

2005 No. 724

INCOME TAX

INHERITANCE TAX

**The Charge to Income Tax by Reference to Enjoyment of
Property Previously Owned Regulations 2005**

<i>Made</i> - - - -	<i>16th March 2005</i>
<i>Laid before the House of Commons</i>	<i>16th March 2005</i>
<i>Coming into force</i> - -	<i>6th April 2005</i>

The Treasury, in exercise of the powers conferred upon them by paragraphs 1, 4(5) and (6), 7(2), (4) and (5), 9(1) and (3), 14 and 20 of Schedule 15 to the Finance Act 2004(a), and the Commissioners of Inland Revenue, in exercise of powers conferred upon them by section 104 of the Finance Act 1986(b), make the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Charge to Income Tax by Reference to Enjoyment of Property Previously Owned Regulations 2005 and shall come into force on 6th April 2005.

Prescribed valuation date

2. In paragraph 4 (chargeable amount in relation to land), paragraph 7 (chargeable amount in relation to chattels) and paragraph 9 (chargeable amount in relation to intangible property) of Schedule 15 to the Finance Act 2004 the valuation date in relation to a taxable period is 6th April in the relevant year of assessment or, if later, the first day of the taxable period.

Prescribed rate of interest

3.—(1) In paragraphs 7(2) and 9(1) of Schedule 15 to the Finance Act 2004 the prescribed rate is the official rate of interest at the valuation date.

(2) In this regulation, “the official rate of interest” has the meaning given in section 181 of the Income Tax (Earnings and Pensions) Act 2003(c).

(a) 2004 c. 12.
(b) 1986 c. 54.
(c) 2003 c. 1.

Valuation and rental value

4.—(1) The valuation of land or any interest in land for the purposes of paragraph 4 of Schedule 15 to the Finance Act 2004 and a chattel or any interest in a chattel for the purposes of paragraph 7 of Schedule 15 to the Finance Act 2004 is—

- (a) before the first five-year anniversary, by reference to the first valuation date, and
- (b) thereafter, by reference to the valuation date at the last five-year anniversary.

(2) The rental value of land for the purposes of paragraph 4 of Schedule 15 to the Finance Act 2004 is determined in relation to a year of assessment—

- (a) between the end of the first taxable period and the first five-year anniversary, by reference to the annual value in relation to the first year of assessment in which paragraph 3 of Schedule 15 to the Finance Act 2004 (land) applied, and
- (b) thereafter, by reference to the rental value for the year of assessment commencing at the last five-year anniversary.

(3) Subject to paragraph (4), in this regulation—

“five-year anniversary” means the fifth anniversary of 6th April in the year of assessment in which paragraph 3 (land) or paragraph 6 (chattels) of Schedule 15 to the Finance Act 2004 first applied to a chargeable person in relation to the relevant land or chattel or any interest in the relevant land or chattel, and subsequent anniversaries at five-year intervals;

“first valuation date” means the date on which paragraph 3 or paragraph 6 of Schedule 15 to the Finance Act 2004 first applied to a chargeable person in relation to the relevant land or chattel or any interest in the relevant land or chattel.

(4) If there is no valuation date at a five-year anniversary, the date on which paragraph 3 or paragraph 6 of Schedule 15 to the Finance Act 2004 next apply to the chargeable person in relation to the relevant land or chattel, or any interest in the relevant land or chattel, shall be treated as the date on which, and being in the year of assessment in which, paragraph 3 or paragraph 6 of that Schedule first applied to that person in relation to that land, chattel or interest.

Exemptions from charge

5.—(1) Paragraph 3 (land) and paragraph 6 (chattels) do not apply to a person in relation to a disposal of part of an interest in any property if—

- (a) the disposal was by a transaction made at arm’s length with a person not connected with him;
- (b) the disposal was by a transaction such as might be expected to be made at arm’s length between persons not connected with each other, and
 - (i) the disposal was for a consideration not in money or in the form of readily convertible assets, or
 - (ii) the disposal was made before 7th March 2005.

(2) In this regulation “readily convertible asset” has the meaning given in section 702 of the Income Tax (Earnings and Pensions) Act 2003(a).

