

Status: Point in time view as at 31/07/1998.

Changes to legislation: Income and Corporation Taxes Act 1988, SCHEDULE 5 is up to date with all changes known to be in force on or before 14 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

SCHEDULES

SCHEDULE 5

Section 97.

TREATMENT OF FARM ANIMALS ETC. FOR PURPOSES OF CASE I OF SCHEDULE D

Farming: the general rule

- 1 (1) ^{M1}Subject to the provisions of this Schedule, in computing [^{F1}profits] under Case I of Schedule D, animals kept by a farmer for the purposes of his farming shall be treated as trading stock.
- (2) Animals forming part of production herds with respect to which an election under paragraph 2 below has effect shall not be so treated, but shall be treated instead in accordance with the rules set out in paragraph 3 below.
- (3) An election under paragraph 2 below is referred to in this Schedule as “an election for the herd basis”.

Textual Amendments

F1 Words in [Sch. 5 para. 1\(1\)](#) substituted (31.7.1998) by [Finance Act 1998 \(c. 36\), s. 46\(3\)\(a\)\(b\)](#), [Sch. 7 para. 1](#)

Marginal Citations

M1 Source—1970 Sch.6; 1973 s.35; 1984 s.48(6)-(9)

Farming: election for the herd basis

- 2 (1) An election for the herd basis shall apply to all production herds of a particular class kept by the farmer making the election, including herds which he has ceased to keep before, or first begins to keep after, the making of the election.
- (2) An election for the herd basis must be made in writing to the inspector, and must specify the class of herds to which it relates.
- (3) Subject to paragraphs 6 and 12 below, an election for the herd basis made by any farmer shall be valid only if it is made—
 - ^{F2}(a) in the case of an election by a person chargeable to income tax, not later than twelve months from the 31st January next following the qualifying year of assessment;
 - (b) in the case of an election on behalf of persons in partnership, not later than twelve months from the 31st January next following the year of assessment in which the qualifying period of account ends; and

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- (c) in the case of an election by a person chargeable to corporation tax, not later than two years from the end of the qualifying accounting period.]
- (4) An election for the herd basis made by any farmer shall be irrevocable and, subject to paragraph 6 below, shall have effect—
- [^{F3}(a) in a case falling within sub-paragraph (3)(a) above, for the qualifying year of assessment and all subsequent years;
- (b) in a case falling within sub-paragraph (3)(b) above, for the qualifying period of account and all subsequent periods of account; and
- (c) in a case falling within sub-paragraph (3)(c) above, for the qualifying accounting period and all subsequent accounting periods.]
- [^{F4}(5) Where, in a case falling within sub-paragraph (3)(a) above, the commencement year immediately precedes the qualifying year of assessment, sub-paragraph (4)(a) above shall have effect as if the reference to the qualifying year of assessment were a reference to the commencement year.
- (6) In this paragraph—
- “commencement year”, in relation to a person chargeable to income tax, means the year of assessment in which his trade is set up and commenced;
- “period of account”, in relation to persons in partnership, means any period for which accounts are drawn up;
- “qualifying accounting period”, in relation to a person chargeable to corporation tax, means the first accounting period during the whole or part of which it kept a production herd of the class in question;
- “qualifying period of account”, in relation to persons in partnership, means the first period of account during the whole or part of which those persons kept such a herd;
- “qualifying year of assessment”, in relation to a person chargeable to income tax, means the first year of assessment after the commencement year for which the amount of [^{F5}profits] or losses in respect of his farming is computed for tax purposes by reference to the facts of a period during the whole or part of which he kept such a herd.]

Textual Amendments

- F2** Words in Sch. 5 para. 2(3) substituted (with effect in accordance with s. 199(2) of the amending Act) by Finance Act 1994 (c. 9), **Sch. 19 para. 43(1)**
- F3** Sch. 5 para. 2(4)(a)-(c) substituted for para. 2(4)(a)(b) (with effect in accordance with s. 199(2) of the amending Act) by Finance Act 1994 (c. 9), **Sch. 19 para. 43(2)**
- F4** Sch. 5 para. 2(5)(6) inserted (with effect in accordance with s. 199(2) of the amending Act) by Finance Act 1994 (c. 9), **Sch. 19 para. 43(3)**
- F5** Words in Sch. 5 para. 2(6) substituted (31.7.1998) by Finance Act 1998 (c. 36), **s. 46(3)(a)(b)**, Sch. 7 para. 1

- 3 (1) Where an election for the herd basis has effect, the consequences for the purposes of computing [^{F6}profits] under Case I of Schedule D shall be as provided by this paragraph.

