Draft Order laid before the House of Commons under paragraph 2 of Schedule 7 to the Scotland Act 1998, for approval by resolution of that House.

D R A F T S T A T U T O R Y I N S T R U M E N T S

2015 No.

INCOME TAX

The Scottish Rate of Income Tax (Consequential Amendments) Order 2015

Made - - - - ***

Coming into force in accordance with article 1

A draft of this Order was laid before and approved by the House of Commons in accordance with paragraphs 1 and 2 of Schedule 7 to the Scotland Act 1998(**a**).

The Treasury, in exercise of the powers conferred by section 80G(1A) and (2) of the Scotland Act 1998(**b**), makes the following Order:

Citation, commencement and effect

1.—(1) This Order may be cited as the Scottish Rate of Income Tax (Consequential Amendments) Order 2015 and comes into force on the day after the day on which it is made.

(2) The amendments made by this Order have effect in relation to the tax year appointed by the Treasury under section 25(5) of the Scotland Act 2012 and subsequent tax years.

Registered pension schemes: relief at source

2. The Finance Act 2004(**c**) is amended as follows.

3.—(1) Section 192(**d**) (relief at source) is amended as follows.

(2) In subsection (1) for "at the basic rate for the tax year in which the payment is made" substitute "at the relevant rate".

(3) After subsection (1) insert—

"(1A) For the purposes of this section and sections 192A and 192B "the relevant rate" is—

(**a**) 1998 c. 46. Paragraph 1 of Schedule 7 was amended by paragraph 16(10)(b) of Schedule 38 to the Finance Act 2014 (c. 26).

(**b**) Section 80G was inserted by section 25(3) of the Scotland Act 2012 (c. 11) and amended by paragraph 16 of Schedule 38 to the Finance Act 2014.

(**c**) 2004 c. 12; section 192(4) was substituted by paragraph 11 of Schedule 2 to the Finance Act 2009 (c. 10).

(**d**) Section 192(4) was substituted by paragraph 11 of Schedule 2 to the Finance Act 2009 (c. 10) and section 192(5) was repealed by Part 1 of Schedule 3 to the Income Tax Act 2007 (c. 3).

(a) if the Commissioners for Her Majesty's Revenue and Customs so notify the scheme administrator, the Scottish basic rate for the tax year in which the payment is made; and

(b) the basic rate for that tax year in all other cases.".

(4) In subsection (4) for "or the additional rate" substitute ", the Scottish higher rate, the additional rate or the Scottish additional rate".

(5) After subsection (10) insert—

"(11) Subsection (10) does not apply to prevent the giving of relief in respect of the contribution in accordance with subsection 192A.".

4. After section 192 insert—

"Relief at source: additional relief

192A.—(1) An individual to whom relief is given in accordance with section 192 in respect of a contribution is entitled to a tax reduction for the tax year in which the payment of the contribution is made if the conditions in subsection (2) or (4) are met.

(2) The conditions are that—

(a) the relevant rate is the basic rate for the tax year in which the payment of the contribution is made,

(b) the individual is a Scottish taxpayer for that tax year, and

(c) the Scottish basic rate for that tax year is higher than the basic rate.

(3) If the conditions in subsection (2) are met, the amount of the tax reduction is an amount equal to the difference between the amount of relief which would have been given if the relevant rate were the Scottish basic rate for the tax year in which the payment is made and the amount of relief given under section 192.

(4) The conditions are that—

(a) the relevant rate is the Scottish basic rate for the tax year in which the payment of the contribution is made,

(b) the individual is not a Scottish taxpayer for that tax year, and

(c) the basic rate for that tax year is higher than the Scottish basic rate.

(5) If the conditions in subsection (4) are met, the amount of the tax reduction is an amount equal to the difference between the amount of relief which would have been given if the relevant rate were the basic rate for the tax year in which the payment is made and the amount of relief given under section 192.

(6) A tax reduction under this section is given effect at Step 6 of the calculation in section 23 of ITA 2007(**a**).

