



# Income Tax (Trading and Other Income) Act 2005

## 2005 CHAPTER 5

### PART 2

#### TRADING INCOME

### CHAPTER 1

#### INTRODUCTION

### 3 Overview of Part 2

- (1) This Part imposes charges to income tax under—
  - (a) Chapter 2 (the profits of a trade, profession or vocation which meet the territorial conditions mentioned in section 6),
  - (b) Chapter 17 (amounts treated as adjustment income under section 228), and
  - (c) Chapter 18 (post-cessation receipts that are chargeable under this Part).
- (2) Part 6 deals with exemptions from the charges under this Part.
- (3) See, in particular, the exemptions under sections 777 (VAT repayment supplements) and 778 (incentives to use electronic communications).
- (4) The charges under this Part apply to non-UK residents as well as UK residents but this is subject to sections [F16(1A), (2)] and (3) and 243(3) and (4) (charges on non-UK residents only on UK income).
- (5) The rest of this Part contains rules relevant to the charges to tax under this Part.
- (6) This section needs to be read with the relevant priority rules (see sections 2 and 4).

*Status: Point in time view as at 15/09/2016.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Part 2. (See end of Document for details)*

### Textual Amendments

- F1** Words in s. 3(4) substituted (with effect in accordance with s. 82 of the amending Act) by Finance Act 2016 (c. 24), s. 78(3) (and also with effect in accordance with Finance (No. 2) Act 2017 (c. 32), s. 39(1)(2))

## 4 Provisions which must be given priority over Part 2

- (1) Any receipt or other credit item, so far as it falls within—
- (a) Chapter 2 of this Part (receipts of trade, profession or vocation), and
  - (b) Chapter 3 of Part 3 so far as it relates to a UK property business, is dealt with under Part 3.
- (2) Any receipt or other credit item, so far as it falls within—
- (a) this Part, and
  - (b) Part 2, 9 or 10 of ITEPA 2003 (employment income, pension income or social security income), is dealt with under the relevant Part of ITEPA 2003.

## CHAPTER 2

### INCOME TAXED AS TRADE PROFITS

#### *Charge to tax on trade profits*

## 5 Charge to tax on trade profits

Income tax is charged on the profits of a trade, profession or vocation.

## 6 Territorial scope of charge to tax

- (1) Profits of a trade arising to a UK resident are chargeable to tax under this Chapter wherever the trade is carried on.
- [<sup>F2</sup>(1A) Profits of a trade of dealing in or developing UK land arising to a non-UK resident are chargeable to tax under this Chapter wherever the trade is carried on.]
- (2) Profits of a trade [<sup>F3</sup>other than a trade of dealing in or developing UK land] arising to a non-UK resident are chargeable to tax under this Chapter only if they arise—
- (a) from a trade carried on wholly in the United Kingdom, or
  - (b) in the case of a trade carried on partly in the United Kingdom and partly elsewhere, from the part of the trade carried on in the United Kingdom.
- [<sup>F4</sup>(2A) If the tax year is a split year as respects a UK resident individual, this section has effect as if, for the overseas part of that year, the individual were non-UK resident.]
- (3) This section applies to professions and vocations as it applies to trades.

*Status: Point in time view as at 15/09/2016.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Part 2. (See end of Document for details)*

### Textual Amendments

- F2** S. 6(1A) inserted (with effect in accordance with s. 82 of the amending Act) by [Finance Act 2016 \(c. 24\)](#), [s. 78\(1\)\(a\)](#) (and also with effect in accordance with [Finance \(No. 2\) Act 2017 \(c. 32\)](#), s. 39(1)(2))
- F3** Words in s. 6(2) inserted (with effect in accordance with s. 82 of the amending Act) by [Finance Act 2016 \(c. 24\)](#), [s. 78\(1\)\(b\)](#) (and also with effect in accordance with [Finance \(No. 2\) Act 2017 \(c. 32\)](#), s. 39(1)(2))
- F4** S. 6(2A) inserted (with effect in accordance with Sch. 45 para. 153(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 75](#)

### [<sup>F5</sup>6A Arrangements for avoiding tax

- (1) Subsection (3) applies if a person has entered into an arrangement the main purpose or one of the main purposes of which is to obtain a relevant tax advantage for the person.
- (2) In subsection (1) the reference to obtaining a relevant tax advantage includes obtaining a relevant tax advantage by virtue of any provisions of double taxation arrangements, but only in a case where the relevant tax advantage is contrary to the object and purpose of the provisions of the double taxation arrangements (and subsection (3) has effect accordingly, regardless of anything in section 6(1) of TIOPA 2010).
- (3) The relevant tax advantage is to be counteracted by means of adjustments.
- (4) For this purpose adjustments may be made (whether by an officer of Revenue and Customs or by the person) by way of an assessment, the modification of an assessment, amendment or disallowance of a claim, or otherwise.
- (5) In this section “relevant tax advantage” means a tax advantage in relation to income tax to which the person is chargeable (or would without the tax advantage be chargeable) by virtue of section 6(1A).
- (6) In this section “tax advantage” includes—
  - (a) a relief or increased relief from tax,
  - (b) repayment or increased repayment of tax,
  - (c) avoidance or reduction of a charge to tax or an assessment to tax,
  - (d) avoidance of a possible assessment to tax,
  - (e) deferral of a payment of tax or advancement of a repayment of tax, and
  - (f) avoidance of an obligation to deduct or account for tax.
- (7) In this section—

“arrangement” (except in the phrase “double taxation arrangements”) includes any agreement, understanding, scheme, transaction or series of transactions, whether or not legally enforceable;

“double taxation arrangements” means arrangements which have effect under section 2(1) of TIOPA 2010 (double taxation relief by agreement with territories outside the United Kingdom).

*Status: Point in time view as at 15/09/2016.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Part 2. (See end of Document for details)*

### Textual Amendments

**F5** Ss. 6A, 6B inserted (with effect in accordance with s. 82 of the amending Act) by [Finance Act 2016 \(c. 24\), s. 78\(2\)](#) (and also with effect in accordance with [Finance \(No. 2\) Act 2017 \(c. 32\), s. 39\(1\)\(2\)](#))

## 6B Trade of dealing in or developing UK land

- (1) A non-UK resident person's "trade of dealing in or developing UK land" consists of—
  - (a) any activities falling within subsection (2) which the person carries on, and
  - (b) any activities from which profits arise which are treated under Part 9A of ITA 2007 as profits of the person's trade of dealing in or developing UK land.
- (2) The activities within this subsection are—
  - (a) dealing in UK land;
  - (b) developing UK land for the purpose of disposing of it.
- (3) In this section "land" includes—
  - (a) buildings and structures,
  - (b) any estate, interest or right in or over land, and
  - (c) land under the sea or otherwise covered by water.
- (4) In this section—
 

"disposal" is to be interpreted in accordance with section 517R of ITA 2007;

"UK land" means land in the United Kingdom.]

### Textual Amendments

**F5** Ss. 6A, 6B inserted (with effect in accordance with s. 82 of the amending Act) by [Finance Act 2016 \(c. 24\), s. 78\(2\)](#) (and also with effect in accordance with [Finance \(No. 2\) Act 2017 \(c. 32\), s. 39\(1\)\(2\)](#))

## 7 Income charged

- (1) Tax is charged under this Chapter on the full amount of the profits of the tax year.
- (2) For this purpose the profits of a tax year are the profits of the basis period for the tax year.
- (3) For the rules identifying the basis period for a tax year, see Chapter 15.
- (4) This section is subject to Part 8 (foreign income: special rules).
- (5) And, for the purposes of section 830 (meaning of "relevant foreign income"), the profits of a trade, profession or vocation arise from a source outside the United Kingdom only if the trade, profession or vocation is carried on wholly outside the United Kingdom.

## 8 Person liable

The person liable for any tax charged under this Chapter is the person receiving or entitled to the profits.

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### *Trades and trade profits*

#### **9 Farming and market gardening**

- (1) Farming or market gardening in the United Kingdom is treated for income tax purposes as the carrying on of a trade or part of a trade (whether or not the land is managed on a commercial basis and with a view to the realisation of profits).
- (2) All farming in the United Kingdom carried on by a person, other than farming carried on as part of another trade, is treated for income tax purposes as one trade.
- (3) In the case of farming carried on by a firm, this rule is explained by section 859(1).

#### **10 Commercial occupation of land other than woodlands**

- (1) The commercial occupation of land in the United Kingdom is treated for income tax purposes as the carrying on of a trade or part of a trade.
- (2) For this purpose the occupation of land is commercial if the land is managed—
  - (a) on a commercial basis, and
  - (b) with a view to the realisation of profits.
- (3) This section does not apply—
  - (a) to farming or market gardening (which is dealt with by section 9),
  - (b) if the land is being prepared for forestry purposes, or
  - (c) if the land comprises woodlands (which is dealt with by section 11).

#### **11 Commercial occupation of woodlands**

- (1) The commercial occupation of woodlands in the United Kingdom is not a trade or part of a trade for any income tax purpose.
- (2) For this purpose the occupation of woodlands is commercial if the woodlands are managed—
  - (a) on a commercial basis, and
  - (b) with a view to the realisation of profits.
- (3) See also sections 267 and 768 (which, when read with this section, secure that profits or losses from the commercial occupation of woodlands in the United Kingdom are ignored for income tax purposes).

#### **12 Profits of mines, quarries and other concerns**

- (1) Profits or losses arising out of land in the case of a concern to which this section applies are calculated as if the concern were a trade.
- (2) Any profits arising out of the land are charged to income tax as if the concern were a trade carried on in the United Kingdom.

But this does not impose a charge to tax on a non-UK resident in the case of a concern outside the United Kingdom.
- (3) Any losses arising out of the land are treated for the purposes of [F6Part 4 of ITA 2007](loss relief) as losses of a trade carried on in the United Kingdom.

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- (4) The concerns to which this section applies are—
- (a) mines and quarries (including gravel pits, sand pits and brickfields),
  - (b) ironworks, gasworks, salt springs or works, alum mines or works, waterworks and streams of water,
  - (c) canals, inland navigation, docks and drains or levels,
  - (d) rights of fishing,
  - (e) rights of markets and fairs, tolls, bridges and ferries,
  - (f) railways and other kinds of way, and
  - (g) a concern of the same kind as one specified in paragraph (b), (c), (d) or (e).
- (5) This section does not apply to a concern if section 10 (commercial occupation of land other than woodlands) applies to the occupation of the land out of which the profits or losses arise.

#### Textual Amendments

- F6** Words in s. 12(3) substituted (6.4.2007 with effect as noted in s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), ss. 1027, 1034, [Sch. 1 para. 494](#) (with transitional provisions and savings in [Sch. 2](#))

### 13 Visiting performers

- (1) This section applies if an entertainer, sportsman or sportswoman of a prescribed description (a “performer”)—
- (a) is non-UK resident in a tax year, and
  - (b) performs a relevant activity in the United Kingdom in the tax year.
- (2) If a payment or transfer connected with the relevant activity is made, the performer is treated for income tax purposes as performing the relevant activity in the course of a trade, profession or vocation carried on in the United Kingdom.
- (3) It does not matter whether the payment or transfer is made to the performer or anyone else.
- (4) Subsection (2) does not apply—
- (a) so far as the performer would otherwise be performing the relevant activity in the course of a trade, profession or vocation carried on in the United Kingdom, or
  - (b) if the relevant activity is performed in the course of an employment or office.
- (5) If a payment or transfer connected with the relevant activity is made to —
- (a) a person other than the performer, and
  - (b) that person is of a prescribed description,
- the payment or transfer is treated for income tax purposes as made instead to the performer in the course of a trade, profession or vocation carried on in the United Kingdom.
- (6) Subsection (5) does not apply in such circumstances as may be prescribed.
- (7) If—

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- (a) income tax is chargeable on profits arising from payments or transfers (made to any person), and
  - (b) the payments or transfers are connected with the relevant activity,
- the tax is charged as if the payments or transfers were received in the course of a separate trade, profession or vocation (distinct from any other trade, profession or vocation carried on by the performer).
- (8) In this section and section 14—
- <sup>F7</sup> .....
- “prescribed” means prescribed by regulations,  
“regulations” means regulations made by the Treasury,  
“relevant activity” means an activity of a prescribed description, and
- <sup>F7</sup> .....
- and a payment or transfer is connected with a relevant activity if it has a connection of the prescribed kind with that activity.
- [<sup>F8</sup>(9) In this section and section 14—
- (a) references to a payment include references to a payment by way of loan of money, and
  - (b) references to a transfer do not include references to a transfer of money but, subject to that, include references to—
    - (i) a temporary transfer (as by way of loan), and
    - (ii) a transfer of a right (whether or not a right to receive money).
- (10) This section does not apply to payments or transfers of a kind prescribed in regulations under section 966(6) of ITA 2007.]

#### Textual Amendments

- F7** S. 13(8) definitions of "payment" and "transfer" repealed (6.4.2007 with effect as noted in s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), ss. 1027, 1031, 1034, [Sch. 1 para. 495\(2\)](#), [Sch. 3 Pt. 1](#) (with transitional provisions and savings in [Sch. 2](#))
- F8** S. 13(9)(10) inserted (6.4.2007 with effect as noted in s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), ss. 1027, 1034, [Sch. 1 para. 495\(3\)](#) (with transitional provisions and savings in [Sch. 2](#))

## 14 Visiting performers: supplementary

- (1) Regulations may provide—
- (a) for the deduction, in calculating any profits of the performer arising from the payment or transfer, of expenses incurred by other persons in relation to the payment or transfer,
  - (b) that any liability to income tax (whether of the performer or anyone else) which would, apart from section 13(5), arise in relation to the payment or transfer is not to arise (or is to arise so far as prescribed).
- (2) Regulations may provide—
- (a) for the apportionment of profits between different trades, professions or vocations of the performer,

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- (b) for the apportionment between different tax years of the profits arising from relevant activities of the performer,
  - (c) for losses made in any trade, profession or vocation of the performer to be deducted from or set off against the profits of another trade, profession or vocation of the performer,
  - (d) that prescribed provisions of the Income Tax Acts about losses, or about expenses, are not to apply (or are to apply with prescribed modifications) in prescribed circumstances relating to the performer.
- (3) References in this section to a trade, profession or vocation of the performer include references to the separate one referred to in section 13(7) as well as to any other carried on by the performer.
- (4) Regulations may—
- (a) make provision generally for giving effect to section 13, and
  - (b) make different provision for different cases or descriptions of cases.

## **15 Divers and diving supervisors**

- (1) This section applies if—
- (a) a person performs the duties of employment as a diver or diving supervisor in the United Kingdom or in any area designated by Order in Council under section 1(7) of the Continental Shelf Act 1964 (c. 29),
  - (b) the duties consist wholly or mainly of seabed diving activities, and
  - (c) any employment income from the employment would otherwise be chargeable to tax under Part 2 of ITEPA 2003.
- (2) The performance of the duties of employment is instead treated for income tax purposes as the carrying on of a trade in the United Kingdom.
- (3) For the purposes of this section the following are seabed diving activities—
- (a) taking part as a diver in diving operations concerned with the exploration or exploitation of the seabed, its subsoil and their natural resources, and
  - (b) acting as a diving supervisor in relation to any such diving operations.

## **16 Oil extraction and related activities**

- (1) If a person carries on any oil-related activities as part of a trade, those activities are treated for income tax purposes as a separate trade, distinct from all other activities carried on by the person as part of the trade.
- (2) For this purpose the following are oil-related activities—
- (a) oil extraction activities, and
  - (b) any activities consisting of the acquisition, enjoyment or exploitation of oil rights.
- (3) “Oil extraction activities” and “oil rights” have the meaning given by [F<sup>9</sup> sections 225A and 225B].



*Status: Point in time view as at 15/09/2016.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Part 2. (See end of Document for details)*

### Textual Amendments

- F9** Words in s. 16(3) substituted (1.4.2010) (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), s. 381(1), [Sch. 8 para. 190](#) (with [Sch. 9 paras. 1-9, 22](#))

### Modifications etc. (not altering text)

- C1** S. 16 excluded (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), [ss. 87, 1034](#), (with transitional provisions and savings in [Sch. 2](#))

## Starting and ceasing to trade

### 17 Effect of becoming or ceasing to be a UK resident

[<sup>F10</sup>(1) This section applies if—

- (a) an individual carries on a trade otherwise than in partnership, and
- (b) there is a change of residence.

(1A) For the purposes of this section there is a “change of residence” if—

- (a) the individual becomes or ceases to be UK resident, or
- (b) a tax year is, as respects the individual, a split year.

(1B) The change of residence occurs—

- (a) in a case falling within subsection (1A)(a), at the start of the tax year for which the individual becomes or ceases to be UK resident, and
- (b) in a case falling within subsection (1A)(b), at the start of whichever of the UK part or the overseas part of the tax year is the later part.]

(2) [<sup>F11</sup>If this section applies and the individual does not actually cease permanently to carry on the trade immediately before the change of residence occurs,] the individual is treated for income tax purposes—

- (a) as permanently ceasing to carry on the trade at the time of the change of residence, and
- (b) so far as the individual continues to carry on the trade, as starting to carry on a new trade immediately afterwards.

(3) But subsection (2) does not prevent a loss made before the change of residence from being [<sup>F12</sup>deducted under section 83 of ITA 2007 from] profits arising after the change.

(4) This section applies to professions and vocations as it applies to trades.

(5) In the case of a trade carried on by a firm, see sections 852(6) and (7) and 854(5).

### Textual Amendments

- F10** S. 17(1)-(1B) substituted for s. 17(1) (with effect in accordance with [Sch. 45 para. 153\(2\)](#) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 76\(2\)](#)

- F11** Words in s. 17(2) inserted (with effect in accordance with [Sch. 45 para. 153\(2\)](#) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 76\(3\)](#)

- F12** Words in s. 17(3) substituted (with effect as noted in s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), [ss. 1027, 1034](#), [Sch. 1 para. 496](#) (with transitional provisions and savings in [Sch. 2](#))

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*Status: Point in time view as at 15/09/2016.*

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## **18 Effect of company starting or ceasing to be within charge to income tax**

- (1) This section applies if a company starts or ceases to be within the charge to income tax under this Chapter in respect of a trade.
- (2) The company is treated for the purposes of this Part—
  - (a) as starting to carry on the trade when it starts to be within the charge, or
  - (b) as permanently ceasing to carry on the trade when it ceases to be within the charge.

### *Trading income and property income*

## **19 Tied premises**

- (1) This section applies if —
  - (a) in the course of carrying on a trade a person (“the trader”) supplies, or is concerned in the supply of, goods sold or used on premises occupied by another person,
  - (b) the trader has an estate or interest in the premises,
  - (c) the estate or interest is dealt with as property employed for the purposes of the trade, and
  - (d) receipts and expenses in connection with the premises would otherwise be brought into account in calculating the profits of a property business of the trader.
- (2) Both the receipts and expenses are instead brought into account in calculating the profits of the trade.
- (3) Any apportionment of receipts or expenses that is necessary because—
  - (a) the receipts or expenses do not relate only to the premises, or
  - (b) the above conditions are met only in relation to part of the premises,is to be made on a just and reasonable basis.

## **20 Caravan sites where trade carried on**

- (1) This section applies if—
  - (a) a person (“the trader”) carries on material activities connected with the operation of a caravan site,
  - (b) the activities are, or are part of, a trade, and
  - (c) receipts from, and expenses of, lettings of caravans or pitches for caravans on the site would otherwise be brought into account in calculating the profits of a property business of the trader.
- (2) The trader may instead bring both the receipts and expenses into account in calculating the profits of the trade.
- (3) But if the conditions in subsection (1)(a) and (b) are met for only part of a tax year, subsection (2) applies only to the receipts and expenses that would otherwise be brought into account in calculating the profits of the property business for that part of the tax year.
- (4) In this section—

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“caravan site” means—

- (a) land on which a caravan is stationed for the purposes of human habitation, and
- (b) land which is used in conjunction with land on which a caravan is so stationed, and

“letting” includes a licence to occupy.

## **21 Surplus business accommodation**

- (1) This section applies if—
  - (a) a person (“the trader”) carrying on a trade obtains receipts from a letting of business accommodation that is temporarily surplus to requirements (see subsections (3) and (4)),
  - (b) the accommodation is not held as trading stock,
  - (c) the receipts are in respect of part of a building of which another part is used to carry on the trade,
  - (d) the receipts are relatively small, and
  - (e) the receipts, and the expenses of the letting, would otherwise be brought into account in calculating the profits of a property business of the trader.
- (2) The trader may instead bring both the receipts and expenses into account in calculating the profits of the trade.
- (3) Accommodation is temporarily surplus to requirements only if—
  - (a) it has been used within the last 3 years to carry on the trade or acquired within the last 3 years,
  - (b) the trader intends to use it to carry on the trade at a later date, and
  - (c) the letting is for a term of not more than 3 years.
- (4) If accommodation is temporarily surplus to requirements at the beginning of a period of account, it continues to be temporarily surplus to requirements until the end of that period.
- (5) If under this section any of the receipts from and expenses of a letting are brought into account in calculating the profits of the trade, all subsequent receipts from and expenses of the letting must be dealt with in the same way (but only so long as this section continues to apply).
- (6) In this section “letting” includes a licence to occupy.
- (7) This section applies to professions and vocations as it applies to trades.

## **22 Payments for wayleaves**

- (1) This section applies if—
  - (a) a person (“the trader”) carries on a trade on some or all of the land to which a wayleave relates,
  - (b) rent is receivable, or expenses are incurred, by the trader in respect of the wayleave, and
  - (c) apart from any rent or expenses in respect of a wayleave, no other receipts or expenses in respect of any of the land are brought into account in calculating the profits of any property business of the trader.

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- (2) If—
- (a) the trader would otherwise be liable to tax under Chapter 9 of Part 3 in respect of the rent for the wayleave (rent receivable for UK electric-line wayleaves), or
  - (b) expenses [<sup>F13</sup>incurred by the trader in respect of the wayleave would otherwise be brought into account in calculating profits] charged under that Chapter,
- the trader may instead bring both the rent and expenses into account in calculating the profits of the trade.
- (3) If—
- (a) rent for the wayleave would otherwise be brought into account in calculating the profits of a property business of the trader, or
  - (b) expenses incurred by the trader in respect of the wayleave would otherwise be so brought into account,
- the trader may instead bring both the rent and expenses into account in calculating the profits of the trade.
- (4) In this section “rent” includes—
- (a) a receipt mentioned in section 266(3), and
  - (b) any other receipt in the nature of rent.
- (5) In this section “wayleave” means an easement, servitude or right in or over land which is enjoyed in connection with—
- (a) an electric, telegraph or telephone wire or cable,
  - (b) a pipe for the conveyance of any thing, or
  - (c) any apparatus used in connection with such a pipe.
- (6) The reference to the enjoyment of an easement, servitude or right in connection with an electric, telegraph or telephone wire or cable includes (in particular) its enjoyment in connection with—
- (a) a pole or pylon supporting such a wire or cable, or
  - (b) apparatus used in connection with such a wire or cable.
- (7) This section applies to professions and vocations as it applies to trades.

#### Textual Amendments

**F13** Words in s. 22(2)(b) substituted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 588** (with Sch. 2 Pts. 1, 2)

#### *Rent-a-room and [<sup>F14</sup>qualifying care] relief*

#### Textual Amendments

**F14** Words in s. 23 cross-heading substituted (16.12.2010) (with effect in accordance with Sch. 1 para. 36 of the amending Act) by Finance (No. 3) Act 2010 (c. 33), **Sch. 1 para. 32(2)(b)** (with Sch. 1 para. 37)

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*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Part 2. (See end of Document for details)*

## 23 Rent-a-room and [<sup>F15</sup>qualifying care] relief

- (1) The rules for calculating the profits of a trade carried on by an individual are subject to Chapter 1 of Part 7 (rent-a-room relief).
- (2) That Chapter provides relief on income from the use of furnished accommodation in the individual's only or main residence (see, in particular, sections 792 and 796).
- (3) The rules for calculating the profits of a trade, profession or vocation carried on by an individual are subject to Chapter 2 of Part 7 ([<sup>F16</sup>qualifying care] relief).
- (4) That Chapter provides relief on income from the provision by the individual of [<sup>F17</sup>qualifying care] (see, in particular, sections 813, 816, 822 and 823).

### Textual Amendments

- F15** Words in s. 23 heading substituted (16.12.2010) (with effect in accordance with Sch. 1 para. 36 of the amending Act) by Finance (No. 3) Act 2010 (c. 33), Sch. 1 para. 32(2)(a) (with Sch. 1 para. 37)
- F16** Words in s. 23(3) substituted (16.12.2010) (with effect in accordance with Sch. 1 para. 36 of the amending Act) by Finance (No. 3) Act 2010 (c. 33), Sch. 1 para. 32(1)(a) (with Sch. 1 para. 37)
- F17** Words in s. 23(4) substituted (16.12.2010) (with effect in accordance with Sch. 1 para. 36 of the amending Act) by Finance (No. 3) Act 2010 (c. 33), Sch. 1 para. 32(1)(b) (with Sch. 1 para. 37)

## CHAPTER 3

### TRADE PROFITS: BASIC RULES

## 24 Professions and vocations

Apart from section 30 (animals kept for trade purposes), the provisions of this Chapter apply to professions and vocations as they apply to trades.

## 25 Generally accepted accounting practice

- (1) The profits of a trade must be calculated in accordance with generally accepted accounting practice, subject to any adjustment required or authorised by law in calculating profits for income tax purposes.
- (2) This does not—
  - (a) require a person to comply with the requirements of [<sup>F18</sup>the Companies Act 2006 or subordinate legislation made under that Act] except as to the basis of calculation, or
  - (b) impose any requirements as to audit or disclosure.
- (3) This section is subject to [<sup>F19</sup>section 25A (cash basis for small businesses)] .
- (4) This section does not affect provisions of the Income Tax Acts relating to the calculation of the profits of Lloyd's underwriters.

*Status: Point in time view as at 15/09/2016.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Part 2. (See end of Document for details)*

#### Textual Amendments

- F18** Words in s. 25(2)(a) substituted (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments\) \(Taxes and National Insurance\) Order 2008 \(S.I. 2008/954\)](#), arts. 1(1), **36** (with art. 4)
- F19** Words in s. 25(3) substituted (with effect in accordance with Sch. 4 paras. 56, 57 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), **Sch. 4 para. 3**

### [<sup>F20</sup> 25A Cash basis for small businesses

- (1) A person who is or has been carrying on a trade may elect for the profits of the trade to be calculated on the cash basis (instead of in accordance with generally accepted accounting practice).
- (2) References in this Part to calculating the profits of a trade on the cash basis are references to doing so in accordance with this section.
- (3) Chapter 3A contains provision about—
  - (a) when a person may make an election under this section, and
  - (b) the effect of such an election.
- (4) Where an election under this section has effect in relation to a trade, sections 27, 28 and 30 do not apply in relation to the calculation of the profits of the trade.]

#### Textual Amendments

- F20** S. 25A inserted (with effect in accordance with Sch. 4 paras. 56, 57 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), **Sch. 4 para. 4**

### 26 Losses calculated on same basis as profits

- (1) The same rules apply for income tax purposes in calculating losses of a trade as apply in calculating profits.
- (2) This is subject to any express provision to the contrary.

### 27 Receipts and expenses

- (1) In the Income Tax Acts, in the context of the calculation of the profits of a trade, references to receipts and expenses are to any items brought into account as credits or debits in calculating the profits.
- (2) There is no implication that an amount has been actually received or paid.
- (3) This section is subject to any express provision to the contrary.

### 28 Items treated under CAA 2001 as receipts and expenses

The rules for calculating the profits of a trade need to be read with—

- (a) the provisions of CAA 2001 which treat charges as receipts of a trade, and
- (b) the provisions of CAA 2001 which treat allowances as expenses of a trade.

*Status: Point in time view as at 15/09/2016.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Part 2. (See end of Document for details)*

## [<sup>F21</sup>28A Money's worth

- (1) Subsection (2) applies—
  - (a) for the purpose of bringing into account an amount arising in respect of a transaction involving money's worth entered into in the course of a trade, and
  - (b) if an amount at least equal to the amount that would be brought into account under that subsection is not otherwise brought into account as a receipt in calculating the profits of a trade under a provision of this Part other than a provision mentioned in subsection (3).
- (2) For the purpose of calculating the profits of the trade, an amount equal to the value of the money's worth is brought into account as a receipt if, had the transaction involved money, an amount would have been brought into account as a receipt in respect of it.
- (3) But where another provision of this Part makes express provision for the bringing into account of an amount in respect of money's worth as a receipt in calculating the profits of a trade (however expressed), that other provision applies instead of subsection (2).]

### Textual Amendments

**F21** S. 28A inserted (with effect in accordance with s. 71(7) of the amending Act) by [Finance Act 2016](#) (c. 24), s. 71(2)

## 29 Interest

For the purpose of calculating the profits of a trade, interest is an item of a revenue nature, whatever the nature of the loan.

## 30 Animals kept for trade purposes

- (1) Animals or other living creatures kept for the purposes of a trade are treated as trading stock if they are not kept wholly or mainly—
  - (a) for the work they do in connection with the carrying on of the trade,
  - (b) for public exhibition, or
  - (c) for racing or other competitive purposes.
- (2) But they are not treated as trading stock if they are part of a herd in relation to which a herd basis election has effect (see Chapter 8).
- (3) This section applies to shares in animals or other living creatures as it applies to the creatures themselves.
- (4) This section does not apply to professions or vocations.

## 31 Relationship between rules prohibiting and allowing deductions

- (1) Any relevant permissive rule in this Part—
  - (a) has priority over any relevant prohibitive rule in this Part, but
  - (b) is subject to [<sup>F22</sup>section 36 (unpaid remuneration), section 38 (employee benefit contributions), section 48 (car <sup>F23</sup>... hire) and section] 55 (crime-related payments).

*Status: Point in time view as at 15/09/2016.*

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- [<sup>F24</sup>(1A) But, if the relevant permissive rule would allow a deduction in calculating the profits of a trade in respect of an amount which arises directly or indirectly in consequence of, or otherwise in connection with, relevant tax avoidance arrangements, that rule—
- (a) does not have priority under subsection (1)(a), and
  - (b) is subject to any relevant prohibitive rule in this Part (and to the provisions mentioned in subsection (1)(b)).]
- (2) In this section “any relevant permissive rule in this Part” means any provision of—
- (a) Chapter 5 (apart from sections 60 to 67),
  - [<sup>F25</sup>(aa) Chapter 5A,]
  - (b) Chapter 11, [<sup>F26</sup>...
  - (c) Chapter 13, [<sup>F27</sup>or
  - (d) Chapter 17A,]
- which allows a deduction in calculating the profits of a trade.
- (3) In this section “any relevant prohibitive rule in this Part”, in relation to any deduction, means any provision of this Part (apart from sections [<sup>F28</sup>36, 38,] 48 and 55) which might otherwise be read as—
- (a) prohibiting the deduction, or
  - (b) restricting the amount of the deduction.
- [<sup>F29</sup>(4) In this section “relevant tax avoidance arrangements” means arrangements—
- (a) to which the person carrying on the trade is a party, and
  - (b) the main purpose, or one of the main purposes, of which is the obtaining of a tax advantage (within the meaning of section 1139 of CTA 2010).
- “Arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable).]