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- (2) The initial cost of the herd and, subject to the provisions of this paragraph as to replacements, the cost of any animal added to the herd shall not be deducted as an expense and the value of the herd shall not be brought into account.
- (3) Where an animal which has theretofore been treated as part of the farmer's trading stock is added to the herd otherwise than by way of replacement, there shall be included as a trading receipt—
 - (a) in the case of an animal bred by the farmer, a sum equal to the cost of breeding it and rearing it to maturity; and
 - (b) in any other case, a sum equal to the initial cost to the farmer of acquiring the animal, together with any cost incurred by him in rearing it to maturity.
- (4) Where an animal (the "first animal") forming part of the herd dies, or ceases to form part of the herd, and is replaced in the herd by another animal (the "second animal")—
 - (a) any proceeds of sale of the first animal shall be included as a trading receipt; and
 - (b) the cost of the second animal, except in so far as that cost consists of such costs as are allowable apart from the provisions of this Schedule as deductions in computing [^{F6}profits] of farming under Case I of Schedule D, shall, subject to sub-paragraphs (5) and (6) below, be deducted as an expense.
- (5) Where the second animal is of better quality than the first animal, the amount deducted shall not exceed the amount which it would have been necessary to expend in order to acquire an animal of the same quality as the first animal.
- (6) Where the first animal was slaughtered by the order of any Ministry, government department or local or public authority under the law relating to diseases of animals, and the second animal is of worse quality, the amount included as a trading receipt shall not exceed the amount allowable as a deduction.
- (7) Where the herd is sold as a whole, and another production herd of the same class is acquired, sub-paragraphs (1) to (6) above shall apply as though there had been sold from, and replaced in, the original herd a number of animals equal to the number in the original herd or in the newly acquired herd, whichever is the less.
- (8) Subject to sub-paragraph (9) below, if (either all at once or over a period not exceeding 12 months) either—
 - (a) the whole of a herd is sold in circumstances in which sub-paragraph (7) above does not apply, or
 - (b) a part of a herd is sold on a substantial reduction being made in the number of animals in the herd,any profit or loss arising from the transaction shall not be taken into account.
- (9) Where within five years of the sale the seller acquires or begins to acquire another production herd of the class in question or, as the case may be, acquires or begins to acquire animals to replace the part of the herd in question—
 - (a) sub-paragraphs (4) to (7) above shall apply to the acquisition or replacement, except that, if the sale was one which the seller was compelled to effect by causes wholly beyond his control, the amount included as a trading receipt in respect of any animal sold which is replaced by an animal of worse quality shall not exceed the amount allowable as a deduction in respect of that animal of worse quality; and

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- (b) for the purpose of the application of those sub-paragraphs, the proceeds of sale of the animals comprised in the original herd or part of a herd shall be brought into account as if they had been respectively received at the times of the corresponding acquisitions.
- (10) If an animal forming part of the herd is sold, and none of sub-paragraphs (4) to (9) above applies, any profit or loss arising from the transaction shall be included or deducted, as the case may be; and for the purposes of this sub-paragraph, that profit or loss shall be computed by comparing with the proceeds of sale—
 - (a) in the case of an animal bred by the farmer, the cost of breeding it and rearing it to maturity; and
 - (b) in any other case, a sum equal to the initial cost to the farmer of acquiring the animal (or in the case of an animal acquired otherwise than for valuable consideration, its market value when the farmer acquired it) together, in both cases, with any cost incurred by him in rearing it to maturity.
- (11) Where the herd is sold as a whole, and another production herd of the same class is acquired, and the number of animals in the newly acquired herd is less than the number in the original herd, then, if the difference is not substantial, sub-paragraphs (8) and (9) above shall not apply, and sub-paragraph (10) above shall apply to a number of animals in the original herd equal to the difference.
- (12) The preceding provisions of this paragraph shall apply in relation to the death or destruction of animals as they apply in relation to their sale, as if any insurance or compensation moneys received by reason of the death or destruction were proceeds of sale, and any reference in this paragraph to the proceeds of sale of an animal includes a reference to any proceeds of sale of its carcase or any part of its carcase.