Relief at source: excessive relief given

192B.—(1) If relief is given to an individual in accordance with section 192 in respect of a contribution and the conditions in subsection (2) or (4) apply, an amount of excessive relief given is treated as an amount of tax for which the individual is liable for the tax year in which the payment of the contribution is made.

(2) The conditions are that—

(a) the relevant rate is the basic rate for the tax year in which the payment of the contribution is made,

(b) the individual is a Scottish taxpayer for that tax year, and

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(**a**) Section 280(1) of the Finance Act 2004 provides that in Part 4 of that Act "ITA 2007" means the Income Tax Act 2007.

(c) the Scottish basic rate for that tax year is lower than that rate.

(3) If the conditions in subsection (2) apply, the amount of excessive relief given is an amount equal to the difference between the amount of relief given and the amount of relief which would have been given if the relevant rate were the Scottish basic rate for the tax year in which the payment is made.

(4) The conditions are that—

(a) the relevant rate is the Scottish basic rate for the tax year in which the payment of the contribution is made,

(b) the individual is not a Scottish taxpayer in that tax year, and

(c) the basic rate for that tax year is lower than the Scottish basic rate.

(5) If the conditions in subsection (4) apply, the amount of excessive relief given is an amount equal to the difference between the amount of relief given and the amount of relief which would have been given if the relevant rate were the basic rate for the tax year in which the payment is made.

(6) An amount of excessive relief treated as an amount of tax under this section is added at Step 7 of the calculation in section 23 of ITA 2007.".

5.—(1) The Income Tax Act 2007(**a**)is amended as follows.

(2) In section 26(**b**) (tax reductions), in subsection (1), in paragraph (a), after "section 353(1A) of ICTA (relief for interest on loan to buy life annuity)," insert "section 192A of FA 2004 (relief at source: additional relief),".

(3) In section 30(**c**) (additional tax), in subsection (1), after "Chapter 8 of Part 10 of ITEPA2003(**d**) (high income child benefit charge)," insert "section 192B of FA 2004 (relief at source: excessive relief given),".

6. In the Registered Pension Schemes (Relief at Source) Regulations 2005(**e**), in regulation 2 (interpretation), in paragraph (2), in the definition of "net contribution", for "the basic rate" substitute "the relevant rate".

Amendments to the Finance Act 2004

7.—(1) The Finance Act 2004 is amended as follows.

(2) In section 227(**f**) (annual allowance charge), in subsection (4A)—

(a) in paragraph (a) after "the basic rate" in the first place it occurs, insert "or, in the case of a Scottish taxpayer, the Scottish basic rate";

(b) in paragraph (b) after "the higher rate" in the first place it occurs, insert "or, in the case of a Scottish taxpayer, the Scottish higher rate"; and

(c) in paragraph (c) after "the additional rate", insert "or, in the case of a Scottish taxpayer, the Scottish additional rate".

(3) In section 237B(**g**) (liability of scheme administrator for annual allowance charge), in subsection (4)—

(a) in paragraph (a)—

(**a**) 2007.c. 3.

(**b**) Section 26(1)(a) was amended by paragraph 6(o)(ii) of Schedule 1 to the Finance Act 2009, paragraph 8 of Schedule 6 and paragraph 32(2)(a) of Schedule 39 to the Finance Act 2012 (c. 14), and section 11(3) of and paragraph 6 of Schedule 11 to the Finance Act 2014.

(**c**) Section 30(1) was amended by section 8(a) of and paragraph 83 of Schedule 16 to the Finance Act 2011 (c. 11), and section 6(3) of the Finance Act 2012.

(**d**) Section 1017 of the Income Tax Act 2007 provides that in that Act "ITEPA 2003" means the Income Tax (Earnings and Other Income) Act 2003 (c. 1).

(**e**) S.I. 2005/3448, amended by S.I. 2009/56. There are other amending instruments but none is relevant.

