benefit settlement during (and only during) that period.

496B Relief for trustees

- (1) The trustees of a settlement are entitled (on making a claim in respect of a tax year) to repayment of an amount of income tax equal to the lesser of amount A and amount B.
- (2) Amount A is—

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TEI×TR

where—

TEI is the total of the amounts that are employment income of beneficiaries of the settlement because of discretionary employment income payments made in the tax year by the trustees, and

TR is the trust rate in force for the tax year.

- (3) Amount B is the amount of the trustees' tax pool available for the tax year (see section 497) reduced (but not so that it goes below nil) by the total amount of income tax (if any) treated under section 494 as having been paid as a result of payments made by the trustees in the tax year.
- (4) A claim under this section may not be made before the end of the tax year to which it relates.]

[^{F3}Tax pool]

Textual Amendments

- F3** S. 497 cross-heading inserted (with effect in accordance with art. 3(7) of the amending S.I.) by [The Enactment of Extra-Statutory Concessions Order 2010 \(S.I. 2010/157\)](#), arts. 1, **3(4)** (with art. 3(10))

497 Calculation of trustees' tax pool

- (1) Take the following steps to calculate the amount of the trustees' tax pool available for a tax year (“the current tax year”).

This is subject to subsections (2) and (3).

Step 1

Take the amount of the trustees' tax pool available for the previous tax year and deduct from that amount (but not so that it goes below nil)^{F4}—

- (a) the total amount of income tax treated under section 494 as having been paid as a result of payments made by the trustees in the previous tax year^{F5}, and
- (b) the amount to which the trustees are entitled under section 496B in respect of the previous tax year.]

Step 2

Add together all amounts of income tax for which the trustees are liable for the current tax year and which are of a type set out in section 498.

Step 3

Add the sum calculated at Step 2 to the amount resulting from Step 1.

- (2) If the trustees were non-UK resident for the previous tax year, references in subsection (1) to the previous tax year are to be read as references to the last tax year prior to the current tax year for which the trustees were UK resident.
- (3) If—

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- (a) the current tax year is the tax year during which the settlement is established, or
- (b) the trustees have been UK resident for no tax year prior to the current tax year, ignore Steps 1 and 3 and, accordingly, the trustees' tax pool available for the current tax year is the sum calculated at Step 2.

Textual Amendments

- F4** Word in s. 497(1) inserted (with effect in accordance with art. 3(8) of the amending S.I.) by [The Enactment of Extra-Statutory Concessions Order 2010 \(S.I. 2010/157\)](#), arts. 1, **3(5)(a)** (with art. 3(10))
- F5** Words in s. 497(1) inserted (with effect in accordance with art. 3(8) of the amending S.I.) by [The Enactment of Extra-Statutory Concessions Order 2010 \(S.I. 2010/157\)](#), arts. 1, **3(5)(b)** (with art. 3(10))

498 Types of income tax for the purposes of section 497

(1) The types of amount referred to at Step 2 in section 497 are as follows.

Type 1

The amount of any tax on income (other than income of a kind mentioned below in relation to Type [^{F6}2, 3 or 3A]) charged at the dividend trust rate or at the trust rate.

Type 2

The amount of tax at the nominal rate on any income which is—

- (a) chargeable under Chapter 3 of Part 4 of ITTOIA 2005 (dividends etc from UK resident companies),
- (b) chargeable under Chapter 5 of that Part (stock dividends from UK resident companies), or
- (c) chargeable under Chapter 6 of that Part (release of loan to participator in close company),

and on which tax is charged at the dividend trust rate as a result of section 479.

Type 3

The amount of tax at the nominal rate on any income on which tax is charged at the dividend trust rate as a result of section 481.

[^{F7}Type 3A

The amount of tax at the nominal rate on any amount in respect of which—

- (a) the trustees are liable to income tax under section 467 of ITTOIA 2005 (gains from contracts for life insurance etc),
- (b) the trustees are liable to income tax at the trust rate by virtue of section 482 above, and
- (c) tax at the [^{F8}basic rate] is treated as having been paid by virtue of section 530 of ITTOIA 2005 (life insurance).]

Type 4

The amount of any tax on income on which tax is charged at the basic rate ^{F9}... as a result of section 491.

Type 5

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The amount of tax on any income determined in accordance with section 26 of FA 2005 (special tax treatment for trusts for the benefit of vulnerable persons).

- (2) In relation to Types 2 and 3, references to the nominal rate are references to a rate equal to the difference between the dividend trust rate and the dividend ordinary rate.
- [^{F10}(2A) In relation to Type 3A, the reference to the nominal rate is a reference to a rate equal to the difference between the trust rate and the [^{F11}basic rate] .]
- (3) In relation to Types 1 to 4, references to income do not include income the tax on which is reduced in accordance with section 26 of FA 2005.

Textual Amendments

- F6** Words in s. 498(1) substituted (21.7.2008 with effect in accordance with s. 56(4) of the amending Act) by [Finance Act 2007 \(c. 11\), s. 56\(2\)\(a\)](#)
- F7** Words in s. 498(1) inserted (21.7.2008 with effect in accordance with s. 56(4) of the amending Act) by [Finance Act 2007 \(c. 11\), s. 56\(2\)\(b\)](#)
- F8** Words in s. 498(1) substituted (21.7.2008 with effect in accordance with Sch. 1 para. 65 of the amending Act) by [Finance Act 2008 \(c. 9\), Sch. 1 para. 22\(2\)](#)
- F9** Words in s. 498(1) omitted (21.7.2008 with effect in accordance with Sch. 1 para. 65 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\), Sch. 1 para. 22\(3\)](#)
- F10** S. 498(2A) inserted (21.7.2008 with effect in accordance with s. 56(4) of the amending Act) by [Finance Act 2007 \(c. 11\), s. 56\(3\)](#)
- F11** Words in s. 498(2A) substituted (21.7.2008 with effect in accordance with Sch. 1 para. 65 of the amending Act) by [Finance Act 2008 \(c. 9\), Sch. 1 para. 22\(4\)](#)

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