#### Textual Amendments

- F22** Words in s. 31(1)(b) substituted (with effect as stated in s. 67(7) of the amending Act) by [Finance Act 2007 \(c. 11\), s. 67\(2\)](#)
- F23** Words in s. 31(1)(b) omitted (with effect in accordance with Sch. 11 paras. 65-67 of the amending Act) by virtue of [Finance Act 2009 \(c. 10\), Sch. 11 para. 35](#)
- F24** S. 31(1A) inserted (with effect in accordance with s. 78(5)-(7) of the amending Act) by [Finance Act 2013 \(c. 29\), s. 78\(1\)\(a\)](#)
- F25** S. 31(2)(aa) inserted (with effect in accordance with Sch. 5 para. 6 of the amending Act) by [Finance Act 2013 \(c. 29\), Sch. 5 para. 3](#)
- F26** Word in s. 31(2)(b) omitted (with effect in accordance with Sch. 4 paras. 56, 57 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\), Sch. 4 para. 49](#)
- F27** S. 31(2)(d) and word inserted (with effect in accordance with Sch. 4 paras. 56, 57 of the amending Act) by [Finance Act 2013 \(c. 29\), Sch. 4 para. 49](#)
- F28** Words in s. 31(3) inserted (with effect as stated in s. 67(7) of the amending Act) by [Finance Act 2007 \(c. 11\), s. 67\(3\)](#)
- F29** S. 31(4) inserted (with effect in accordance with s. 78(5)-(7) of the amending Act) by [Finance Act 2013 \(c. 29\), s. 78\(1\)\(b\)](#)



*Status: Point in time view as at 15/09/2016.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Part 2. (See end of Document for details)*

## <sup>F30</sup> CHAPTER 3A

### TRADE PROFITS: CASH BASIS

#### Textual Amendments

**F30** Pt. 2 Ch. 3A inserted (with effect in accordance with Sch. 4 paras. 56, 57 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 4 para. 5](#)

#### *Eligibility*

#### **31A Conditions to be met for profits to be calculated on cash basis**

- (1) A person may make an election under section 25A for a tax year if conditions A to C are met.
- (2) Condition A is that the aggregate of the cash basis receipts of each trade, profession or vocation carried on by the person during that tax year does not exceed any relevant maximum applicable for that tax year (see section 31B).
- (3) Condition B is that, in a case where the person is either an individual who controls a firm or a firm controlled by an individual—
  - (a) the aggregate of the cash basis receipts of each trade, profession or vocation carried on by the individual or the firm during that tax year does not exceed any relevant maximum applicable for that tax year, and
  - (b) the firm or the individual (as the case may be) has also made an election under section 25A for that tax year.
- (4) Condition C is that the person is not an excluded person in relation to the tax year (see section 31C).
- (5) For the purposes of this section, the “cash basis receipts” of a trade, profession or vocation, in relation to a tax year, are any receipts that—
  - (a) are received during the basis period for the tax year, and
  - (b) would be brought into account in calculating the profits of the trade, profession or vocation for that tax year on the cash basis.

#### **31B Relevant maximum**

- (1) For the purposes of section 31A there is a “relevant maximum” applicable for a tax year in relation to a trade, profession or vocation carried on by a person if any of conditions A to C is met.
- (2) Condition A is that an election under section 25A did not have effect in relation to the trade, profession or vocation for the previous tax year.
- (3) Condition B is that the aggregate of the cash basis receipts of each trade, profession or vocation carried on by the person during the previous tax year is greater than an amount equal to twice the VAT threshold for that previous tax year.
- (4) Condition C is that, in a case where the person is either an individual who controls a firm or a firm controlled by an individual, the aggregate of the cash basis receipts of each trade, profession or vocation carried on by the individual or the firm during

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the previous tax year is greater than an amount equal to twice the VAT threshold for that previous tax year.

- (5) If there is a relevant maximum applicable for a tax year, the amount of the relevant maximum is—
- (a) the VAT threshold, or
  - (b) in the case where the person is an individual who is a universal credit claimant in the tax year, an amount equal to twice the VAT threshold.
- (6) For the purposes of this section, where the basis period for a tax year is less than 12 months, the VAT threshold is proportionately reduced.
- (7) In this section—
- “universal credit claimant”, in relation to a tax year, means a person who is entitled to universal credit under the relevant legislation for an assessment period (within the meaning of the relevant legislation) that falls within the basis period for the tax year,
- “the relevant legislation” means—
- (a) Part 1 of the Welfare Reform Act 2012, or
  - (b) any provision made for Northern Ireland which corresponds to that Part of that Act, and
- “the VAT threshold”, in relation to a tax year, means the amount specified at the end of that tax year in paragraph 1(1)(a) of Schedule 1 to VATA 1994.
- (8) The Treasury may by order amend this section.
- (9) A statutory instrument containing an order under subsection (8) that restricts the circumstances in which an election may be made under section 25A may not be made unless a draft of the instrument containing the order has been laid before, and approved by a resolution of, the House of Commons.

### **31C Excluded persons**

- (1) A person is an excluded person in relation to a tax year if the person meets any of conditions A to H.
- (2) Condition A is that—
- (a) the person is a firm, and
  - (b) one or more of the persons who have been partners in the firm at any time during the basis period for the tax year was not an individual at that time.
- (3) Condition B is that the person was a limited liability partnership at any time during the basis period for the tax year.
- (4) Condition C is that the person is an individual who has been a Lloyd's underwriter at any time during the basis period for the tax year.
- (5) Condition D is that the person has made an election under Chapter 8 (trade profits: herd basis rules) that has effect in relation to the tax year.
- (6) Condition E is that the person has made a claim under [<sup>F31</sup>Chapter 16] (claim for averaging of fluctuating profits) in relation to the tax year.

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(7) Condition F is that, at any time within the period of 7 years ending immediately before the basis period for the tax year, the person obtained an allowance under Part 3A of CAA 2001 (business premises renovation allowances).

(8) Condition G is that the person has carried on a mineral extraction trade at any time during the basis period for the tax year.

In this subsection “mineral extraction trade” has the same meaning as in Part 5 of CAA 2001 (see section 394(2) of that Act).

(9) Condition H is that—

- (a) at any time before the beginning of the basis period for the tax year the person obtained an allowance under Part 6 of CAA 2001 (research and development allowances) in respect of qualifying expenditure incurred by the person, and
- (b) the person owns an asset representing the expenditure.

In this subsection “qualifying expenditure” has the same meaning as in Part 6 of CAA 2001.

(10) The Treasury may by order amend this section.

(11) A statutory instrument containing an order under subsection (10) that restricts the circumstances in which an election may be made under section 25A may not be made unless a draft of the instrument containing the order has been laid before, and approved by a resolution of, the House of Commons.

#### Textual Amendments

**F31** Words in s. 31C(6) substituted (with effect in accordance with s. 25(12) of the amending Act) by Finance Act 2016 (c. 24), s. 25(8)

### *Elections under section 25A*

#### **31D Effect of election under section 25A**

(1) An election made by a person under section 25A has effect—

- (a) for the tax year for which it is made, and
- (b) for every subsequent tax year.

This is subject to subsections (2) and (3).

(2) An election made by a person under section 25A ceases to have effect if any of conditions A to C in section 31A is not met for a subsequent tax year.

(3) An election made by a person under section 25A ceases to have effect if—

- (a) there is a change of circumstances relating to any trade, profession or vocation carried on by the person which makes it more appropriate for its profits for a subsequent tax year to be calculated in accordance with generally accepted accounting practice, and
- (b) the person elects to calculate those profits in that way.

(4) Neither subsection (2) nor subsection (3) prevents the person making an election under section 25A for any subsequent tax year.

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*Status: Point in time view as at 15/09/2016.*

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- (5) An election that—
- (a) is made by a person under section 25A, and
  - (b) has effect for a tax year,
- has effect in relation to every trade, profession or vocation carried on by the person during the tax year.
- (6) For provision prohibiting a person who has made an election under section 25A from claiming any capital allowances (other than in respect of expenditure incurred on the provision of a car), see section 1(4) of CAA 2001.

### *Calculation of profits on cash basis*

#### **31E Calculation of profits on cash basis**

- (1) This section applies to professions and vocations as it applies to trades.
- (2) To determine the profits of a trade for a tax year on the cash basis—
  - Step 1* Calculate the total amount of receipts of the trade received during the basis period for the tax year.
  - Step 2* Deduct from that amount the total amount of expenses of the trade paid during the basis period for the tax year.
- (3) Subsection (2) is subject to any adjustment required or authorised by law in calculating profits for income tax purposes.

### *Overview of rest of Part 2*

#### **31F Overview of rest of Part 2 as it applies to cash basis**

- (1) For provision about the application of Chapters 4 to 6 (rules about deductions and receipts) in relation to the cash basis, see sections 32A, 56A and 95A.
- (2) For provision about the application of Chapter 11 (trade profits: other specific trades) in relation to the cash basis, see section 148K.
- (3) The following Chapters apply only where profits are calculated on the cash basis—
  - Chapter 6A (trade profits: amounts not reflecting commercial transactions),
  - Chapter 17A (cash basis: adjustments for capital allowances).
- (4) The following Chapters do not apply in relation to the cash basis—
  - Chapter 8 (trade profits: herd basis rules),
  - Chapter 9 (trade profits: sound recordings),
  - Chapter 10 (trade profits: certain telecommunication rights),
  - Chapter 10A (leases of plant or machinery: special rules for long funding leases),
  - Chapter 11A (trade profits: changes in trading stock),
  - Chapter 13 (deductions from profits: unremittable amounts),
  - Chapter 14 (disposal and acquisition of know-how),
  - Chapter 16 (averaging profits of farmers and creative artists),
  - Chapter 16ZA (compensation for compulsory slaughter of animal),
  - Chapter 16A (oil activities).]

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## CHAPTER 4

### TRADE PROFITS: RULES RESTRICTING DEDUCTIONS

#### *Introduction*

#### **32 Professions and vocations**

The provisions of this Chapter apply to professions and vocations as they apply to trades.

#### *[<sup>F32</sup>Cash basis accounting*

##### **Textual Amendments**

**F32** S. 32A and cross-heading inserted (with effect in accordance with Sch. 4 paras. 56, 57 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 4 para. 7](#)

#### **32A Application of Chapter to the cash basis**

- (1) The following sections do not apply in calculating the profits of a trade on the cash basis—
  - section 33 (capital expenditure),
  - section 35 (bad and doubtful debts),
  - sections 36 and 37 (unpaid remuneration),
  - section 43 (employee benefit contributions: profits calculated before end of 9 month period),
  - sections 48 to 50B (car hire).
- (2) For rules restricting deductions that apply only where profits are calculated on the cash basis, see the following—
  - section 33A (cash basis: capital expenditure),
  - section 51A (cash basis: interest payments on loans).]

#### *Capital expenditure*

#### **33 Capital expenditure**

In calculating the profits of a trade, no deduction is allowed for items of a capital nature.

#### **[<sup>F33</sup>33A Cash basis: capital expenditure**

- (1) In calculating the profits of a trade on the cash basis, no deduction is allowed for items of a capital nature, other than expenditure that—
  - (a) if it were not allowable as a deduction in calculating the profits of the trade, would be qualifying expenditure within the meaning of Part 2 of CAA 2001 (plant and machinery allowances), and
  - (b) is not expenditure incurred on the provision of a car.

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*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Part 2. (See end of Document for details)*

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- (2) In this section “car” has the same meaning as in Part 2 of CAA 2001 (see section 268A of that Act).]

**Textual Amendments**

**F33** S. 33A inserted (17.7.2013) (with effect in accordance with Sch. 4 para. 56 57 of the amending Act) by Finance Act 2013 (c. 29), **Sch. 4 para. 8**

*Wholly and exclusively and losses rules*

**34 Expenses not wholly and exclusively for trade and unconnected losses**

- (1) In calculating the profits of a trade, no deduction is allowed for—
- (a) expenses not incurred wholly and exclusively for the purposes of the trade, or
  - (b) losses not connected with or arising out of the trade.
- (2) If an expense is incurred for more than one purpose, this section does not prohibit a deduction for any identifiable part or identifiable proportion of the expense which is incurred wholly and exclusively for the purposes of the trade.

*Bad and doubtful debts*

**35 Bad and doubtful debts**

- (1) In calculating the profits of a trade, no deduction is allowed for a debt owed to the person carrying on the trade, except so far as—
- (a) the debt is bad,
  - (b) the debt is estimated to be bad, or
  - (c) the debt is released wholly and exclusively for the purposes of the trade as part of a statutory insolvency arrangement.
- (2) If the debtor is bankrupt or insolvent, the whole of the debt is estimated to be bad for the purposes of subsection (1)(b), except so far as any amount may reasonably be expected to be received on the debt.

*Unpaid remuneration*

**36 Unpaid remuneration**

- (1) This section applies if, in calculating the profits of a trade of a period of account—
- (a) an amount is charged in the accounts for the period in respect of employees' remuneration, and
  - (b) a deduction for the remuneration would otherwise be allowable for the period.
- (2) No deduction is allowed for the remuneration for the period of account unless it is paid before the end of the period of 9 months immediately following the end of the period of account.

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- (3) If the remuneration is paid after the end of that 9 month period, a deduction for it is allowed for the period of account in which it is paid.

### **37 Unpaid remuneration: supplementary**

- (1) For the purposes of section 36 an amount charged in the accounts in respect of employees' remuneration includes an amount for which provision is made in the accounts with a view to its becoming employees' remuneration.
- (2) For the purposes of section 36 it does not matter whether an amount is charged for—
- particular employments, or
  - employments generally.
- (3) If the profits of the trade are calculated before the end of the 9 month period mentioned in section 36(2)—
- it must be assumed, in making the calculation, that any remuneration which is unpaid when the calculation is made will not be paid before the end of that period, but
  - if the remuneration is subsequently paid before the end of that period, nothing in this subsection prevents the calculation being revised and any tax return being amended accordingly.
- (4) For the purposes of this section and section 36 remuneration is paid when it—
- is treated as received by an employee for the purposes of ITEPA 2003 by section 18, 19, 31 or 32 of that Act (receipt of money and non-money earnings), or
  - would be so treated if it were not exempt income.
- (5) In this section and section 36—
- “employee” includes an office-holder and “employment” therefore includes an office, and
- “remuneration” means an amount which is or is treated as earnings for the purposes of ITEPA 2003.

### *Employee benefit contributions*

### **38 Restriction of deductions**

[<sup>F34</sup>(1) This section applies if, in calculating for income tax purposes the profits of a trade of a person (“the employer”) for a period, a deduction would otherwise be allowable for the period in respect of employee benefit contributions made or to be made (but see subsection (4)).]

- (2) No deduction is allowed for the contributions for the period except so far as—
- qualifying benefits are provided, or qualifying expenses are paid, out of the contributions during the period or within 9 months from the end of it, or
  - if the making of the contributions is itself the provision of qualifying benefits, the contributions are made during the period or within 9 months from the end of it.

[<sup>F35</sup>(2A) In calculating for income tax purposes the profits of a trade on the cash basis, this section has effect as if—

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- (a) in subsection (1), the words “or to be made” were omitted, and
  - (b) in subsection (2), the words “or within 9 months from the end of it” were omitted (in both places).]
- (3) An amount disallowed under subsection (2) is allowed as a deduction for a subsequent period so far as—
- (a) qualifying benefits are provided out of the contributions before the end of the subsequent period, or
  - (b) if the making of the contributions is itself the provision of qualifying benefits, the contributions are made before the end of the subsequent period.
- (4) This section does not apply to any deduction that is allowable for—
- (a) anything given as consideration for goods or services provided in the course of a trade or profession,
  - (b) contributions under a registered pension scheme or under a superannuation fund to which section 615(3) of ICTA applies,
  - (c) contributions under a qualifying overseas pension scheme in respect of an individual who is a relevant migrant member of the pension scheme in relation to the contributions, or
  - (d) contributions under an accident benefit scheme.

For the purposes of paragraph (c) “qualifying overseas pension scheme” and “relevant migrant member” have the same meaning as in Schedule 33 to FA 2004 (see paragraphs 4 to 6 of that Schedule).

- (5) See also—
- section 39 (making of “employee benefit contributions”),
  - section 40 (provision of qualifying benefits),
  - section 41 (timing and amount of certain qualifying benefits),
  - section 42 (provision or payment out of employee benefit contributions),
  - section 43 (profits calculated before end of 9 month period), and
  - section 44 (interpretation of sections 38 to 44).

#### Textual Amendments

**F34** S. 38(1) substituted (with effect as stated in s. 34(13) of the amending Act) by [Finance Act 2007 \(c. 11\), s. 34\(8\)](#)

**F35** S. 38(2A) inserted (with effect in accordance with Sch. 4 paras. 56, 57 of the amending Act) by [Finance Act 2013 \(c. 29\), Sch. 4 para. 9](#)

### 39 Making of “employee benefit contributions”

[<sup>F36</sup>(1) For the purposes of section 38, an “employee benefit contribution” is made if, as a result of any act or omission—

- (a) property is held, or may be used, under an employee benefit scheme, or
- (b) there is an increase in the total value of property that is so held or may be so used (or a reduction in any liabilities under an employee benefit scheme).]

(2) For this purpose “employee benefit scheme” means a trust, scheme or other arrangement for the benefit of persons who are, or include, present or former



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employees of the employer [<sup>F37</sup> or persons linked with present or former employees of the employer ] .

[<sup>F38</sup>(3) Section 554Z1 of ITEPA 2003 applies for the purposes of subsection (2) but as if references to A were to a present or former employee of the employer.

- (4) So far as it is not covered by subsection (2), “employee benefit scheme” also means—
- (a) an arrangement (“the relevant arrangement”) within subsection (1)(b) of section 554A of ITEPA 2003 to which subsection (1)(c) of that section applies, or
  - (b) any other arrangement connected (directly or indirectly) with the relevant arrangement.]

#### Textual Amendments

- F36** S. 39(1) substituted (19.7.2007 with effect as stated in s. 34(13) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), s. 34(9)
- F37** Words in s. 39(2) inserted (with effect in accordance with Sch . 2 para. 52-59 61 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 2 para. 36\(2\)](#)
- F38** S. 39(3)(4) inserted (with effect in accordance with Sch . 2 para. 52-59 61 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 2 para. 36\(3\)](#)

## 40 Provision of qualifying benefits

- (1) For the purposes of section 38 qualifying benefits are provided if there is—
- (a) a payment of money, or
  - (b) a transfer of assets,
- which meets condition A, B, C or D.
- (2) Condition A is that the payment or transfer gives rise both to an employment income tax charge and to an NIC charge.
- (3) Condition B is that the payment or transfer would give rise to both charges if—
- (a) the duties of the employment in respect of which the payment or transfer was made were performed in the United Kingdom, and
  - (b) the person in respect of whose employment the payment or transfer was made met at all relevant times the conditions as to residence or presence in Great Britain or Northern Ireland prescribed under section 1(6) of the Contributions and Benefits Act.
- (4) Condition C is that the payment or transfer is made in connection with the termination of the recipient's employment with the employer.
- (5) Condition D is that the payment or transfer is made under an employer-financed retirement benefits scheme [<sup>F39</sup> and the payment or transfer—
- (a) gives rise to an employment income tax charge under Chapter 2 of Part 6 of ITEPA 2003 or under Part 9 of that Act, or
  - (b) is an excluded benefit as defined in section 393B(3) of that Act.]
- (6) None of the conditions is met if the payment or transfer is by way of loan.

[<sup>F40</sup>(6A) For the purposes of section 38 qualifying benefits are also provided if—

- (a) a relevant step within the meaning of Part 7A of ITEPA 2003 is taken, and

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(b) Chapter 2 of that Part applies by reason of the step.]

(7) In this section—

“the Contributions and Benefits Act” means—

- (a) the Social Security Contributions and Benefits Act 1992 (c. 4), or
- (b) the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7),

“employment income tax charge” means a charge to tax under ITEPA 2003 (whether on the recipient or on someone else), and

“NIC charge” means a liability to pay national insurance contributions under section 6 (Class 1 contributions), section 10 (Class 1A contributions) or section 10A (Class 1B contributions) of the Contributions and Benefits Act.

#### Textual Amendments

**F39** Words in s. 40(5) inserted (with effect in accordance with Sch . 2 para. 52-59 62 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 2 para. 37\(2\)](#)

**F40** S. 40(6A) inserted (with effect in accordance with Sch . 2 para. 52-59 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 2 para. 37\(3\)](#)

## 41 Timing and amount of certain qualifying benefits

[<sup>F41</sup>(1) If the provision of a qualifying benefit takes the form of a payment of money, the benefit, so far as Chapter 4 of Part 2 of ITEPA 2003 applies to the money, is provided for the purposes of section 38 when the money is treated as received for the purposes of that Chapter (applying the rules in section 18 of that Act (receipt of money earnings)).]

[<sup>F42</sup>(1A) Except so far as subsection (1) applies to the provision of the qualifying benefit, if the provision of a qualifying benefit is a chargeable relevant step, for the purposes of section 38—

- (a) the benefit is provided when A's employment with B starts if the chargeable relevant step is taken before then, or
- (b) otherwise, the benefit is provided when the chargeable relevant step is taken.]

(2) If the provision of a qualifying benefit takes the form of a transfer of an asset [<sup>F43</sup> which meets condition A, B, C or D in section 40 ], the amount provided for the purposes of section 38 is the total of—

- (a) the amount (if any) spent on the asset by [<sup>F44</sup>a scheme manager] , <sup>F45</sup>...
- (b) in a case where the asset was transferred to [<sup>F44</sup>a scheme manager] by the employer, the amount of the deduction that would be allowable as mentioned in subsection (1) of that section in respect of the transfer<sup>F46</sup>, and
- (c) if the transfer is a chargeable relevant step, the cost of the relevant step so far as not covered by paragraph (a) or (b).]

(3) But if the amount given by subsection (2) is more than the amount that—

- (a) is charged to tax under ITEPA 2003 in respect of the transfer, or
- (b) would be so charged if condition B in section 40 were met,

the deduction allowable under section 38(2) or (3) is limited to that lower amount.

[<sup>F47</sup>(4) If the provision of a qualifying benefit is a chargeable relevant step which does not involve a sum of money (see section 554Z(10) of ITEPA 2003) and is not covered by

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subsection (2), the amount provided for the purposes of section 38 is the cost of the relevant step (subject to subsection (5)).

- (5) If the provision of a qualifying benefit is a chargeable relevant step which is not covered by subsection (2) (whether or not it involves a sum of money), the amount provided for the purposes of section 38 is not to exceed the amount that—
- (a) is charged to tax under ITEPA 2003 in relation to the relevant step (whether under Part 7A of that Act or otherwise), or
  - (b) would be charged had not A been non-UK resident in any tax year.
- (6) In this section—
- (a) “chargeable relevant step” means a relevant step within the meaning of Part 7A of ITEPA 2003 by reason of which Chapter 2 of that Part applies (and references to A and B are to be read accordingly), and
  - (b) references to the cost of a chargeable relevant step are to be read in accordance with section 554Z3(6) of that Act.]

#### Textual Amendments

- F41** S. 41(1) substituted (with effect in accordance with Sch. 2 paras. 52-59, 63 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 2 para. 38\(2\)](#)
- F42** S. 41(1A) inserted (with effect in accordance with Sch. 2 paras. 52-59 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 2 para. 38\(3\)](#)
- F43** Words in s. 41(2) inserted (with effect in accordance with Sch. 2 paras. 52-59 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 2 para. 38\(4\)\(a\)](#)
- F44** Words in s. 41 substituted (19.7.2007 with effect as stated in [s. 34\(13\)](#) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [s. 34\(10\)](#)
- F45** Word in s. 41(2) omitted (with effect in accordance with Sch. 2 paras. 52-59 of the amending Act) by virtue of [Finance Act 2011 \(c. 11\)](#), [Sch. 2 para. 38\(4\)\(b\)](#)
- F46** S. 41(2)(c) and word inserted (with effect in accordance with Sch. 2 paras. 52-59 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 2 para. 38\(4\)\(c\)](#)
- F47** S. 41(4)-(6) inserted (with effect in accordance with Sch. 2 paras. 52-59 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 2 para. 38\(5\)](#)

## 42 Provision or payment out of employee benefit contributions

- (1) For the purposes of section 38(2)(a)—
- (a) any qualifying benefits provided, or
  - (b) any qualifying expenses paid,
- by [<sup>F48</sup>a scheme manager] after the receipt by [<sup>F49</sup>the scheme manager] of employee benefit contributions are treated as being provided or paid out of the contributions.
- (2) This operates up to the total amount of the contributions reduced by the amount of any benefits or expenses previously provided or paid as mentioned in section 38(2)(a).
- (3) For the purposes of section 38(3)(a) any qualifying benefits provided by [<sup>F50</sup>a scheme manager] after the receipt by [<sup>F51</sup>the scheme manager] of employee benefit contributions are treated as being provided out of the contributions.
- (4) This operates up to the total amount of the contributions reduced by the amount of any benefits or expenses previously provided or paid as mentioned in section 38(2)(a) or (3)(a).

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- (5) For the purposes of this section no account is taken of any other amount received or paid by the [F52 scheme manager] .

#### Textual Amendments

- F48** Words in s. 42(1) substituted (19.7.2007 with effect as stated in s. 34(13) of the amending Act) by [Finance Act 2007 \(c. 11\), s. 34\(11\)\(a\)](#)
- F49** Words in s. 42(1) substituted (19.7.2007 with effect as stated in s. 34(13) of the amending Act) by [Finance Act 2007 \(c. 11\), s. 34\(11\)\(a\)](#)
- F50** Words in s. 42(3) substituted (19.7.2007 with effect as stated in s. 34(13) of the amending Act) by [Finance Act 2007 \(c. 11\), s. 34\(11\)\(b\)](#)
- F51** Words in s. 42(3) substituted (19.7.2007 with effect as stated in s. 34(13) of the amending Act) by [Finance Act 2007 \(c. 11\), s. 34\(11\)\(b\)](#)
- F52** Words in s. 42(5) substituted (19.7.2007 with effect as stated in s. 34(13) of the amending Act) by [Finance Act 2007 \(c. 11\), s. 34\(11\)\(c\)](#)

#### 43 Profits calculated before end of 9 month period

- (1) This section applies if the profits of the trade are calculated before the end of the 9 month period mentioned in section 38(2).
- (2) It must be assumed, in making the calculation, that any benefits, expenses or contributions which are not provided, paid or made when the calculation is made will not be provided, paid or made before the end of that period.
- (3) But if the benefits, expenses or contributions are subsequently provided, paid or made before the end of that period, nothing in this section prevents the calculation being revised and any tax return being amended accordingly.

#### 44 Interpretation of sections 38 to 44

- (1) In this section and sections 38 to 43—
- “accident benefit scheme” means an employee benefit scheme under which benefits may be provided only by reason of a person's disablement, or death, caused by an accident occurring during the person's service as an employee of the employer,
- “employee benefit contribution” is to be read in accordance with section 39(1),
- “employee benefit scheme” has the meaning given by section [F53 39(2) to (4) ] ,
- “the employer” is to be read in accordance with section 38(1),
- “employer-financed retirement benefits scheme” has the same meaning as in Chapter 2 of Part 6 of ITEPA 2003 (see section 393A of that Act), [F54 but ignoring section 393B(2)(a) and (c) of that Act ]
- “qualifying benefits” is to be read in accordance with section 40,
- “qualifying expenses” includes any expenses of the third party (other than the provision of benefits to employees of the employer)—
- (a) which are incurred in operating the employee benefit scheme, and
- (b) which, if incurred by the employer, would be deductible in calculating for income tax purposes the employer's profits for any period, and

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[<sup>F55</sup>“scheme manager” means a person who administers an employee benefit scheme (acting in that capacity).]

- (2) A reference in this section and sections 38 to 43 to a person's employee includes the holder of an office under that person, and “employment” is to be read accordingly.

#### Textual Amendments

- F53** Words in s. 44(1) substituted (with effect in accordance with Sch. 2 paras. 52-59 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 2 para. 39\(a\)](#)
- F54** Words in s. 44(1) inserted (with effect in accordance with Sch. 2 paras. 52-59, 62 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 2 para. 39\(b\)](#)
- F55** S. 44(1): definition of “third party” substituted (19.7.2007 with effect as stated in [s. 34\(13\)](#) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [s. 34\(12\)](#)

### *Business entertainment and gifts*

#### **45 Business entertainment and gifts: general rule**

- (1) The general rule is that no deduction is allowed in calculating the profits of a trade for expenses incurred in providing entertainment or gifts in connection with the trade.
- (2) A deduction for expenses which are incurred—
- (a) in paying sums to or on behalf of an employee of the person carrying on the trade (“the trader”), or
  - (b) in putting sums at the disposal of an employee of the trader,
- is prohibited by the general rule if (and only if) the sums are paid, or put at the employee's disposal, exclusively for meeting expenses incurred or to be incurred by the employee in providing the entertainment or gift.
- (3) The general rule is subject to exceptions—
- for entertainment (see section 46), and
  - for gifts (see section 47).
- (4) For the purposes of this section and those two sections—
- (a) “employee”, in relation to a company, includes a director of the company and a person engaged in the management of the company,
  - (b) “entertainment” includes hospitality of any kind, and
  - (c) the expenses incurred in providing entertainment or a gift include expenses incurred in providing anything incidental to the provision of entertainment or a gift.

#### **46 Business entertainment: exceptions**

- (1) The prohibition in section 45 on deducting expenses incurred in providing entertainment does not apply in either of cases A and B.
- (2) Case A is where—
- (a) the entertainment is of a kind which it is the trader's trade to provide, and
  - (b) the entertainment is provided in the ordinary course of the trade either for payment or free of charge in order to advertise to the public generally.

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- (3) Case B is where the entertainment is provided for employees of the trader unless—
- (a) the entertainment is also provided for others, and
  - (b) the provision of the entertainment for the employees is incidental to its provision for the others.

#### 47 Business gifts: exceptions

- (1) The prohibition in section 45 on deducting expenses incurred in providing gifts does not apply in any of cases A, B, C and D.
- (2) Case A is where—
- (a) the gift is of an item which it is the trader's trade to provide, and
  - (b) the item is given away in the ordinary course of the trade in order to advertise to the public generally.
- (3) Case B is where the gift incorporates a conspicuous advertisement for the trader unless—
- (a) the gift is food, drink, tobacco or a token or voucher exchangeable for goods, or
  - (b) the cost of the gift to the trader, together with any other gifts (except food, drink, tobacco or a token or voucher exchangeable for goods) given to the same person in the same basis period, exceeds £50.

The Treasury may by order amend the sum for the time being specified in paragraph (b) so as to increase it.

- (4) Case C is where gifts are provided for employees of the trader unless—
- (a) gifts are also provided for others, and
  - (b) the provision of the gifts for the employees is incidental to the provision of gifts for the others.
- (5) Case D is where the gift is given to—
- (a) a charity,
  - (b) the Historic Buildings and Monuments Commission for England, or
  - (c) the Trustees of the National Heritage Memorial Fund.

#### *Car or motor cycle hire*

#### 48 Car<sup>F56</sup> ... hire

- (1) This section applies if, in calculating the profits of a trade, a deduction is allowed for expenses incurred on the hiring of a car [F57 which is not—
- (a) a car that is first registered before 1 March 2001,
  - (b) a car that has low CO<sub>2</sub> emissions,
  - (c) a car that is electrically propelled, or
  - (d) a qualifying hire car.]
- (2) The amount of the deduction which would otherwise be allowable is reduced by [F58 15%].

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- (3) Subsection (4) applies if [<sup>F59</sup>a deduction is reduced as a result of subsection (2), or a corresponding provision,] and subsequently—
- (a) there is a rebate (however described) of the hire charges, or
  - (b) a debt in respect of any of the hire charges is released otherwise than as part of a statutory insolvency arrangement.
- (4) The amount that, as a result of the rebate or release—
- (a) is brought into account as a receipt of the trade <sup>F60</sup>..., or
  - (b) is treated as a post-cessation receipt under section 249 (debts released after cessation),
- is reduced by [<sup>F61</sup>15%] .

- [<sup>F62</sup>(4A) In this section “corresponding provision” means—
- (a) section 56(2) of CTA 2009 (car <sup>F63</sup>... hire: trade profits and property income), [<sup>F64</sup> or ]
  - (b) section 1251(2) of CTA 2009 (car <sup>F63</sup>... hire: expenses of management), [<sup>F65</sup> including as applied by section 82(4) of FA 2012. ]<sup>F66</sup>...
  - <sup>F66</sup>(c)] .....
- <sup>F67</sup>(5) .....