(**f**) Section 227(4A) was inserted by section 3(4) of the Finance Act 2011 and amended by paragraph 63(5) of Schedule 1 to the Taxation of Pensions Act 2014 (c. 30).

(**g**) Section 237B was inserted by paragraph 15 of Schedule 17 to the Finance Act 2011.

(i) after "the additional rate" in the first place it occurs, insert "or the Scottish additional rate"; and

(ii) after "the additional rate" in the second place it occurs, insert "or, in the case of a Scottish taxpayer, the Scottish additional rate,";

(b) in paragraph (b)—

(i) after "the higher rate" in the first place it occurs insert "or the Scottish higher rate"; and

(ii) after "the higher rate" in the second place it occurs insert "or, in the case of a Scottish taxpayer, the Scottish higher rate"; and

(c) in paragraph (c) after "basic rate" insert "or, in the case of a Scottish taxpayer, the Scottish basic rate".

(4) In section 280 (abbreviations and general index), in subsection (2) after the entry relating to "scheme sanction charge" insert—

"Scottish additional rate"	"section 6A of ITA 2007 (as applied by section 989 of that Act)"
"Scottish basic rate"	"section 6A of ITA 2007 (as applied by section 989 of that Act)"
"Scottish higher rate"	"section 6A of ITA 2007 (as applied by section 989 of that Act)"
"Scottish taxpayer"	"section 989 of ITA 2007".

Amendments to the Income Tax (Trading and Other Income) Act 2005

8. The Income Tax (Trading and Other Income) Act 2005(**a**) is amended as follows.

9.—(1) Section 539(**b**) (relief for deficiencies) is amended as follows.

(2) In subsection (1)(b) for "the higher rate or the dividend upper rate (or both)" substitute "one or more of the higher rate, the Scottish higher rate or the dividend upper rate".

(3) In subsection (5)—

(a) after the opening sentence, insert "If the individual is a Scottish taxpayer, instead of Step 3 carry out Steps 3A and 3B.";

(b) after Step 3 insert—

"Step 3A

If there is an amount of deficiency remaining after Step 1, attribute to the remaining amount of the deficiency an amount of the individual's income for the tax year which is liable at the higher of the Scottish higher rate and the higher rate, so far as is possible.

Step 3B

If there is an amount of deficiency remaining after Step 3A, attribute to the remaining amount of the deficiency an amount of the individual's income for the tax year which is liable at the lower of the Scottish higher rate and the higher rate, so far as is possible.";

(c) in Step 5—

(i) for "Assume that any income attributed to the deficiency at Step 3 is liable at the basic rate" substitute—

"Assume that any income liable at the higher rate and attributed to the deficiency at Step 3, Step 3A or Step 3B is liable at the basic rate"; and

(ii) at the end insert—

(**a**) 2005 c. 5.

(**b**) Section 539 was substituted by paragraph 539 of Schedule 1 to the Income Tax Act 2007 and subsection (5) was amended by paragraph 58 of Schedule 1 to the Finance Act 2008 (c. 9).

"Assume that any income liable at the Scottish higher rate and attributed to the deficiency at Step 3A or Step 3B is liable at the Scottish basic rate.".

10. In section 669(**a**) (reduction in residuary income: inheritance tax on accrued income), in subsection (3)(a)—

(a) for "or the higher rate" substitute ", the Scottish additional rate, the higher rate or the Scottish higher rate";

(b) in sub-paragraph (ii) after "the basic rate" insert "or, in the case of a Scottish taxpayer, at the Scottish basic rate".

11. In section 685A(**b**) (settlor-interested settlements), in subsection (3), after "the additional rate" insert "or, in the case of a Scottish taxpayer, at the Scottish additional rate".

12. In Schedule 4(**c**) (abbreviations and defined expressions), in the table in Part 2, after the entry relating to "sale proceeds of an animal" insert—

"Scottish additional rate"	"section 6A of ITA 2007 (as applied by section 989 of that Act"
"Scottish basic rate"	"section 6A of ITA 2007 (as applied by section 989 of that Act"
"Scottish higher rate"	"section 6A of ITA 2007 (as applied by section 989 of that Act"
"Scottish taxpayer"	"section 989 of ITA 2007".

