



Income and Corporation Taxes Act 1988

1988 CHAPTER 1

PART IV

PROVISIONS RELATING TO THE SCHEDULE D CHARGE

CHAPTER II

INCOME TAX: BASIS OF ASSESSMENT ETC.

Cases I and II

60 Assessment on preceding year basis

- (1) Subject to the provisions of this section and sections 61 to 63, income tax shall be charged under Cases I and II of Schedule D on the full amount of the profits or gains of the year preceding the year of assessment.
- (2) Subsection (3) or (4) below shall apply where, in the case of a trade, profession or vocation, an account has, or accounts have, been made up to a date or dates within the period of three years immediately preceding the year of assessment.
- (3) If—
 - (a) an account was made up to a date within the year preceding the year of assessment, and
 - (b) that account was the only account made up to a date in that year, and
 - (c) it was for a period of one year beginning either—
 - (i) at the commencement of the trade, profession or vocation, or
 - (ii) at the end of the period on the profits or gains of which the assessment for the last preceding year of assessment was to be computed,the profits or gains of the year ending on that date shall be taken to be the profits or gains of the year preceding the year of assessment.

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- (4) If subsection (3) does not apply, the Board shall decide what period of 12 months ending on a date within the year preceding the year of assessment shall be deemed to be the year the profits or gains of which are to be taken to be the profits or gains of the year preceding the year of assessment.
- (5) Where—
- (a) the Board have given a decision under subsection (4) above, and
 - (b) it appears to them that, in consequence of that decision, income tax for the last preceding year of assessment in respect of the profits or gains from the same source should be computed on the profits or gains of a corresponding period, they may give a direction to that effect, and an assessment or, on a claim therefor, repayment of tax shall be made accordingly.
- (6) The decision whether or not to give a direction under subsection (5) above shall be subject to an appeal which shall lie to the General Commissioners unless the appellant elects (in accordance with section 46(1) of the Management Act) to bring it before the Special Commissioners, and the Commissioners hearing the appeal shall grant such relief, if any, as is just.
- (7) An appeal under subsection (6) above shall be brought within 30 days of receipt of notice of the decision, save that, if the decision is to give a direction and an assessment is made in accordance with the direction, the appeal against the decision shall be by way of an appeal against the assessment.
- (8) In the case of the death of a person who, if he had not died, would under subsections (2) to (5) above have become chargeable to income tax for any year, the tax which would have been so chargeable shall be assessed and charged on his executors or administrators, and shall be a debt due from and payable out of his estate.

61 Special basis at commencement of trade, profession or vocation

- (1) Subject to subsection (4) below, where the trade, profession or vocation has been set up and commenced within the year of assessment, the computation of the profits or gains chargeable to income tax under Case I or Case II of Schedule D shall be made either on the full amount of the profits or gains arising in the year of assessment or according to the average of such period, not being greater than one year, as the case may require and as may be directed by the inspector.
- (2) On an appeal to the General or Special Commissioners, the Commissioners shall have jurisdiction to review the inspector's decision under subsection (1) above.
- (3) Where the trade, profession or vocation has been set up and commenced within the year preceding the year of assessment, the computation of the profits or gains chargeable to income tax under Case I or Case II of Schedule D shall be made on the profits or gains for one year from its first being set up.
- (4) Subsections (1) to (3) above shall not apply in any case where section 113(1) and (2) apply but no election is made under section 113(2), but in such a case the computation of the profits or gains chargeable to income tax under Case I or II of Schedule D for the year of assessment in which the new trade, profession or vocation is treated as having been set up and commenced, and for each of the three years following that year of assessment, shall be made on the full amount of the profits or gains arising in the year of assessment in question.

62 Special basis for early years following commencement

(1) In this section —

“charged” means charged to income tax in respect of the profits or gains of a trade, profession or vocation;

“the second year of assessment” and “the third year of assessment” mean respectively the year next after, and the year next but one after, the year of assessment in which the trade, profession or vocation in question was set up and commenced; and

“the fifth year of assessment” and “the sixth year of assessment” mean respectively the year next but three after, and the year next but four after, the year of assessment in which the trade, profession or vocation in question was set up and commenced.

(2) Subject to subsection (4) below, the person charged, or liable to be charged, shall be entitled, on giving notice to the inspector within seven years after the end of the second year of assessment, to require that tax shall be charged for both the second year of assessment and the third year of assessment (but not for one or other only of those years) on the amount of the profits or gains for each such year respectively.

