80

Pensions

80.1 Introduction
80.1.1 General
80.1.2 Privileges and Patterns
80.1.3 Types of Provision
80.1.4 Types of Benefit

80.2 Approved Retirement Benefit Schemes

80.3 FA 2004, Part 4 Rules
80.3.1 Introduction
80.3.2 Basic Concepts and Overview
80.3.3 Chapter 4, Sections 186–205 Registered Pension Schemes: Tax Reliefs and Exemptions

80.1 Introduction

80.1.1 General[65]

Few areas provide better examples of the problems of tax policy than pensions. Having decided that pension provision was a good thing and that tax advantages should be provided to encourage it, the UK legislature proceed to pile rule upon rule—and to widen existing rules. Change had to come, and so FA 2004 introduced new rules, which replaced all the old rules with one basic set and came into force on 1 April 2006. Amendments have been made each year since, with particularly significant changes made in FA 2011.

The legislation governing the tax treatment of pension income is found primarily in ITEPA 2003, Part 9. ITEPA 2003 provides one single chapter, Chapter 5A, on the taxation of benefits. Chapter 15A exempts certain lump sums. Other exemptions are to be found in Chapters 17 (any taxpayer) and 18 (non-residents).

80.1.2 Privileges and Patterns

Employees, with or without financial assistance from their employer, are encouraged to set money aside for retirement. Sums set aside under a scheme approved by HMRC will not be treated as income for the year in which they are so set aside, and the fund in

[65] There is much background literature on this topic, eg the papers from the British Association Economics Section printed in (2005) 26 *Fiscal Studies* 1–134, Pensions Commission, *Pensions: Challenges and Choices. The First Report of the Pensions Commission* (2004), an independent body established by the Government following the Pensions Green Paper of December 2002, the practical Reardon, *Zurich Pensions Handbook*, 9th edn (Pearson, 2004), and a major study for the World Bank—Mitchell, *Trends in Retirement Systems and Lessons for Reform* (World Bank, 1993). The Report of the Committee on the Taxation Treatment of Provisions for Retirement, Cmnd 9063 (1954) tells the story to 1954 and contains many proposals for reform, most of which were later implemented. Among broader books there is much of value and interest in Davis, *Pension Funds* (OUP, 1995) and Dilnot, Disney, Johnson and Whitehouse, *Pension Policy in the UK* (Institute for Fiscal Studies, 1994).

which the money is saved will usually be allowed to accumulate free of tax. In return for these privileges,[66] savers are taxed on their eventual pensions; income is spread forward to retirement years. This pattern of exemption for the sums saved and exemption for the income in the fund in return for eventual taxability of the pension (often reduced to 'EET'), may also be seen in some other countries. However, the UK has not had a pure EET since 1997, when pension funds lost the right to claim repayment of the tax credit on dividends.

It is in the interests of both the individuals and the state that people should save for retirement. In the UK the state provides a basic retirement pension. Employees qualify through payments of Class I NICs charged on employer and employee, although the pension is related to the number of years of contribution; the self-employed qualify by paying Class 2 NICs. The basic state pension is below the poverty line. Those who retire and have no other source of income rely on the state for supplementary, income-related (ie means-tested) benefits.

80.1.3 Types of Provision

There are two major types of pension provision—the terminal salary scheme (TSS) sometimes called 'defined benefit' (DB), and the money purchase scheme (MPS), sometimes called 'defined contribution' (DC).[67] These govern the size of the pot available for deployment on retirement, but in different ways. The TSS is tied to the value of the final salary (measured in various ways over various periods) and the maximum contributions are geared to the sums needed to meet this target. The MPS provides no limit on the pot available on retirement but has a ceiling on the amount which may be contributed each year. In the UK, until relatively recently, many occupational pension schemes were examples of the TSS, while personal pensions schemes and retirement annuities are examples of the MPS.

From a labour economist's point of view, there may be important differences between these two schemes. TSS (or DB) may

> sort stayers from quitters and help match stayers to long-tenure firms … strengthen worker-attachment firms, enabling investments of firm-specific skills … reward, through pay-back loading, high achievers at zero cost to the firm.[68]

The disadvantages include the need to provide long-term contracts and the requirement of a normal retirement age. There are also advantages and disadvantages for the employee, and general economic issues. Thus, does the investment policy of a defined benefit scheme become unnecessarily conservative? Given the great weight of money in these funds, what are the effects of rules which favour investment in equities rather than bonds, or vice versa, and what would be the consequences for capital markets of changing them?[69]

[66] On whether these incentives actually cost the government money, see Ruggeri and Fougere (1997) 18 *Fiscal Studies* 143.

