

CHAPTER 3 Purchased life annuities

Capital element in certain purchased annuities. ITA67 s239; CTA76 s140(1) and Sch2 Ptl par9; FA79 s28(4); FA96 s132(1) and Sch5 Ptl par1(10) and (11); FA97 s146(1) and Sch9 Ptl par1(15) 788.—(1) In this section—

“life annuity” means an annuity payable for a term ending with (or at a time ascertainable only by reference to) the end of a human life, whether or not there is provision for the annuity to end during the life on the expiration of a fixed term or on the happening of any event or otherwise, or to continue after the end of the life in particular circumstances;

“purchased life annuity” means a life annuity granted for a consideration in money or money's worth in the ordinary course of a business of granting annuities on human life.

(2) This section shall not apply to—

(a) any annuity which apart from this section would be treated for the purposes of the provisions of the Income Tax Acts relating to tax on annuities and other annual payments as consisting to any extent in the payment or repayment of a capital sum,

(b) any annuity purchased under or for the purposes of any sponsored superannuation scheme within the meaning of section 783 (1), or any scheme approved under section 784, or in pursuance of any obligation imposed or offer or invitation made under or in connection with any such scheme, or any other annuity purchased by any person in recognition of another's services (or past services) in any office or employment,

(c) any annuity payable under a substituted contract within the meaning of section 786 (3),

(d) any annuity where the whole or part of the consideration for the grant of the annuity consisted of sums satisfying the conditions for relief from tax under section 787, or

(e) any annuity purchased in pursuance of any direction in a will, or to provide for an annuity payable by virtue of a will or settlement out of income of property disposed of by the will or settlement (whether with or without resort to capital).

(3) A purchased life annuity (not being of a description excepted by subsection (2)) shall, for the purposes of the provisions of the Income Tax Acts relating to tax on annuities and other annual payments, be treated as containing a capital element and, to the extent of the capital element, as not being an annual payment or in the nature of an annual payment; but the capital element in such an annuity shall be taken into account in computing profits or gains or losses for other purposes of the Income Tax Acts in any circumstances in which a lump sum payment would be taken into account.

(4) In the case of any purchased life annuity to which this section applies—

(a) the capital element shall be determined by reference to the amount or value of the payments made or

other consideration given for the grant of the annuity,

(b) the proportion which the capital element in any annuity payment bears to the total amount of that payment shall be constant for all payments on account of the annuity,

(c) where neither the term of the annuity nor the amount of any annuity payment depends on any contingency other than the duration of a human life or lives, that proportion shall be the same proportion which the total amount or value of the consideration for the grant of the annuity bears to the actuarial value of the annuity payments as determined in accordance with subsection (5), and

(d) where paragraph (c) does not apply, that proportion shall be such as may be just, having regard to that paragraph and to the contingencies affecting the annuity.

(5) For the purposes of subsection (4)—

(a) any entire consideration given for the grant of an annuity and for some other matter shall be apportioned as appears just (but so that a right to a return of premiums or other consideration for an annuity shall not be treated for this purpose as a distinct matter from the annuity),

(b) where it appears that the amount or value of the consideration purporting to be given for the grant of an annuity has affected, or has been affected by, the consideration given for some other matter, the aggregate amount or value of those considerations shall be treated as one entire consideration given for both and shall be apportioned under paragraph (a) accordingly, and

(c) the actuarial value of any annuity payments shall be taken to be their value as at the date when the first of those payments begins to accrue, that value being determined by reference to the prescribed tables of mortality and without discounting any payment for the time to elapse between that date and the date it is to be made.

(6) Where a person making a payment on account of any life annuity has been notified in the prescribed manner of any decision as to its being or not being a purchased life annuity to which this section applies or as to the amount of the capital element, if any, and has not been notified of any alteration of that decision, the notice shall be evidence until the contrary is proved as to those matters for the purpose of determining the amount of income tax which the person is entitled or required to deduct from the payment, or for which the person is liable in respect of the payment.

(7) Where a person making a payment on account of a purchased life annuity to which this section applies has not been notified in the prescribed manner of the amount of the capital element, the amount of income tax which the person is entitled or required to deduct from the payment, or for which the person is liable in respect of it, shall be the same as if the annuity were not a purchased life annuity to which this section applies.

(8) Any person, other than a company which is within the charge to corporation tax, carrying on a business of granting annuities on human life shall be entitled to repayment of any income tax borne by that person by deduction or otherwise for any year of assessment up to the amount of income tax which, if this

section had not been enacted, that person would have been entitled to deduct and retain on making payments due in that year of assessment on account of life annuities and which in accordance with this section that person has not deducted.

(9) This section shall apply to life annuities whenever purchased or commencing, and the reference to section 787 in subsection (2)(d) shall be construed accordingly.