Amendments to the Finance (No. 2) Act 2005

13. In the Finance (No. 2) Act 2005(**d**), in section 7 (charge to income tax on social security pension lump sum), in subsection (5)—

(a) in paragraph (c) after "the basic rate" in the second place it occurs, insert "or, if P is a Scottish taxpayer, the Scottish basic rate";

(b) in paragraph (d) after "the higher rate" in the second place it occurs, insert "or, if P is a Scottish taxpayer, the Scottish higher rate"; and

(c) in paragraph (e) after "the additional rate", insert "or, if P is a Scottish taxpayer, the Scottish additional rate".

Amendments to the Income Tax Act 2007

14.—(1) The Income Tax Act 2007 is amended as follows.

(2) In section 31(**e**) (calculating total income), in subsection (2), after "the basic rate" insert "or the Scottish basic rate".

(3) In section 55B(**f**) (entitlement to transferable tax allowance for married couples and civil partners)—

(**a**) Section 669(3)(a) was amended by paragraph 561 of Schedule 1 to the Income Tax Act 2007, paragraph 59 of Schedule 1 to the Finance Act 2008 and paragraph 21 of Schedule 2 to the Finance Act 2009.

(**b**) Section 685A was inserted by paragraph 6(1) of Schedule 13 to the Finance Act 2006 (c. 25) and subsection (3) was amended by paragraph 22 of Schedule 22 to the Finance Act 2009.

(**c**) Part 2 of Schedule 4 was amended by paragraph 63 of Schedule 1 to the Finance Act 2008 and Part 1 of Schedule 3 to the Corporation Tax Act 2009 (c. 4).

(**d**) 2005 c. 22; section 7(5) was amended by paragraph 24 of Schedule 2 to the Finance Act 2009.

(**e**) Section 31(2) was amended by paragraph 12 of Schedule 1 to the Finance Act 2008 and section 11(4) of the Finance Act 2014.

(**f**) Sections 55B and 55C were inserted by section 11(2) of the Finance Act 2014.

(a) in paragraph (b) of subsection (2) after "the basic rate," insert "the Scottish basic rate,"; and

(b) in subsection (3) after "the basic rate" insert "or, in the case of a Scottish taxpayer, the Scottish basic rate".

(4) In section 55C (election to reduce personal allowance), in paragraph (c) of subsection (1), after "the basic rate," insert "the Scottish basic rate,".

(5) In section 58 (meaning of "adjusted net income"), in subsection (2), at the end insert "or, in the case of a gift made by an individual who is a Scottish taxpayer for the tax year, by reference to the Scottish basic rate for the tax year".

(6) In section 414(**a**) (relief for gifts to charity), in paragraph (a) of subsection (2) for "income tax at the basic rate, and" substitute—

"income tax—

(i) at the Scottish basic rate if the individual is a Scottish taxpayer for that tax year, or

(ii) otherwise, at the basic rate, and".

(7) In section 415 (meaning of "grossed up amount"), at the end insert ", or, in the case of a gift made by an individual who is a Scottish taxpayer for that tax year, by reference to the Scottish basic rate for that tax year".

Name
Name

Date

Two of the Lords Commissioners of Her Majesty's Treasury

(**a**) Section 414(2) was amended by paragraph 20 of Schedule 1 to the Finance Act 2008 and paragraph 6 of Schedule 2 to the Finance Act 2009.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends certain provisions of the Income Tax Acts and the linked Registered Pensions Schemes (Relief at Source) Regulations 2005 (S.I. 2005/3448) ("the RAS regulations"). The amendments are made in consequence of the power of the Scottish Parliament to set a Scottish rate of income tax provided for in Part 4A of the Scotland Act 1998 (c. 46). The power is expected to be exercisable for the tax year 2016-2017 and subsequent tax years.