#### Textual Amendments

- F56** Words in s. 48 heading omitted (with effect in accordance with Sch. 11 paras. 65-67 of the amending Act) by virtue of [Finance Act 2009 \(c. 10\)](#), [Sch. 11 para. 36\(7\)](#)
- F57** Words in s. 48(1) substituted (with effect in accordance with Sch. 11 paras. 65-67 of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 11 para. 36\(2\)](#)
- F58** Word in s. 48(2) substituted (with effect in accordance with Sch. 11 paras. 65-67 of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 11 para. 36\(3\)](#)
- F59** Words in s. 48(3) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), [Sch. 1 para. 589\(2\)](#) (with [Sch. 2 Pts. 1, 2](#))
- F60** Words in s. 48(4)(a) repealed (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), [Sch. 1 para. 589\(3\)](#), [Sch. 3 Pt. 1](#) (with [Sch. 2 Pts. 1, 2](#))
- F61** Word in s. 48(4) substituted (with effect in accordance with Sch. 11 paras. 65-67 of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 11 para. 36\(4\)](#)
- F62** S. 48(4A) inserted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), [Sch. 1 para. 589\(4\)](#) (with [Sch. 2 Pts. 1, 2](#))
- F63** Words in s. 48(4A)(a)(b)(c) omitted (with effect in accordance with Sch. 11 paras. 65-67 of the amending Act) by virtue of [Finance Act 2009 \(c. 10\)](#), [Sch. 11 para. 36\(5\)](#)
- F64** Word in s. 48(4A)(a) inserted (17.7.2012) by [Finance Act 2012 \(c. 14\)](#), [Sch. 16 para. 126\(a\)](#)
- F65** Words in s. 48(4A)(b) inserted (17.7.2012) by [Finance Act 2012 \(c. 14\)](#), [Sch. 16 para. 126\(b\)](#)
- F66** S. 48(4A)(c) and word omitted (17.7.2012) by virtue of [Finance Act 2012 \(c. 14\)](#), [Sch. 16 para. 126\(c\)](#)
- F67** S. 48(5) omitted (with effect in accordance with Sch. 11 paras. 65-67 of the amending Act) by virtue of [Finance Act 2009 \(c. 10\)](#), [Sch. 11 para. 36\(6\)](#)

#### 49 Car <sup>F68</sup>... hire: supplementary

- (1) In section 48 “car <sup>F69</sup>...” means a mechanically propelled road vehicle other than <sup>F70</sup>...—
- [<sup>F71</sup>(za) a motor cycle (within the meaning of section 185(1) of the Road Traffic Act 1988),]



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- (a) [<sup>F72</sup>a vehicle] of a construction primarily suited for the conveyance of goods or burden of any description, or
- (b) [<sup>F73</sup>a vehicle] of a type not commonly used as a private vehicle and unsuitable for such use.

[<sup>F74</sup>(1A) In section 48—

“a car that has low CO2 emissions” has the same meaning as in section 104AA of CAA 2001 (special rate expenditure: main rate car);

“electrically propelled” has the meaning given in section 268B of that Act.]

(2) In section 48 “a qualifying hire car <sup>F75</sup>...” means a car <sup>F75</sup>... which—

- (a) is hired under a hire-purchase agreement <sup>F76</sup>... under which there is no option to purchase,
- (b) is hired under a hire-purchase agreement under which there is an option to purchase exercisable on the payment of a sum equal to not more than 1% of the retail price of the car <sup>F75</sup>... when new, or

<sup>F77</sup>(c) .....

[<sup>F78</sup>(d) is leased under a long-funding lease (within the meaning of section 70G of CAA 2001).]

[<sup>F79</sup>(3) For this purpose “hire-purchase agreement” has the meaning given by section 998A of ITA 2007.]

(6) In this section <sup>F80</sup>... “new” means unused and not second-hand.

#### Textual Amendments

- F68** Words in s. 49 heading omitted (with effect in accordance with Sch. 11 paras. 65-67 of the amending Act) by virtue of [Finance Act 2009 \(c. 10\)](#), [Sch. 11 para. 37\(6\)](#)
- F69** Words in s. 49(1) omitted (with effect in accordance with Sch. 11 paras. 65-67 of the amending Act) by virtue of [Finance Act 2009 \(c. 10\)](#), [Sch. 11 para. 37\(2\)\(a\)](#)
- F70** Word in s. 49(1) omitted (with effect in accordance with Sch. 11 paras. 65-67 of the amending Act) by virtue of [Finance Act 2009 \(c. 10\)](#), [Sch. 11 para. 37\(2\)\(b\)](#)
- F71** S. 49(1)(za) inserted (with effect in accordance with Sch. 11 paras. 65-67 of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 11 para. 37\(2\)\(c\)](#)
- F72** Words in s. 49(1)(a) inserted (with effect in accordance with Sch. 11 paras. 65-67 of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 11 para. 37\(2\)\(d\)](#)
- F73** Words in s. 49(1)(b) inserted (with effect in accordance with Sch. 11 paras. 65-67 of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 11 para. 37\(2\)\(d\)](#)
- F74** S. 49(1A) inserted (with effect in accordance with Sch. 11 paras. 65-67 of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 11 para. 37\(3\)](#)
- F75** Words in s. 49(2) omitted (with effect in accordance with Sch. 11 paras. 65-67 of the amending Act) by virtue of [Finance Act 2009 \(c. 10\)](#), [Sch. 11 para. 37\(4\)\(a\)](#)
- F76** Words in s. 49(2)(a) repealed (1.4.2010) (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), s. 381(1), [Sch. 8 para. 254\(2\)](#), [Sch. 10 Pt. 9](#) (with [Sch. 9 paras. 1-9, 22](#))
- F77** S. 49(2)(c) omitted (with effect in accordance with Sch. 11 paras. 65-67 of the amending Act) by virtue of [Finance Act 2009 \(c. 10\)](#), [Sch. 11 para. 37\(4\)\(b\)](#)
- F78** S. 49(2)(d) inserted (with effect in accordance with Sch. 11 paras. 65-67 of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 11 para. 37\(4\)\(c\)](#)
- F79** S. 49(3) substituted (1.4.2010) for s. 49(3)-(5) (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), s. 381(1), [Sch. 8 para. 254\(3\)](#) (with [Sch. 9 paras. 1-9, 22](#))



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**F80** Words in s. 49(6) omitted (with effect in accordance with Sch. 11 paras. 65-67 of the amending Act) by virtue of [Finance Act 2009 \(c. 10\)](#), [Sch. 11 para. 37\(5\)](#)

**F81 50 Hiring cars (but not motor cycles) with low carbon dioxide emissions**

.....

**Textual Amendments**

**F81** S. 50 omitted (with effect in accordance with Sch. 11 paras. 65-67 of the amending Act) by virtue of [Finance Act 2009 \(c. 10\)](#), [Sch. 11 para. 38](#)

**[F82] 50A Short-term hiring in and long-term hiring out**

- (1) Section 48 does not apply to expenses incurred by a person (“the taxpayer”) on the hiring of a car if condition A or B is met.
- (2) Condition A is that—
  - (a) the expenses are incurred in respect of the making available of the car to the taxpayer for a period (“the hire period”) of not more than 45 consecutive days, and
  - (b) if the car is made available to the taxpayer (whether by the same person or different persons) for one or more periods linked to the hire period, the hire period and the linked period or periods, taken together, consist of not more than 45 days.
- (3) Condition B is that the expenses are incurred in respect of a period (“the sub-hire period”) throughout which the taxpayer makes the car available to another person (“the customer”) and—
  - (a) the sub-hire period consists of more than 45 consecutive days, or
  - (b) if the taxpayer makes the car available to the customer throughout one or more periods linked to the sub-hire period, the sub-hire period and the linked period or periods, taken together, consist of more than 45 days,but see subsection (4).
- (4) Condition B is not met if—
  - (a) the customer is an employee of the taxpayer or of a person connected with the taxpayer, or
  - (b) during all or part of the sub-hire period (or any period linked to the sub-hire period), the customer makes any car available to an employee of the taxpayer under arrangements with the taxpayer or with a person connected with the taxpayer.
- (5) Neither condition A nor condition B is met if the car is hired under arrangements the purpose, or one of the main purposes, of which is—
  - (a) to disapply or reduce the effect of section 48, or
  - (b) other avoidance of tax.
- (6) For the purposes of condition B the expenses incurred by the taxpayer on the hiring of the car must be apportioned between—
  - (a) the sub-hire period, and

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- (b) the remainder of the period during which the car is made available to the taxpayer,  
according to the respective lengths of those periods.
- (7) A period of consecutive days (“the main period”) is linked to—
- (a) a period of consecutive days that ends not more than 14 days before the main period begins,
  - (b) a period of consecutive days that begins not more than 14 days after the main period ends, and
  - (c) a period of consecutive days linked to a period in paragraph (a) or (b).
- (8) For the purposes of this section, where arrangements for the hiring of a car include arrangements for the provision of a replacement car in the event that the first car is not available, the first car and any replacement car are to be treated as if they were the same car.
- (9) In this section (and section 50B) “arrangements” includes any arrangements, scheme or understanding of any kind, whether or not legally enforceable and whether involving a single transaction or two or more transactions.

#### Textual Amendments

**F82** Ss. 50A, 50B inserted (with effect in accordance with Sch. 11 paras. 65-67 of the amending Act) by Finance Act 2009 (c. 10), [Sch. 11 para. 39](#)

### 50B Connected persons: application of section 48

- (1) This section applies where connected persons incur expenses on the hiring of the same car for the same period and—
- (a) section 48 would (but for this section) apply to the expenses of two or more of those persons, or
  - (b) section 48 and section 56 of CTA 2009 would (but for this section and section 58B of that Act) each apply to the expenses of at least one of those persons.
- (2) This section only applies where one or more of the persons mentioned in subsection (1) (a) or (b) incurs the expenses under commercial arrangements (and such a person is referred to below as a “commercial lessee”).
- (3) In relation to the expenses mentioned in subsection (1) to which section 48 would (but for this section) apply, section 48 only applies to the following—
- (a) where there is one commercial lessee, any such expenses incurred by that lessee, and
  - (b) where there is more than one, any such expenses incurred by the first commercial lessee in the chain of arrangements for the hiring of the car for the period.
- (4) In this section—
- (a) references to expenses incurred by a commercial lessee include expenses incurred in that or any other capacity, and

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- (b) “commercial arrangements” means arrangements the terms of which are such as would reasonably have been expected if the parties to the arrangements had been dealing at arm’s length.]

#### Textual Amendments

**F82** Ss. 50A, 50B inserted (with effect in accordance with Sch. 11 paras. 65-67 of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 11 para. 39](#)

#### Modifications etc. (not altering text)

**C2** S. 50B modified by 1988 c. 1, s. 578A(5) (as inserted (with effect in accordance with Sch. 11 paras. 65-67 of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 11 para. 62\(7\)](#))

### *Patent royalties*

## **51 Patent royalties**

F83

#### Textual Amendments

**F83** S. 51 repealed (6.4.2007 with effect as noted in [s. 1034\(1\)](#) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), [ss. 1027, 1031, 1034](#), [Sch. 1 para. 497](#), [Sch. 3 Pt. 1](#) (with transitional provisions and savings in [Sch. 2](#))

### *Interest payments*

## **[<sup>F84</sup>51A Cash basis: interest payments on loans**

- (1) In calculating the profits of a trade on the cash basis, no deduction is allowed for the interest paid on a loan.
- (2) This is subject to section 57B.]

#### Textual Amendments

**F84** S. 51A inserted (with effect in accordance with Sch. 4 paras. 56, 57 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 4 para. 10](#)

## **52 Exclusion of double relief for interest**

- (1) In calculating the profits of a trade, no deduction is allowed—
- (a) for any tax year for the interest paid on a debt or liability in respect of which relief is given under [<sup>F85</sup>section 383 of ITA 2007](see subsection (5) below), or
- (b) for any relevant tax year for other interest on the same debt or liability.
- (2) A tax year is a relevant one if the interest in respect of which the relief is given could, but for the relief, have been brought into account in calculating the profits of a trade of the tax year.

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- (3) For the purposes of subsection (1)(b) all interest which—
- (a) is capable of being brought into account in calculating the profits of a trade, and
  - (b) is payable by any person on money advanced to the person on current account, is treated as interest on the same debt.
- (4) It does not matter if the money is advanced—
- (a) on one or more accounts, or
  - (b) by the same or separate banks or other persons.
- (5) For the purposes of this section relief under [<sup>F85</sup>section 383 of ITA 2007] is to be treated as given only when the claim for the relief can no longer be varied (whether on appeal or otherwise).
- (6) For a rule excluding relief under [<sup>F85</sup>section 383 of ITA 2007] if interest on a debt or liability is brought into account in calculating the profits of a trade, see [<sup>F86</sup>section 387(2) and (3) of that Act] .

#### Textual Amendments

- F85** Words in s. 52(1)(5)(6) substituted (6.4.2007 with effect as noted in s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), ss. 1027, 1034, [Sch. 1 para. 498\(2\)](#) (with transitional provisions and savings in [Sch. 2](#))
- F86** Words in s. 52(6) substituted (6.4.2007 with effect as noted in s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), ss. 1027, 1034, [Sch. 1 para. 498\(3\)](#) (with transitional provisions and savings in [Sch. 2](#))

### *Social security contributions*

#### **53 Social security contributions**

- (1) In calculating the profits of a trade, no deduction is allowed for any contribution paid by any person under—
- (a) Part 1 of the Social Security Contributions and Benefits Act 1992 (c. 4), or
  - (b) Part 1 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7).
- (2) But this prohibition does not apply to an employer's contribution.
- (3) For this purpose “an employer's contribution” means—
- (a) a secondary Class 1 contribution,
  - (b) a Class 1A contribution, or
  - (c) a Class 1B contribution,
- within the meaning of Part 1 of the Social Security Contributions and Benefits Act 1992 or of the Social Security Contributions and Benefits (Northern Ireland) Act 1992.

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### *Penalties, interest and VAT surcharges*

#### **54 Penalties, interest and VAT surcharges**

- (1) In calculating the profits of a trade, no deduction is allowed for any penalty or interest mentioned in the first column of the following table.
- (2) This is the table—

<i>Penalty or interest</i>	<i>Description of tax, levy or duty</i>
Interest under any provision of Part 9 of TMA 1970	Income tax, capital gains tax and corporation tax
[ <sup>F87</sup> Interest under section 101 of FA 2009 in connection with sums required to be deducted under section 61 of FA 2004 (construction industry)]	
Penalty under any of sections 60 to 70 of VATA 1994	Value added tax
Interest under section 74 [ <sup>F88</sup> or 85A] of VATA 1994	
Penalty under any of sections 8 to 11 of FA 1994	Excise duties
Penalty under any of paragraphs 12 to 19 of Schedule 7 to FA 1994	Insurance premium tax
[ <sup>F89</sup> Interest under section 60(8) of FA 1994 or paragraph 21 of Schedule 7 to FA 1994]	
Penalty under any provision of Part 5 of Schedule 5 to FA 1996	Landfill tax
[ <sup>F90</sup> Interest under section 56(5) of, or paragraph 26 or 27 of Schedule 5 to, FA 1996]	
Penalty under any provision of Schedule 6 to FA 2000	Climate change levy
Interest under any of paragraphs 70, 81 to 85 [ <sup>F91</sup> , 109 and 123(6)] of that Schedule	
Penalty under any provision of Part 2 of FA 2001	Aggregates levy
Interest under [ <sup>F92</sup> section 42(6) of, or] any of paragraphs 5 to 9 of Schedule 5 to, paragraph 6 of Schedule 8 to and paragraph 5 of Schedule 10 [ <sup>F93</sup> to, FA 2001]	

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Penalty under section 25 or 26 of FA 2003	Customs, export and import duties
Penalty under any provision of Part 4 of FA 2003	Stamp duty land tax
Interest under any provision of that Part	
[ <sup>F94</sup> Penalty under Schedule 24 to FA 2007	Various taxes and excise duties]
[ <sup>F95</sup> Penalty under Schedule 41 to FA 2008	Various taxes and excise duties]

- (3) In calculating the profits of a trade, no deduction is allowed for any surcharge under section 59 of VATA 1994.

#### Textual Amendments

- F87** Words in s. 54(2) table substituted (with effect in accordance with art. 1(2) of the amending S.I.) by [The Finance Act 2009, Sections 101 and 102 \(Interest on Late Payments and Repayments\) \(Consequential Amendments\) Order 2014 \(S.I. 2014/1283\)](#), art. 1(1), **Sch. para. 5**
- F88** Words in s. 54(2) table inserted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 438(2)**
- F89** Words in s. 54(2) table substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 438(3)**
- F90** Words in s. 54(2) table substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 438(4)**
- F91** Words in s. 54(2) table substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 438(5)**
- F92** Words in s. 54(2) table inserted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 438(6)(a)**
- F93** Words in s. 54(2) table substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 438(6)(b)**
- F94** Words in s. 54(2) table added (1.4.2009) by [The Finance Act 2008, Schedule 40 \(Appointed Day, Transitional Provisions and Consequential Amendments\) Order 2009 \(S.I. 2009/571\)](#), art. 1(1), **Sch. 1 para. 28**
- F95** Words in s. 54(2) table added (1.4.2010) by [The Finance Act 2008 \(Penalties for Errors and Failure to Notify etc\) \(Consequential Amendments\) Order 2010 \(S.I. 2010/530\)](#), art. 1, **Sch. para. 8**

#### *Crime-related payments*

#### 55 Crime-related payments

- (1) In calculating the profits of a trade, no deduction is allowed for expenses incurred—
- in making a payment if the making of the payment constitutes a criminal offence, or
  - in making a payment outside the United Kingdom if the making of a corresponding payment in any part of the United Kingdom would constitute a criminal offence in that part.
- (2) In calculating the profits of a trade, no deduction is allowed for expenses incurred in making a payment induced by a demand which constitutes—

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- (a) the offence of blackmail under section 21 of the Theft Act 1968 (c. 60) (England and Wales),
- (b) the offence of extortion (Scotland), or
- (c) the offence of blackmail under section 20 of the Theft Act (Northern Ireland) 1969 (c. 16 (N.I.)) (Northern Ireland).

### *[<sup>F96</sup>Integral features*

#### **Textual Amendments**

- F96** S. 55A and cross-heading inserted (with effect in accordance with s. 73(6) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [s. 73\(4\)](#)

## **55A Expenditure on integral features**

[ Section 33A(3) of CAA 2001 provides that no deduction is allowed in respect of <sup>F97</sup>(1) certain expenditure on an integral feature of a building or structure (within the meaning of that section).]

[<sup>F98</sup>(2) But section 33A(3) of CAA 2001 does not apply in calculating the profits of a trade on the cash basis.]

#### **Textual Amendments**

- F97** S. 55A(1): s. 55A renumbered as s. 55A(1) (with effect in accordance with Sch. 4 paras. 56, 57 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 4 para. 11\(2\)](#)
- F98** S. 55A(2) inserted (with effect in accordance with Sch. 4 paras. 56, 57 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 4 para. 11\(3\)](#)

### *[<sup>F99</sup>Rental rebates*

#### **Textual Amendments**

- F99** S. 55B and cross-heading inserted (8.4.2010) (with effect in accordance with Sch. 5 para. 2(3) of the amending Act) by [Finance Act 2010 \(c. 13\)](#), [Sch. 5 para. 2\(1\)](#)

## **55B Rental rebates**

- (1) Where plant or machinery (“the asset”) is leased and a rental rebate is payable by the lessor, the amount of the deduction allowable in respect of the rebate is limited to—
  - (a) the amount of the lessor's income from the lease, or
  - (b) in the case of a finance lease, that amount excluding the finance charge.
- (2) “Rental rebate” means any sum payable to the lessee that is calculated by reference to the termination value of the asset.
- (3) For this purpose—
  - (a) the termination value of an asset is the value of the asset at or about the time when the lease terminates,

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- (b) calculation by reference to the termination value includes calculation by reference to any one or more of—
    - (i) the proceeds of sale, if the asset is sold,
    - (ii) any insurance proceeds, compensation or similar sums in respect of the asset,
    - (iii) an estimate of the market value of the asset, and
  - (c) calculation by reference to the termination value also includes—
    - (i) determination in a way which, or by reference to factors or criteria which, might reasonably be expected to produce a broadly similar result to calculation by reference to the termination value, or
    - (ii) any other form of calculation indirectly by reference to the termination value.
- (4) For the purposes of this section—
- (a) the income of the lessor from the lease is the total of all the amounts receivable in connection with the lease that have been brought into account in calculating the lessor's income for income tax purposes, excluding—
    - (i) disposal receipts brought into account under Part 2 of CAA 2001 (see section 60(1) of that Act), and
    - (ii) so much of any amount as represents charges for services or qualifying UK or foreign tax (within the meaning of section 70YE of that Act) to be paid by the lessor, and
  - (b) the finance charge, in relation to a finance lease, is—
    - (i) if the lease is one that, under generally accepted accounting practice, falls (or would fall) to be treated as a loan, so much of the rentals under the lease as fall (or would fall) to be treated as interest, or
    - (ii) in any other case, the amount that, in accordance with generally accepted accounting practice, falls (or would fall) to be treated as the gross return on investment.
- (5) Where the asset is acquired by the lessor in a transaction in relation to which an election is made under section 266 of CAA 2001 (election where predecessor and successor are connected persons), this section applies as if the successor had been the lessor at all material times and everything done to or by the predecessor had been done to or by the successor.
- (6) Where the whole or part of a rental rebate is disallowed under this section as a deduction in computing profits—
- (a) the amount disallowed, or
  - (b) if less, the amount by which the rental rebate exceeds the amount of capital expenditure incurred by the lessor,
- may be treated for the purposes of capital gains tax as an allowable loss accruing to the lessor on the termination of the lease.
- That allowable loss is deductible only from chargeable gains accruing to the lessor on the disposal of the asset.
- (7) This section does not apply to a long funding finance lease (see section 148C).]



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## CHAPTER 5

### TRADE PROFITS: RULES ALLOWING DEDUCTIONS

#### *Introduction*

#### **56 Professions and vocations**

Apart from sections 87 to 90 (scientific research and expenses connected with patents, designs and trade marks) [<sup>F100</sup>and section 97A (cash basis: value of trading stock on cessation of trade)], the provisions of this Chapter apply to professions and vocations as they apply to trades.

##### **Textual Amendments**

**F100** Words in s. 56 inserted (with effect in accordance with Sch. 4 paras. 56, 57 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 4 para. 50](#)

#### *[<sup>F101</sup>Cash basis accounting*

##### **Textual Amendments**

**F101** S. 56A and cross-heading inserted (with effect in accordance with Sch. 4 paras. 56, 57 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 4 para. 13](#)

#### **56A Application of Chapter to the cash basis**

- (1) The following sections do not apply in calculating the profits of a trade on the cash basis—
  - sections 60 to 67 (tenants under taxed leases),
  - <sup>F102</sup>...
- (2) For rules allowing deductions that apply only where profits are calculated on the cash basis, see the following—
  - section 57B (cash basis: interest payments on loans).
- (3) In calculating the profits of a trade on the cash basis, any reference in this Chapter to the incurring of expenses is to be read as a reference to the paying of expenses.]

##### **Textual Amendments**

**F102** Words in s. 56A(1) omitted (with effect in accordance with s. 72(4) of the amending Act) by virtue of [Finance Act 2016 \(c. 24\)](#), [s. 72\(2\)\(a\)](#)

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### *Pre-trading expenses*

#### **57 Pre-trading expenses**

- (1) This section applies if a person incurs expenses for the purposes of a trade before (but not more than 7 years before) the date on which the person starts to carry on the trade (“the start date”).
- (2) If, in calculating the profits of the trade—
  - (a) no deduction would otherwise be allowed for the expenses, but
  - (b) a deduction would be allowed for them if they were incurred on the start date, the expenses are treated as if they were incurred on the start date (and therefore a deduction is allowed for them).

### *F103 Subsistence expenses*

#### **Textual Amendments**

**F103** S. 57A and cross-heading inserted (with effect in accordance with art. 3(2) of the amending S.I.) by [The Enactment of Extra-Statutory Concessions Order 2009 \(S.I. 2009/730\)](#), arts. 1(1), 3

#### **57A Expenses incurred by traders on food and drink**

- (1) In calculating the profits of a trade, a deduction is allowed for any reasonable expenses incurred on food or drink for consumption by the trader at a place to which the trader travels in the course of carrying on the trade, or while travelling to a place in the course of carrying on the trade, if conditions A and B are met.
- (2) Condition A is met if—
  - (a) a deduction is allowed for the expenses incurred by the trader in travelling to the place, or
  - (b) where the expenses of travelling to the place are not incurred by the trader, a deduction would be allowed for them if they were.
- (3) Condition B is met if—
  - (a) at the time the expenses are incurred on the food or drink, the trade is by its nature itinerant, or
  - (b) the trader does not travel to the place more than occasionally in the course of carrying on the trade and either—
    - (i) the travel in connection with which the expenses are incurred on the food or drink is undertaken otherwise than as part of the trader’s normal pattern of travel in the course of carrying on the trade, or
    - (ii) the trader does not have such a normal pattern of travel.]

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### *F<sup>104</sup> Cash basis: interest payments*

#### **Textual Amendments**

**F104** S. 57B and cross-heading inserted (with effect in accordance with Sch. 4 paras. 56, 57 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 4 para. 14](#)

#### **57B Cash basis: interest payments on loans**

- (1) This section applies if a person carrying on a trade in a period pays any interest on a loan during the period and—
  - (a) a deduction for the interest would not otherwise be allowable in calculating the profits of the trade because of section 51A, or
  - (b) in the absence of section 51A, a deduction for the interest would not otherwise be allowable in calculating the profits of the trade because (and only because) it was not an expense incurred wholly and exclusively for the purposes of the trade.
- (2) In calculating the profits of the trade on the cash basis, a deduction is allowed for the interest.
- (3) But the maximum amount that may be deducted by virtue of this section or section 58 (incidental costs of obtaining finance) in calculating the profits of a trade for any period is £500.
- (4) The Treasury may by order amend the figure for the time being specified in subsection (3).
- (5) A statutory instrument containing an order under this section that amends that figure so as to substitute a lower figure may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the House of Commons.]

### *Incidental costs of obtaining finance*

#### **58 Incidental costs of obtaining finance**

- (1) In calculating the profits of a trade, a deduction is allowed for incidental costs of obtaining finance by means of—
  - (a) a loan, or
  - (b) the issue of loan stock,if the interest on the loan or stock is deductible in calculating the profits of the trade.
- (2) “Incidental costs of obtaining finance” means expenses—
  - (a) which are incurred on fees, commissions, advertising, printing and other incidental matters, and
  - (b) which are incurred wholly and exclusively for the purpose of obtaining the finance, providing security for it or repaying it.
- (3) Expenses incurred wholly and exclusively for the purpose of—
  - (a) obtaining finance, or
  - (b) providing security for it,

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are incidental costs of obtaining the finance even if it is not in fact obtained.

- (4) But the following are not incidental costs of obtaining finance—
- (a) sums paid because of losses resulting from movements in the rate of exchange between different currencies,
  - (b) sums paid for the purpose of protecting against such losses,
  - (c) the cost of repaying a loan or loan stock so far as attributable to its being repayable at a premium or having been obtained or issued at a discount, and
  - (d) stamp duty.
- (5) This section needs to be read with <sup>F105</sup>—
- (a) section 57B(3) (which imposes a limit on the total amount that may be deducted by virtue of this section or section 57B), and
  - (b) section 59 (which provides for restrictions in relation to convertible loans and loan stock etc.).

#### Textual Amendments

**F105** Words in s. 58(5)(a) inserted (with effect in accordance with Sch. 4 paras. 56, 57 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 4 para. 15](#)

#### Modifications etc. (not altering text)

**C3** S. 58 modified (with effect as mentioned in s. 56 of the amending Act) by [Finance Act 2005 \(c. 7\)](#), [s. 51\(3\)\(5\)](#)

**C4** S. 58 modified (1.4.2010) by [Income Tax Act 2007 \(c. 3\)](#), [s. 564N\(3\)](#) (as inserted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), s. 381(1), [Sch. 2 para. 15\(3\)](#) (with Sch. 9 paras. 1-9, 22))

## 59 Convertible loans and loan stock etc.

- (1) No deduction is allowed under section 58 in respect of a loan or loan stock if—
- (a) it carries the right of conversion into, or to the acquisition of, shares or other securities, and
  - (b) the right is exercisable before the end of the period of 3 years from the date when the loan was obtained or the stock issued (“the 3 year period”).
- (2) “Other securities” does not include a loan or loan stock—
- (a) the interest on which is deductible in calculating the profits of the person's trade, and
  - (b) which does not carry such a right as is mentioned in subsection (1).
- (3) But the restriction imposed by subsection (1) does not apply if the right is not, or is not wholly, exercised before the end of the 3 year period.
- (4) In such a case any incidental costs of obtaining finance incurred before the end of the 3 year period are treated as incurred immediately after the end of it.
- (5) If the right is exercised within the 3 year period as to part of the loan or loan stock, only the following incidental costs of obtaining finance are treated as incurred.
- (6) The costs are those corresponding to the proportion of the loan or loan stock in respect of which the right is not exercised within that period.

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### *Tenants under taxed leases*

#### **60 Tenants under taxed leases: introduction**

- (1) Sections 61 to 67 apply if land used in connection with a trade is subject to a taxed lease.
- (2) Section 61 (tenants occupying land for purposes of trade treated as incurring expenses) applies in calculating the profits of a trade carried on by the tenant under the taxed lease for the purpose of making deductions for the expenses of the trade.
- (3) But any deduction for an expense under section 61 is subject to the application of any provision of Chapter 4 of this Part.
- (4) In this section and sections 61 to 67 the following expressions have the same meaning as in Chapter 4 of Part 3 (profits of property businesses: lease premiums etc.)—
  - “receipt period” (see section 288(6)),
  - “taxed lease” (see section 287(4)),
  - “taxed receipt” (see section 287(4)), and
  - “unreduced amount” (see section 290(2)).
- (5) Section 290(3) and (4) (unreduced amount of taxed receipt under section 277 as a result of section 278) applies for the purposes of sections 61 to 65.
- (6) In sections 64 to 67 references to a reduction under section 288 [F106 below or section 228 of CTA 2009] by reference to a taxed receipt have the same meaning as in Chapter 4 of Part 3 (see section 290(6)).
- (7) In the application of sections 64 to 67 to Scotland—
  - (a) references to a lease being granted out of a taxed lease are to the grant of a sublease of land subject to the taxed lease, and
  - (b) references to the lease so granted are to be read as references to the sublease.

#### **Textual Amendments**

**F106** Words in s. 60(6) inserted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 591** (with Sch. 2 Pts. 1, 2)

#### **61 Tenants occupying land for purposes of trade treated as incurring expenses**

- (1) The tenant under the taxed lease is treated as incurring an expense of a revenue nature in respect of the land subject to the taxed lease for each qualifying day.
- (2) If there is more than one taxed receipt, this section applies separately in relation to each of them.
- (3) A day is a “qualifying day”, in relation to a taxed receipt, if it is a day—
  - (a) that falls within the receipt period of the taxed receipt, and
  - (b) on which the tenant occupies the whole or part of the land subject to the taxed lease for the purposes of carrying on a trade.

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*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Part 2. (See end of Document for details)*

- (4) If on the qualifying day the tenant occupies the whole of the land subject to the taxed lease for the purposes of the trade, the amount of the expense for the qualifying day by reference to the taxed receipt is given by the formula—

$$\frac{A}{\text{TRP}}$$

A is the unreduced amount of the taxed receipt, and TRP is the number of days in the receipt period of the taxed receipt.

