

2002 No. 653

**INCOME TAX
TAXES**

**The Scottish Water (Transfer of Functions, etc.)
(Tax Provisions) Order 2002**

Made - - - - -	11th March 2002
Laid before Parliament	11th March 2002
Coming into force - -	1st April 2002

The Treasury, in exercise of the powers conferred upon them by sections 104(1), 112(1) and (5) and 126(1) of the Scotland Act 1998(a), hereby make the following Order:

Citation and commencement

1. This Order may be cited as the Scottish Water (Transfer of Functions, etc.) (Tax Provisions) Order 2002 and shall come into force on 1st April 2002.

Interpretation

2. In this Order—

“the Corporation Tax Acts” has the meaning given by section 831(1)(a) of the Taxes Act;
“the new water and sewerage authorities” means the bodies established by section 62(1) of the Local Government etc. (Scotland) Act 1994(b), that is, the East of Scotland Water Authority, the West of Scotland Water Authority and the North of Scotland Water Authority;

“Scottish Water” means the body corporate known as Scottish Water and established by section 20 of, and Schedule 3 to, the Water Industry (Scotland) Act 2002(c);

“the Taxes Act” means the Income and Corporation Taxes Act 1988(d).

Tax Provisions consequential on the transfer of functions etc. to Scottish Water

3. Articles 4 to 7 make provision in consequence of the transfer on 1st April 2002 of the functions, property and liabilities of the new water and sewerage authorities to Scottish Water by virtue of sections 21 and 22 of the Water Industry (Scotland) Act 2002(e).

(a) 1998 c. 46. Section 126(1) is cited because it defines “Minister of the Crown” as including the Treasury.
(b) 1994 c. 39.
(c) 2002 asp 3.
(d) 1988 c. 1.
(e) Sections 21 and 22 come into force on 1st April 2002, being the day appointed by S.S.I. 2002/118.

Corporation tax: general

4.—(1) For all purposes of the Corporation Tax Acts in relation to accounting periods beginning on or after 1st April 2002—

- (a) Scottish Water shall be treated as if it were the same person as each of the new water and sewerage authorities, and
- (b) the new water and sewerage authorities shall be treated as if together they were the same person as Scottish Water.

(2) For the purposes of section 393 of the Taxes Act(a) (losses other than terminal losses) the new water and sewerage authorities shall be treated as if, before 1st April 2002, they had together carried on a single trade.

(3) Section 400 of the Taxes Act(b) (write-off of government investment) shall not apply with regard to any debt transferred to Scottish Water by virtue of section 22 of the Water Industry (Scotland) Act 2002.

(4) For the purposes of section 400 of the Taxes Act the new water and sewerage authorities shall be treated as if, before 1st April 2002, they had together carried on a single trade.

(5) For the purposes of corporation tax on chargeable gains—

- (a) Scottish Water shall be treated as having acquired all assets transferred from the new water and sewerage authorities by virtue of section 22 of the Water Industry (Scotland) Act 2002 at the time when they were acquired by the new water and sewerage authorities, and
- (b) on any disposal of any of those assets by Scottish Water, any expenditure incurred by a new water and sewerage authority which would, if the disposal had been made by that authority, have been allowable by virtue of section 38 of the Taxation of Chargeable Gains Act 1992 in computing the chargeable gain or allowable loss on the disposal of the asset shall be treated as though it had been incurred by Scottish Water.

Transfer arrangements

5. The existence or exercise of the powers of the Scottish Ministers under the Water Industry (Scotland) Act 2002 shall not be regarded as constituting or creating arrangements within the meaning of section 410 of the Taxes Act(c) (arrangements for transfer of company to another group or consortium).

Tax-free benefits

6. Nothing in this Order or Part 3 of the Water Industry (Scotland) Act 2002, and nothing done under this Order or that Part, shall be regarded as a scheme or arrangement for the purposes of section 30 of the Taxation of Chargeable Gains Act 1992(d) (tax-free benefits).

Stamp Duty

7. No transfer from the new water and sewerage authorities to Scottish Water effected by virtue of the Water Industry (Scotland) Act 2002 shall give rise to any liability to stamp duty.

Nick Ainger
Tony McNulty

11th March 2002

Two of the Lords Commissioners of Her Majesty's Treasury

(a) Section 393 was amended by section 99 of the Finance Act 1990 (c. 29) and section 73(2) of, and paragraph 8 of Schedule 15 and Part V of Schedule 19 to, the Finance Act 1992 (c. 31).
(b) Section 400 was amended by paragraph 12 of Schedule 15 to the Finance Act 1991, paragraph 14(1) and (2) of Schedule 10 to the Taxation of Chargeable Gains Act 1992 (c. 12), paragraph 8(5) of Schedule 14 and Part III(11) of Schedule 23 to the Finance Act 1993 (c. 34), paragraph 19 of Schedule 14 to the Finance Act 1996 (c. 8), paragraph 36 of Schedule 5 and paragraph 1 of Schedule 7 to the Finance Act 1998 (c. 36), paragraph 87(1) and (2) of Part I of Schedule 2 to S.I. 1999/1820, and paragraph 35 of Schedule 2 to the Capital Allowances Act 2001 (c. 2).
(c) Section 410(5) was amended by section 68 of the Finance Act 1997 (c. 16).
(d) 1992 c. 12. Section 30 was amended by paragraphs 46 and 47(a) of Schedule 20 to the Finance Act 1996 and Part II(12) of Schedule 40 to the Finance Act 2000 (c. 17).

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision consequential on the Water Industry (Scotland) Act 2002 (“the 2002 Act”). In particular it ensures that the transfer of functions, property and liabilities from the three Scottish water authorities to Scottish Water (the new body corporate established by the 2002 Act) on 1st April 2002 does not give rise to any adverse or beneficial tax consequences.

Article 1 provides for citation and commencement, and article 2 for interpretation.

Article 3 introduces articles 4 to 7.

Article 4 treats Scottish Water, for all purposes of corporation tax, as being the same person as each of the three Scottish water authorities, and vice versa. The article also makes the following particular provisions relating to corporation tax—

- it provides that, for the purposes of section 393 of the Income and Corporation Taxes Act 1988 (trading losses) (“the 1988 Act”) and section 400 of that Act (write-off of government investment), the three Scottish water authorities shall be treated as together having carried on a single trade before 1st April 2002.
- it provides that section 400 of the 1988 Act shall not apply in relation to any debt transferred to Scottish Water from the three Scottish water authorities.
- it provides that, for the purposes of corporation tax on chargeable gains, Scottish Water shall be treated as having acquired the assets transferred to it from the three Scottish water authorities at the time when they were acquired by those authorities, and that expenditure incurred by any of those authorities on any of those assets shall be treated, in computing the chargeable gain or allowable loss on a subsequent disposal by Scottish Water of that asset, as if it had been incurred by Scottish Water.

Article 5 provides that the existence or exercise of any of the powers of the Scottish Ministers under the 2002 Act shall not be regarded as constituting or creating arrangements within the meaning of section 410 of the 1998 Act (arrangements for transfer of company to another group or consortium).

Article 6 provides that nothing in, or done under, this Order or Part 3 of the 2002 Act shall be regarded as a scheme or arrangement for the purposes of section 30 of the Taxation of Chargeable Gains Act 1992 (tax-free benefits).

Article 7 provides that no transfer from the three Scottish water authorities to Scottish Water effected by virtue of the 2002 Act shall give rise to any liability to stamp duty.

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(Tax Provisions) Order 2002

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