The Scottish rate of income tax is used to calculate the Scottish basic, higher and additional rates of income tax which apply to the non-savings income of a Scottish taxpayer. This Order makes amendments to take account of the potential for a difference between the Scottish basic, higher and additional rates on the one hand and the basic, higher and additional rates of income tax on the other.

Articles 3 to 6 deal with income tax relief at source for contributions to a registered pension in Part 4, Chapter 4 of the Finance Act 2004 (c. 12) ("FA 2004"). An individual is given relief on his contribution to a scheme by way of the scheme administrator adding a sum equal to income tax on the contribution at the basic rate which the scheme administrator claims from Her Majesty's Revenue and Customs ("HMRC"). Section 192 of FA 2004 is amended to provide that the scheme administrator must use the Scottish basic rate to arrive at the amount to be added to a contribution where so notified by HMRC (article 3(2) and (3)).

Articles 4 and 5 insert new sections 192A and 192B into FA 2004 so that an individual who is a Scottish taxpayer for the tax year in which a contribution is made receives relief at the Scottish basic rate even if he has received relief at source under amended section 192 at the basic rate, and so that an individual who is not a Scottish taxpayer receives relief at the basic rate even if he has received relief at source at the Scottish basic rate. New section 192A of FA 2004 provides for additional relief by way of a tax reduction where too little relief has been given under section 192 and new section 192B allows for excessive relief to be clawed back using the additional tax collection mechanism in section 30 of the Income Tax Act 2007 (c. 3) ("ITA"). Section 192 is also amended to provide that where a Scottish taxpayer's income is chargeable at the Scottish higher rate or Scottish additional rate, relief on the contribution is given at those rates (article 3(4)).

Article 7 makes amendments to sections 227 and 237B of FA 2004 which deal with the annual allowance charge applied where an individual's pension input amount exceeds the annual allowance for a tax year, to provide that, in the case of a Scottish taxpayer, the Scottish basic, higher and additional rates apply in calculating the charge.

Section 539 of the Income Tax (Trading and Other Income) Act 2005 (c. 5) ("ITTOIA") is amended to take account of income charged at the Scottish basic, higher and additional rates in calculating a tax reduction given if a deficiency arises when an individual's life insurance policy (or similar policy or contract) comes to an end.

Section 669 of ITTOIA, which provides for a reduction in the residuary income of a deceased's estate in certain circumstances, is amended so that it takes into account income charged at the Scottish higher rate or the Scottish additional rate as well as income charged at the higher rate or additional rate. It also provides for the amount of extra liability to be calculated by reference to the Scottish basic rate instead of the basic rate in the case of a Scottish taxpayer. Section 685A of ITTOIA, which provides for a tax credit where a person other than the settlor receives an annual payment from a settlor-interested trust, is amended: if the person is a Scottish taxpayer, the credit is calculated at the Scottish additional rate instead of the additional rate.

Article 10 amends section 7 of the Finance (No. 2) Act 2005 (c. 22), which imposes a charge to income tax where a person becomes entitled to a social security pension lump sum. It is amended to provide that in the case of a Scottish taxpayer the Scottish basic, higher and additional rates apply in calculating the amount of the charge instead of the basic, higher and additional rates.

Article 11(2) amends section 31 of ITA to include in the total income calculation income from which deduction is made at the Scottish basic rate. The provisions in ITA on the transferable tax allowance for married couples are amended to provide that an individual liable to tax at the Scottish basic rate is eligible for the tax reduction or to make an election to reduce his personal allowance. The amendments apply the Scottish basic rate in calculating the amount of the tax reduction in the case of a Scottish taxpayer (article 11(3)).

Sections 58, 414 and 415 of ITA dealing with relief for gifts to charity provide for the relief to be given at the Scottish basic rate instead of the basic rate if the individual is a Scottish taxpayer (article 11(5) to (7)).

A Tax Information and Impact Note covering this instrument was published on 14th March 2014 alongside Budget and is available at http://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins. It remains an accurate summary of the impacts that apply to this instrument.

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