[67] FA 2004, s 164 *et seq* and Sch 28.

[68] See Davis, *op cit*, ch 10.

[69] See, generally, Davis, *op cit*, ch 10.

80.1.4 Types of Benefit

The typical benefit payable is an annuity, which is to last for the life of the assured but may be for the life of that person and another (eg a surviving spouse). Under a TSS, the amount of the annuity is fixed by reference to the terminal salary retirement age; under an MPS, the annuity is fixed by the annuity rates prevailing at the relevant time. The present low interest rate environment has greatly reduced the payout levels and attractiveness of annuities, spurring recent moves to give retirees more flexibility over their pension pots. Under the general 'pension freedom' rule changes from 6 April 2015, it is now possible for those aged 55 or over to withdraw up to their entire pension fund in cash rather than as an annuity. The first 25% is tax-free, with the rest added to the taxpayer's income and thus taxed at his or her highest marginal tax rate. As a result, it will often be more tax efficient (and also more prudent) to spread the withdrawal over a number of years.

80.2 Approved Retirement Benefit Schemes

The major influence on the development of approved retirement benefit schemes has been the Civil Service model; basically, no one should get a better deal than civil servants.[70] This, perhaps cynical, view ignores the major influence the Civil Service model has had in improving levels of pension provision, especially since railway companies and other large commercial concerns of the 19th century used that model for their own schemes. Today schemes are governed by the rules in FA 2004, sections 149–284 (not rewritten) and secondary legislation. For earlier schemes, see the 5th edition of *Revenue Law*.

ITEPA 2003, section 570 states that the word 'pension' includes a pension which is paid voluntarily or is capable of being discontinued. The charge is on the full amount accruing during the year; the liability is on the person receiving or entitled to the pension.[71] FA 2004 does not rewrite this part of ITEPA 2003. The rules in Chapter 3 and 4 apply only if one of the more specific sets of rules later in the chapter do not. As from 2006, payments under all registered pension schemes are governed by ITEPA 2003, Part 9, Chapter 5A.

The term 'pension' has not been defined by statute or judicially; indeed, judges have refused to attempt such a definition. In *McMann v Shaw*,[72] a series of payments was held to be compensation for loss of office as opposed to a pension, the deciding factor being that they were not payments for services past or present—they were in fact payments to the former Borough Treasurer of Southall whose position was abolished under the London Government reorganisation in 1963, and the payments were made from the time the employee became redundant until he became entitled to a pension in respect of his previous service. In *Johnson v Holleran*,[73] it was held that retirement was not an essential condition for certain payments to be a pension, but that the former employment must have

[70] When the 'old code' of approval was brought in by FA 1921, the Revenue, in exercising their discretionary power to approve schemes, looked to the rules of the state schemes in deciding what might be accepted: hence, such rules as the maximum pension payable being 40/60ths of final salary became part of the code.

[71] ITEPA 2003, ss 571 and 572.

[72] [1972] 3 All ER 732, (1972) 48 TC 330.

[73] [1989] STC 1, (1989) 61 TC 428.

ceased. In *HMRC v Barclays Bank*,[74] the Bank had provided various services tax free to some of its pensioners. The Bank withdrew the concession and compensated the pensioners for their loss; the compensation payments were held to be relevant benefits and so chargeable under TA 1988, section 596A(1).

If the pension is payable under the rules of an approved scheme, whether or not an exempt approved scheme, it is charged to tax under ITEPA 2003, Part 9, Chapter 3 and so under PAYE.[75] Foreign pensions are chargeable under ITEPA 2003, Part 9, Chapter 4;[76] today, the chargeable amount is reduced by 10%; at one time the remittance basis applied.

Under the Civil Service superannuation arrangements introduced in 1973, the lump sum gratuity which had previously been discretionary was made payable as of right, and it was thought desirable to declare that lump sums payable on retirement were not taxable, whether or not payable as of right.[77] In this way the lump sum was assimilated to the proceeds of a life assurance policy. Tax-free status does not apply to an unjustified payment of compensation for early retirement unless due to ill-health; such a payment falls within ITEPA 2003, section 401.[78] Neither does it apply to unauthorised payments from a fund, or to payments after the cessation of tax exemptions.[79] The scheme in question must be an approved scheme, a statutory scheme or a foreign government scheme; or a funded, unapproved retirement benefits scheme where the lump sum is attributable to employer contributions to the scheme on which the employee has been charged to tax.[80] The sum may not exceed 3/80ths of final salary for each year of service up to 40.