Textual Amendments

F6 Words in *Sch. 5 para. 3(1)(4)(b)* substituted (31.7.1998) by *Finance Act 1998 (c. 36), s. 46(3)(a)(b)*, *Sch. 7 para. 1*

Farming: provisions applicable to special cases

- 4 A farmer who, having kept a production herd of a particular class, ceases altogether to keep herds of that class for a period of at least five years shall, as respects production herds kept by him after the end of that period, be treated as if he had never kept any production herds of that class before the end of that period.
- 5 (1) Where a farmer transfers to another person all or any of the animals which form part of a production herd otherwise than by way of sale or by way of sale but for a price other than that which they would have fetched if sold in the open market, and either—
 - (a) the transferor is a body of persons over whom the transferee has control or the transferee is a body of persons over whom the transferor has control or both the transferor and the transferee are bodies of persons and some other person has control over both of them; or
 - (b) it appears with respect to the transfer, or with respect to transactions of which the transfer is one that the sole or main benefit, or one of the main benefits, which (apart from the provisions of this paragraph) might have

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been expected to accrue to the parties or any of them was a benefit resulting from—

- (i) the obtaining of a right to make an election for the herd basis, or
- (ii) such an election having effect or ceasing to have effect, or
- (iii) such an election having a greater effect or a less effect;

the like consequences shall ensue, in relation to all persons concerned, for the purpose of computing [^{F7}profits] under Case I of Schedule D as would have ensued if the animals had been sold for the price which they would have fetched if sold in the open market.

- (2) In this paragraph “body of persons” includes a partnership, and “control” has the meaning given by section 840.

Textual Amendments

- F7** Words in [Sch. 5 para. 5\(1\)](#) substituted (31.7.1998) by [Finance Act 1998 \(c. 36\), s. 46\(3\)\(a\)\(b\)](#), [Sch. 7 para. 1](#)

- 6 (1) Where the whole or a substantial part of a production herd kept by a farmer for the purposes of his farming is slaughtered by the order of any Ministry, government department or local or public authority under the law relating to the diseases of animals in such circumstances that compensation is payable in respect of it, an election for the herd basis thereupon made by the farmer in relation to that herd and any other production herds of the same class so kept by him shall, subject to sub-paragraph (2) below, be valid notwithstanding that it is not made within the time required by paragraph 2(3) above.

[^{F8}(2) An election for the herd basis made by virtue of sub-paragraph (1) above shall only be valid if made—

- (a) in the case of an election by a person chargeable to income tax, not later than twelve months from the 31st January next following the qualifying year of assessment;
- (b) in the case of an election on behalf of persons in partnership, not later than twelve months from the 31st January next following the year of assessment in which the qualifying period of account ends; and
- (c) in the case of an election by a person chargeable to corporation tax, not later than two years from the end of the qualifying accounting period.

(3) An election for the herd basis made by virtue of sub-paragraph (1) above shall, notwithstanding paragraph 2(4) above, have effect—

- (a) in a case falling within sub-paragraph (2)(a) above, for the qualifying year of assessment and all subsequent years;
- (b) in a case falling within sub-paragraph (2)(b) above, for the qualifying period of account and all subsequent periods of account; and
- (c) in a case falling within sub-paragraph (2)(c) above, for the qualifying accounting period and all subsequent accounting periods.

(4) In this paragraph—

“period of account”, in relation to persons in partnership, means any period for which accounts are drawn up;

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“qualifying accounting period”, in relation to a person chargeable to corporation tax, means the first accounting period in which the compensation is relevant;

“qualifying period of account”, in relation to persons in partnership, means the first period of account in which the compensation is relevant;

“qualifying year of assessment”, in relation to a person chargeable to income tax, means the first year of assessment for which the amount of [^{F9}profits] or losses in respect of his farming falls to be computed for tax purposes by reference to the facts of a period in which the compensation is relevant.]

- (5) For the purposes of this paragraph, compensation shall be deemed to be relevant in any period if, but only if, it falls (or would but for an election under this paragraph fall) to be taken into account as a trading receipt in computing the [^{F9}profits] or losses of that or an earlier period.

