

Capital sums: effect of death, winding up and partnership changes. ITA67 s195B(3) and (6) and s293; CTA76 s21(1) and Sch1 par42; FA93 s10(1) 760.—(1) In this section, any references to tax paid or borne or payable or to be paid or borne by a person include, in cases where the income of an individual's spouse is deemed to be income of the individual, references to the income tax paid or borne, or payable or to be paid or borne, by the individual's spouse.

(2) Where a person on whom, by reason of the receipt of a capital sum, a charge is to be, or would otherwise be, made under section 757 dies or, being a body corporate, commences to be wound up—

(a) no sums shall be charged under that section on that person for any chargeable period subsequent to that in which the death takes place or the winding up commences, and

(b) the amount to be charged for the chargeable period in which the death occurs or the winding up commences shall be increased by the total amounts which but for the death or winding up would have been charged for subsequent chargeable periods.

(3) (a) In the case of a death, the personal representatives may, by notice in writing served on the inspector not later than 21 days after notice has been served on them of the charge to be made by virtue of this section, require that the tax payable out of the estate of the deceased by reason of the increase provided for by this section shall be reduced so as not to exceed the amount determined in accordance with paragraph (b).

(b) The amount referred to in paragraph (a) shall be the total amount of tax which would have been payable by the deceased or out of his or her estate by reason of the operation of section 757 in relation to the capital sum if, instead of the amount to be charged for the year in which the death occurs being increased by the whole amount of the sums charged for subsequent years, the several amounts to be charged for the years beginning with that in which the capital sum was received and ending with that in which the death occurred had each been increased by that whole amount divided by the number of those years.

(4) (a) In this subsection, “the relevant period” has the same meaning as in Part 43.

(b) Where, under Chapter 4 of Part 9 as modified by Part 43, charges under section 757 are to be made on 2 or more persons as being the persons for the time being carrying on a trade, and the relevant period comes to an end, subsection (2) shall apply in relation to the ending of the relevant period as it applies where a body corporate commences to be wound up.

(c) Where paragraph (b) applies—

(i) the additional sums which under subsection (2) are to be charged for the year in which the relevant period ends shall be aggregated and apportioned among the members of the partnership immediately before the ending of the relevant period according to their respective interests in the partnership profits at that time and each partner (or, if that partner is dead, his or her personal representatives) charged for his or her proportion, and

(ii) each partner (or, if that partner is dead, his or her personal representatives) shall have the same right to require a reduction of the total tax payable by him or her or out of his or her estate by reason of the increase provided for by this section as would have been exercisable by the personal representatives under subsection (3) in the case of a death, and that subsection shall apply accordingly but as if the reference to the amount of tax which would have been payable by the deceased or out of his or her estate in the event mentioned in that subsection were a reference to the amount of tax which would in that event have been paid or borne by the partner in question or out of his or her estate.