If consideration is received for a restrictive covenant given in connection with an office or employment, past, present or future, there may be liability under ITEPA 2003, section 225. Sums payable for termination of the office may be chargeable under section 401 to the extent that they exceed £30,000. An ex-gratia lump sum payment given on retirement will now be regarded as a benefit provided by an unfunded, unapproved pension scheme and so be taxable in full.[81]

80.3 FA 2004, Part 4 Rules

From 6 April 2006 (known as 'A day'), the general tax rules on pensions changed dramatically. As from that date, there has been one set of, at times necessarily complex, rules instead of the eight or nine previously in force. What follows is an outline of the key features of

[74] [2006] EWHC 2118 (Ch), [2007] STC 74, considering the meaning of a relevant benefit for the purposes of TA 1988, ss 596A and 612.

[75] ITEPA 2003, s 683(3), ex TA 1988, s 597(1).

[76] ITEPA 2003, s 575(2), as amended by ITTOIA 2005, ex TA 1988, s 65(2).

[77] Ex TA 1988, s 189, rewritten as ITEPA 2003, Pt 9, Ch 16 and superseded by Ch 15A.

[78] Ex TA 1988, s 189(2) and Sch 11, para 4. A payment is justified if it is properly regarded as a benefit earned by past service.

[79] Ex TA 1988, s 600.

[80] Ex TA 1988, ss 189, 595, 596A(8).

[81] Exceptions are made for redundancy and compensation for loss of office, including the case of forced voluntary resignation, unless the employee does not belong to an approved scheme (see Statement of Practice SP 13/91); in such a case a lump sum ex-gratia payment may be made on retirement, but subject to normal Revenue limits and subject to a *de minimis* limit for which prior approval is not required.

the legislation. FA 2011 made some important changes to the FA 2004 rules, as discussed below.

80.3.1 Introduction

As can now be seen, the pension scheme rules had become so numerous and expansive that the whole structure was about to collapse under its own weight. Another report, a set of proposals and finally legislation—FA 2004—followed. One of the main attractions for the FA 2004 regime was that once it was in force, on 6 April 2006, all rights under existing schemes could be transferred across. This regime, as initially drafted, was generous, but it represented a new beginning. FA 2004 has been much amended by later Acts. These rules were not affected by the Rewrite and provide one example of income tax charges arising outside the three main income tax Acts.[82] The objective was simplification. The FA 2004 rules apply uniformly to all personal pension arrangements. All schemes must be registered (Part 4, Chapter 2).

80.3.1.1 Benefits

There is flexibility of benefits (Part 4, Chapter 3). So all pensioners are entitled to take up to 25% of their fund as a tax-free lump sum. Personal pension schemes have always allowed pensioners to take up to 25% of the value of the fund as a lump sum (retirement annuities were more generous still at 33.3%). However, the maximum lump sum for members of occupational schemes was a multiple of their pension—this is what changed. As just noted, under the 'pension freedom' rule changes from 6 April 2015, it is now possible for those aged 55 or over to withdraw up to their entire defined contribution pension fund in cash rather than as an annuity. The first 25% is tax-free, with the rest added to the taxpayer's income and thus taxed at his or her highest marginal tax rate.

There is also a greater flexibility of benefits then there once was when one considers the transition from work to retirement. Under FA 2004, one may draw a pension and still work. Again, this change is primarily of benefit to the members of occupational schemes. It was a condition of retiring from an occupational schemes that one retired—ie did not work—hence all the litigation in *Venables v Hornby*.[83] The self-employed were under no such restriction, as they could draw down their personal pension scheme benefits as required.

80.3.1.2 Contributions—Limit 1 (Total Value)

Tax reliefs and rules about maximum contributions are contained in Part 4, Chapter 4. Employers may deduct contributions to a registered pension scheme. There is, however, flexibility regarding contributions: the 2004 rules restrict tax relief for contributions in just two ways. First, there is a maximum lifetime contributions allowance: set initially at £1.5 million, it rose to £1.8 million in 2010, before it was cut back to £1.5 million again from 6 April 2012, £1.25 million from 6 April 2014 and £1 million from 6 April 2016. The allowance from 6 April 2020 is £1,073,100, and this amount is frozen until the end of the 2025–26 taxation year. This limit has caused some anguish for some people who would

[82] See ITA 2007, s 3(2), referring to FA 2004, Pt 4, Ch 7.
[83] [2003] UKHL 65, [2004] STC 84.

see themselves as moderately, rather than immoderately, well-off. It has to be said that the drop in interest rates and so the annuity rate means that £1 million generates a lower pension now than it would have done in 2000; this was one of the main reasons behind the 'pensions freedom' move in 2015, which allowed the over-55s to withdraw up to their entire pension fund as cash rather than purchase an annuity.