Textual Amendments

- F8** Sch. 5 para. 6(2)-(4) substituted (with effect in accordance with s. 199(2) of the amending Act) by Finance Act 1994 (c. 9), **Sch. 19 para. 43(4)**
- F9** Words in Sch. 5 para. 6(4)(5) substituted (31.7.1998) by Finance Act 1998 (c. 36), s. 46(3)(a)(b), **Sch. 7 para. 1**

Exclusion of working animals, and interpretation of preceding provisions

- 7 Nothing in this Schedule applies to any animals kept wholly or mainly for the work they do in connection with the carrying on of the farming.
- 8 (1) In this Schedule “herd” includes a flock, and any other collection of animals however named.
- (2) For the purposes of this Schedule, immature animals kept in a herd shall not be treated as forming part of the herd unless—
- (a) the land on which the herd is kept is such that animals which die or cease to form part of the herd cannot be replaced except by animals bred and reared on that land; and
 - (b) the immature animals in question are bred in the herd, are maintained in the herd for the purpose of replacement, and are necessarily maintained for that purpose;
- and references in this Schedule to herds shall be construed accordingly.
- (3) References in this Schedule to an animal being added to a herd include references to an immature animal which is kept in the herd becoming a mature animal except that not more immature animals shall be treated as forming part of a herd than are required to prevent a fall in the numbers of the herd.
- (4) Female animals shall be treated for the purposes of this Schedule as becoming mature when they produce their first young.

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- (5) In this Schedule “a production herd” means, in relation to a farmer, a herd of animals of the same species (irrespective of breed) kept by him wholly or mainly for the sake of the products which they produce for him to sell, being products obtainable from the living animal.

In this sub-paragraph “products obtainable from the living animal” means—

- (a) the young of the animal, or
(b) any other product obtainable from the animal, not being a product obtainable only by slaughtering the animal itself.
- (6) For the purposes of this Schedule, production herds kept by a farmer shall be deemed to be of the same class if, and only if, all the animals kept in the herds are of the same species (irrespective of breed) and the products produced for him to sell for the sake of which (either wholly or mainly) the herds are kept by him are of the same kinds in the case of all the herds; and elections for the herd basis shall be framed accordingly.
- (7) Any reference in this Schedule to [F¹⁰profits] chargeable to tax under Schedule D includes a reference to [F¹⁰profits] which would be so chargeable if there were any such [F¹⁰profits] for the chargeable period in question.

Textual Amendments

F10 Words in Sch. 5 para. 8(7) substituted (31.7.1998) by Finance Act 1998 (c. 36), ss. 46(3)(a)(b), Sch. 7 para. 1

Application of preceding provisions to trades other than farming, creatures other than animals, and animals and creatures kept singly

- 9 (1) The preceding provisions of this Schedule shall, with the necessary adaptations, apply in relation to trades other than farming, and trades consisting only in part of farming as they apply in relation to farming, and references to farmers shall be construed accordingly.
- (2) Those provisions shall (both in relation to farming and in relation to other trades) apply in relation to living creatures other than animals as they apply in relation to animals.
- (3) Laying birds shall be treated for the purposes of this Schedule as becoming mature when they first lay.
- (4) The provisions of this Schedule shall (both in relation to farming and in relation to other trades) apply, with the necessary adaptations [F¹¹—
- (a) in relation to animals or other creatures kept singly as they apply in relation to herds; and
- (b) in relation to shares in animals or other creatures as they apply in relation to animals or other creatures themselves.]
- (5) Nothing in this Schedule shall apply in relation to any animal or other creature kept wholly or mainly for public exhibition or for racing or other competitive purposes.

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Textual Amendments

F11 Words in [Sch. 5 para. 9\(4\)](#) substituted (retrospectively) by [Finance Act 2000 \(c. 17\), s. 76\(2\)\(3\)](#)

Supplemental and saving

- 10 Where an election for the herd basis is made, every person carrying on any farming or other trade affected by the election shall, if required to do so by notice from the inspector, make and deliver to the inspector, within the time specified in the notice, such returns as to, and as to the products of, the animals or other creatures kept by him for the purposes of the trade as may be required by the notice.
- 11 Where an election for the herd basis has effect for any chargeable period after an assessment for that period has become final and conclusive, any such assessment or, on a claim therefor, repayment of tax shall be made as may be necessary to give effect to the election.
- 12 The validity of an election for the herd basis in force immediately before the commencement of this Schedule and made in pursuance of—
- (a) section 35 of the Finance Act 1973 on or after 25th July 1973 and before 6th April 1976, or
 - (b) section 48(6) to (9) of the Finance Act 1984,
- shall not be affected by the repeal of those sections by this Act.

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