Avoiding double charge

6.—(1) This regulation provides for the avoidance, to the extent specified, of double charges to tax arising in the circumstances specified (in paragraph (2)) for the purposes of paragraph (d) of section 104(1) of the Finance Act 1986 (being circumstances which appear to the Board to be similar to those referred to in paragraphs (a) to (c) of that subsection).

(2) The specified circumstances are—

- (a) a person makes a transfer by way of gift—

(a) 2003 c. 1.

- (i) of property representing the proceeds of the disposal of relevant property,
 - (ii) by virtue of which property becomes comprised in a settlement,
 - (b) the transfer is or proves to be a chargeable transfer,
 - (c) the person dies on or after 6th April 2005 and within seven years of the transfer,
 - (d) the person made an election under paragraph 21 of Schedule 15 to the Finance Act 2004 (election for application of inheritance tax provisions) in relation to the relevant property,
 - (e) the relevant property—
 - (i) is by virtue of section 102(3) of the Finance Act 1986 treated for the purposes of the Inheritance Tax Act 1984 as property to which the person was beneficially entitled immediately before his death, or
 - (ii) ceased to be property subject to a reservation and became the subject of a potentially exempt transfer by virtue of section 102(4) of the Finance Act 1986, and
 - (f) the chargeable proportion of the relevant property—
 - (i) is comprised in the estate of the person immediately before his death within the meaning of section 5(1) of the Inheritance Tax Act 1984 and the value attributable to it is transferred by a chargeable transfer under section 4 of that Act, or
 - (ii) is property transferred by the potentially chargeable transfer to which sub-paragraph (e)(ii) applies, value attributable to which is transferred by a chargeable transfer.
- (3) Where this regulation applies, there shall be calculated, separately in accordance with sub-paragraphs (a) and (b), the total tax chargeable as a consequence of the death of the person—
- (a) disregarding so much of the value transferred by the transfer of value to which paragraph (2)(a) refers as represents the proceeds of the disposal of the relevant property to which paragraph (2)(f) refers, and
 - (b) disregarding so much of the value transferred by the transfer of value to which paragraph (2)(f) refers as is represented by property to which paragraph (2)(a) refers.
- (4) Where the amount calculated under paragraph (3)(a) is higher than the amount calculated under (3)(b)—
- (a) only so much of that higher amount shall be payable as remains after deducting, as a credit, from the amount comprised in the higher amount which is attributable to the value of the property to which paragraph (2)(f) refers, a sum (not exceeding the amount so attributable) equal to so much of the tax paid—
 - (i) as became payable before the person’s death, and
 - (ii) as is attributable to the value disregarded under paragraph (3)(a), and
 - (b) so much of the value transferred by the transfer of value to which paragraph (2)(a) refers as is attributable to the property to which paragraph (2)(f) refers shall (except in relation to chargeable transfers which were chargeable to tax, when made by the person, for the purposes of an occasion which occurred before the person’s death on which tax was chargeable under section 64 or 65 of the Inheritance Tax Act 1984 (charge at ten year anniversary and charge at other times in relation to settlements without interests in possession)) be treated as reduced to a nil amount for all the purposes of the Inheritance Tax Act 1984.
- (5) Where the amount calculated under paragraph (3)(a) is less than the amount calculated under paragraph (3)(b) the value of the property to which paragraph (2)(f) refers shall be reduced to a nil amount for all the purposes of the Inheritance Tax Act 1984.
- (6) In this regulation, “relevant property” and “the chargeable proportion” have the meanings given in paragraph 21 of Schedule 15 to the Finance Act 2004.

Jim Murphy
Nick Ainger

16th March 2005

Two of the Lords Commissioners of Her Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made pursuant to Schedule 15 of the Finance Act 2004 (c.12) which provides for an income tax charge in relation to the benefit enjoyed by taxpayers in certain circumstances from continuing to enjoy assets they formerly owned.

Regulation 1 provides for citation and commencement.

Regulation 2 prescribes the valuation date.

Regulation 3 prescribes the rate of interest to be used to determine the monetary benefit of assets enjoyed.

Regulation 4 makes provision for a five yearly rather than an annual valuation of land and chattels.

Regulation 5 provides for exemptions from the charge.

Regulation 6 makes provision for the avoidance of a double charge where an inheritance tax charge also arises.

These Regulations do not impose new costs on businesses or charities.

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