- (5) If on the qualifying day the tenant occupies part of the land subject to the taxed lease for the purposes of the trade, the amount of the expense for the qualifying day by reference to the taxed receipt is given by the formula—

$$\frac{F \times A}{\text{TRP}}$$

where—

F is the fraction of the land that is so occupied calculated on a just and reasonable basis, and

A and TRP have the same meaning as in subsection (4).

[<sup>F107</sup>(5A) No expense is to be determined under this section by reference to the taxed receipt if section 292(4B) or (4C) applies.]

- (6) This section is subject to section 62 (limit on deductions if tenant entitled to mineral extraction allowance).

#### Textual Amendments

**F107** S. 61(5A) inserted (with effect in accordance with Sch. 28 para. 4 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 28 para. 2](#)

## 62 Limit on deductions if tenant entitled to mineral extraction allowance

- (1) This section applies if the tenant under the taxed lease has become entitled, in respect of expenditure on the acquisition of an interest in the land subject to the taxed lease, to an allowance for a tax year under Part 5 of CAA 2001 (mineral extraction allowances) in respect of expenditure falling within section 403 of that Act (qualifying expenditure on acquiring a mineral asset).
- (2) If the allowance is in respect of the whole of the expenditure, no deduction is allowed for expenses under section 61 for a qualifying day falling within that or a later tax year.
- (3) If the allowance is in respect of only part of the expenditure (“the allowable part”) the amount of the deduction for expenses under section 61 for a qualifying day falling within that or a later tax year is calculated by multiplying the amount that, apart from this section, would be the amount of the deduction for the qualifying day by—

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$$\frac{\text{WE} - \text{AP}}{\text{WE}}$$

where—

WE is the whole of the expenditure, and

AP is the allowable part of the expenditure.

### **63 Tenants dealing with land as property employed for purposes of trade**

- (1) This section applies if the tenant under the taxed lease—
  - (a) does not occupy the land subject to the taxed lease, or a part of it, but
  - (b) deals with the tenant's interest in the land, or the part of it, as property employed for the purposes of carrying on a trade.
- (2) Section 61 applies as if the land or the part of it were occupied by the tenant for the purposes of the trade.
- (3) But the tenant is not treated as incurring an expense in respect of the land for a qualifying day as a result of this section so far as the tenant is treated as incurring an expense under section 292 (tenants under taxed leases treated as incurring expenses) in respect of the land for the day in calculating the profits of the tenant's property business.
- (4) This section is subject to sections 64 and 65 (restrictions on section 61 expenses where the additional calculation rule is relevant).

### **64 Restrictions on section 61 expenses: lease premium receipts**

- [<sup>F108</sup>(1) This section applies if a lease has been granted out of the taxed lease and—
- (a) in calculating the amount of a receipt of a property business under Chapter 4 of Part 3 (profits of property businesses: lease premiums etc) in respect of the lease, there is a reduction under section 288 (the additional calculation rule) by reference to the taxed receipt, or
  - (b) in calculating the amount of a receipt of a property business under Chapter 4 of Part 4 of CTA 2009 (profits of a property business: lease premiums etc) in respect of the lease, there is a reduction under section 228 of that Act (the additional calculation rule) by reference to the taxed receipt.

In this section and sections 65 and 67 the receipt that is so reduced is referred to as a “lease premium receipt”.]

- (2) Subsections (3) to (5) provide for the application of section 61 as a result of section 63 for a qualifying day that falls within the receipt period of the lease premium receipt.
- (3) The tenant under the taxed lease is treated as incurring an expense under section 61 as a result of section 63 for the qualifying day by reference to the taxed receipt only if the daily amount of the taxed receipt exceeds the daily reduction of the lease premium receipt.

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*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Part 2. (See end of Document for details)*

- (4) If the condition in subsection (3) is met, the amount of that expense for the qualifying day by reference to the taxed receipt is equal to that excess.
- (5) If the qualifying day falls within the receipt period of more than one lease premium receipt, the reference in subsection (3) to the daily reduction of the lease premium receipt is to be read as a reference to the total of the daily reductions of each of the lease premium receipts whose receipt period includes the qualifying day.
- (6) In this section—  
the “daily amount” of the taxed receipt is given by the formula—

$$\frac{A}{\text{TRP}}$$

where—

A is the unreduced amount of the taxed receipt, and

TRP is the number of days in the receipt period of the taxed receipt, and  
the “daily reduction” of a lease premium receipt is given by the formula—

$$\frac{\text{AR}}{\text{RRP}}$$

where—

AR is the reduction under section 288 [<sup>F109</sup>below or section 228 of CTA 2009] by reference to the taxed receipt, and

RRP is the number of days in the receipt period of the lease premium receipt.

- (7) Section 65 explains how this section operates if the lease does not extend to the whole of the premises subject to the taxed lease.

#### Textual Amendments

**F108** S. 64(1) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 592\(2\)](#) (with [Sch. 2 Pts. 1, 2](#))

**F109** Words in s. 64(6) inserted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 592\(3\)](#) (with [Sch. 2 Pts. 1, 2](#))

## 65 Restrictions on section 61 expenses: lease of part of premises

- (1) This section applies if—  
(a) [<sup>F110</sup>section 64 applies], and  
(b) the lease granted out of the taxed lease does not extend to the whole of the premises subject to the taxed lease.
- (2) Subsections (3) to (5) apply for a qualifying day that falls within the receipt period of the lease premium receipt.



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- (3) Sections 61, 63 and 64 apply separately in relation to the part of the premises subject to the lease and to the remainder of the premises.
- (4) If—
  - (a) more than one lease that does not extend to the whole of the premises subject to the taxed lease has been granted out of the taxed lease, and
  - (b) the qualifying day falls within the receipt period of two or more lease premium receipts that relate to different leases,sections 61, 63 and 64 apply separately in relation to each part of the premises subject to a lease to which such a lease premium receipt relates and to the remainder of the premises.
- (5) Where sections 61, 63 and 64 apply in relation to a part of the premises, A becomes the amount calculated by multiplying the unreduced amount of the taxed receipt by the fraction of the premises constituted by the part.
- (6) This fraction is calculated on a just and reasonable basis.

#### Textual Amendments

**F110** Words in s. 65(1)(a) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), [Sch. 1 para. 593](#) (with [Sch. 2 Pts. 1, 2](#))

## 66 Corporation tax receipts [<sup>F111</sup>under ICTA] treated as taxed receipts

Section 296 (corporation tax receipts treated as taxed receipts applies for the purposes of sections 60 to 67.

#### Textual Amendments

**F111** Words in s. 66 title inserted (1.4.2009) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), [Sch. 1 para. 594](#) (with [Sch. 2 Pts. 1, 2](#))

## 67 Restrictions on section 61 expenses: corporation tax receipts [<sup>F112</sup>under ICTA]

- (1) This section provides for the application of section 61 as a result of section 63 if—
  - (a) a lease has been granted out of the taxed lease,
  - (b) in calculating the amount of a corporation tax receipt in respect of the lease, there is a reduction under section 37(2) or (3) of ICTA by reference to the amount chargeable on the superior interest for the purposes of that section, and
  - (c) the amount chargeable on the superior interest is the taxed receipt for the purposes of section 61.
- (2) Sections 61 and 63 to 65 apply as follows—
  - (a) the corporation tax receipt is treated as if it were a lease premium receipt for the purposes of sections 64 and 65,
  - (b) references in those sections to the reduction under section 288 by reference to the taxed receipt are, in relation to the corporation tax receipt, to the reduction under section 37(2) or (3) of ICTA by reference to the amount chargeable on the superior interest, and

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- (c) for the purposes of those sections the receipt period of the corporation tax receipt is—
- (i) in the case of a corporation tax receipt as a result of section 34 of ICTA, the period treated in calculating the amount of the receipt as being the duration of the lease, and
  - (ii) in the case of a corporation tax receipt as a result of section 35 of ICTA, the period treated in calculating the amount of the receipt as being the duration of the lease remaining at the date of the assignment.
- (3) There is a corporation tax receipt in respect of a lease if—
- (a) there is a receipt of a Schedule A business or an overseas property business (within the meaning of section 70A(4) of ICTA) as a result of section 34 or 35 of ICTA (treatment of premiums etc. as rent and assignments for profit of lease granted at an undervalue) in respect of the lease for an accounting period ending after 5th April 2005 [<sup>F113</sup>but before 1st April 2009], or
  - (b) there would be such a receipt, but for the operation of section 37(2) or (3) of ICTA (reductions in certain receipts under section 34 or 35 of ICTA).
- (4) References to a reduction under section 37(2) or (3) of ICTA in a corporation tax receipt by reference to the amount chargeable on the superior interest are to the difference between—
- (a) the amount of the corporation tax receipt before the operation of section 37(2) or (3) of ICTA, and
  - (b) the amount of the corporation tax receipt after the operation of that subsection, so far as attributable to the amount chargeable on the superior interest for the purposes of section 37 of ICTA.

#### Textual Amendments

**F112** Words in s. 67 title inserted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 595\(3\)](#) (with [Sch. 2 Pts. 1, 2](#))

**F113** Words in s. 67(3)(a) inserted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 595\(2\)](#) (with [Sch. 2 Pts. 1, 2](#))

F114 ...

#### Textual Amendments

**F114** [S. 68 and cross-heading](#) omitted (with effect in accordance with s. 72(4) of the amending Act) by virtue of [Finance Act 2016 \(c. 24\), s. 72\(1\)\(a\)](#)

## <sup>F114</sup>68 Replacement and alteration of trade tools

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### *Payments for restrictive undertakings*

#### **69 Payments for restrictive undertakings**

- (1) In calculating the profits of a trade, a deduction is allowed for a payment—
  - (a) which is treated as earnings of an employee by virtue of section 225 of ITEPA 2003 (payments for restrictive undertakings), and
  - (b) which is made, or treated as made for the purposes of section 226 of that Act (valuable consideration given for restrictive undertakings), by the person carrying on the trade.
- (2) The deduction is allowed for the period of account in which the payment—
  - (a) is made, or
  - (b) is treated as made for the purposes of section 226 of ITEPA 2003.

### *Seconded employees*

#### **70 Employees seconded to charities and educational establishments**

- (1) This section applies if a person carrying on a trade (“the employer”) makes the services of a person employed for the purposes of the trade available to—
  - (a) a charity, or
  - (b) an educational establishment,on a basis that is stated and intended to be temporary.
- (2) In calculating the profits of the trade, a deduction is allowed for expenses of the employer that are attributable to the employee's employment during the period of the secondment.
- (3) In this section—

“educational establishment” means—

  - (a) in England and Wales, any of the bodies mentioned in section 71(1),
  - (b) in Scotland, any of the bodies mentioned in section 71(2),
  - (c) in Northern Ireland, any of the bodies mentioned in section 71(3), and
  - (d) any other educational body which is for the time being approved for the purposes of this section by the Secretary of State or, in Northern Ireland, the Department of Education, and

“the period of the secondment” means the period for which the employee's services are made available to the charity or educational establishment.

#### **71 Educational establishments**

- (1) A body in England and Wales is an educational establishment for the purposes of section 70 if it is—
  - <sup>[F115]</sup>(a) a local authority (but only to the extent that the services of the employee are made available to the authority for the purposes of, or in connection with, the education functions of the authority),
  - (b) an educational institution maintained or otherwise supported<sup>[F116]</sup>, in the exercise of their education functions, by a local authority],

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- (c) an independent school within the meaning of the Education Act 1996 (c. 56) registered under section 161 of the Education Act 2002 (c. 32),<sup>F117</sup>...
- [<sup>F118</sup>(ca) an alternative provision Academy that is not an independent school within the meaning of the Education Act 1996,]
- (d) an institution within the further education sector, or the higher education sector, within the meaning of the Further and Higher Education Act 1992 (c. 13)[<sup>F119</sup>, or
- (e) a 16 to 19 Academy.]
- (2) A body in Scotland is an educational establishment for the purposes of section 70 if it is—
- (a) an education authority within the meaning of the Education (Scotland) Act 1980 (c. 44),
- (b) an educational establishment within the meaning of the Education (Scotland) Act 1980 managed by an education authority within the meaning of that Act,
- (c) a public or grant-aided school within the meaning of the Education (Scotland) Act 1980,
- (d) an independent school within the meaning of the Education (Scotland) Act 1980,
- (e) a central institution within the meaning of the Education (Scotland) Act 1980,
- (f) an institution within the higher education sector within the meaning of section 56(2) of the Further and Higher Education (Scotland) Act 1992 (c. 37), or
- (g) a college of further education within the meaning of section 36(1) of the Further and Higher Education (Scotland) Act 1992.
- (3) A body in Northern Ireland is an educational establishment for the purposes of section 70 if it is—
- (a) an [<sup>F120</sup>education and library board] within the meaning of the Education and Libraries (Northern Ireland) Order 1986 (S.I. 1986/594 (N.I. 3)),
- (b) a college of education[<sup>F121</sup>, a grant-aided school or an] independent school within the meaning of the Education and Libraries (Northern Ireland) Order 1986, or
- (c) an institution of further education within the meaning of the Further Education (Northern Ireland) Order 1997 (S.I. 1997/1772 (N.I. 15)).
- [<sup>F122</sup>(4) In subsection (1) “local authority” and “education functions” have the same meaning as in the Education Act 1996 (see section 579(1) of that Act).]

#### Textual Amendments

- F115** S. 71(1)(a) substituted (5.5.2010) by [The Local Education Authorities and Children’s Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#), art. 1, **Sch. 2 para. 56(2)**
- F116** Words in s. 71(1)(b) substituted (5.5.2010) by [The Local Education Authorities and Children’s Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#), art. 1, **Sch. 2 para. 56(3)**
- F117** Word in s. 71(1) omitted (1.4.2012) by virtue of [Education Act 2011 \(c. 21\)](#), s. 82(3), **Sch. 13 para. 14**; [S.I. 2012/924](#), art. 2
- F118** S. 71(1)(ca) inserted (E.W.) (1.4.2012) by [The Alternative Provision Academies \(Consequential Amendments to Acts\) \(England\) Order 2012 \(S.I. 2012/976\)](#), art. 1, **Sch. para. 15** (with art. 3)
- F119** S. 71(1)(e) and word inserted (1.4.2012) by [Education Act 2011 \(c. 21\)](#), s. 82(3), **Sch. 13 para. 14**; [S.I. 2012/924](#), art. 2

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- F120** Words in s. 71(3)(a) substituted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 596(2)(a)** (with Sch. 2 Pts. 1, 2)
- F121** Words in s. 71(3)(b) substituted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 596(2)(b)** (with Sch. 2 Pts. 1, 2)
- F122** S. 71(4) added (5.5.2010) by The Local Education Authorities and Children's Services Authorities (Integration of Functions) Order 2010 (S.I. 2010/1158), art. 1, **Sch. 2 para. 56(4)**

### *Contributions to agents' expenses*

## **72 Payroll deduction schemes: contributions to agents' expenses**

- (1) This section applies if—
- a person carrying on a trade (“the employer”) is liable to make payments to an individual,
  - income tax falls to be deducted from those payments as a result of PAYE regulations, and
  - the employer withholds sums from those payments in accordance with an approved scheme and pays the sums to an approved agent.
- (2) In calculating the profits of the employer's trade, a deduction is allowed for expenses incurred by the employer in making a payment to the agent for expenses which—
- have been incurred, or
  - are to be incurred,
- by the agent in connection with the agent's functions under the scheme.

[<sup>F123</sup>(2A) In calculating the profits of the employer's trade on the cash basis, subsection (2) has effect as if paragraph (b) were omitted.]

- (3) In this section “approved agent” and “approved scheme” have the same meaning as in section 714 of ITEPA 2003.

### **Textual Amendments**

- F123** S. 72(2A) inserted (with effect in accordance with Sch. 4 paras. 56, 57 of the amending Act) by Finance Act 2013 (c. 29), **Sch. 4 para. 16**

### *Counselling and retraining expenses*

## **73 Counselling and other outplacement services**

- (1) In calculating the profits of a trade, a deduction is allowed for counselling expenses if—
- the person carrying on the trade (“the employer”) incurs the expenses,
  - the expenses are incurred in relation to a person (“the employee”) who holds or has held an office or employment under the employer for the purposes of the trade, and
  - the relevant conditions are met.
- (2) In this section “counselling expenses” means expenses incurred—

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- (a) in the provision of services to the employee in connection with the cessation of the office or employment,
  - (b) in the payment or reimbursement of fees for such provision, or
  - (c) in the payment or reimbursement of travelling expenses in connection with such provision.
- (3) In this section “the relevant conditions” means—
- (a) conditions A to D for the purposes of section 310 of ITEPA 2003 (employment income exemptions: counselling and other outplacement services), and
  - (b) in the case of travel expenses, condition E for those purposes.

#### **74 Retraining courses**

- (1) In calculating the profits of a trade, a deduction is allowed for retraining course expenses if—
- (a) the person carrying on the trade (“the employer”) incurs the expenses,
  - (b) they are incurred in relation to a person (“the employee”) who holds or has held an office or employment under the employer for the purposes of the trade, and
  - (c) the relevant conditions are met.
- (2) In this section—
- “retraining course expenses” means expenses incurred in the payment or reimbursement of retraining course expenses within the meaning given by section 311(2) of ITEPA 2003, and
- “the relevant conditions” means—
- (a) the conditions in subsections (3) and (4) of section 311 of ITEPA 2003 (employment income exemptions: retraining courses), and
  - (b) in the case of travel expenses, the conditions in subsection (5) of that section.

#### **75 Retraining courses: recovery of tax**

- (1) This section applies if—
- (a) an employer's liability to tax for a tax year is determined on the assumption that a deduction for expenditure is allowed under section 74, and
  - (b) the deduction would not otherwise have been allowed.
- (2) If, subsequently—
- (a) the condition in section 311(4)(a) of ITEPA 2003 is not met because of the employee's failure to begin the course within the period of one year after ceasing to be employed, or
  - (b) the condition in section 311(4)(b) of ITEPA 2003 is not met because of the employee's continued employment or re-employment,
- an assessment of an amount or further amount of tax due as a result of the condition not being met may be made under section 29(1) of TMA 1970.
- (3) Such an assessment must be made before the end of the period of 6 years immediately following the end of the tax year in which the failure to meet the condition occurred.

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(4) If subsection (2) applies, the employer must give [<sup>F124</sup>an officer of Revenue and Customs] a notice containing particulars of—

- (a) the employee's failure to begin the course,
- (b) the employee's continued employment, or
- (c) the employee's re-employment,

within 60 days of coming to know of it.

<sup>F125</sup>(5) .....

(6) A notice under subsection (5) may specify a time (not less than 60 days) within which the required information must be provided.

#### Textual Amendments

**F124** Words in s. 75(4)(5) substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), ss. 50, 53(1), [Sch. 4 para. 132\(1\)](#); S.I. 2005/1126, [art. 2\(h\)](#)

**F125** S. 75(5) omitted (13.8.2009) by virtue of [The Finance Act 2009, Schedule 47 \(Consequential Amendments\) Order 2009 \(S.I. 2009/2035\)](#), art. 1, [Sch. para. 42](#)

### *Redundancy payments etc.*

## 76 Redundancy payments and approved contractual payments

(1) Sections 77 to 79 apply if—

- (a) a person (“the employer”) makes a redundancy payment or an approved contractual payment to another person (“the employee”), and
- (b) the payment is in respect of the employee's employment wholly in the employer's trade or partly in the employer's trade and partly in one or more other capacities.

(2) For the purposes of this section and sections 77 to 80 “redundancy payment” means a redundancy payment payable under—

- (a) Part 11 of the Employment Rights Act 1996 (c. 18), or
- (b) Part 12 of the Employment Rights (Northern Ireland) Order 1996 (S.I. 1996/1919 (N.I. 16)).

(3) For the purposes of this section and those sections—

“contractual payment” means a payment which, under an agreement, an employer is liable to make to an employee on the termination of the employee's contract of employment, and

a contractual payment is “approved” if, in respect of that agreement, an order is in force under—

- (a) section 157 of the Employment Rights Act 1996, or
- (b) Article 192 of the Employment Rights (Northern Ireland) Order 1996.

## 77 Payments in respect of employment wholly in employer's trade

(1) This section applies if—

- (a) the payment is in respect of the employee's employment wholly in the employer's trade, and

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- (b) no deduction would otherwise be allowable for the payment.
- (2) In calculating the profits of the trade, a deduction is allowed under this section for the payment.
- (3) The deduction under this section for an approved contractual payment must not exceed the amount which would have been due to the employee if a redundancy payment had been payable.
- (4) If the payment is made after the employer has permanently ceased to carry on the trade, it is treated as made on the last day on which the employer carried on the trade.
- (5) If there is a change in the persons carrying on the trade, subsection (4) does not apply so long as a person carrying on the trade immediately before the change continues to carry it on after the change.
- (6) The deduction under this section is allowed for the period of account in which the payment is made (or treated under subsection (4) as made).

## **78 Payments in respect of employment in more than one capacity**

- (1) This section applies if the payment is in respect of the employee's employment with the employer—
  - (a) partly in the employer's trade, and
  - (b) partly in one or more other capacities.
- (2) The amount of the redundancy payment, or the amount which would have been due if a redundancy payment had been payable, is to be apportioned on a just and reasonable basis between—
  - (a) the employment in the trade, and
  - (b) the employment in the other capacities.
- (3) The part of the payment apportioned to the employment in the trade is treated as a payment in respect of the employee's employment wholly in the trade for the purposes of section 77.

## **79 Additional payments**

- (1) This section applies if the employer permanently ceases to carry on a trade or part of a trade and makes a payment to the employee in addition to—
  - (a) the redundancy payment, or
  - (b) if an approved contractual payment is made, the amount that would have been due if a redundancy payment had been payable.

<sup>F126</sup>(2) .....

- (3) If, in calculating the profits of the trade—
  - (a) no deduction would otherwise be allowable for the additional payment, but
  - (b) a deduction would be allowable for it if the employer had not permanently ceased to carry on the trade or the part of the trade,
 a deduction is allowed under this section for the additional payment.
- (4) The deduction under this section is limited to 3 times the amount of—
  - (a) the redundancy payment, or



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- (b) if an approved contractual payment is made, the amount that would have been due if a redundancy payment had been payable.
- (5) If the payment is made after the employer has permanently ceased to carry on the trade or the part of the trade, it is treated as made on the last day on which the employer carried on the trade or the part of the trade.
- (6) The deduction under this section is allowed for the period of account in which the payment is made (or treated under subsection (5) as made).

#### Textual Amendments

**F126** S. 79(2) repealed (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), Sch. 1 para. 597, **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

#### [<sup>F127</sup>79A Additional payments: change in the persons carrying on the trade

- (1) This section deals with the application of section 79 in circumstances where there is a change in the persons carrying on the trade.
- (2) The employer is treated for the purposes of section 79 as permanently ceasing to carry on the trade unless a person carrying on the trade immediately before the change continues to carry it on after the change.]

#### Textual Amendments

**F127** S. 79A inserted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), **Sch. 1 para. 598** (with Sch. 2 Pts. 1, 2)

### 80 Payments made by the Government

- (1) This section applies if, in respect of a redundancy payment or an approved contractual payment payable by an employer—
  - (a) the Secretary of State makes a payment under section 167 of the Employment Rights Act 1996 (c. 18), or
  - (b) the Department for Employment and Learning makes a payment under Article 202 of the Employment Rights (Northern Ireland) Order 1996 (S.I. 1996/1919 (N.I. 16)).
- (2) So far as the employer reimburses the Secretary of State or Department for the payment, sections 77 to [<sup>F128</sup>79A] apply as if the payment were—
  - (a) a redundancy payment, or
  - (b) an approved contractual payment, made by the employer.

#### Textual Amendments

**F128** Word in s. 80(2) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), **Sch. 1 para. 599** (with Sch. 2 Pts. 1, 2)

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*Status: Point in time view as at 15/09/2016.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Part 2. (See end of Document for details)*

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### *Personal security expenses*

#### **81 Personal security expenses**

- (1) This section applies if—
  - (a) an individual (“the trader”) carries on a trade (alone or in a partnership of individuals),
  - (b) there is a special threat to the personal physical security of the trader which arises wholly or mainly because of the particular trade,
  - (c) a service or asset which improves personal security is used by or provided for the trader to meet the threat,
  - (d) the person incurring expenses in connection with that use or provision does so with the sole object of meeting the threat, and
  - (e) a deduction for the expenses would not otherwise be allowable in calculating the profits of the trade because (and only because) they were not incurred wholly and exclusively for the purposes of the trade.
- (2) In calculating the profits of the trade, a deduction is allowed for the expenses—
  - (a) in the case of a service, if the benefit resulting to the trader consists wholly or mainly of an improvement of the trader's personal physical security, and
  - (b) in the case of an asset, if the person incurring the expenses intends the asset to be used to improve personal physical security (whether solely or partly).
- (3) If the person incurring the expenses intends the asset to be used solely to improve personal physical security, any use of the asset which is incidental to improving personal physical security is ignored.
- (4) If the person incurring the expenses intends the asset to be used partly to improve personal physical security, a deduction is allowed only for the proportion of the expenses which is attributable to the intended use to improve personal physical security.
- (5) The fact that a service or asset improves the personal physical security of a member of the trader's family or household (as well as that of the trader) does not prevent a deduction from being allowed.
- (6) In determining whether or not this section applies in relation to an asset, it does not matter if—
  - (a) the asset becomes fixed to land, or
  - (b) the trader is or becomes entitled to the property in the asset or (if the asset is a fixture) to any estate or interest in the land concerned.
- (7) In this section—
 

“asset” includes equipment and a structure (such as a wall), but does not include a car, ship or aircraft or a dwelling or grounds appurtenant to a dwelling, and

“service” does not include a dwelling or grounds appurtenant to a dwelling.

*Status: Point in time view as at 15/09/2016.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Part 2. (See end of Document for details)*

### *Contributions to local enterprise organisations or urban regeneration companies*

## **82 Contributions to local enterprise organisations or urban regeneration companies**

- (1) This section applies if a person carrying on a trade (“the contributor”) incurs expenses in making a contribution (whether in cash or in kind)—
  - (a) to a local enterprise organisation (see section 83), or
  - (b) to an urban regeneration company (see section 86),and a deduction would not otherwise be allowable for the expenses in calculating the profits of the trade.
- (2) In calculating the profits of the trade, a deduction is allowed under this section for the expenses.
- (3) But if, in connection with the making of the contribution, the contributor or a connected person—
  - (a) receives a disqualifying benefit of any kind, or
  - (b) is entitled to receive such a benefit,the amount of the deduction is restricted to the amount of the expenses less the value of the benefit.
- (4) For this purpose it does not matter whether a person receives, or is entitled to receive, the benefit—
  - (a) from the organisation or company concerned, or
  - (b) from anyone else.
- (5) Subsection (6) applies if—
  - (a) a deduction has been made under this section, and
  - (b) the contributor or a connected person receives a disqualifying benefit that is in any way attributable to the contribution.
- (6) An amount equal to the value of the benefit (so far as not brought into account in determining the amount of the deduction)—
  - (a) is brought into account in calculating the profits of the trade, as a receipt arising on the date on which the benefit is received, or
  - (b) if the contributor has permanently ceased to carry on the trade before that date, is treated as a post-cessation receipt (see Chapter 18).
- (7) In this section “disqualifying benefit” means a benefit the expenses of obtaining which, if incurred by the contributor directly in a transaction at arm's length, would not be allowable as a deduction in calculating the profits of the trade.

## **83 Meaning of “local enterprise organisation”**

- (1) For the purposes of section 82 “local enterprise organisation” means—
  - (a) a local enterprise agency,
  - (b) a training and enterprise council,
  - (c) a Scottish local enterprise company, or
  - (d) a business link organisation.

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*Status: Point in time view as at 15/09/2016.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Part 2. (See end of Document for details)*

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- (2) “Local enterprise agency” means a body for the time being approved as a local enterprise agency for the purposes of section 82 by the relevant national authority, that is to say by—
- (a) the Secretary of State (in relation to England or Northern Ireland),
  - (b) the Scottish Ministers (in relation to Scotland), or
  - (c) the National Assembly for Wales (in relation to Wales).

For further provision about approvals by the relevant national authority, see sections 84 and 85.

- (3) “Training and enterprise council” means a body with which the Secretary of State has an agreement under which the body is to carry out the functions of a training and enterprise council.
- (4) “Scottish local enterprise company” means a company with which—
- (a) Scottish Enterprise, or
  - (b) Highlands and Islands Enterprise,
- has an agreement under which the company is to carry out the functions of a local enterprise company.
- (5) “Business link organisation” means a person authorised by or on behalf of the Secretary of State to use a trade mark designated by the Secretary of State for the purposes of this subsection.

## **84 Approval of local enterprise agencies**

- (1) The relevant national authority may approve a body as a local enterprise agency for the purposes of section 82 only if conditions A and B are met.
- (2) But if those conditions are met, the body may be approved—
- (a) whatever its status or structure, and
  - (b) even if it is not described as a local enterprise agency.
- (3) Condition A is that the relevant national authority is satisfied—
- (a) that the body's sole aim is the promotion or encouragement of local enterprise, or
  - (b) that one of the body's main aims is the promotion or encouragement of local enterprise and that it has or is about to have a separate fund for the sole purpose of pursuing that aim.
- (4) For this purpose “local enterprise” means industrial and commercial activity or enterprise in a particular area in the United Kingdom, with particular reference to encouraging the formation and development of small businesses.
- (5) Condition B is that the body is precluded from paying or transferring any of its income or profit directly or indirectly—
- (a) to any of its members, or
  - (b) to any person charged with the control and direction of its affairs.
- (6) The payment of—
- (a) reasonable remuneration for goods, labour or power supplied or for services provided,
  - (b) reasonable interest on money lent, or

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(c) reasonable rent for premises,  
does not count as a payment or transfer of income or profit for the purposes of subsection (5).

## **85 Supplementary provisions with respect to approvals**

- (1) This section applies for the purposes of section 84.
- (2) The relevant national authority may give a body approval that is conditional on its compliance with such requirements as to—
  - (a) accounts,
  - (b) provision of information, and
  - (c) other matters,as the relevant national authority considers appropriate
- (3) If the relevant national authority approves a body on the basis that it has or is about to have a separate fund (see section 84(3)(b))—
  - (a) the approval must specify the fund, and
  - (b) section 82 applies only to a contribution to the body made wholly to or for the purposes of the fund.
- (4) The relevant national authority must withdraw the approval of a body as a local enterprise agency if—
  - (a) condition A or B in section 84 is no longer met, or
  - (b) the body is failing to comply with a requirement imposed as a condition of its approval.
- (5) The relevant national authority must give notice of withdrawal to the body concerned, specifying the date from which the withdrawal takes effect (which may be earlier than the date on which the notice is given).

## **86 Meaning of “urban regeneration company”**

- (1) For the purposes of section 82 “urban regeneration company” means any body of persons which the Treasury by order designates as an urban regeneration company for the purposes of that section.
- (2) A body may be so designated only if—
  - (a) its sole or main function is to co-ordinate the regeneration of a specific urban area in the United Kingdom,
  - (b) it is expected to seek to perform that function by creating a plan for the development of that area and trying to secure that the plan is carried into effect, and
  - (c) in co-ordinating the regeneration of that area, it is expected to work together with some or all local or other public authorities which exercise functions in relation to the whole or part of that area.
- (3) An order under this section may be framed so as to take effect on a date earlier than the making of the order, but not earlier than three months before the date on which the order is made.