The calculation of the lifetime limit for those on defined benefit salary-linked schemes uses a different formula, generally multiplying the first-year pension by 20; so a pension of £50,000 gives a value of £1 million (and is safe), while one of £80,000 gives a value of £1.6 million (and becomes overfunded). It is also the case that sums generated in private pension schemes, where the old limitations were on the annual percentages of relevant earnings contribution not the value of the fund, could have grown above this figure. One solution was to retire before the new rules came in—as many of Her Majesty's judges felt compelled to do but for special treatment—or take advantage of the limited transitional rules.

80.3.1.3 Contributions—Limit 2 (Annual)

Secondly, there is an annual restriction on amounts added to the fund—this used to be a percentage (the basis allowance being 25%) of annual earnings but is now a simple annual sum. Originally £215,000, the annual allowance rose to £255,000 for 2010–11 before being cut back to £50,000 from 6 April 2011 and then £40,000 from 6 April 2014. If income excluding any pension contributions exceeds £150,000 the allowance is reduced by £1 for each £2 of 'adjusted' income (income plus pension contributions) between £150,000 and £210,000. The minimum allowance (for those earning £210,000 or more) is £10,000. Unused annual allowance from the previous three years may be carried forward if pension savings were made in those years. In considering whether this limit might be exceeded, it must be remembered that one can now put into the fund not only cash but also shares or land, the values of which may be matters of dispute.

80.3.1.4 Charge

A tax charge arises (FA 2004, Part 4, Chapter 5) once the value of the fund (not of the contributions) passes the lifetime allowance. A tax charge of 25% is imposed (to remove the benefit of the tax exemption on the lifetime allowance). If money is taken out of the fund in an unauthorised way—paid back to the member to bring the value of the fund down—a 55% charge is imposed to claw back the allowance. This may look severe, but there is nothing to stop the person adding further sums if the value of the fund drops below the lifetime allowance—and there will be further relief in that year.

80.3.2 Basic Concepts and Overview

FA 2004, Part 4, Chapter 1 (sections 149–152) defines basic concepts; Chapter 2 (sections 153–159D) covers the registration and de-registration of pension schemes; Chapter 3 (sections 160–185J) provides for the payments that may be made by registered pension schemes and related matters; Chapter 4 (sections 186–203) deals with tax reliefs and exemptions in connection with registered pension schemes; Chapter 5 (sections 204–242) imposes tax charges in connection with registered pension schemes;

Chapter 6 (sections 243–249) covers certain schemes that are not registered pension schemes; Chapter 7 (sections 250–274A) makes provisions regarding compliance; and Chapter 8 (sections 275–284) contains interpretation and other supplementary provisions.

80.3.3 Chapter 4, Sections 186–205 Registered Pension Schemes: Tax Reliefs and Exemptions

80.3.3.1 Exemption for Fund

Exemption from income tax is given to the scheme by section 186. The exempt income is that derived from investments or deposits held for the purposes of a registered pension scheme, or underwriting commissions applied for the purposes of a registered pension scheme, which would otherwise be chargeable to tax under ITTOIA 2005, Part 5, Chapter 8/ the miscellaneous loss rules in CTA 2010, section 91. Other parts of section 186 ensure that investments are widely defined and that the exemption covers relevant stock lending fees. The exemption does not apply where the investment or deposit is held as a member of a property investment LLP. The exemption from CGT is given by section 187, which amends TCGA 1992, section 271 and exempts gains accruing to a person on a disposal of investments held for the purposes of a registered pension scheme.

80.3.3.2 Relief for Members' Contributions

Relief for members' contributions is provided by section 188. The payments must be 'relievable pension contributions', ie anything not excluded by section 188(3) or (3A), such as payments after a person has reached the age of 75. Also excluded are contributions paid by an employer of the individual. A pension credit which increases the rights of the individual under the pension scheme is treated as a contribution on behalf of the individual only if it derives from a pension scheme that is not a registered pension scheme.[84]

Since the level of contributions is important, other rules go on to provide that certain sums are not treated as contributions for the purpose of FA 2004, Part 4. So one ignores transfers of sums representing accrued rights under a pension schemes.[85] Although the contributions will usually be in the form of money, section 195 allows the transfer of shares acquired under SAYE option schemes or under tax-advantaged share incentive schemes.

