

Schedule 6: Bill 7: Minor and consequential amendments

Overview

1. This Schedule makes minor and consequential amendments.

Part 8: Amendments for purposes connected with earlier tax law rewrite acts Income and Corporation Taxes Act 1988

2. Section 59(3) of ICTA has been repealed and not rewritten as it is unnecessary. See *Change 747* in Annex 1.

Q1. We welcome comments on the proposal not to rewrite section 59(3) of ICTA.
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Annex 1: Change 747: Section 59(3) of ICTA: Part 8: Schedule 6:

Section 59(1) of ICTA was rewritten in section 8 of ITTOIA and repealed. Section 59(2) of ICTA was repealed by ITTOIA without being rewritten as it did not appear to add anything to section 59(1), and if it did so add, there was no justification (see the Explanatory Note on section 8 of ITTOIA). Section 59(3) of ICTA (along with section 59(4) of ICTA) was, at that time, considered as a candidate for relocation; but since then it has been determined to be unnecessary.

The differences between section 8 of ITTOIA and section 59(3) are (in part at least) a result of consolidations having preserved, in section 59(3), wording from the Income Tax Act 1806 which appears to have been derived from a taxation Act of 1763/4 (4 Geo.3 c.2).

If section 59(3) of ICTA applies in addition to section 8 of ITTOIA, the effect of repealing section 59(3) without rewriting it would be to remove the answerability to tax of owners or occupiers who are neither in receipt of, nor entitled to, the profits.

Repealing section 59(3) would reflect the fact that there is no longer any justification for a person to be liable to tax on profits from markets, fairs, tolls, fisheries etc when the person would not be liable to tax in respect of any other business. (Section 59(3) only applies to profits of markets, fairs, tolls, fisheries etc.)

If, however, section 59(3) applies instead of section 8 of ITTOIA, the effect of repealing section 59(3) without rewriting it would be to impose liability on people entitled to the profits but who are not owners or occupiers and are not in receipt of the profits. It is difficult to formulate a set of circumstances in which a person might be within this description otherwise than by avoidable choice. That, coupled with the fact that there is no recent known reliance on section 59(3), suggests that its disappearance would be unlikely in practice to give rise to new liabilities to tax.

The final element of section 59(3) entitles the recipient of profits to deduct and retain the tax on them before passing them to the entitled person. If a business is not covered by section 59(3), there is no corresponding rule. It is not easy to identify what the rule adds to the general law. Equally, it is not easy to be sure that it has no application. So although this element of section 59(3) of ICTA is also considered unnecessary in practice, its repeal may in theory amount to a change in the law.

This change is in principle adverse to some taxpayers and favourable to others. But it is expected to have no practical effect as it is in line with generally accepted practice.