*Status: Point in time view as at 15/09/2016.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Part 2. (See end of Document for details)*

## *F129* Contributions to flood and coastal erosion risk management projects

### Textual Amendments

**F129** Ss. 86A, 86B and cross-heading inserted (with effect in accordance with Sch. 5 para. 9 of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [Sch. 5 para. 1](#)

## **86A Contributions to flood and coastal erosion risk management projects**

- (1) This section applies if—
  - (a) a person carrying on a trade (“the contributor”) incurs expenses in making a qualifying contribution to a qualifying flood or coastal erosion risk management project, and
  - (b) a deduction would not otherwise be allowable for the expenses in calculating the profits of the trade.
- (2) In determining whether the condition in subsection (1)(b) is satisfied, a deduction giving effect to a capital allowance is to be disregarded.
- (3) In calculating the profits of the trade, a deduction is allowed under this section for the expenses.
- (4) But if, in connection with the making of the contribution, the contributor or a connected person—
  - (a) receives a disqualifying benefit, or
  - (b) is entitled to receive such a benefit,
 no deduction is allowed.
- (5) For the purposes of subsection (4) it does not matter whether a person receives, or is entitled to receive, the benefit—
  - (a) from the carrying out of the project, or
  - (b) from any person.
- (6) Subsection (7) applies if—
  - (a) a deduction has been made under this section in relation to the contribution, and
  - (b) the contributor or a connected person receives—
    - (i) a refund of any part of the contribution, if the contribution is a sum of money, or
    - (ii) compensation for any part of the contribution, if the contribution is the provision of services,
 in money or money's worth.
- (7) The amount of, or an amount equal to the value of, the refund or compensation (so far as not otherwise brought into account in calculating the profits of the trade or treated as a post-cessation receipt)—
  - (a) is brought into account in calculating the profits of the trade, as a receipt arising on the date on which the refund or compensation is received, or
  - (b) if the contributor has permanently ceased to carry on the trade before that date, is treated as a post-cessation receipt (see Chapter 18).

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- (8) In this section “disqualifying benefit” means a benefit consisting of money or other property, but it does not include—
- (a) a refund of the contribution, if the contribution is a sum of money;
  - (b) compensation for the contribution, if the contribution is the provision of services;
  - (c) a structure that—
    - (i) is or is to be used for the purposes of flood or coastal erosion risk management, and
    - (ii) is put in place in carrying out the project;
  - (d) an addition to a structure where—
    - (i) the structure is or is to be used for the purposes of flood or coastal erosion risk management, and
    - (ii) the addition is made in carrying out the project;
  - (e) land, plant or machinery that is or is to be used, in the realization of the project, for the purposes of flood or coastal erosion risk management;
  - (f) a right over land that is or is to be used, in the realization of the project, for the purposes of flood or coastal erosion risk management.
- (9) In subsection (8) “structure” includes road, path, pipe, earthwork, plant and machinery.

## **86B Interpretation of section 86A**

- (1) This section applies for the purposes of section 86A.
- (2) A flood or coastal erosion risk management project is a qualifying project if—
- (a) an English risk management authority has applied to the Environment Agency for a grant under section 16 of the Flood and Water Management Act 2010 in order to fund the project, or
  - (b) the Environment Agency has determined that it will carry out the project, and the Environment Agency has allocated funding by way of grant-in-aid to the project.
- (3) A contribution to a flood or coastal erosion risk management project is a qualifying contribution if the contribution is made—
- (a) for the purposes of the project, and
  - (b) under an agreement between—
    - (i) the person making the contribution, and
    - (ii) the applicant authority or (as the case may be) the Environment Agency,or between those two persons and other persons.
- (4) References to a flood risk management project or a coastal erosion risk management project are to be interpreted in accordance with sections 1 to 3 of the Flood and Water Management Act 2010.
- (5) In section 86A and this section—
- “contribution”, in relation to a period of account, means—
- (a) a sum of money paid in that period of account, or
  - (b) any services provided in that period of account;

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“English risk management authority” has the meaning given by section 6(14) of the Flood and Water Management Act 2010.]

### *Scientific research*

## **87 Expenses of research and development**

- (1) If a person carrying on a trade incurs expenses of a revenue nature on research and development—
  - (a) related to the trade, and
  - (b) directly undertaken by or on behalf of the person,
 a deduction is allowed for the expenses in calculating the profits of the trade.
- (2) For this purpose expenses incurred on research and development—
  - (a) do not include expenses incurred in the acquisition of rights in, or arising out of, research and development, but
  - (b) subject to that, include all expenses incurred in carrying out, or providing facilities for carrying out, research and development.
- (3) The reference in this section to research and development related to a trade includes—
  - (a) research and development which may lead to or facilitate an extension of the trade, and
  - (b) research and development of a medical nature which has a special relation to the welfare of workers employed in the trade.
- (4) The same expenses may not be brought into account under this section in relation to more than one trade.
- (5) In this section “research and development” has the meaning given by [<sup>F130</sup>section 1006 of ITA 2007] and includes oil and gas exploration and appraisal.
- (6) This section does not apply to professions or vocations.

### **Textual Amendments**

**F130** Words in s. 87(5) substituted (6.4.2007 with effect as noted in s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), ss. 1027, 1034, [Sch. 1 para. 499](#) (with transitional provisions and savings in [Sch. 2](#))

## **88 Payments to research associations, universities etc.**

- (1) If a person carrying on a trade—
  - [<sup>F131</sup>(a) pays any sum to an Association in the case of which exemption may be claimed under section 508 of ICTA and which has as its object the undertaking of research and development which may lead to or facilitate an extension of the class of trade to which the trade carried on by the person belongs, or
  - (b) pays any sum to be used for scientific research related to that class of trade to an approved university, college research institute or other similar institution,]
 a deduction is allowed for the sum in calculating the profits of the trade.
- (2) The deduction is allowed for the period of account in which the payment is made.



*Status: Point in time view as at 15/09/2016.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Part 2. (See end of Document for details)*

- (3) “Scientific research” means any activities in the fields of natural or applied science for the extension of knowledge.
- (4) For the purposes of this section—
  - (a) <sup>F132</sup> .....
  - (b) a university, college research institute or other similar institution, is approved if it is for the time being approved for the purposes of this section by the Secretary of State.
- (5) The [<sup>F133</sup>reference in subsection (1)(b)] to scientific research related to a class of trade include—
  - (a) scientific research which may lead to or facilitate an extension of trades of the class, and
  - (b) scientific research of a medical nature which has a special relation to the welfare of workers employed in trades of the class.
- (6) If a question arises as to—
  - (a) whether, or
  - (b) [<sup>F134</sup>to] what extent,any activities constitute or constituted scientific research, the Inland Revenue must refer the question for decision to the Secretary of State, whose decision is final.
- (7) The same expenses may not be brought into account under this section in relation to more than one trade.
- (8) This section does not apply to professions or vocations.

#### Textual Amendments

- F131** Words in s. 88(1)(a)(b) substituted (with effect as mentioned in s. 14(5) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), s. 14(2)
- F132** S. 88(4)(a) repealed (with effect as mentioned in s. 14(5) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), ss. 14(2), 70, Sch. 11 Pt. 2(2)
- F133** Words in s. 88(5) substituted (with effect as mentioned in s. 14(5) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), s. 14(4)
- F134** Word in s. 88(6)(b) inserted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 1 para. 600 (with Sch. 2 Pts. 1, 2)

### *Expenses connected with patents, designs and trade marks*

#### **89 Expenses connected with patents**

- (1) In calculating the profits of a trade, a deduction is allowed for expenses incurred—
  - (a) in obtaining for the purposes of the trade the grant of a patent or the extension of a patent's term, or
  - (b) in connection with a rejected or abandoned application for a patent made for the purposes of the trade.
- (2) This section does not apply to professions or vocations.

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*Status: Point in time view as at 15/09/2016.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Part 2. (See end of Document for details)*

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## 90 Expenses connected with designs or trade marks

- (1) In calculating the profits of a trade, a deduction is allowed for expenses incurred in obtaining for the purposes of the trade—
- (a) the registration of a design or trade mark,
  - (b) the extension of a period for which the right in a registered design subsists, or
  - (c) the renewal of registration of a trade mark.
- (2) This section does not apply to professions or vocations.

*Export Credits Guarantee Department*

## 91 Payments to Export Credits Guarantee Department

In calculating the profits of a trade, a deduction is allowed for a sum payable by the person carrying on the trade to the Export Credits Guarantee Department—

- (a) under an agreement entered into as a result of arrangements made under section 2 of the Export and Investment Guarantees Act 1991 (c. 67) (insurance in connection with overseas investment), or
- (b) with a view to entering into such an agreement.

*Expenses connected with foreign trades*

## 92 Expenses connected with foreign trades

- (1) This section applies if—
- (a) an individual (“the trader”) carries on a foreign trade (alone or in partnership),
  - (b) the trader is absent from the United Kingdom wholly and exclusively for the purpose of carrying on the foreign trade or the foreign trade and one or more other trades (whether or not foreign trades),
  - (c) qualifying expenses are incurred in connection with the foreign trade, and
  - (d) a deduction for the expenses would not otherwise be allowable in calculating the profits of the foreign trade because (and only because) they were not incurred wholly and exclusively for the purposes of the foreign trade.
- (2) In calculating any profits of the foreign trade which are not charged in accordance with section 832 (relevant foreign income charged on the remittance basis), a deduction is allowed for the expenses.
- (3) Any of the following expenses are qualifying expenses incurred in connection with the foreign trade—
- (a) expenses incurred by the trader in travelling between a place in the United Kingdom and a place where the foreign trade is carried on,
  - (b) expenses incurred by the trader on board and lodging at a place where the foreign trade is carried on,
  - (c) if the trader's absence from the United Kingdom is for a continuous period of 60 days or more, family expenses (as defined in section 94), and
  - (d) if the trader also carries on another trade outside the United Kingdom (whether or not a foreign trade), expenses incurred by the trader in travelling between a place where the foreign trade is carried on and a place outside the United Kingdom where the other trade is carried on.

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*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Part 2. (See end of Document for details)*

- (4) In this section and section 93 “foreign trade” means a trade carried on wholly outside the United Kingdom.

### 93 Allocation of expenses

- (1) Expenses within section 92(3)(a), (b) or (c) are allocated to the foreign trade.
- (2) If—
- (a) the expenses are within section 92(3)(a) or (b), and
  - (b) the trader carries on more than one foreign trade at the place in question outside the United Kingdom,
- those expenses are allocated between the foreign trades on a just and reasonable basis.
- (3) If—
- (a) the expenses are within section 92(3)(c), and
  - (b) the trader's absence is for the purpose of carrying on more than one foreign trade,
- those expenses are allocated between the foreign trades on a just and reasonable basis.
- (4) Expenses within section 92(3)(d) are allocated—
- (a) to the trade carried on at the trader's place of destination, if that trade is a foreign trade, and
  - (b) in any other case, to the foreign trade carried on at the trader's place of departure.
- (5) If the trader carries on more than one foreign trade at—
- (a) the place of destination (in a case falling within subsection (4)(a)), or
  - (b) the place of departure (in a case falling within subsection (4)(b)),
- the expenses are allocated between the foreign trades on a just and reasonable basis.

### 94 Family expenses

- (1) In section 92(3)(c) “family expenses” means expenses of a journey made by the trader's spouse [<sup>F135</sup>or civil partner] or child if the journey—
- (a) is between a place in the United Kingdom and a place outside the United Kingdom where any of the trades is carried on, and
  - (b) is made in order to accompany the trader at the beginning of the period of absence or to visit the trader during that period or to return after a journey made for either purpose.
- (2) But no more than two outward and two return journeys made by the same person in a tax year fall within subsection (1).
- (3) In this section “child” includes a stepchild but does not include a person who is aged 18 or over at the start of the outward journey.

#### Textual Amendments

**F135** Words in s. 94(1) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), [reg. 184](#)

*Status: Point in time view as at 15/09/2016.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Part 2. (See end of Document for details)*

### *[<sup>F136</sup>SAYE option schemes, CSOP schemes*

#### **Textual Amendments**

**F136** S. 94A and cross-heading inserted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 7 para. 28](#) (with [Sch. 9 paras. 1-9, 22](#))

#### **94A Costs of setting up SAYE option scheme or CSOP scheme**

- (1) This section applies if—
- (a) a company incurs expenses in setting up a scheme within subsection (2) <sup>F137</sup> ... and
  - <sup>F138</sup>(b) .....
- (2) The schemes within this subsection are—
- (a) [<sup>F139</sup>Schedule 3]SAYE option schemes within the meaning of the SAYE code (see section 516(4) of ITEPA 2003), and
  - (b) [<sup>F140</sup>Schedule 4]CSOP schemes within the meaning of the CSOP code (see section 521(4) of ITEPA 2003).
- <sup>F141</sup> ...
- (3) A deduction for the expenses is to be made in calculating the profits of a trade carried on by the company.
- (4) If the [<sup>F142</sup>relevant date falls] more than 9 months after the end of the period of account in which the expenses are incurred, for the purposes of subsection (3) the deduction is to be made for the period of account in which the [<sup>F142</sup>relevant date falls] .

[ In subsection (4) “the relevant date”—

- <sup>F143</sup>(4A) (a) in relation to a Schedule 3 SAYE option scheme, has the meaning given in paragraph 40A(6) of Schedule 3 to ITEPA 2003, and
- (b) in relation to a Schedule 4 CSOP scheme, has the meaning given in paragraph 28A(6) of Schedule 4 to ITEPA 2003.]

[ But subsection (4) does not apply in calculating the profits of a trade on the cash <sup>F144</sup>(5) basis.]]

#### **Textual Amendments**

**F137** Words in s. 94A(1)(a) omitted (6.4.2014) by virtue of [Finance Act 2014 \(c. 26\), Sch. 8 paras. 140\(2\)\(a\), 146](#) (with [Sch. 8 paras. 147-157](#))

**F138** S. 94A(1)(b) and word omitted (6.4.2014) by virtue of [Finance Act 2014 \(c. 26\), Sch. 8 paras. 140\(2\)\(b\), 146](#) (with [Sch. 8 paras. 147-157](#))

**F139** Words in s. 94A(2)(a) inserted (6.4.2014) by [Finance Act 2014 \(c. 26\), Sch. 8 paras. 140\(3\)\(a\), 146](#) (with [Sch. 8 paras. 147-157](#))

**F140** Words in s. 94A(2)(b) inserted (6.4.2014) by [Finance Act 2014 \(c. 26\), Sch. 8 paras. 140\(3\)\(b\), 146](#) (with [Sch. 8 paras. 147-157](#))

**F141** Words in s. 94A(2) omitted (6.4.2014) by virtue of [Finance Act 2014 \(c. 26\), Sch. 8 paras. 140\(3\)\(c\), 146](#) (with [Sch. 8 paras. 147-157](#))

**F142** Words in s. 94A(4) substituted (6.4.2014) by [Finance Act 2014 \(c. 26\), Sch. 8 paras. 140\(4\), 146](#) (with [Sch. 8 paras. 147-157](#))

*Status: Point in time view as at 15/09/2016.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Part 2. (See end of Document for details)*

**F143** S. 94A(4A) inserted (6.4.2014) by [Finance Act 2014 \(c. 26\)](#), [Sch. 8 paras. 140\(5\)](#), 146 (with [Sch. 8 paras. 147-157](#))

**F144** S. 94A(5) inserted (with effect in accordance with [Sch. 4 paras. 56, 57](#) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 4 para. 17](#)

### *[<sup>F145</sup>Limited liability partnerships: salaried members*

#### **Textual Amendments**

**F145** S. 94AA and cross-heading inserted (6.4.2014) by [Finance Act 2014 \(c. 26\)](#), [Sch. 17 paras. 3\(2\)](#), 6

## **94AA Deductions in relation to salaried members**

- (1) This section applies in relation to a limited liability partnership if section 863A(2) (limited liability partnerships: salaried members) applies in the case of a member of the partnership (“M”).
- (2) In calculating for a period of account under section 849 (calculation of firm's profits and losses) the profits of a trade carried on by the limited liability partnership, a deduction is allowed for expenses paid by the partnership in respect of M's employment under section 863A(2) if no deduction would otherwise be allowed for the payment.
- (3) This section is subject to section 33 (capital expenditure), section 34 (expenses not wholly and exclusively for trade etc), section 45 (business entertainment and gifts) and section 53 (social security contributions).]

## **[<sup>F146</sup>CHAPTER 5A**

### **TRADE PROFITS: DEDUCTIONS ALLOWABLE AT A FIXED RATE**

#### **Textual Amendments**

**F146** Pt. 2 Ch. 5A inserted (with effect in accordance with [Sch. 5 para. 6](#) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 5 para. 2](#)

### *Introduction*

## **94B Professions and vocations**

The provisions of this Chapter apply to professions and vocations as they apply to trades.

## **94C Provisions not applicable to certain firms**

The provisions of this Chapter do not apply in calculating the profits of a trade carried on by a firm for a period if one or more of the persons who have been partners in the firm at any time during the period was not an individual at that time.

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*Status: Point in time view as at 15/09/2016.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Part 2. (See end of Document for details)*

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### *Expenditure on vehicles*

#### **94D Expenditure on vehicles**

- (1) This section applies if, in calculating the profits of a trade of a person for a period—
  - (a) a deduction would otherwise be allowable for the period in respect of qualifying expenditure incurred in relation to a relevant vehicle (see subsection (2)), or
  - (b) a deduction would be so allowable in respect of such expenditure but for the fact it is capital expenditure.
- (2) In this section “relevant vehicle” means a car, motor cycle or goods vehicle that—
  - (a) is used for the purposes of the trade, and
  - (b) is not an excluded vehicle (see section 94E).
- (3) The person may make a deduction under this section for the period in respect of the qualifying expenditure.
- (4) If a deduction for a period is made under this section—
  - (a) no other deduction is allowed (for that or any other period) in respect of the qualifying expenditure, and
  - (b) this section applies in relation to the relevant vehicle for every subsequent period for which the vehicle is used for the purposes of the trade.
- (5) The amount of the deduction is the appropriate mileage amount in relation to the relevant vehicle for the period (see section 94F).
- (6) In this section “qualifying expenditure”, in relation to a vehicle, means any expenditure incurred in respect of the acquisition, ownership, hire, leasing or use of the vehicle, other than incidental expenses incurred in connection with a particular journey.
- (7) For provision preventing capital allowances from being claimed in respect of qualifying expenditure incurred in relation to a relevant vehicle, see section 38ZA of CAA 2001.

#### **94E Excluded vehicles**

- (1) A car, motor cycle or goods vehicle that is used for the purposes of a trade is an “excluded vehicle” for the purposes of section 94D if condition A or B is met in relation to the vehicle.
- (2) Condition A is that the person who is or has been carrying on the trade has at any time claimed any capital allowances under Part 2 of CAA 2001 in respect of any expenditure incurred on the provision of the vehicle.
- (3) Condition B is that—
  - (a) the vehicle is a goods vehicle or a motor cycle, and
  - (b) any of the expenditure incurred on acquiring the vehicle has been deducted in calculating the profits of the trade for a period on the cash basis (see section 25A).

*Status: Point in time view as at 15/09/2016.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Part 2. (See end of Document for details)*

## 94F The appropriate mileage amount

- (1) In calculating the profits of a trade for a period, the appropriate mileage amount in relation to a relevant vehicle for the period is—

$$M \times R$$

where—

M is the number of miles of business journeys made by a person (other than as a passenger) using that vehicle in the period, and

R is the rate applicable to that kind of vehicle.

- (2) The rates applicable are as follows—

TABLE

<i>Kind of vehicle</i>	<i>Rate per mile</i>
Car or goods vehicle	45p for the first 10,000 miles 25p after that
Motor cycle	24p

- (3) In a case where the total number of miles of relevant business journeys made in the period is greater than 10,000, the rate of 45p per mile is available only in relation to 10,000 of those miles.

- (4) “Relevant business journey” means any business journey made in the period by a car or goods vehicle—

- that is used for the purposes of the trade, and
- in relation to which section 94D applies for the period.

- (5) In this section—

“business journey”, in relation to a vehicle used for the purposes of a trade, means any journey, or any identifiable part or proportion of a journey, that is made wholly and exclusively for the purposes of the trade, and

“relevant vehicle” has the same meaning as in section 94D.

- (6) The Treasury may by regulations amend subsection (2) so as to alter the rates or rate bands.

Regulations under this subsection may also make consequential amendments to subsection (3).

## 94G Definitions of types of vehicle

- (1) This section applies for the purposes of sections 94D to 94F (and this section).

- (2) “Car” means a mechanically propelled road vehicle which is not—

- a goods vehicle,
- a motor cycle,
- an invalid carriage, or

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*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Part 2. (See end of Document for details)*

- (d) a vehicle of a type not commonly used as a private vehicle and unsuitable to be so used.
- (3) “Goods vehicle” means a mechanically propelled road vehicle which—
- (a) is of a construction primarily suited for the conveyance of goods or burden of any description, and
- (b) is not a motor cycle.
- (4) “Motor cycle” has the meaning given by section 185(1) of the Road Traffic Act 1988.
- (5) For the purposes of this section “invalid carriage” has the meaning given by section 185(1) of the Road Traffic Act 1988.

*Use of home for business purposes*

**94H Use of home for business purposes**

- (1) This section applies if, in calculating the profits of a trade of a person for a period, a deduction (“the standard deduction”) would otherwise be allowable for the period [F147] in respect of—
- (a) the use of the person's home for the purposes of the trade, or
- (b) where the person is a firm, the use of a partner's home for those purposes.]
- (2) The person may, instead of making the standard deduction, make a deduction for the period under this section.
- (3) The amount of the deduction allowable for the period is the sum of the applicable amounts for each month, or part of a month, falling within the period.
- (4) The applicable amount for a month, or part of a month, is given by the following Table—

TABLE

<i>Number of hours worked</i>	<i>Applicable amount</i>
25 or more	£10.00
51 or more	£18.00
101 or more	£26.00

where the “number of hours worked” in a month (or part of a month) is the number of hours spent wholly and exclusively on [F148] qualifying work].

[ Qualifying work” means—

- <sup>F149</sup>(4A) (a) work done by the person, or any employee of the person, in the person's home wholly and exclusively for the purposes of the trade, or
- (b) where the person is a firm, work done by a partner, or any employee of the firm, in the partner's home wholly and exclusively for those purposes.
- (4B) Where more than one person does qualifying work in the same home at the same time, any hour spent wholly and exclusively on that work is to be taken into account only once for the purposes of subsection (4).]



*Status: Point in time view as at 15/09/2016.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Part 2. (See end of Document for details)*

(5) If the person<sup>F150</sup>, or, where the person is a firm, a partner of the firm,] has more than one home, this section has effect as if those homes were a single home.

[ Where a firm makes a deduction for a period under this section in respect of the use<sup>F151</sup>(5A) of a partner's home for the purposes of a trade, the only deduction which the firm may make for the period in respect of the use of any other partner's home for those purposes is a deduction under this section.]

(6) The Treasury may by regulations amend subsection (4) so as to alter the rates or rate bands.

#### Textual Amendments

- F147** Words in s. 94H(1) substituted (with effect in accordance with s. 24(11) of the amending Act) by [Finance Act 2016 \(c. 24\), s. 24\(3\)](#)
- F148** Words in s. 94H(4) substituted (with effect in accordance with s. 24(11) of the amending Act) by [Finance Act 2016 \(c. 24\), s. 24\(4\)](#)
- F149** S. 94H(4A)(4B) inserted (with effect in accordance with s. 24(11) of the amending Act) by [Finance Act 2016 \(c. 24\), s. 24\(5\)](#)
- F150** Words in s. 94H(5) inserted (with effect in accordance with s. 24(11) of the amending Act) by [Finance Act 2016 \(c. 24\), s. 24\(6\)](#)
- F151** S. 94H(5A) inserted (with effect in accordance with s. 24(11) of the amending Act) by [Finance Act 2016 \(c. 24\), s. 24\(7\)](#)

#### *Premises used both as home and business premises*

### **94I Premises used both as a home and as business premises**

- (1) This section applies if—
- a person carries on a trade at any premises,
  - the premises are used mainly for the purposes of carrying on the trade, but are also <sup>F152</sup>used as a home by—
    - the person carrying on the trade, or
    - where that person is a firm, a partner of the firm,]
  - the person incurs expenses in relation to the premises,
  - the expenses are incurred mainly (but not wholly and exclusively) for the purposes of the trade, and
  - in calculating the profits of the trade for a period, a deduction (“the standard deduction”) would otherwise be allowable for the period in respect of a part or proportion of the expenses in accordance with section 34(2).
- (2) The person may, instead of making the standard deduction, make a deduction for the period under this section.
- (3) The amount of the deduction allowable for the period is the amount of the expenses less the non-business use amount.
- (4) The non-business use amount is the sum of the applicable amounts for each month, or part of a month, falling within the period.

*Status: Point in time view as at 15/09/2016.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Part 2. (See end of Document for details)*

- (5) The applicable amount for a month, or part of a month, is given by the following Table—

TABLE

<i>Number of relevant occupants</i>	<i>Applicable amount</i>
1	£350
2	£500
3 or more	£650

- (6) For the purposes of subsection (5) “relevant occupant”, in relation to a month (or part of a month), means an individual who, at any time during that month (or that part of a month)—

- (a) occupies the premises as a home, or
- (b) stays at the premises otherwise than in the course of the trade.

[ Where a person makes a deduction for a period under this section in respect of <sup>F153</sup>(6A) expenses incurred in relation to premises falling within subsection (1)(b), the only deduction which the person may make for the period in respect of expenses incurred in relation to any other premises falling within subsection (1)(b) is a deduction under this section.]

- (7) The Treasury may by regulations amend subsection (5) so as to alter the rates or rate bands.]

#### Textual Amendments

**F152** Words in s. 94I(1)(b) substituted (with effect in accordance with s. 24(11) of the amending Act) by Finance Act 2016 (c. 24), s. 24(9)

**F153** S. 94I(6A) inserted (with effect in accordance with s. 24(11) of the amending Act) by Finance Act 2016 (c. 24), s. 24(10)

## CHAPTER 6

### TRADE PROFITS: RECEIPTS

#### *Introduction*

#### 95 Professions and vocations

Apart from section 105 (industrial development grants), the provisions of this Chapter apply to professions and vocations as they apply to trades.

*Status: Point in time view as at 15/09/2016.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Part 2. (See end of Document for details)*

## *[<sup>F154</sup>Cash basis accounting*

### **Textual Amendments**

**F154** S. 95A and cross-heading inserted (with effect in accordance with Sch. 4 paras. 56, 57 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 4 para. 19](#)

## **95A Application of Chapter to the cash basis**

For rules about receipts that apply only for the purpose of calculating profits on the cash basis, see the following—

- section 96A (cash basis: capital receipts),
- section 97A (cash basis: value of trading stock on cessation of trade),
- section 97B (cash basis: value of work in progress on cessation of profession or vocation).]

### *Capital receipts*

## **96 Capital receipts**

- (1) Items of a capital nature must not be brought into account as receipts in calculating the profits of a trade.
- (2) But this does not apply to items which, as a result of any provision of this Part, are brought into account as receipts in calculating the profits of the trade.

## **[<sup>F155</sup>96A Cash basis: capital receipts**

- (1) This section applies if—
  - (a) the whole or part of any expenditure incurred in acquiring, creating or improving an asset has been brought into account in calculating the profits of a trade of a person on the cash basis, or
  - (b) the whole or part of any such expenditure would have been so brought into account if an election under section 25A had had effect in relation to the trade at the time the expenditure was paid.
- (2) The following amounts are to be brought into account as a receipt in calculating the profits of the trade on the cash basis—
  - (a) any proceeds arising from the disposal of the asset or any part of it;
  - (b) any proceeds arising from the grant of any right in respect of, or any interest in, the asset;
  - (c) any amount of damages, proceeds of insurance or other compensation received in respect of the asset.
- (3) In a case where only part of the expenditure incurred in acquiring, creating or improving an asset has been, or would have been, brought into account as mentioned in subsection (1), the amount brought into account under subsection (2) is proportionately reduced.
- (4) If—

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*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Part 2. (See end of Document for details)*

- (a) at any time the person ceases to use the asset or any part of it for the purposes of the trade, but
  - (b) the person does not dispose of the asset (or that part) at that time,
- the person is to be regarded for the purposes of this section as disposing of the asset (or that part) at that time for an amount equal to the market value amount.
- (5) If at any time there is a material increase in the person's non-business use of the asset or any part of it, the person is to be regarded for the purposes of this section as disposing of the asset (or that part) at that time for an amount equal to the relevant proportion of the market value amount.
- (6) For the purposes of subsection (5)—
- (a) there is an increase in a person's non-business use of an asset (or part of an asset) if—
    - (i) the proportion of the person's use of the asset (or that part) that is for the purposes of the trade decreases, and
    - (ii) the proportion of the person's use of the asset (or that part) that is for other purposes (the “non-business use”) increases;
  - (b) “the relevant proportion” is the difference between—
    - (i) the proportion of the person's use of the asset (or part of the asset) that is non-business use, and
    - (ii) the proportion of the person's use of the asset (or that part) that was non-business use before the increase mentioned in subsection (5).
- (7) In this section “the market value amount” means the amount that would be regarded as normal and reasonable—
- (a) in the market conditions then prevailing, and
  - (b) between persons dealing with each other at arm's length in the open market.]

#### Textual Amendments

**F155** S. 96A inserted (with effect in accordance with Sch. 4 paras. 56, 57 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 4 para. 20](#)

### *Debts released*

#### **97 Debts incurred and later released**

- (1) This section applies if—
- (a) in calculating the profits of a trade, a deduction is allowed for the expense giving rise to a debt owed by the person carrying on the trade,
  - (b) all or part of the debt is released, and
  - (c) the release is not part of a statutory insolvency arrangement.
- (2) The amount released—
- (a) is brought into account as a receipt in calculating the profits of the trade, and
  - (b) is treated as arising on the date of the release.

*Status: Point in time view as at 15/09/2016.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Part 2. (See end of Document for details)*

*F<sup>156</sup>Cash basis: value of stock and work in progress on cessation*

**Textual Amendments**

**F156** Ss. 97A, 97B and cross-heading inserted (with effect in accordance with Sch. 4 paras. 56, 57 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 4 para. 21](#)

**97A Cash basis: value of trading stock on cessation of trade**

- (1) This section applies if—
  - (a) a person permanently ceases to carry on a trade in a tax year, and
  - (b) an election under section 25A (cash basis for small businesses) has effect in relation to the trade for the tax year.
- (2) The value of any trading stock belonging to the trade at the time of the cessation is brought into account as a receipt in calculating the profits of the trade for the tax year.
- (3) The value is to be determined on a basis that is just and reasonable in all the circumstances.
- (4) If there is a change in the persons carrying on a trade, subsection (2) does not apply in relation to the trade so long as a person carrying on the trade immediately before the change continues to carry it on after the change.
- (5) In this section “trading stock” has the same meaning as in Chapter 12 (see section 174).
- (6) This section does not apply to professions or vocations.

**97B Cash basis: value of work in progress on cessation of profession or vocation**

- (1) This section applies if—
  - (a) a person permanently ceases to carry on a profession or vocation in a tax year, and
  - (b) an election under section 25A (cash basis for small businesses) has effect in relation to the profession or vocation for the tax year.
- (2) The value of any work in progress at the time of the cessation is brought into account as a receipt in calculating the profits of the profession or vocation for the tax year.
- (3) The value is to be determined on a basis that is just and reasonable in all the circumstances.
- (4) If there is a change in the persons carrying on a profession, subsection (2) does not apply in relation to the profession so long as a person carrying on the profession immediately before the change continues to carry it on after the change.
- (5) In this section “work in progress” has the same meaning as in Chapter 12 (see section 183).]