Other conditions for relief. The individual must be a relevant UK individual for the tax year, which means satisfying any one of four tests in FA 2004, section 189. The first is having 'relevant UK earnings' chargeable to income tax for that year. The second is being resident in the UK at some time during the year. The third is being resident in the UK both at some time during the five tax years immediately before that year and when the individual became a member of the pension scheme. The fourth is having general earnings from overseas Crown employment subject to UK tax. Section 189(2) then defines 'relevant UK earnings'; for discussion, see the related earned income concepts above at §7.8. Section 189(2) lists employment income, income which is chargeable under ITTOIA 2005, Part 2 derived

[84] FA 2004, s 188(4). In *HMRC v Sippchoice* [2020] UKUT 149 (TCC), the UK held that contributions 'paid' means paid in money; it does not encompass in specie contributions, even if made in satisfaction of an earlier obligation to contribute money, and notwithstanding HMRC guidance to the contrary.

[85] FA 2004, s 188(5).

immediately from the carrying on or exercise of a trade, profession or vocation (whether individually, or as a partner acting personally in a partnership), ITTOIA 2005, Part 3 income from furnished holiday letting businesses, and patent income of an individual in respect of inventions. Any income that is exempt from UK tax under double taxation agreements is not 'taxable in the UK'.

Section 190 annual limits. Carrying over from the stakeholder pension system, there is a basic amount of £3,600 which may be contributed. Otherwise, the limit is the amount of the individual's relevant UK earnings chargeable to income tax for the tax year. Relief is given either by deduction at source (section 192), or under a net pay agreement, ie by deduction from the relevant employment income (section 193). There is also provision for making a claim for deduction from total income (section 194).

Other rules provide relief for employer's contributions (section 196) and for the spreading of the relief in appropriate cases (sections 197–198); so section 197 directs, subject to exceptions, spreading over four years. The deductions are from profits taxed under ITTOIA 2005, Part 2 or, in the case of a company with investment business, as expenses of management under TA 1988, section 75 or under section 76, step 1 for an insurance company (sections 196 and 200). There is a separate rule allowing the deduction of sums required to be added to make good any deficiency in the scheme (section 199). Section 199A, added in 2008, allows certain indirect contributions, ie a payment of a contribution by someone other than the employer, to be spread in the same way.[86] Any minimum contributions made by the Revenue under the Pensions Schemes Act 1993, section 43 are grossed up (section 202).

80.3.3.3 Relevant Earnings

The definition of 'relevant earnings' uses many of the terms and expressions originally used in making the distinction between earned income and investment income, and still important for retirement annuity and personal pension relief calculations. Even though some of the rules were relaxed by FA 2004, the 'relevant earnings' used to calculate such entitlements still use broadly the same categories.[87] It is still important for identifying certain income of husband and wife and civil partners.[88] The distinction is not the same as that discussed in §7.7 above, ie between savings and other income for tax rate purposes; thus, income from land will be investment income, but is not savings income.

Relevant earnings are defined in three main categories, with one addition:[89]

(1) *Category I* is any employment income charged to tax under ITEPA 2003.[90] In *Dale v IRC*,[91] annuity payments to a trustee 'so long as he acts as trustee' were held by the House of Lords to be earned income. In that case the trustee was to receive the payments; the amount and value of the work actually done was irrelevant.[92] The Revenue argued that since a trustee was not at that time entitled to remuneration for

[86] Added by FA 2008, s 90.
[87] FA 2004, s 189(2), ex TA 1988, ss 623(2), 644.
[88] TA 1988, s 282A(4A): earned income cannot fall within s 282A.
[89] FA 2004, s 189(2), TA 1988, s 833(4); the list is supplemented in s 833(5), (6).
[90] FA 2004, s 189(2)(a).
[91] [1953] 2 All ER 671, 34 TC 468.
[92] 34 TC 468, 493 (*per* Lord Normand).

his services as distinct from the reimbursement of expenses, the annuity was a conditional gift. However, the House of Lords held that the income was earned, since the condition of the annuity was compliance with the testator's condition of serving as a trustee.