(3) A notice under subsection (2) above may be revoked by the person who gave it by notice given to the inspector within six years after the end of the third year of assessment and, where it is so revoked, tax shall be charged for both the second year of assessment and the third year of assessment as if the first notice had never been given.

(4) Subsections (2) and (3) above shall not apply in any case where—

(a) section 113(1) and (2) apply and the change in the persons engaged in carrying on the trade, profession or vocation in partnership occurs after 19th March 1985; but

(b) no election is made under section 113(2);

but in such a case the person charged, or liable to be charged, shall be entitled, on giving notice to the inspector within seven years after the end of the fifth year of assessment, to require that tax shall be charged for both the fifth year of assessment and the sixth year of assessment (but not for one or other only of those years) on the amount of the profits or gains for each such year respectively.

(5) A notice under subsection (4) above may be revoked by the person who gave it by notice given to the inspector within six years after the end of the sixth year of assessment and, where it is so revoked, tax shall be charged for both the fifth year of assessment and the sixth year of assessment as if the first notice had never been given.

(6) If at any time during the second or third year of assessment—

(a) a change occurs, by reason of retirement or death, in a partnership of persons engaged in the trade, profession or vocation, or the dissolution of the partnership as to one or more of the partners, or the admission of a new partner, in such circumstances that one or more of the persons who until that time were engaged in the trade, profession or vocation continue to be engaged in it; or

(b) a change occurs such that a person who until that time was engaged in the trade, profession or vocation on his own account continues to be engaged in it but as a partner in a partnership;

a notice given for the purposes of subsection (2) above must, if given after the occurrence of the change and after notice has been given as respects the change under

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section 113(2), comply with the requirements of subsection (7) or (8) below, as the case may require.

- (7) A notice given within 12 months after the end of the second year of assessment must be signed by—
- (a) each of the individuals who were engaged in the trade, profession or vocation at any time between the commencement of that year and the giving of the notice; or
 - (b) in the case of a deceased person, his personal representatives.
- (8) A notice given after the end of the third year of assessment must be signed by—
- (a) each of the individuals who were engaged in the trade, profession or vocation at any time during the second or third year of assessment; or
 - (b) in the case of a deceased person, his personal representatives.
- (9) In the case of the death of a person who, if he had not died, would under the provisions of this section have become chargeable to income tax for any year, the tax which would have been so chargeable shall be assessed and charged on his personal representatives, and shall be a debt due from and payable out of his estate.
- (10) There shall be made such assessments, reductions of assessments or, on a claim in that behalf, repayments of tax as may in any case be required in order to give effect to the preceding provisions of this section.

63 Special basis on discontinuance

- (1) Where in any year of assessment a trade, profession or vocation is permanently discontinued, then notwithstanding anything in sections 60 to 62—
- (a) the person charged or chargeable with income tax in respect thereof shall be charged for that year on the amount of the profits or gains of the period beginning on the 6th April in that year and ending on the date of the discontinuance, but subject to any deduction or set-off to which he may be entitled under section 385 in respect of any loss; and
 - (b) if the aggregate of the profits or gains (if any) of the years ending on the 5th April in each of the two years preceding the year of assessment in which the discontinuance occurs exceeds—
 - (i) the aggregate of the amounts on which that person has been charged for each of those two years; or
 - (ii) the aggregate of the amounts on which he would have been so charged if no deduction or set-off under section 385 had been allowed;
 he may be charged instead, for each of those two years, but subject to any such deduction or set-off, on the amount of the profits or gains of the year ending on the 5th April in that year.
- (2) Where a person has been charged with income tax otherwise than in accordance with subsection (1) above, any such assessment to tax, reduction or discharge of an assessment to tax, or on a claim therefor, repayment of tax shall be made as may be necessary to give effect to that subsection.
- (3) In the case of the death of a person who, if he had not died, would under the provisions of this section have become chargeable to income tax for any year, the tax which would have been so chargeable shall be assessed and charged on his executors or administrators, and shall be a debt due from and payable out of his estate.

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- (4) Subsection (1)(b) above shall not apply where a trade is permanently discontinued in consequence of the nationalisation of any property constituting the assets of the trade.

For the purposes of this subsection “nationalisation” means, in relation to any property, a transfer of the property for which provision is made by any Act passed after the beginning of August 1945 and embodying a scheme for the carrying on of any industry or part of an industry, or of any undertaking, under national ownership or control, being a transfer, as part of the initial putting into force of the scheme, either to the Crown or to a body corporate constituted for the purposes of the scheme or of some previous scheme for such national ownership or control.