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*Status: Point in time view as at 15/09/2016.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Part 2. (See end of Document for details)*

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*Amounts received following earlier cessation*

**98 Acquisition of trade: receipts from transferor's trade**

- (1) This section applies if —
- (a) a person (“the transferor”) permanently ceased to carry on a trade at any time,
  - (b) at that time the transferor transferred to another person (“the transferee”) the right to receive sums arising from the carrying on of the trade, and
  - (c) the transferee subsequently carries on the transferor's trade.
- (2) Sums—
- (a) which the transferee receives as a result of the transfer, and
  - (b) which are not brought into account in calculating the profits of the transferor's trade for income or corporation tax purposes for any period before the cessation,
- are brought into account in calculating the profits of the transferee's trade in the period of account in which they are received.
- (3) Any sums mentioned in subsection (1)(b) which are received after the transferor has permanently ceased to carry on the trade are not post-cessation receipts (see Chapter 18).

*Reverse premiums*

**99 Reverse premiums**

- (1) For the purposes of sections 101 and 102 a payment or other benefit is a reverse premium—
- (a) if conditions A to C are met, and
  - (b) it is not excluded by section 100.
- (2) Condition A is that a person (“the recipient”) receives the payment or other benefit by way of inducement in connection with a transaction being entered into by—
- (a) the recipient, or
  - (b) a person connected with the recipient.
- (3) Condition B is that the transaction (the “property transaction”) is one under which—
- (a) the recipient, or
  - (b) the person connected with the recipient,
- becomes entitled to an estate, interest or right in or over land.
- (4) Condition C is that the payment or other benefit is paid or provided by—
- (a) the person (“the grantor”) by whom the estate, interest or right is granted or was granted at an earlier time,
  - (b) a person connected with the grantor, or
  - (c) a nominee of, or a person acting on the directions of, the grantor or a person connected with the grantor.

*Status: Point in time view as at 15/09/2016.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Part 2. (See end of Document for details)*

## 100 Excluded cases

- (1) A payment or other benefit is not a reverse premium so far as it is brought into account under section 532 of CAA 2001 (the general rule excluding contributions) to reduce the recipient's expenditure qualifying for capital allowances.
- (2) A payment or other benefit received in connection with a property transaction is not a reverse premium if—
  - (a) the person entering into the transaction is an individual, and
  - (b) the transaction relates to premises occupied or to be occupied by the individual as the individual's only or main residence.
- (3) A payment or other benefit is not a reverse premium so far as it is consideration for the transfer of an estate or interest in land which constitutes the sale in a sale and lease-back arrangement.
- (4) A “sale and lease-back arrangement” means any such arrangement as is described in <sup>F157</sup>section 681AA(1) or (2), 681AB(1) or (2) or 681BA of ITA 2007 or <sup>F158</sup>section 835(1) or (2) or 836(1) or (2) of CTA 2010].

### Textual Amendments

**F157** Words in s. 100(4) inserted (1.4.2010) (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), s. 381(1), **Sch. 8 para. 255** (with [Sch. 9 paras. 1-9, 22](#))

**F158** Words in s. 100(4) substituted (1.4.2010) (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), **Sch. 1 para. 445** (with [Sch. 2](#))

### Modifications etc. (not altering text)

**C5** S. 100(1) excluded (26.3.2007) by [The Income Tax \(Construction Industry Scheme\) Regulations 2005 \(S.I. 2005/2045\)](#), reg. 20(2) (as amended by [The Income Tax \(Construction Industry Scheme\) \(Amendment\) Regulations 2007 \(S.I. 2007/672\)](#), **reg. 5(3)**)

## 101 Tax treatment of reverse premiums

- (1) A reverse premium is treated for income tax purposes as a receipt of a revenue nature.
- (2) If the recipient enters into the property transaction for the purposes of a trade carried on (or to be carried on) by the recipient, the reverse premium is brought into account in calculating the profits of the trade.
- (3) If subsection (2) does not apply, the reverse premium is charged to income tax in accordance with section 311 (reverse premium taxed as property business receipt).

## 102 Arrangements not at arm's length

- (1) This section applies if—
  - (a) two or more of the parties to the property arrangements are connected persons, and
  - (b) the terms of those arrangements are not such as would reasonably have been expected if those persons had been dealing at arm's length.

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*Status: Point in time view as at 15/09/2016.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Part 2. (See end of Document for details)*

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- (2) The terms of the property arrangements meet the condition in subsection (1)(b) if they differ to a significant extent from the terms which, at the time the arrangements were entered into, would be regarded as normal and reasonable—
- (a) in the market conditions then prevailing, and
  - (b) between persons dealing with each other at arm's length in the open market.
- (3) The whole amount or value of the reverse premium brought into account under section 101 is brought into account in the first relevant period of account.
- (4) “The first relevant period of account” means the period of account in which the property transaction is entered into.
- (5) But if the recipient enters into the property transaction for the purposes of a trade—
- (a) which is not then carried on by the recipient, but
  - (b) which the recipient subsequently starts to carry on,
- “the first relevant period of account” means the first period of account in which the recipient carries on the trade.

### **103 Connected persons and property arrangements**

For the purposes of this section and sections 99 to 102—

- (a) persons are treated as connected with each other if they are connected (for which see section 878(5)) at any time during the period when the property arrangements are entered into, and
- (b) “the property arrangements” means the property transaction and any arrangements entered into in connection with it (whether before it, at the same time as it or after it).

#### *Assets of mutual concerns*

### **104 Distribution of assets of mutual concerns**

- (1) This section applies if—
- (a) a deduction has been allowed in calculating the profits of a trade for a payment to a mutual concern for the purposes of its mutual business,
  - (b) the concern is being or has been wound up or dissolved,
  - (c) a person (“the recipient”) who is carrying on the trade, or was doing so at the time of the payment, receives money or money's worth representing the concern's assets, and
  - (d) the assets in question represent profits of the mutual business conducted by the concern.
- (2) If the recipient is carrying on the trade at the time the money or money's worth is received, the amount or value of the money or money's worth is brought into account as a receipt in calculating the profits of the trade.
- (3) If the recipient—
- (a) is not carrying on the trade at the time the money or money's worth is received, but
  - (b) was doing so at the time of the payment to the mutual concern,



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*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Part 2. (See end of Document for details)*

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the amount or value of the money or money's worth is treated as a post-cessation receipt (see Chapter 18).

- (4) For the purposes of this section money or money's worth represents assets of a mutual concern if it—
- (a) forms part of the assets of the concern,
  - (b) forms part of the consideration for the transfer of the assets of the concern as part of a scheme of amalgamation or reconstruction which involves its winding up, or
  - (c) consists of the consideration for a transfer or surrender of a right to receive anything falling within paragraph (a) or (b) and does not give rise to a charge to income tax on the person receiving it otherwise than as a result of this section.
- (5) If a transfer or surrender of a right to receive anything which—
- (a) forms part of the assets of a mutual concern, or
  - (b) forms part of the consideration for the transfer of the assets of a mutual concern,
- is not at arm's length, the person making the transfer or surrender is treated as receiving consideration equal to the value of the right.
- (6) In this section references to a mutual concern are to a body corporate which has at any time carried on a trade which consists of or includes the conduct of mutual business (whether or not confined to the members of the body corporate).
- (7) For the purposes of this section a trade does not consist of or include the conduct of mutual business if all the profits of the trade are chargeable to income or corporation tax.

### *Industrial development grants*

## **105 Industrial development grants**

- (1) This section applies if a person carrying on a trade receives a payment by way of a grant under—
- (a) section 7 or 8 of the Industrial Development Act 1982 (c. 52), or
  - (b) Article 7, 9 or 30 of the Industrial Development (Northern Ireland) Order 1982 (S.I. 1982/1083 (N.I. 15)).
- (2) The payment is brought into account as a receipt in calculating the profits of the trade unless—
- (a) the grant is designated as made towards the cost of specified capital expenditure, [<sup>F159</sup> (but see subsection (2A))]
  - (b) the grant is designated as compensation for the loss of capital assets, or
  - (c) the grant is for all or part of a corporation tax liability (including one that has already been met).

[<sup>F160</sup>(2A) Subsection (2)(a) is to be disregarded in calculating the profits of a trade on the cash basis.]

- (3) This section does not apply to professions or vocations.

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### Textual Amendments

- F159** Words in s. 105(2)(a) inserted (with effect in accordance with Sch. 4 paras. 56, 57 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), **Sch. 4 para. 22(2)**
- F160** S. 105(2A) inserted (with effect in accordance with Sch. 4 paras. 56, 57 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), **Sch. 4 para. 22(3)**

*Proceeds of insurance etc.*

## 106 Sums recovered under insurance policies etc.

- (1) This section applies if—
- (a) a deduction is allowed for a loss or expense in calculating the profits of a trade,
  - (b) a person carrying on the trade recovers a sum under an insurance policy or a contract of indemnity in respect of the loss or expense, and
  - (c) the sum is not of a revenue nature.
- (2) The sum is brought into account as a receipt in calculating the profits of the trade (but only up to the amount of the deduction).

## [<sup>F161</sup>CHAPTER 6A

TRADE PROFITS: AMOUNTS NOT REFLECTING COMMERCIAL TRANSACTIONS

### Textual Amendments

- F161** Pt. 2 Ch. 6A inserted (with effect in accordance with Sch. 4 paras. 56, 57 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), **Sch. 4 para. 23**

## 106A Professions and vocations

The provisions of this Chapter apply to professions and vocations as they apply to trades.

## 106B Application of Chapter

This Chapter applies in calculating the profits of a person's trade for a period on the cash basis.

## 106C Amounts not reflecting commercial transactions

- (1) This section applies if—
- (a) the person does anything in relation to the trade (“the relevant act”),
  - (b) there is a difference between—
    - (i) the amount (if any) that, as a result of the relevant act, would (apart from this section) be brought into account in calculating the profits of the trade for the period, and

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- (ii) the amount (if any) that would have been so brought into account had the relevant act consisted of a transaction between the person and another person dealing with each other at arm's length in the open market (“the arm's length amount”), and
  - (c) the profits of the trade for the period are less than they would have been if the arm's length amount had been so brought into account.
- (2) The amount to be brought into account in calculating the profits of the trade for the period is an amount that is just and reasonable in all the circumstances.

#### **106D Capital receipts**

Section 106C does not apply in relation to the relevant act if subsection (4) or (5) of section 96A (cash basis: capital receipts) applies in relation to that act.

#### **106E Gifts to charities etc**

Section 106C does not apply in relation to the relevant act if any of the provisions of Chapter 7 (trade profits: gifts to charities etc) applies in relation to that act.]

### **CHAPTER 7**

#### **TRADE PROFITS: GIFTS TO CHARITIES ETC.**

#### **107 Professions and vocations**

The provisions of this Chapter apply to professions and vocations as they apply to trades.

#### **108 Gifts of trading stock to charities etc.**

- (1) This section applies if a person carrying on a trade (“the donor”) gives an article for the purposes of—
- (a) a charity, a registered club or a body listed in subsection (4), or
  - (b) a designated educational establishment (see section 110),
- and the article is one manufactured, or of a class or description sold, by the donor in the course of the trade.
- (2) In calculating the profits of the trade, no amount is required to be brought into account as a receipt in consequence of the disposal of the article.
- (3) In this section “registered club” has the meaning given by <sup>F162</sup>section 658 of CTA 2010 (community] amateur sports clubs).
- (4) The bodies referred to in subsection (1)(a) are—
- (a) the Trustees of the National Heritage Memorial Fund,
  - (b) the Historic Buildings and Monuments Commission for England,
  - (c) <sup>F163</sup>.....
  - (d) <sup>F163</sup>.....
  - <sup>F164</sup>(e) .....

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- (5) This section [F165—
- (a)] needs to be read with section 109 (receipt by donor or connected person of benefit attributable to certain gifts)[F166, and
  - (b) is subject to section 809ZM of ITA 2007 (removal of income tax relief in respect of tainted charity donations etc).]

#### Textual Amendments

- F162** Words in s. 108(3) substituted (1.4.2010) (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), **Sch. 1 para. 446** (with **Sch. 2**)
- F163** S. 108(4)(c)(d) repealed (6.4.2007 with effect as noted in s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), ss. 1027, 1031, 1034, **Sch. 1 para. 500**, **Sch. 3 Pt. 1** (with transitional provisions and savings in **Sch. 2**)
- F164** S. 108(4)(e) omitted (1.4.2012) by virtue of [The Public Bodies \(Abolition of the National Endowment for Science, Technology and the Arts\) Order 2012 \(S.I. 2012/964\)](#), arts. 1(2), 3(1), **Sch.**
- F165** S. 108(5)(a): words in s. 108(5) renumbered as s. 108(5)(a) (with effect in accordance with **Sch. 3 para. 27** of the amending Act) by [Finance Act 2011 \(c. 11\)](#), **Sch. 3 para. 6(a)**
- F166** S. 108(5)(b) and word inserted (with effect in accordance with **Sch. 3 para. 27** of the amending Act) by [Finance Act 2011 \(c. 11\)](#), **Sch. 3 para. 6(b)**

#### Modifications etc. (not altering text)

- C6** S. 108 excluded (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), ss. 445(1), 1034 (with transitional provisions and savings in **Sch. 2**)

### 109 Receipt by donor or connected person of benefit attributable to certain gifts

- (1) This section applies if a person carrying on a trade (“the donor”) makes a gift in relation to which—
- (a) section 108 applies, or
  - (b) section 63(2) of CAA 2001 applies (gifts to charities etc. of plant or machinery used in the trade),
- and the donor, or a person connected with the donor, receives a benefit which is in any way attributable to the making of the gift.
- (2) An amount equal to the value of the benefit—
- (a) is brought into account in calculating the profits of the trade, as a receipt of the trade arising on the date on which the benefit is received, or
  - (b) if the donor has permanently ceased to carry on the trade before that date, is treated as a post-cessation receipt (see Chapter 18).

### 110 Meaning of “designated educational establishment”

- (1) For the purposes of section 108 “designated educational establishment” means an educational establishment designated, or within a category designated, in regulations made—
- (a) for England and Scotland, by the Secretary of State,
  - (b) for Wales, by the National Assembly for Wales, and
  - (c) for Northern Ireland, by the Department of Education.
- (2) The regulations may make different provision for different areas.

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- (3) If any question arises as to whether an educational establishment is within a category designated in the regulations, [<sup>F167</sup>an officer of Revenue and Customs] must refer the question for decision—
- (a) in the case of an establishment in England or Scotland, to the Secretary of State,
  - (b) in the case of an establishment in Wales, to the National Assembly for Wales, and
  - (c) in the case of an establishment in Northern Ireland, to the Department of Education.
- (4) The power of the Secretary of State or the National Assembly for Wales to make regulations under this section is exercisable by statutory instrument.
- (5) A statutory instrument containing any regulations made by the Secretary of State under this section is subject to annulment in pursuance of a resolution of the House of Commons.
- (6) Regulations made under this section by the Department of Education—
- (a) are a statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I. 12)), and
  - (b) are subject to negative resolution within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954 (c. 33 (N.I.)).

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#### Textual Amendments

**F167** Words in s. 110(3) substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005](#) (c. 11), ss. 50, 53(1), [Sch. 4 para. 132\(1\)](#); S.I. 2005/1126, [art. 2\(h\)](#)

## CHAPTER 8

### TRADE PROFITS: HERD BASIS RULES

#### *Introduction*

#### **111 Election for application of herd basis rules**

- (1) A person who keeps or has kept a production herd for the purposes of a trade may make an election under this Chapter (a “herd basis election”).
- (2) In calculating the profits of the trade, animals which are part of a production herd in relation to which a herd basis election has effect—
  - (a) are not treated as trading stock (see section 30), but
  - (b) are treated instead in accordance with sections 114 to 123 (“the herd basis rules”).
- (3) This Chapter is expressed in terms of farmers but applies to any person who keeps or has kept a production herd for the purposes of a trade, whether or not the trade is farming.

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- (4) References in this Chapter to keeping a production herd are to keeping it for the purposes of the trade.

**[<sup>F168</sup>111A Herd basis rules not to apply where cash basis used**

Nothing in this Chapter applies in calculating the profits of a trade on the cash basis.]

**Textual Amendments**

**F168** S. 111A inserted (with effect in accordance with Sch. 4 paras. 56, 57 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 4 para. 24](#)

**112 Meaning of “animal”, “herd”, “production herd” etc.**

- (1) In this Chapter—
- (a) “animal” means any animal or other living creature,
  - (b) “herd” includes a flock and any other collection of animals (however named), and
  - (c) “production herd” means, in relation to a farmer, a herd of animals of the same species (irrespective of breed) kept by the farmer wholly or mainly for the products obtainable from the living animal which the animals produce for the farmer to sell.
- (2) For this purpose “the products obtainable from the living animal” means—
- (a) the young of the animal, or
  - (b) any other product obtainable from the animal without slaughtering it.
- (3) For the purposes of this Chapter the general rule is that immature animals kept in a production herd are not part of the herd.
- (4) There is an exception to this rule if—
- (a) the nature of the land on which the herd is kept means that animals which die or cease to be part of the herd can be replaced only by animals bred and reared on the land,
  - (b) the immature animals in question are bred in the herd and are maintained in the herd for the purpose of replacing other animals, and
  - (c) it is necessary to maintain the immature animals for that purpose.
- (5) In that case the immature animals are part of the herd for the purposes of this Chapter, but only so far as they are required to prevent a fall in the numbers of the herd.
- (6) References in this Chapter to an animal being added to a herd include references to an immature animal that is not part of the herd reaching maturity.
- (7) This Chapter applies—
- (a) in relation to animals kept singly as it applies in relation to herds, and
  - (b) in relation to shares in animals as it applies in relation to animals themselves.

**113 Other interpretative provisions**

- (1) This section applies for the purposes of this Chapter.

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- (2) A production herd kept by a farmer is of the same class as another production herd only if—
  - (a) the animals kept in both herds are of the same species (irrespective of breed), and
  - (b) the products produced for the farmer to sell (for which the herds are wholly or mainly kept) are of the same kinds in both herds.
- (3) References to the sale of an animal include references to its death or destruction.
- (4) References to the sale proceeds of an animal include references to—
  - (a) money received from an insurer because of the animal's death or destruction,
  - (b) compensation money received because of the animal's death or destruction, and
  - (c) the sale proceeds of the animal's carcass or any part of its carcass.
- (5) Female animals become mature—
  - (a) in the case of laying birds, when they first lay, and
  - (b) in any other case, when they produce their first young.
- (6) 20% or more of a herd is a substantial part of the herd, but a lesser percentage than 20% is capable of being a substantial part of the herd depending on the circumstances of the case concerned.

#### *The herd basis rules*

### **114 Initial cost of herd and value of herd**

- (1) In calculating the profits of the trade, no deduction is allowed for the initial cost of the herd.
- (2) In calculating the profits of the trade, the value of the herd is not brought into account.

### **115 Addition of animals to herd**

- (1) This section applies for the purpose of calculating the profits of the trade if an animal is added to the herd, unless it replaces another animal in the herd.
- (2) No deduction is allowed for the cost of the animal.
- (3) If, immediately before it was added to the herd, the animal was part of the farmer's trading stock, the balancing amount is brought into account as a receipt.
- (4) “The balancing amount” means—
  - (a) in the case of an animal bred by the farmer, the cost of breeding the animal and rearing it to maturity, and
  - (b) in any other case, the sum of the initial cost of acquiring the animal and the cost (if any) incurred by the farmer in rearing the animal to maturity.

### **116 Replacement of animals in herd**

- (1) This section applies for the purpose of calculating the profits of the trade if—

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- (a) an animal (“the old animal”) is sold from the herd or otherwise ceases to be part of the herd, and
  - (b) it is replaced in the herd by another animal (“the new animal”).
- (2) The sale proceeds (if any) of the old animal are brought into account as a receipt.
- (3) But this needs to be read with—
- (a) section 117 (amount of receipt if old animal slaughtered under disease control order),
  - (b) section 120 (acquisition of new herd begun within 5 years of sale), and
  - (c) section 122 (replacement of part sold begun within 5 years of sale).
- (4) Except so far as otherwise allowable, a deduction is allowed under this section for the cost of the new animal.
- (5) But if the new animal is of better quality than the old animal, the amount of the deduction must not exceed the amount that it would have been necessary to spend to replace the old animal with an animal of the same quality.

#### **117 Amount of receipt if old animal slaughtered under disease control order**

- (1) This section applies for the purposes of section 116.
- (2) If—
- (a) the old animal was slaughtered under a disease control order, and
  - (b) the new animal is of worse quality than the old animal,
- the amount brought into account as a receipt under section 116 must not exceed the equivalent amount for the new animal.
- (3) For this purpose “a disease control order” means an order made under the law relating to the diseases of animals by—
- (a) central government,
  - (b) a devolved authority,
  - (c) a local authority, or
  - (d) another public authority.
- (4) If, immediately before it was added to the herd, the new animal was part of the farmer's trading stock, “the equivalent amount for the new animal” means—
- (a) in the case of an animal bred by the farmer, the cost of breeding the animal and rearing it to maturity, and
  - (b) in any other case, the sum of the initial cost of acquiring the animal and the cost (if any) incurred by the farmer in rearing the animal to maturity.
- (5) Otherwise “the equivalent amount for the new animal” means the cost of the new animal.

#### **118 Sale of animals from herd**

- (1) This section applies for the purpose of calculating the profits of the trade if an animal is sold from the herd unless—
- (a) it is replaced in the herd by another animal (see section 116), or



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- (b) it is sold as part of the sale of the whole or a substantial part of the herd that takes place all at once or over a period not longer than 12 months (see section 119).
- (2) A profit arising from the sale is brought into account as a receipt.
- (3) A deduction is allowed for a loss arising from the sale.
- (4) The amount of the profit or loss is the difference between the sale proceeds of the animal and the deductible amount for the animal.
- (5) “The deductible amount for the animal” means—
  - (a) in the case of an animal bred by the farmer, the cost of breeding the animal and rearing it to maturity,
  - (b) in the case of an animal acquired by the farmer for valuable consideration, the sum of the initial cost to the farmer of acquiring the animal and the cost (if any) incurred by the farmer in rearing the animal to maturity, and
  - (c) in the case of an animal acquired by the farmer but not for valuable consideration, the sum of the market value of the animal when acquired and the cost (if any) incurred by the farmer in rearing the animal to maturity.

### **119 Sale of whole or substantial part of herd**

- (1) This section applies for the purpose of calculating the profits of the trade if, either all at once or over a period not longer than 12 months, the herd or a substantial part of the herd is sold unless—
  - (a) section 120 applies (acquisition of new herd begun within 5 years of sale), or
  - (b) section 122 applies (replacement of part sold begun within 5 years of sale),
 but paragraph (a) is subject to subsection (5) of section 120 (so far as that section provides for a case in which this section is to apply).
- (2) A profit arising from the sale is not brought into account as a receipt.
- (3) No deduction is allowed for a loss arising from the sale.

### **120 Acquisition of new herd begun within 5 years of sale**

- (1) This section applies for the purpose of calculating the profits of the trade if—
  - (a) either all at once or over a period not longer than 12 months, the herd (“the old herd”) is sold, and
  - (b) the farmer acquires or starts to acquire another production herd of the same class (“the new herd”) within 5 years of the sale.
- (2) Section 116 (replacement of animals in herd) applies as if a number of animals equal to—
  - (a) the number of animals in the old herd, or
  - (b) if smaller, the number of animals in the new herd,
 had been sold from the old herd and replaced in that herd (but see section 121 (sale for reasons outside farmer's control)).
- (3) For the purposes of section 116, the sale proceeds of an animal that is treated as a result of subsection (2) above as if it had been—
  - (a) sold from the old herd, and

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- (b) replaced in that herd by another animal (“the new animal”),  
are not brought into account as a receipt until the new animal is acquired.
- (4) If—
- (a) the number of animals in the new herd is smaller than the number of animals in the old herd, and
  - (b) the difference is not substantial,
- section 118 (sale of animals from herd) applies as if a number of animals equal to the difference had been sold from the old herd.
- (5) If the number of animals in the new herd is smaller than the number of animals in the old herd and the difference is substantial—
- (a) section 119 (sale of whole or substantial part of herd where replacement not begun within 5 years), or
  - (b) section 122 (sale of substantial part of herd where replacement begun within 5 years),
- applies as if a number of animals equal to the difference had been sold from the old herd.
- (6) If the number of animals in the new herd is larger than the number of animals in the old herd, section 115 (addition of animals to herd) applies as if a number of animals equal to the difference had been added to the old herd.
- (7) For the purposes of this section—
- (a) if the difference between the number of animals in the new herd and the number of animals in the old herd is equal to 20% or more of the number of animals in the old herd, the difference is substantial, but
  - (b) a lesser percentage than 20% is capable of being a substantial difference depending on the circumstances of the case concerned.

## **121 Section 120: sale for reasons outside farmer's control**

- (1) This section applies for the purposes of section 116, as applied by section 120(2).
- (2) If—
- (a) the farmer was compelled to sell the old herd for reasons wholly outside the farmer's control, and
  - (b) an animal (“the new animal”) that is treated as a result of section 120(2) as if it replaced an animal sold (“the old animal”) is of worse quality than the old animal,
- the amount brought into account as a receipt under section 116 must not exceed the equivalent amount for the new animal.
- (3) If, immediately before it was added to the herd, the new animal was part of the farmer's trading stock, “the equivalent amount for the new animal” means—
- (a) in the case of an animal bred by the farmer, the cost of breeding the animal and rearing it to maturity, and
  - (b) in any other case, the sum of the initial cost of acquiring the animal and the cost (if any) incurred by the farmer in rearing the animal to maturity.
- (4) Otherwise “the equivalent amount for the new animal” means the cost of the new animal.

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## **122 Replacement of part sold begun within 5 years of sale**

- (1) This section applies for the purpose of calculating the profits of the trade if—
  - (a) either all at once or over a period not longer than 12 months, a substantial part of the herd is sold, and
  - (b) the farmer acquires or starts to acquire animals to replace the part sold within 5 years of the sale.
- (2) Section 116 (replacement of animals in herd) applies so far as the animals included in the part sold are replaced (but see section 123 (sale for reasons outside farmer's control)).
- (3) The sale proceeds of an animal included in the part sold are not brought into account as a receipt until the animal that replaces it in the herd is acquired.
- (4) If some of the animals included in the part sold are not replaced—
  - (a) a profit arising from their sale is not brought into account as a receipt, and
  - (b) no deduction is allowed for a loss arising from their sale.

## **123 Section 122: sale for reasons outside farmer's control**

- (1) This section applies for the purposes of section 116, as applied by section 122(2).
- (2) If—
  - (a) the farmer was compelled to sell the part of the herd for reasons wholly outside the farmer's control, and
  - (b) an animal (“the new animal”) that replaces an animal sold (“the old animal”) is of worse quality than the old animal,
 the amount brought into account as a receipt under section 116 must not exceed the equivalent amount for the new animal.
- (3) If, immediately before it was added to the herd, the new animal was part of the farmer's trading stock, “the equivalent amount for the new animal” means—
  - (a) in the case of an animal bred by the farmer, the cost of breeding the animal and rearing it to maturity, and
  - (b) in any other case, the sum of the initial cost of acquiring the animal and the cost (if any) incurred by the farmer in rearing the animal to maturity.
- (4) Otherwise “the equivalent amount for the new animal” means the cost of the new animal.

### *Elections*

## **124 Herd basis elections**

- (1) A herd basis election must specify the class of production herd to which it relates.
- (2) A herd basis election must be made—
  - (a) on or before the first anniversary of the normal self-assessment filing date for the tax year in which the first relevant period of account ends, or
  - (b) if that is the tax year in which the farmer starts to carry on the trade and the farmer is not a firm, on or before the second anniversary of the normal self-assessment filing date for that tax year.

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- (3) “The first relevant period of account” means the first period of account in which the farmer making the election keeps a production herd of the class to which the election relates (but see subsection (8)).
- (4) A herd basis election cannot relate to more than one class of production herd, but separate elections may be made for different classes.
- (5) A herd basis election is irrevocable.
- (6) A herd basis election has effect in relation to all production herds of the class to which it relates, including any which the farmer—
  - (a) has ceased to keep before making the election, or
  - (b) first keeps after making the election.
- (7) A herd basis election has effect for every period of account in which the farmer—
  - (a) carries on the trade, and
  - (b) keeps a production herd of the class to which the election relates.
- (8) If the farmer is a firm and there is a change in the persons who are partners in the firm—
  - (a) any herd basis election made by the old firm ceases to have effect, and
  - (b) in relation to the new firm, “the first relevant period of account” means the first period of account in which the new firm keeps a production herd of the class to which the election relates.

## **125 Five year gap in which no production herd kept**

- (1) This section applies if a farmer—
  - (a) keeps a production herd of a particular class, and
  - (b) ceases altogether to keep herds of that class for a period of at least 5 years.
- (2) If the farmer keeps a production herd of that class after the end of that period—
  - (a) the period of account in which the farmer starts to keep the herd is treated as the first period of account in which the farmer keeps a production herd of that class, and
  - (b) any herd basis election previously made by the farmer in relation to production herds of that class ceases to have effect.

## **126 Slaughter under disease control order**

- (1) This section applies if—
  - (a) the whole or a substantial part of a production herd kept by a farmer is slaughtered under a disease control order, and
  - (b) the circumstances of the slaughter are such that compensation is payable in respect of the animals slaughtered.
- (2) The farmer may make a herd basis election in respect of the class of production herd involved in the slaughter as if the period of account —
  - (a) in which the compensation falls to be brought into account in calculating the profits of the trade, or
  - (b) in which it would (but for the election) fall to be so brought into account,

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were the first period of account in which the farmer keeps a production herd of that class.

- (3) An election made as a result of this section has effect for that period of account and every subsequent period of account in which the farmer—
- (a) carries on the trade, and
  - (b) keeps a production herd of the class to which the election relates.
- (4) In this section “disease control order” means an order made under the law relating to the diseases of animals by—
- (a) central government,
  - (b) a devolved authority,
  - (c) a local authority, or
  - (d) another public authority.

*Preventing abuse of the herd basis rules*

## **127 Preventing abuse of the herd basis rules**

- (1) This section applies if—
- (a) a person carrying on a trade (the “transferor”) transfers the whole or part of a production herd to another person (the “transferee”),
  - (b) the transfer is not by way of sale or is by way of sale but for a price other than that which the animals sold would have fetched if sold in the open market, and
  - (c) the control condition or herd basis benefit condition is met.
- (2) The control condition is met if—
- (a) the transferor is a body of persons over which the transferee has control,
  - (b) the transferee is a body of persons over which the transferor has control, or
  - (c) both the transferor and transferee are bodies of persons and another person has control over both of them.
- (3) For this purpose “body of persons” includes a firm.
- (4) The herd basis benefit condition is met if—
- (a) the transferor or transferee (or both) might (but for this section) have been expected to obtain a herd basis benefit as a result of the transfer or the transactions of which the transfer is one, and
  - (b) the herd basis benefit is the sole or main benefit, or one of the main benefits, that the person in question might have been expected to obtain.
- (5) For this purpose a “herd basis benefit” is a benefit resulting from—
- (a) the obtaining of a right to make a herd basis election,
  - (b) the herd basis rules applying or not applying, or
  - (c) the herd basis rules having a greater or lesser effect.
- (6) For the purpose of calculating the profits of—
- (a) the trade carried on by the transferor, and
  - (b) any trade carried on by the transferee,
- the animals transferred are treated as having been sold at the price which they would have fetched if sold in the open market.

*Status: Point in time view as at 15/09/2016.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Part 2. (See end of Document for details)*

## Supplementary

### <sup>F169</sup> 128 Information if election made

.....

#### Textual Amendments

**F169** S. 128 omitted (13.8.2009) by virtue of [The Finance Act 2009, Schedule 47 \(Consequential Amendments\) Order 2009 \(S.I. 2009/2035\)](#), art. 1, **Sch. para. 43**

### 129 Further assessment etc. if herd basis rules apply

- (1) If the herd basis rules apply in calculating the profits of a tax year after an assessment for that tax year has become final and conclusive, any assessment or repayment of tax that is necessary to give effect to the rules must be made.
- (2) But repayment of tax is due only if a claim for it is made.