In *White v Franklin*,[93] dividends were held to be income earned from employment, provided they were a reward for services. However, this case was decided before the introduction of Schedule F in 1965, now ITTOIA 2005, Part 4, Chapter 3. The priority rules in ITTOIA 2005 make it clear that, in general, income taxed under ITEPA 2003 is not taxed under ITTOIA 2005, Part 4 (income from savings and investment); however, they go on to say that this does not apply to Chapter 3 (dividend income from UK-resident companies). It will be interesting to see how the courts get round this nonsense—if it ever comes to court.[94] In *White v Franklin*, the taxpayer (T) was assistant managing director of a company. T's mother and brother settled 50% of the issued share capital on trust to pay the income to the taxpayer, 'so long as he shall be engaged in the management of the company', with remainder to the mother and others. It was held that his income from the trust was earned income. The Commissioners had found that the settlement had been made as an inducement to T to remain with the company, and so the income accrued to him because, and not simply while, he was an active director.[95] It was also important that the trust held a large block of shares in the employing company, so that T's work would produce direct results. These, however, were matters of fact to support the inference that the purpose of the settlement was to keep T interested in the company, and was not simply an arrangement in a family settlement distributing income arising from family property to persons with certain qualifications.[96] This appears to be a borderline case.[97]

If a payment of income is not only in return for services but also for some other consideration, there can be no apportionment of the income so as to treat even a part of it as earned;[98] the question is one of the construction of the arrangement.

The TA 1988 definition of 'earned income' included any income from any property which is attached to or forms part of the employment of any office or employment of profit held by the individual. However, these words are not part of FA 2004, section 189(2). We may therefore exclude them for present purposes. Nevertheless, some see that *White v Franklin* may be justified on this basis. For details, see *Revenue Law*, 5th edition, at §7.8.2.

(2) *Category II* consists of any income which is charged under ITTOIA 2005, Part 2 (ex Schedule D) and immediately derived by the individual from a trade, profession or vocation carried on by him as an individual or as a partner personally acting in the partnership.[99] This has given rise to some 'nice' distinctions. The earnings will be

[93] [1965] 1 All ER 692, 42 TC 283, [1965] BTR 152.
[94] ITTOIA 2005, s 366(3); the rule may be dated back to 1965 and the start of Sch F.
[95] 42 TC 283, 284.
[96] [1965] 1 All ER 692, 699, 42 TC 283, 297.
[97] See Vinelott J in *O'Leary v McKinlay* [1991] STC 42, 53.
[98] *Hale v Shea* [1965] 1 All ER 155, 42 TC 260.
[99] See the comments of Lindsay J in *Koenigsberger v Mellor* [1993] STC 408, 414.

relevant only if the trade was carried on by the individual. In *Fry v Shiels Trustees*,[100] trustees legally owned and managed a business, the income of which was held for infant beneficiaries. It was held that the income was not earned since the profits were earned by the trustees, and so by individuals who certainly did not own them. A trustee-beneficiary would, in such circumstances, presumably be allowed to treat the income as earned and would be allowed to keep the benefit. In a similar vein, it has been held that income received as a name at Lloyds, ie as a member of a syndicate, was not 'relevant earnings' for pension purposes; the taxpayer's activities, which mostly involved deciding with which syndicate he would place his money, were preparatory to a trade which was, in fact, carried on by others on his behalf.[101]

Further difficulties have arisen from the requirement that the profit must be derived immediately from the business. An example is *Northend v White, Leonard and Corbin Greener*,[102] where interest accruing to a solicitor on money deposited at a bank on general deposit account was held to be investment income. The source was not the carrying-on of the profession but rather the loan deposit with the bank. This conclusion has been criticised.[103]

Today, income in the form of dividends may be earned income for ITTOIA 2005. This is because ITTOIA 2005, section 366 makes it clear that the Part 2 classification is to take priority over Part 4, Chapter 3 because statute contains a statutory provision that where shares are held as trading assets, the dividends arising from those shares are now treated as part of the trading profits of the business[104] and so may be earned income.

(3) *Category III* is income under ITTOIA 2005, Part 3 from carrying on a UK or EEA furnished holiday letting business.

(4) *Category IV* is patents.

[100] [1915] SC 159; 6 TC 583.

[101] *Koenigsberger v Mellor* [1993] STC 408.

[102] [1975] STC 317; 50 TC 121, the interest belonged to the solicitor thanks to Solicitors Act 1965, s 8(2).

[103] The decision in *Northend* rests on a statement by Pennycuick J in *Bucks v Bowers* [1970] 2 All ER 202, 46 TC 267, which may only be a dictum; the decision in that case was later reversed by statute.

[104] ITTOIA 2005, s 366, ex F(No 2)A 1997, s 24, which applied as from 2 July 1997.