## CHAPTER 9

### TRADE PROFITS: <sup>F170</sup> . . . SOUND RECORDINGS

#### Textual Amendments

**F170** Pt. 2 Ch. 9: words in heading repealed (with effect as mentioned in ss. 46, 47 of the repealing Act) by [Finance Act 2006 \(c. 25\)](#), **s. 178**, {Sch. 26 Pt. 3(4) Note 1}

## Introduction

### 130 Expenditure to which this Chapter applies

- (1) This Chapter makes provision about—
  - (a) expenditure incurred on the production or acquisition of the original master version of a <sup>F171</sup> . . . sound recording, <sup>F172</sup> . . .
  - (b) <sup>F172</sup> .....
- (2) In this Chapter references to production expenditure are to expenditure incurred on the production of the original master version of a <sup>F173</sup> . . . sound recording.
- (3) In this Chapter references to acquisition expenditure are to expenditure incurred on the acquisition of the original master version of a <sup>F174</sup> . . . sound recording.
- (4) In this Chapter references to the original master version of a film or sound recording include any rights in the original master version of a <sup>F175</sup> . . . sound recording that are held or acquired with it.
- (5) In this Chapter references to production or acquisition expenditure do not include—
  - (a) interest (as to which, see section 29), or
  - (b) the incidental costs of obtaining finance (as to which, see sections 58 and 59).

*Status: Point in time view as at 15/09/2016.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Part 2. (See end of Document for details)*

- (6) <sup>F176</sup> . . . . .
- (7) In this Chapter “any prohibitive rule” means any provision of the Income Tax Acts which—
- (a) prohibits a deduction from being made, or
  - (b) restricts the extent to which it is allowed,
- in calculating the profits of a trade.

**Textual Amendments**

- F171** Words in s. 130(1)(a) repealed (with effect as mentioned in ss. 46, 47 of the repealing Act) by [Finance Act 2006 \(c. 25\), s. 178](#), {Sch. 26 Pt. 3(4) Note 1}
- F172** S. 130(1)(b) and word repealed (with effect as mentioned in ss. 46, 47 of the repealing Act) by [Finance Act 2006 \(c. 25\), s. 178](#), {Sch. 26 Pt. 3(4) Note 1}
- F173** Words in s. 130(2) repealed (with effect as mentioned in ss. 46, 47 of the repealing Act) by [Finance Act 2006 \(c. 25\), s. 178](#), {Sch. 26 Pt. 3(4) Note 1}
- F174** Words in s. 130(3) repealed (with effect as mentioned in ss. 46, 47 of the repealing Act) by [Finance Act 2006 \(c. 25\), s. 178](#), {Sch. 26 Pt. 3(4) Note 1}
- F175** Words in s. 130(4) repealed (with effect as mentioned in ss. 46, 47 of the repealing Act) by [Finance Act 2006 \(c. 25\), s. 178](#), {Sch. 26 Pt. 3(4) Note 1}
- F176** 130(6) repealed (with effect as mentioned in ss. 46, 47 of the repealing Act) by [Finance Act 2006 \(c. 25\), s. 178](#), {Sch. 26 Pt. 3(4) Note 1}

**[<sup>F177</sup>130A Chapter not to apply where cash basis used**

Nothing in this Chapter applies in calculating the profits of a trade on the cash basis.]

**Textual Amendments**

- F177** S. 130A inserted (with effect in accordance with Sch. 4 paras. 56, 57 of the amending Act) by [Finance Act 2013 \(c. 29\), Sch. 4 para. 25](#)

**131 Meaning of “film” and related expressions**

<sup>F178</sup> . . . . .

**Textual Amendments**

- F178** S. 131 repealed (with effect as mentioned in ss. 46, 47 of the repealing Act) by [Finance Act 2006 \(c. 25\), s. 178](#), {Sch. 26 Pt. 3(4) Note 1}

**132 Meaning of “original master version” and “certified master version”**

- (1) In this Chapter “original master version” means—
- (a) <sup>F179</sup> . . . . .
  - (b) in relation to a sound recording, the original master audio tape or disc.
- (2) <sup>F180</sup> . . . . .

*Status: Point in time view as at 15/09/2016.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Part 2. (See end of Document for details)*

(3) <sup>F180</sup> .....

#### Textual Amendments

**F179** S. 132(1)(a) and following word repealed (with effect as mentioned in ss. 46, 47 of the repealing Act) by [Finance Act 2006 \(c. 25\), s. 178](#), {Sch. 26 Pt. 3(4) Note 1}

**F180** S. 132(2)(3) repealed (with effect as mentioned in ss. 46, 47 of the repealing Act) by [Finance Act 2006 \(c. 25\), s. 178](#), {Sch. 26 Pt. 3(4) Note 1}

### 133 Meaning of “relevant period”

In this Chapter “relevant period”, in relation to a trade, means—

- (a) a period of account of the trade, or
- (b) if no accounts of the trade are drawn up for a period, the basis period for a tax year.

*Expenditure treated as revenue in nature*

### 134 Expenditure treated as revenue in nature

- (1) If a person carrying on a trade incurs production or acquisition expenditure, the expenditure is treated for income tax purposes as expenditure of a revenue nature.
- (2) If expenditure is treated under this section as revenue in nature, sums received by the person carrying on the trade from the disposal of the original master version—
  - (a) are treated for income tax purposes as receipts of a revenue nature, and
  - (b) are brought into account in calculating the profits of the trade of the relevant period in which they are received.
- (3) For this purpose sums received from the disposal of the original master version include—
  - (a) sums received from the disposal of any interest or right in or over the original master version (including an interest or right created by the disposal), and
  - (b) insurance, compensation or similar money derived from the original master version.

(4) <sup>F181</sup> .....

#### Textual Amendments

**F181** S. 134(4) repealed (with effect as mentioned in ss. 46, 47 of the repealing Act) by [Finance Act 2006 \(c. 25\), s. 178](#), {Sch. 26 Pt. 3(4) Note 1}



*Status: Point in time view as at 15/09/2016.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Part 2. (See end of Document for details)*

*[<sup>F182</sup>Rules for allocating expenditure]*

**Textual Amendments**

**F182** S. 135 cross-heading substituted (with effect as mentioned in s. 46, 47 of the amending Act) by virtue of [Finance Act 2006 \(c. 25\)](#), [s. 178](#), {Sch. 26 Pt. 3(4) Note 2(a)}

**135** [<sup>F183</sup>**Allocation of production or acquisition expenditure to relevant periods]**

- (1) This section applies for the purpose of calculating the profits of a trade of a relevant period if—
  - (a) the trade consists of or includes the exploitation of the original master versions of <sup>F184</sup> . . . sound recordings,
  - (b) the original master versions do not constitute trading stock of the trade (within the meaning of section 174),
  - (c) the person carrying on the trade incurs production or acquisition expenditure in, or before, the relevant period, and
  - (d) <sup>F185</sup> .....
- (2) A deduction is allowed for the amount of the production or acquisition expenditure allocated to the relevant period, but this is subject to the application of any prohibitive rule.
- (3) The person carrying on the trade must allocate to the relevant period so much of the expenditure as is just and reasonable (but see subsection (5)).
- (4) In making this allocation regard must be had to the following—
  - (a) the amount of the expenditure which remains unallocated at the beginning of the period,
  - (b) the amount of the expenditure incurred in the period,
  - (c) the proportion which the estimated value of the original master version realised in the period (by way of income or otherwise) bears to the sum of the value so realised and the estimated remaining value at the end of the period, and
  - (d) the need to bring the whole of the expenditure into account over the time during which the value of the original master version is expected to be realised.
- (5) The person carrying on the trade may also allocate to the relevant period a further amount, so long as the total amount allocated to the period does not exceed the value of the original master version realised in the period (by way of income or otherwise).
- (6) Expenditure may not be allocated to the relevant period under this section if it is allocated—
  - (a) under this section to any other relevant period,
  - (b) <sup>F186</sup> .....
  - (c) <sup>F186</sup> .....
  - (d) <sup>F186</sup> .....
- (7) <sup>F187</sup> .....

*Status: Point in time view as at 15/09/2016.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Part 2. (See end of Document for details)*

**Textual Amendments**

- F183** S. 135 heading substituted (with effect as mentioned in s. 46, 47 of the amending Act) by virtue of [Finance Act 2006 \(c. 25\), s. 178](#), {Sch. 26 Pt. 3(4) Notes 1, 2(b)}
- F184** Words in s. 135(1)(a) repealed (with effect as mentioned in ss. 46, 47 of the repealing Act) by [Finance Act 2006 \(c. 25\), s. 178](#), {Sch. 26 Pt. 3(4) Note 1}
- F185** S. 135(1)(d) repealed (with effect as mentioned in ss. 46, 47 of the repealing Act) by [Finance Act 2006 \(c. 25\), s. 178](#), {Sch. 26 Pt. 3(4) Note 1}
- F186** S. 135(6)(b)-(d) repealed (with effect as mentioned in ss. 46, 47 of the repealing Act) by [Finance Act 2006 \(c. 25\), s. 178](#), {Sch. 26 Pt. 3(4) Note 1}
- F187** S. 135(7) repealed (with effect as mentioned in ss. 46, 47 of the repealing Act) by [Finance Act 2006 \(c. 25\), s. 178](#), {Sch. 26 Pt. 3(4) Note 1}

*Certified master versions: special rules for allocating expenditure*

**136 Application of provisions about certified master versions**

**F188** . . . . .

**Textual Amendments**

- F188** Ss. 136-144 repealed (with effect as mentioned in ss. 46, 47 of the repealing Act) by [Finance Act 2006 \(c. 25\), s. 178](#), {Sch. 26 Pt. 3(4) Note 1}

**137 Certified master versions: preliminary expenditure**

**F189** . . . . .

**Textual Amendments**

- F189** Ss. 136-144 repealed (with effect as mentioned in ss. 46, 47 of the repealing Act) by [Finance Act 2006 \(c. 25\), s. 178](#), {Sch. 26 Pt. 3(4) Note 1}

**138 Certified master versions: production expenditure**

**F190** . . . . .

**Textual Amendments**

- F190** Ss. 136-144 repealed (with effect as mentioned in ss. 46, 47 of the repealing Act) by [Finance Act 2006 \(c. 25\), s. 178](#), {Sch. 26 Pt. 3(4) Note 1}

**[<sup>F191</sup>138A Certified master versions: acquisition expenditure**

**F192** . . . . .]

*Status: Point in time view as at 15/09/2016.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Part 2. (See end of Document for details)*

**Textual Amendments**

**F191** Ss.138, 138A substituted for s. 138 (with effect as mentioned in [Sch. 3 para. 3\(2\)\(3\)](#) of the amending Act) by [Finance Act 2005 \(c. 7\)](#), s. 59, [Sch. 3 para. 3\(1\)\(4\)](#)

**F192** Ss. 136-144 repealed (with effect as mentioned in ss. 46, 47 of the repealing Act) by [Finance Act 2006 \(c. 25\)](#), s. 178, {Sch. 26 Pt. 3(4) Note 1}

*Certified master versions: limited-budget films*

**139 Certified master versions: production expenditure on limited-budget films**

**F193** . . . . .

**Textual Amendments**

**F193** Ss. 136-144 repealed (with effect as mentioned in ss. 46, 47 of the repealing Act) by [Finance Act 2006 \(c. 25\)](#), s. 178, {Sch. 26 Pt. 3(4) Note 1}

**140 Certified master versions: acquisition expenditure on limited-budget films**

**F194** . . . . .

**Textual Amendments**

**F194** Ss. 136-144 repealed (with effect as mentioned in ss. 46, 47 of the repealing Act) by [Finance Act 2006 \(c. 25\)](#), s. 178, {Sch. 26 Pt. 3(4) Note 1}

*[<sup>F195</sup> Interpretation of sections 138 to 140*

**Textual Amendments**

**F195** S. 140A and preceding cross-heading inserted (with effect as mentioned in [Sch. 3 para. 6\(2\)-\(4\)](#) of the amending Act) by [Finance Act 2005 \(c. 7\)](#), [Sch. 3 para. 6\(1\)](#)

**140A “Disqualifying deduction”**

**F196** . . . . .]

**Textual Amendments**

**F196** Ss. 136-144 repealed (with effect as mentioned in ss. 46, 47 of the repealing Act) by [Finance Act 2006 \(c. 25\)](#), s. 178, {Sch. 26 Pt. 3(4) Note 1}

**141 “Total production expenditure in respect of the original master version”**

**F197** . . . . .

*Status: Point in time view as at 15/09/2016.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Part 2. (See end of Document for details)*

**Textual Amendments**

**F197** Ss. 136-144 repealed (with effect as mentioned in ss. 46, 47 of the repealing Act) by [Finance Act 2006 \(c. 25\), s. 178](#), {Sch. 26 Pt. 3(4) Note 1}

**142 When expenditure is incurred**

**F198** .....

**Textual Amendments**

**F198** Ss. 136-144 repealed (with effect as mentioned in ss. 46, 47 of the repealing Act) by [Finance Act 2006 \(c. 25\), s. 178](#), {Sch. 26 Pt. 3(4) Note 1}

*[<sup>F199</sup>Deferred income agreements*

**Textual Amendments**

**F199** Ss. 142A-142E and preceding cross-heading inserted (with effect as mentioned in s. 65(2) of the amending Act) by [Finance Act 2005 \(c. 7\), s. 65\(1\)](#)

**142A Deferred income agreements which exist when deduction made**

**F200** .....

**Textual Amendments**

**F200** Ss. 136-144 repealed (with effect as mentioned in ss. 46, 47 of the repealing Act) by [Finance Act 2006 \(c. 25\), s. 178](#), {Sch. 26 Pt. 3(4) Note 1}

**142B Meaning of “deferred income agreement in respect of a film”**

**F201** .....

**Textual Amendments**

**F201** Ss. 136-144 repealed (with effect as mentioned in ss. 46, 47 of the repealing Act) by [Finance Act 2006 \(c. 25\), s. 178](#), {Sch. 26 Pt. 3(4) Note 1}

**142C Deferred income agreements entered into after deduction made**

**F202** .....

*Status: Point in time view as at 15/09/2016.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Part 2. (See end of Document for details)*

**Textual Amendments**

**F202** Ss. 136-144 repealed (with effect as mentioned in ss. 46, 47 of the repealing Act) by [Finance Act 2006 \(c. 25\), s. 178](#), {Sch. 26 Pt. 3(4) Note 1}

**142D Meaning of the “net excess relief”**

**F203** . . . . .

**Textual Amendments**

**F203** Ss. 136-144 repealed (with effect as mentioned in ss. 46, 47 of the repealing Act) by [Finance Act 2006 \(c. 25\), s. 178](#), {Sch. 26 Pt. 3(4) Note 1}

**142E Sections 142A to 142D: time of entry into an agreement**

**F204** . . . . .]

**Textual Amendments**

**F204** Ss. 136-144 repealed (with effect as mentioned in ss. 46, 47 of the repealing Act) by [Finance Act 2006 \(c. 25\), s. 178](#), {Sch. 26 Pt. 3(4) Note 1}

*Election for sections 134 to 140 not to apply*

**143 Election for sections 134 to 140 not to apply**

**F205** . . . . .

**Textual Amendments**

**F205** Ss. 136-144 repealed (with effect as mentioned in ss. 46, 47 of the repealing Act) by [Finance Act 2006 \(c. 25\), s. 178](#), {Sch. 26 Pt. 3(4) Note 1}

*Supplementary*

**144 Meaning of “genuinely intended for theatrical release”**

**F206** . . . . .

**Textual Amendments**

**F206** Ss. 136-144 repealed (with effect as mentioned in ss. 46, 47 of the repealing Act) by [Finance Act 2006 \(c. 25\), s. 178](#), {Sch. 26 Pt. 3(4) Note 1}

*Status: Point in time view as at 15/09/2016.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Part 2. (See end of Document for details)*

## CHAPTER 10

### TRADE PROFITS: CERTAIN TELECOMMUNICATION RIGHTS

#### **[<sup>F207</sup> 144A Chapter not to apply where cash basis used**

Nothing in this Chapter applies in calculating the profits of a trade on the cash basis.]

#### **Textual Amendments**

**F207** S. 144A inserted (with effect in accordance with Sch. 4 paras. 56, 57 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 4 para. 26](#)

#### **145 Professions and vocations**

The provisions of this Chapter apply to professions and vocations as they apply to trades.

#### **146 Meaning of “relevant telecommunication right”**

In this Chapter a “relevant telecommunication right” means—

- (a) a licence [<sup>F208</sup> granted under section 8 of the Wireless Telegraphy Act 2006 in accordance with regulations made under section 14 of that Act (bidding for licences),]
- (b) an indefeasible right to use a telecommunications cable system, or
- (c) a right derived (directly or indirectly) from such a licence or indefeasible right.

#### **Textual Amendments**

**F208** Words in s. 146(a) substituted (8.2.2007) by [Wireless Telegraphy Act 2006 \(c. 36\)](#), s. 123, [Sch. 7 para. 37](#)

#### **147 Expenditure and receipts treated as revenue in nature**

- (1) This section applies if, in accordance with generally accepted accounting practice, an amount in respect of—
  - (a) expenditure on the acquisition of a relevant telecommunication right, or
  - (b) a receipt from the disposal of a relevant telecommunication right,
 is recognised in the accounts of a trade as an item in the calculation of profit or loss.
- (2) The amount is treated for income tax purposes as an item of a revenue nature.
- (3) “The acquisition of a relevant telecommunication right” includes—
  - (a) the extension of rights attached to a relevant telecommunication right, and
  - (b) if a relevant telecommunication right is subject to a derivative right, the cancellation or restriction of rights attached to the derivative right.
- (4) “The disposal of a relevant telecommunication right” includes—
  - (a) the cancellation or restriction of rights attached to a relevant telecommunication right, and

*Status: Point in time view as at 15/09/2016.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Part 2. (See end of Document for details)*

- (b) the granting of a derivative right or the extension of rights attached to a derivative right.

#### 148 Credits or debits arising from revaluation

- (1) This section applies if, in accordance with generally accepted accounting practice, an amount in respect of the revaluation of a relevant telecommunication right is recognised in the accounts of a trade (whether or not as an item in the calculation of profit or loss).
- (2) The amount is treated for income tax purposes as an item of a revenue nature.
- (3) In calculating the profits of the trade, the amount is brought into account for the period of account in which it is recognised.

### <sup>F209</sup>CHAPTER 10A

#### LEASES OF PLANT OR MACHINERY: SPECIAL RULES FOR LONG FUNDING LEASES

##### Textual Amendments

**F209** Pt. 2 Ch. 10A, (ss 148A-148J) inserted (19.7.2006) by [Finance Act 2006 \(c. 25\)](#), s. 81, [Sch. 8 para. 13](#)

#### <sup>F210</sup>Application of Chapter

##### Textual Amendments

**F210** S. 148ZA and cross-heading inserted (with effect in accordance with Sch. 4 paras. 56, 57 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 4 para. 27](#)

#### 148ZA Chapter not to apply where cash basis used

Nothing in this Chapter applies in calculating the profits of a trade on the cash basis.]

#### <sup>F211</sup>Lessors under long funding finance leases]

##### Textual Amendments

**F211** Pt. 2 Ch. 10A inserted (19.7.2006) by [Finance Act 2006 \(c. 25\)](#), s. 81, [Sch. 8 para. 13](#)

#### 148A Lessor under long funding finance lease: rental earnings

- (1) This section applies for the purpose of calculating the profits of a person carrying on a trade for a period of account in which he is the lessor of any plant or machinery under a long funding finance lease.
- (2) The amount to be brought into account as the lessor's taxable income from the lease for the period of account is the amount of the rental earnings in respect of the lease for the period of account.

*Status: Point in time view as at 15/09/2016.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Part 2. (See end of Document for details)*

- (3) The “rental earnings” for any period is the amount which, in accordance with generally accepted accounting practice, falls (or would fall) to be treated as the gross return on investment for that period in respect of the long funding lease where it meets the finance lease test.
- (4) If the lease is one which, under generally accepted accounting practice, falls (or would fall) to be treated as a loan in the accounts in question, so much of the rentals under the lease as fall (or would fall) to be treated as interest are to be treated for the purposes of this section as rental earnings.

**Modifications etc. (not altering text)**

**C7** S. 148A excluded (21.7.2008) by [Finance Act 2008 \(c. 9\)](#), [Sch. 20 para. 11\(2\)](#)

**C8** S. 148A excluded (21.7.2009) by [Finance Act 2009 \(c. 10\)](#), [Sch. 33 para. 5](#) (with [Sch. 33 paras. 4, 9](#))

**148B Lessor under long funding finance lease: exceptional items**

- (1) This section applies for the purpose of calculating the profits of a person carrying on a trade for a period of account if he is or has been the lessor under a long funding finance lease.
- (2) This section has effect where a profit or loss (whether of an income or capital nature)—
  - (a) arises to the person in connection with the lease, and
  - (b) in accordance with generally accepted accounting practice falls to be recognised for accounting purposes in a period of account, but
  - (c) would not, apart from this section, be brought into account in calculating the profits of the person.
- (3) The profit or loss is to be treated—
  - (a) in the case of a profit, as income of the person that is attributable to the lease,
  - (b) in the case of a loss, as a revenue expense incurred by the person in connection with the lease.
- (4) Any reference in this section to an amount falling to be recognised for accounting purposes in a period of account is a reference to an amount falling to be recognised for accounting purposes—
  - (a) in the person's profit and loss account or income statement,
  - (b) in the person's statement of recognised gains and losses or statement of changes in equity, or
  - (c) in any other statement of items brought into account in computing the person's profits or losses for that period.

**Modifications etc. (not altering text)**

**C9** S. 148B excluded (21.7.2008) by [Finance Act 2008 \(c. 9\)](#), [Sch. 20 para. 11\(8\)](#)

**C10** S. 148B excluded (21.7.2009) by [Finance Act 2009 \(c. 10\)](#), [Sch. 33 para. 7](#) (with [Sch. 33 paras. 4, 9](#))



*Status: Point in time view as at 15/09/2016.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Part 2. (See end of Document for details)*

### **148C Lessor under long funding finance lease making termination payment**

- (1) This section applies for the purpose of calculating the profits of a person carrying on a trade for a period of account if he is or has been the lessor under a long funding finance lease.
- (2) Where—
  - (a) the lease terminates, and
  - (b) a sum calculated by reference to the termination value is paid to the lessee, no deduction in respect of the sum paid to the lessee is allowed in calculating the profits of the person.
- (3) This section does not prevent a deduction in respect of a sum to the extent that the sum is brought into account in determining the person's rental earnings.

*[<sup>F212</sup>Lessors under long funding operating leases]*

#### **Textual Amendments**

**F212** Pt. 2 Ch. 10A, (ss. 148A-148J) inserted (19.7.2006) by [Finance Act 2006 \(c. 25\)](#), s. 81, [Sch. 8 para. 13](#)

### **[<sup>F213</sup>148D Lessor under long funding operating lease: periodic deduction**

- (1) This section applies if a person carrying on a trade is the lessor of any plant or machinery under a long funding operating lease for the whole or part of a period of account.
- (2) A deduction is allowed in calculating the profits of the person for the period of account for income tax purposes.
- (3) The amount of the deduction is so much of the expected gross reduction in value over the term of the lease as is attributable to the period of account.
- (4) The expected gross reduction in value over the term of the lease is—
  - (a) the starting value of the plant or machinery, less
  - (b) the amount which at the commencement of the term of the lease is expected to be its residual value (or, if section 148DB applies, would have been expected to be that value had that value been estimated at that time).
- (5) The expected gross reduction in value over the term of the lease that is attributable to the period of account is found by apportioning that reduction on a time basis according to the proportion of the term of the lease that falls in the period of account.
- (6) For the meaning of “starting value”, see—
  - (a) section 148DA (“starting value”: general), and
  - (b) section 148DB (“starting value” where plant or machinery originally unqualifying).
- (7) For the meaning of “residual value”, see section 148J(2).]

*Status: Point in time view as at 15/09/2016.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Part 2. (See end of Document for details)*

### Textual Amendments

**F213** S. 148D substituted (1.4.2010) (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 1 para. 447** (with **Sch. 2**)

### **“Starting value”: general**

**F214** **148DA**

- (1) This section is about the meaning of “starting value” in section 148D in relation to a long funding operating lease (“the section 148D lease”).
- (2) But this section does not apply if the conditions in section 148DB(2) (“starting value” where plant or machinery originally unqualifying) are met.
- (3) If the only use of the plant or machinery by the lessor has been the leasing of it under the section 148D lease as a qualifying activity, the starting value is the amount of the expenditure incurred by the lessor on the provision of the plant or machinery (“cost”).
- (4) If subsection (3) does not apply, the starting value depends on the last previous use of the plant or machinery by the lessor.
- (5) If that use was the leasing of it under another long funding operating lease as a qualifying activity, the starting value is the market value of the plant or machinery at the commencement of the term of the section 148D lease (“market value”).
- (6) If that use was the leasing of it under a long funding finance lease as a qualifying activity, the starting value is the value at which the plant or machinery is recognised in the books or other finance records of the lessor at the commencement of the term of the section 148D lease.
- (7) If that use was for the purposes of a qualifying activity other than leasing under a long funding lease, the starting value is the lower of cost and market value.
- (8) For the meaning of “qualifying activity”, see section 148J(2).

### Textual Amendments

**F214** Ss. 148DA, 148DB inserted (1.4.2010) (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 1 para. 448** (with **Sch. 2**)

### **148DB “Starting value” where plant or machinery originally unqualifying**

- (1) This section applies if the conditions in subsection (2) are met in relation to a long funding operating lease to which section 148D applies.
- (2) The conditions are that—
  - (a) the lessor owns the plant or machinery as a result of having incurred expenditure on its provision for purposes other than those of a qualifying activity,
  - (b) the plant or machinery is brought into use by the lessor for the purposes of a qualifying activity on or after 1 April 2006, and
  - (c) that qualifying activity is the leasing of the plant or machinery under the lease.
- (3) For the purposes of section 148D the starting value is the lower of—

*Status: Point in time view as at 15/09/2016.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Part 2. (See end of Document for details)*

- (a) first use market value, and
  - (b) first use amortised market value.
- (4) “First use market value” means the market value of the plant or machinery at the time when it is first brought into use for the purposes of the qualifying activity.
- (5) “First use amortised value” means the value that the plant or machinery would have at the time when it is first brought into use for the purposes of the qualifying activity on the assumptions in subsection (6).
- (6) The assumptions are that—
- (a) the cost of acquiring the plant or machinery had been written off on a straight line basis over its remaining useful economic life, and
  - (b) any further capital expenditure incurred had been written off on a straight line basis over so much of its remaining economic life as remains at the time when the expenditure is incurred.
- (7) For the meaning of “qualifying activity”, “remaining useful economic life” and writing off on a straight line basis, see section 148J(2), section 148J(4) (and section 70YI of CAA 2001 as applied by that section) and section 148J(3) respectively.]

#### Textual Amendments

**F214** Ss. 148DA, 148DB inserted (1.4.2010) (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), [Sch. 1 para. 448](#) (with [Sch. 2](#))

#### [<sup>F215</sup>148E] Long funding operating lease: lessor's additional expenditure

- (1) This section applies if in any period of account—
- (a) a person carrying on a trade is the lessor of any plant or machinery under a long funding operating lease,
  - (b) the person incurs capital expenditure in relation to the plant or machinery (the “additional expenditure”), and
  - (c) the additional expenditure is not reflected in the market value of the plant or machinery at the commencement time (see subsection (7)).
- (2) An additional deduction is allowed in calculating the profits of the person for income tax purposes for each period of account—
- (a) which ends after the incurring of the additional expenditure, and
  - (b) in which the person is the lessor of the plant or machinery under the lease.
- (3) The amount of the deduction is so much of the expected reduction in value of the additional expenditure (“the expected reduction”) as is attributable to the period of account.
- (4) The expected reduction is the amount of the additional expenditure, less the remaining residual value of the plant or machinery resulting from that expenditure.
- (5) For how to determine that remaining residual value, see—
- (a) section 148EA (determination of remaining residual value resulting from lessor's first additional expenditure), and
  - (b) section 148EB (determination of remaining residual value resulting from lessor's further additional expenditure).

*Status: Point in time view as at 15/09/2016.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Part 2. (See end of Document for details)*

- (6) The amount of the expected reduction attributable to the period of account is found by apportioning that reduction on a time basis according to the proportion of the term of the lease that falls in the period of account.
- (7) In this section “the commencement time” means—
- (a) except where section 148DB applies, the commencement of the term of the lease, and
  - (b) if that section applies, the time when the plant or machinery is first brought into use by the lessor for the purposes of the qualifying activity.]

#### Textual Amendments

**F215** S. 148E substituted (1.4.2010) (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 1 para. 449** (with **Sch. 2**)

### **[ F216 148E** **Determination of remaining residual value resulting from lessor's first additional expenditure**

- (1) This section sets out how the remaining residual value of the plant or machinery resulting from the additional expenditure (“RRV”) is determined for the purposes of section 148E(4) if section 148E has not applied in relation to any previous additional expenditure incurred by the person in relation to the leased plant or machinery.
- (2) RRV depends on whether—
- (a) the amount (“ARV”) which is expected to be the residual value of the plant or machinery at the time when the additional expenditure is incurred, exceeds
  - (b) the amount (“CRV”) which at the commencement of the term of the lease is expected to be its residual value (or, if section 148DB applies, would have been expected to be that value had that value been estimated at that time).
- (3) If ARV exceeds CRV, RRV is the part of the excess that is a result of the additional expenditure.
- (4) Otherwise, RRV is nil.
- (5) For the meaning of “residual value”, see section 148J(2).

#### Textual Amendments

**F216** Ss. 148EA, 148EB inserted (1.4.2010) (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 1 para. 450** (with **Sch. 2**)

### **148EB** **Determination of remaining residual value resulting from lessor's further additional expenditure**

- (1) This section sets out how the remaining residual value of the plant or machinery resulting from the additional expenditure (“RRV”) is determined for the purposes of section 148E(4) if section 148E has applied in relation to previous additional expenditure incurred by the person in relation to the leased plant or machinery.
- (2) RRV depends on whether—

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- (a) the amount which is expected to be the residual value of the plant or machinery at the time when the further additional expenditure is incurred (“FARV”), exceeds
  - (b) the sum of the amounts in subsection (3).
- (3) Those amounts are—
- (a) the amount which at the commencement of the term of the lease is expected to be the residual value of the plant or machinery (or, if section 148DB applies, would have been expected to be that value had that value been estimated at that time), and
  - (b) any amounts that were subtracted under section 148E(4) as the remaining residual value of the plant or machinery resulting from the previous additional expenditure.
- (4) If FARV exceeds the sum of the amounts in subsection (3), RRV is the portion of the excess that is a result of the further additional expenditure.
- (5) Otherwise, RRV is nil.
- (6) For the meaning of “residual value”, see section 148J(2).]

#### Textual Amendments

**F216** Ss. 148EA, 148EB inserted (1.4.2010) (with effect in accordance with s. 1184(1) of the amending Act) by *Corporation Tax Act 2010 (c. 4)*, s. 1184(1), **Sch. 1 para. 450** (with **Sch. 2**)

#### [<sup>F217</sup> 148F] **Lessor under long funding operating lease: termination of lease**

- (1) This section applies in calculating for income tax purposes the profits of a person carrying on a trade if the person is the lessor immediately before the termination of a long funding operating lease.
- (2) If the termination amount exceeds the sum of the amounts in subsection (3), an amount equal to the excess is treated as income of the person attributable to the lease arising in the period of account in which it terminates.
- (3) The amounts referred to in subsection (2) are—
  - (a) the total amounts paid to the lessee that are calculated by reference to the termination value,
  - (b) the excess relevant value for section 148D (see subsection (6)), and
  - (c) the excess expenditure for section 148E (see subsection (7)).
- (4) If the sum of the amounts in subsection (3) exceeds the termination amount, the excess is treated as a revenue expense incurred by the person in connection with the lease in the period of account in which it terminates.
- (5) No deduction is allowed in respect of any sums within subsection (3)(a).
- (6) “The excess relevant value for section 148D” is the amount (if any) by which—
  - (a) the starting value of the plant or machinery for the purposes of section 148D(4) (lessor under long funding operating lease: periodic deduction), exceeds
  - (b) the total of the deductions allowable under section 148D for periods of account for the whole or part of which the person was the lessor.

*Status: Point in time view as at 15/09/2016.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Part 2. (See end of Document for details)*

- (7) “The excess expenditure for section 148E” is the amount (if any) by which—
- (a) the total of any amounts of capital expenditure incurred by the person which constitute additional expenditure in the case of the lease for the purposes of section 148E (long funding operating lease: lessor's additional expenditure), exceeds
  - (b) the total of any deductions allowable under section 148E for periods of account for the whole or part of which the person was the lessor.
- (8) For the meaning of “termination amount” and “termination value”, see sections 70YG and 70YH of CAA 2001 (as applied by section 148J(4)).]

#### Textual Amendments

**F217** S. 148F substituted (1.4.2010) (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), [Sch. 1 para. 451](#) (with [Sch. 2](#))

*[<sup>F218</sup> Lessors under long funding finance or operating leases: avoidance etc*

#### Textual Amendments

**F218** S. 148FA and cross-heading inserted (with effect in accordance with Sch. 20 para. 10(5) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 20 para. 10\(2\)](#)

### **148FA Cases where ss. 148A to 148F do not apply: plant or machinery held as trading stock**

- (1) Sections 148A to 148F do not apply in the case of a person carrying on a trade who is or has been the lessor of any plant or machinery under a long funding lease if the following condition is met.
- (2) The condition is that any part of the expenditure incurred by the person on the acquisition of the plant or machinery for leasing under the lease—
  - (a) is (apart from those sections) allowable as a deduction in calculating the profits or losses of the trade, and
  - (b) is so allowable as a result of the plant or machinery forming part of the trading stock of the trade.
- (3) For the purposes of this section the cases in which expenditure incurred by a person carrying on a trade on the acquisition of any plant or machinery for leasing under a lease is allowable as such a deduction include any case where—
  - (a) the person becomes entitled to the deduction at any time after the expenditure is incurred, and
  - (b) the deduction arises as a result of the plant or machinery forming part of the trading stock of the trade at that time.
- (4) If—
  - (a) at any time any of sections 148A to 148F has applied for determining the amounts to be taken into account in calculating the profits or losses of the trade, and
  - (b) the condition in subsection (2) is met at any subsequent time,

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*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Part 2. (See end of Document for details)*

those amounts, and any other amounts which (as a result of this section) are to be so taken into account, are subject to such adjustments as are just and reasonable.

- (5) All such assessments and adjustments of assessments are to be made as are necessary to give effect to subsection (4).]

**Cases where ss. 148A to 148F do not apply: lessor also lessee under non-long funding lease**

- (1) This section applies if—
- (a) a person is the lessee of any plant or machinery under a lease (“lease A”) that is not a long funding lease,
  - (b) the person enters into a lease (“lease B”) of any of that plant or machinery (as lessor), and
  - (c) lease B is a long funding lease.
- (2) Sections 148A to 148F do not apply in relation to lease B.
- (3) If by virtue of section 70H of CAA 2001 (tax return by lessee treating lease as long funding lease) lease A becomes a long funding lease (and does not cease to be such a lease), treat this section as never having applied in relation to lease B.]

**Textual Amendments**

**F219** S. 148FB inserted (with effect in accordance with Sch. 20 para. 10(6) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 20 para. 10\(3\)](#)

**Cases where ss. 148A to 148F do not apply: other avoidance**

- (1) Sections 148A to 148F do not apply in the case of a person carrying on a trade who is or has been the lessor of any plant or machinery under a long funding lease if conditions A to C are met.
- (2) Condition A is that the long funding lease forms part of any arrangement entered into by the person which includes one or more other transactions (whether the arrangement is entered into before or after or at the inception of the lease).
- (3) Condition B is that the main purpose, or one of the main purposes, of the arrangement is to secure that, over the relevant period, there would be a substantial difference between—
- (a) the total amount of the amounts under the arrangement which are, in accordance with generally accepted accounting practice, recognised in determining the profit or loss of the trade for any period or taken into account in calculating the amounts which are so recognised, and
  - (b) the total amount of the amounts under the arrangement which are taken into account in calculating the profits or losses of the trade.
- (4) For the purposes of condition B “the relevant period” means the period which begins with the inception of the lease and ends with the end of the term of the lease.
- (5) Condition C is that the difference would be attributable (wholly or partly) to the application of any of sections 148A to 148F in relation to the person by reference to the plant or machinery under the lease.



*Status: Point in time view as at 15/09/2016.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Part 2. (See end of Document for details)*

- (6) The reference in this section to an amount being recognised in determining the profit or loss of a trade for a period is to an amount being recognised for accounting purposes—
- (a) in the profit and loss account or income statement relating to the trade,
  - (b) in the statement of recognised gains and losses or statement of changes in equity relating to the trade, or
  - (c) in any other statement of items brought into account in calculating the profits and losses of the trade for that period.
- (7) For the purposes of this section it does not matter whether the parties to any transaction which forms part of the arrangement differ from the parties to any of the other transactions.
- (8) For the purposes of this section the cases in which two or more transactions are to be taken as forming part of an arrangement include any case in which it would be reasonable to assume that one or more of them—
- (a) would not have been entered into independently of the other or others, or
  - (b) if entered into independently of the other or others, would not have taken the same form or been on the same terms.
- (9) If—
- (a) at any time any of sections 148A to 148F has applied for determining the amounts to be taken into account in calculating the profits or losses of the trade, and
  - (b) conditions A to C are met at any subsequent time,
- those amounts, and any other amounts which (as a result of this section) are to be so taken into account, are subject to such adjustments as are just and reasonable.
- (10) All such assessments and adjustments of assessments are to be made as are necessary to give effect to subsection (9).]

#### Textual Amendments

**F220** S. 148FC inserted (with effect in accordance with Sch. 20 para. 10(7) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 20 para. 10\(4\)](#)

#### **148FD** Cases where ss 148A to 148F do not apply: films

**F221**

(1) If a person is or has been a lessor under a long funding lease of a film, sections 148A to 148F do not apply in respect of the lease.

(2) “Film” has the same meaning as in Part 15 of CTA 2009 (see section 1181 of that Act).]

#### Textual Amendments

**F221** S. 148FD inserted (with effect in accordance with Sch. 33 para. 3 of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 33 para. 2](#) (with [Sch. 33 para. 9](#))



*Status: Point in time view as at 15/09/2016.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Part 2. (See end of Document for details)*

*[<sup>F222</sup>Lessees under long funding finance leases]*

**Textual Amendments**

**F222** Pt. 2 Ch. 10A inserted (19.7.2006) by [Finance Act 2006 \(c. 25\)](#), s. 81, [Sch. 8 para. 13](#)

**148G Lessee under long funding finance lease: limit on deductions**

- (1) This section applies for the purpose of calculating the profits of a person carrying on a trade, profession or vocation for a period of account in which the person is the lessee of any plant or machinery under a long funding finance lease.
- (2) In calculating the person's profits for the period of account,—
  - (a) the amount deducted in respect of amounts payable under the lease, must not exceed
  - (b) the amounts which, in accordance with generally accepted accounting practice, fall (or would fall) to be shown in the person's accounts as finance charges in respect of the lease.
- (3) If the lease is one which, under generally accepted accounting practice, falls (or would fall) to be treated as a loan, subsection (2) applies as if the lease were one which, under generally accepted accounting practice, fell to be treated as a finance lease.

**148H Lessee under long funding finance lease: termination**

- (1) This section applies where—
  - (a) a person carrying on a trade, profession or vocation is or has been the lessee under a long funding finance lease, and
  - (b) in connection with the termination of the lease, a payment calculated by reference to the termination value falls to be made to the person.
- (2) The payment is not to be brought into account in calculating the profits of the person for any period of account.
- (3) Subsection (2) does not affect the amount of any disposal value that falls to be brought into account by the person under CAA 2001.

*[<sup>F223</sup>Lessees under long funding operating leases]*

**Textual Amendments**

**F223** Pt. 2 Ch. 10A inserted (19.7.2006) by [Finance Act 2006 \(c. 25\)](#), s. 81, [Sch. 8 para. 13](#)

**148I Lessee under long funding operating lease**

- (1) This section applies for the purpose of calculating the profits of a person carrying on a trade, profession or vocation for a period of account in which the person is the lessee of any plant or machinery under a long funding operating lease.

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*Status: Point in time view as at 15/09/2016.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Part 2. (See end of Document for details)*

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- (2) The deductions that may be allowed in calculating the profits of the person for the period of account are to be reduced in accordance with the following provisions of this section.
- (3) The amount of the reduction for any period of account is to be determined as follows.
- (4) First, find the “relevant value” for the purposes of subsection (6)(a), which is—
- (a) the market value of the plant or machinery at the commencement of the term of the lease, unless paragraph (b) applies;
  - (b) if the lessee—
    - (i) owns the plant or machinery as a result of having incurred expenditure on its provision for purposes other than those of a qualifying activity, but
    - (ii) brings the plant or machinery into use for the purposes of a qualifying activity on or after 1st April 2006,
 the lower of first use market value and first use amortised market value.
- (5) In subsection (4)—
- “first use amortised market value” means the value that the plant or machinery would have—
- (a) at the time when it is first brought into use for the purposes of the qualifying activity, but
  - (b) on the assumption that the market value of the plant or machinery at the commencement of the term of the lease had been written off on a straight line basis over the remaining useful economic life of the plant or machinery;
- “first use market value” means the market value of the plant or machinery at the time when it is first brought into use for the purposes of the qualifying activity.
- (6) From—
- (a) the relevant value determined in accordance with subsection (4),  
subtract
  - (b) the amount which, at the commencement of the term of the lease, is (or, in a case falling within subsection (4)(b), would have been) expected to be the market value of the plant or machinery at the end of the term of the lease,
- to find the expected gross reduction over the term of the lease.
- (7) Apportion the amount of that expected gross reduction to each period of account in which any part of the term of the lease falls.
- (8) The apportionment must be on a time basis according to the proportion of the term of the lease that falls in each period of account.
- (9) The amount of the reduction for any period of account is the amount so apportioned to that period.

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*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Part 2. (See end of Document for details)*

*[<sup>F224</sup> Interpretation of this Chapter]*

**Textual Amendments**

**F224** Pt. 2 Ch. 10A inserted (19.7.2006) by [Finance Act 2006 \(c. 25\)](#), s. 81, [Sch. 8 para. 13](#)

**148J Interpretation of Chapter 10A**

- (1) This section has effect for the interpretation of this Chapter.
- (2) In this Chapter—
  - “qualifying activity” has the same meaning as in Part 2 of CAA 2001;
  - “residual value”, in relation to any plant or machinery leased under a long funding operating lease, means—
    - (a) the estimated market value of the plant or machinery on a disposal at the end of the term of the lease,
    - less
    - (b) the estimated costs of that disposal.
- (3) Any reference in this Chapter to a sum being written off on a straight line basis over a period of time (the “writing-off period”) is a reference to—
  - (a) the sum being apportioned between each of the periods of account in which any part of the writing-off period falls,
  - (b) that apportionment being made on a time basis, according to the proportion of the writing-off period that falls in each of the periods of account, and
  - (c) the sum being written off accordingly.
- (4) Chapter 6A of Part 2 of CAA 2001 (interpretation of that Part so far as relating to long funding leases) also applies for the purposes of this Chapter.]

**CHAPTER 11**

TRADE PROFITS: OTHER SPECIFIC TRADES

*[<sup>F225</sup> Cash basis accounting]*

**Textual Amendments**

**F225** S. 148K and cross-heading inserted (with effect in accordance with Sch. 4 paras. 56, 57 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 4 para. 28](#)

**148K Application of Chapter to the cash basis**

The following sections do not apply in calculating the profits of a trade, profession or vocation on the cash basis—

- sections 149 to 154A (dealers in securities etc),
- section 157 (relief in respect of mineral royalties),
- section 158 (lease premiums etc: reduction of receipts),

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section 159 (ministers of religion),  
 section 161 (mineral exploration and access),  
 section 162 (payments by persons liable to pool betting duty),  
 sections 163 and 164 (intermediaries treated as making employment payments),  
 section 164A (managed service companies),  
 sections 165 to 168 (waste disposal),  
 sections 169 to 172ZE (cemeteries and crematoria).]

*Dealers in securities etc.*

#### 149 Taxation of amounts taken to reserves

- (1) This section applies for the purpose of calculating the profits of a person's trade if a profit on the sale of securities would be brought into account in calculating the profits of the trade.
- (2) Profits and losses from the securities that in accordance with generally accepted accounting practice are—
  - (a) calculated by reference to the fair value of the securities, and
  - (b) recognised in the person's statement of recognised gains and losses or statement of changes in equity,
 are brought into account in calculating the profits of the trade.
- (3) But subsection (2) does not apply—
  - (a) to an amount so far as deriving from or otherwise relating to an amount brought into account under that subsection in an earlier period of account, or
  - (b) to an amount recognised for accounting purposes by way of correction of a fundamental error.
- (4) In this section “securities” includes—
  - (a) shares,
  - (b) rights of unit holders in unit trust schemes to which TCGA 1992 applies as a result of section 99 of TCGA 1992,
  - <sup>[F226]</sup>(ba) rights of participants in certain offshore funds to which TCGA 1992 applies as a result of section 103A of TCGA 1992,] and
  - (c) in the case of a company with no share capital, interests in the company possessed by members of the company,
 but does not include a loan relationship (within the meaning of Chapter 2 of Part 4 of FA 1996).

#### Textual Amendments

**F226** S. 149(4)(ba) inserted (1.12.2009 for specified purposes, 1.4.2010 for specified purposes) (with effect in accordance with Sch. 22 para. 12 to the amending Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 22 para. 11\(3\)\(a\)](#); [S.I. 2010/670](#), art. 2

#### 150 Conversion etc. of securities held as circulating capital

- (1) This section applies for the purpose of calculating the profits of a trade if—

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- (a) a transaction falling within subsection (2) occurs in relation to securities (“the original holding”), and
  - (b) a profit on the sale of the securities would be brought into account in calculating the profits of the trade.
- (2) A transaction falls within this subsection if—
- (a) it results in a new holding being treated as the same as the original holding as a result of sections 126 to 136 of TCGA 1992 (CGT roll-over relief in cases of conversion etc.), or
  - (b) it is treated, as a result of section 134 of TCGA 1992 (compensation stock), as an exchange for a new holding which does not involve a disposal of the original holding,
- and it does not fall within section 151(1) or 152(1) below (exchanges of gilts for gilt strips and consolidation of gilt strips).
- (3) This section does not apply to securities in respect of which unrealised profits or losses, calculated by reference to the fair value of the securities at the end of the period of account, are taken into account in the period of account in which the transaction occurs.
- (4) The transaction is treated as not involving a disposal of the original holding and the new holding is treated as the same asset as the original holding.
- (5) But if, under the transaction, the person carrying on the trade—
- (a) receives consideration in addition to the new holding, or
  - (b) becomes entitled to receive such consideration,
- subsection (4) applies as if the references to the original holding were to the proportion of the original holding given by the following fraction.
- (6) The fraction is—

$$\frac{\text{NH}}{\text{NH} + \text{C}}$$

where—

NH is the market value of the new holding at the time of the transaction, and

C is the market value of the consideration at the time of the transaction or (if the consideration is cash) the amount of the consideration.

- (7) In determining whether subsection (2)(a) applies as a result of section 135 or 136 of TCGA 1992, the reference to capital gains tax in section 137(1) of TCGA 1992 is to be read as a reference to income tax.
- (8) In this section “securities” includes—
- (a) shares,
  - (b) loan stocks or similar securities (whether secured or unsecured) of a government, a local or other public authority (in the United Kingdom or elsewhere) or a company,
  - (c) rights of unit holders in unit trust schemes to which TCGA 1992 applies as a result of section 99 of TCGA 1992,

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- [<sup>F227</sup>(ca) rights of participants in certain offshore funds to which TCGA 1992 applies as a result of section 103A of TCGA 1992,]
- (d) in the case of a company with no share capital, interests in the company possessed by members of the company,
- (e) quoted options to subscribe for shares which are treated as shares as a result of section 147 of TCGA 1992, and
- (f) earn-out rights which are assumed to be securities as a result of section 138A(3) of TCGA 1992.

#### Textual Amendments

**F227** S. 150(8)(ca) inserted ((1.12.2009 for specified purposes, 1.4.2010 for specified purposes) (with effect in accordance with Sch. 22 para. 12 of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 22 para. 11\(3\)\(b\)](#); [S.I. 2010/670](#), art. 2

### 151 Exchanges of gilts for gilt strips

- (1) This section applies for the purpose of calculating the profits of a trade if—
- (a) the person carrying it on (“the trader”) exchanges a gilt-edged security for strips of the security, and
- (b) a profit on the sale of the security would be brought into account in calculating the profits of the trade.
- (2) The security is treated as having been redeemed at the time of the exchange by the payment to the trader of its market value.
- (3) The trader is treated as having acquired each strip for the proportion of the market value of the security given by the following fraction.
- (4) The fraction is—

$$\frac{SV}{TV}$$

where—

SV is the market value of one strip, and

TV is the total of the market values of all the strips received in exchange for the security.

- (5) In this section references to market value are to market value at the time of the exchange.
- (6) This section applies to professions and vocations as it applies to trades.
- (7) See also—
- section 153 (meaning of “gilt-edged security” and “strip”), and
- section 154 (regulations for determining market value of securities or strips).

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## **152 Consolidation of gilt strips**

- (1) This section applies for the purpose of calculating the profits of a trade if—
  - (a) strips of a gilt-edged security are consolidated into a single security by being exchanged by the person carrying on the trade (“the trader”) for the single security, and
  - (b) a profit on the sale of any of the strips would be brought into account in calculating the profits of the trade.
- (2) Each strip is treated as having been redeemed at the time of the exchange by payment to the trader of its market value.
- (3) The trader is treated as having acquired the gilt-edged security for an amount equal to the total of the market values of the strips given in exchange.
- (4) In this section references to market value are to market value at the time of the exchange.
- (5) This section applies to professions and vocations as it applies to trades.
- (6) See also—
  - section 153 (meaning of “gilt-edged security” and “strip”), and
  - section 154 (regulations for determining market value of securities or strips).

## **153 Meaning of “gilt-edged security” and “strip”**

- (1) In this Act “gilt-edged security” means a security which—
  - (a) is a gilt-edged security for the purposes of TCGA 1992 (see Schedule 9 to that Act), or
  - (b) will be such a security on the making of an order under paragraph 1 of Schedule 9 to TCGA 1992, if the making of the order is anticipated in the prospectus under which the security is issued.
- (2) For the purposes of sections 151 and 152 “strip”, in relation to a gilt-edged security, means a security issued under the National Loans Act 1968 (c. 13) which meets conditions A to C.
- (3) Condition A is that the security is issued for the purpose of representing the right to or of securing—
  - (a) a payment corresponding to a payment of interest or principal remaining to be made under the gilt-edged security, or
  - (b) two or more payments each corresponding to a payment to be so made.
- (4) Condition B is that the security is issued in conjunction with the issue of one or more other securities which, together with that security—
  - (a) represent the right to, or
  - (b) secure,payments corresponding to every payment remaining to be made under the gilt-edged security.
- (5) Condition C is that the security is not itself a security which—
  - (a) represents the right to, or
  - (b) secures,

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payments corresponding to a part of every payment remaining to be made under the gilt-edged security.

#### **154 Regulations for determining market value of securities or strips**

- (1) The Treasury may by regulations make provision for the purposes of sections 151 and 152 as to the manner of determining the market value at any time of a gilt-edged security (including any strip).
- (2) The regulations may—
  - (a) make different provision for different cases, and
  - (b) contain such incidental, supplemental, consequential and transitional provision as the Treasury consider appropriate.
- (3) The power in this section does not affect the power under section 202(5) of FA 1996 (gilt stripping).

#### **[<sup>F228</sup>154A Certain non-UK residents with interest on 3½% War Loan 1952 Or After**

- (1) This section applies if—
  - (a) in any tax year a person who is not <sup>F229</sup>... resident in the United Kingdom carries on a trade there—
    - (i) consisting of banking or insurance, or
    - (ii) consisting wholly or partly of dealing in securities, and
  - (b) in calculating the profits of the trade for the tax year any amount is disregarded as a result of section 714 (exemption of profits from FOTRA securities) because of a condition subject to which any 3½% War Loan 1952 Or After was issued.
- (2) Interest on money borrowed for the purposes of the trade is to be deducted in calculating the profits of the trade of that tax year only so far as it exceeds the ineligible amount.
- (3) The ineligible amount is found as follows—
 

*Step 1* Add together all sums borrowed for the purposes of the trade and still owing in the basis period for the tax year.

*Step 2* If the person carrying on the trade is a company, deduct any sums carrying interest which is not deducted in calculating the profits of the trade (otherwise than because of subsection (2)).

*Step 3* If the amount found at Step 2 exceeds the total cost of the 3½% War Loan 1952 Or After held for the purposes of the trade in the basis period, deduct the excess from that amount.

*Step 4* Calculate the average rate of interest in the basis period on money borrowed for the purposes of the trade.

*Step 5* Calculate the amount of interest payable on the amount found at Step 3 at the rate found at Step 4 for the basis period.

The result is the ineligible amount.
- (4) If the person's holding of 3½% War Loan 1952 Or After has fluctuated during the basis period, the total cost for the purposes of Step 3 is taken to be—

C×AHTH



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where—

C is the cost of acquisition of the initial holding (if any) and any holdings acquired during the basis period,

AH is the average holding in that period, and

TH is the total of the initial holding (if any) and any holdings acquired during the basis period.

- (5) In subsection (4) “initial holding” means the holding held by the person at the beginning of the basis period.]

#### Textual Amendments

**F228** S. 154A inserted (1.4.2010) (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 7 para. 43](#) (with [Sch. 9 paras. 1-9, 22](#))

**F229** Word in s. 154A(1)(a) omitted (with effect in accordance with Sch. 46 para. 72 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\), Sch. 46 para. 44](#)

### *Persons authorised for purposes of FISMA 2000*

#### **155 Levies and repayments under FISMA 2000**

- (1) This section applies for the purpose of calculating the profits of a trade <sup>F230</sup> ...

[<sup>F231</sup>(2) A deduction is allowed for any sum—

- (a) spent by the person carrying on the trade in paying a levy, or
- (b) paid by that person as a result of an award of costs under costs rules, so far as it is not otherwise allowable.]

- (3) A payment made to the person [<sup>F232</sup>carrying on the trade] as a result of a repayment provision is brought into account as a receipt.

[<sup>F233</sup>(3A) For the purposes of this section “costs rules” means—

- (a) rules made under section 230 of FISMA 2000, or
- (b) provision relating to costs contained in standard terms fixed under paragraph 18 of Schedule 17 to FISMA 2000.]

(4) For the purposes of this section “levy” means—

- (a) a payment required under rules made under section 136(2) of FISMA 2000,
- (b) a levy imposed under the Financial Services Compensation Scheme,
- (c) a payment required under rules made under section 234 of FISMA 2000,
- (d) a payment required under the rules referred to in paragraph 14(1) of Schedule 17 to FISMA 2000 (“scheme rules”) in accordance with paragraph 15(1) of that Schedule, or
- (e) a payment required in accordance with the standard terms fixed under paragraph 18 of that Schedule [<sup>F234</sup>(other than a sum paid as a result of an award of costs under costs rules)].

- (5) For the purposes of this section “repayment provision” means—

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- (a) any provision made by virtue of section 136(7) or 214(1)(e) of FISMA 2000, or
- (b) any provision made by scheme rules for fees to be refunded in specified circumstances.

#### Textual Amendments

- F230** Words in s. 155(1) repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 1 para. 601(2), **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)
- F231** S. 155(2) substituted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 601(3)** (with Sch. 2 Pts. 1, 2)
- F232** Words in s. 155(3) inserted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 601(4)** (with Sch. 2 Pts. 1, 2)
- F233** S. 155(3A) inserted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 601(5)** (with Sch. 2 Pts. 1, 2)
- F234** Words in s. 155(4)(e) substituted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 601(6)** (with Sch. 2 Pts. 1, 2)

*Dealers in land etc.*

#### 156 Purchase or sale of woodlands

- (1) This section applies for the purpose of calculating the profits of a trade of dealing in land.
- (2) If the person carrying on the trade buys woodlands in the United Kingdom in the course of the trade, the part of the cost of the woodlands which is attributable to trees or saleable underwood growing on the land is ignored.
- (3) If—
  - (a) the woodlands are subsequently sold in the course of the trade, and
  - (b) any of the trees or underwood are still growing on the land at the time of the sale,
 the part of the price that is equal to the amount ignored under subsection (2) for the trees or underwood is ignored.

#### <sup>F235</sup> 157 Relief in respect of mineral royalties

#### Textual Amendments

- F235** S. 157 repealed (with effect in accordance with Sch. 39 para. 43(3) of the amending Act) by Finance Act 2012 (c. 14), **Sch. 39 para. 43(1)(a)**

#### 158 Lease premiums etc: reduction of receipts

- (1) This section applies for the purpose of calculating the profits of a trade of dealing in land if a receipt of the trade falls within one of the following categories—
  - (a) lease premiums within section 277,

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- (b) sums within section 279 (sums payable instead of rent),
  - (c) sums within section 280 (sums payable for surrender of a lease),
  - (d) sums within section 281 (sums payable for variation or waiver of [<sup>F236</sup>terms] of lease),
  - (e) consideration for the assignment of a lease within section 282 (lease granted at an undervalue), and
  - (f) amounts received on the sale of an estate or interest in land within section 284 (sales with right to re-conveyance) or section 285 (sale and leaseback transactions).
- (2) The receipt is reduced by the relevant amount.
- (3) The relevant amount is the amount which is treated as a receipt of a property business as a result of any of sections 277 to 285.
- (4) But if—
- (a) the person carrying on the trade makes a claim under section 301 or 302, and
  - (b) as a result of the claim a repayment of tax is made to that person,
- the relevant amount is the amount which, for the purpose of determining the amount of the repayment of tax, is treated as brought into account as a receipt in calculating the profits of the property business.
- (5) If subsection (4) applies, any adjustment of liability to tax may be made—
- (a) by assessment or otherwise, and
  - (b) at any time at which it could be made if it related only to tax for the tax year in which the claim under section 301 or 302 is made.

#### Textual Amendments

**F236** Word in s. 158(1)(d) substituted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 602** (with **Sch. 2 Pts. 1, 2**)

### *Ministers of religion*

#### **159 Ministers of religion**

- (1) This section applies for the purpose of calculating the profits of the profession or vocation of a minister of a religious denomination.
- (2) If the minister pays rent in respect of a dwelling-house and any part of the dwelling-house is used mainly and substantially for the purposes of the minister's duty, a deduction is allowed for—
- (a) one-quarter of the rent, or
  - (b) if less, the part of the rent that, on a just and reasonable apportionment, is attributable to that part of the dwelling-house.
- (3) If—
- (a) an interest in premises belongs to a charity or an ecclesiastical corporation,
  - (b) because of that interest, the minister has a residence in the premises from which to perform the minister's duty, and

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(c) the minister incurs expenses on the maintenance, repair, insurance or management of the premises,

a deduction is allowed under this subsection for part of those expenses.

(4) The amount of the deduction under subsection (3) is—

$$\frac{A}{4} - B$$

where—

A is the amount of the expenses, and

B is the amount of the expenses for which a deduction is otherwise allowable.

#### *Barristers and advocates*

### <sup>F237</sup>160 Alternative basis of calculation in early years of practice

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#### **Textual Amendments**

**F237** S. 160 omitted (with effect in accordance with Sch. 4 paras. 56, 57 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 4 para. 51](#)

#### *Mineral exploration and access*

### **161 Mineral exploration and access**

- (1) This section applies for the purpose of calculating the profits of a trade if—
- (a) the person carrying on the trade incurs expenditure on mineral exploration and access in an area or group of sands, and
  - (b) the presence of mineral deposits in commercial quantities has already been established in that area or group of sands.
- (2) A deduction is allowed for the expenditure only if a deduction would have been allowed for it if the presence of mineral deposits in commercial quantities had not already been established in that area or group of sands.
- (3) In this section “mineral exploration and access” has the same meaning as in Part 5 of CAA 2001 (see section 396(1) of that Act).

#### *Persons liable to pool betting duty*

### <sup>F238</sup>162 Payments by persons liable to pool betting duty

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### Textual Amendments

**F238** S. 162 repealed (with effect in accordance with Sch. 39 para. 21(3) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 39 para. 21\(1\)\(a\)](#)

## *Intermediaries treated as making employment payments*

### **163 Deduction for deemed employment payment**

- (1) This section applies for the purpose of calculating the profits of a trade, profession or vocation carried on by an intermediary who is treated as making a deemed employment payment in connection with the trade, profession or vocation.
- (2) A deduction is allowed for—
  - (a) the amount of the deemed employment payment, and
  - (b) the amount of any employer's national insurance contributions paid by the intermediary in respect of it.
- (3) The deduction is allowed for the period of account in which the deemed employment payment is treated as made.
- (4) No deduction in respect of—
  - (a) the deemed employment payment, or
  - (b) any employer's national insurance contributions paid by the intermediary in respect of it,may be made except in accordance with this section.
- (5) In this section “deemed employment payment” and “intermediary” have the same meaning as in Chapter 8 of Part 2 of ITEPA 2003.

### **164 Special rules for partnerships**

- (1) This section applies for the purpose of calculating the profits of a trade, profession or vocation carried on by a firm that is treated as making a deemed employment payment in connection with the trade, profession or vocation.
- (2) The amount of the deduction allowed under section 163 is limited to the amount that reduces the profits of the firm for the tax year to nil.
- (3) The expenses of the firm in connection with the relevant engagements for any period of account are limited to the total of—
  - (a) 5% of the amount taken into account in step 1 of the calculation in section 54(1) of ITEPA 2003 (calculation of deemed employment payment), and
  - (b) the amount deductible in step 3 of that calculation.
- (4) In this section “deemed employment payment” and “the relevant engagements” have the same meaning as in Chapter 8 of Part 2 of ITEPA 2003.

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### *f<sup>F239</sup>Managed service companies*

#### **Textual Amendments**

**F239** S. 164A and cross-heading inserted (retrospective to 6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), s. 25, [Sch. 3 para. 9](#)

#### **164A Deduction for deemed employment payments**

- (1) This section applies for the purpose of calculating the profits of a trade, profession or vocation carried on by a managed service company (“the MSC”) which is treated as making a deemed employment payment in connection with the trade, profession or vocation.
- (2) A deduction is allowed for—
  - (a) the amount of the deemed employment payment, and
  - (b) the amount of any employer's national insurance contributions paid by the MSC in respect of it.
- (3) The deduction is allowed for the period of account in which the deemed employment payment is treated as made.
- (4) The amount of the deduction allowed under subsection (2) is limited to the amount that reduces the profits of the firm for the tax year to nil.
- (5) No deduction in respect of—
  - (a) the deemed employment payment, or
  - (b) any employer's national insurance contributions paid by the MSC in respect of it,
 may be made except in accordance with this section.
- (6) In this section “deemed employment payment”, “employer's national insurance contributions” and “managed service company” have the same meaning as in Chapter 9 of Part 2 of ITEPA 2003.]

### *Waste disposal*

#### **165 Deduction for site preparation expenditure**

- (1) This section applies for the purpose of calculating the profits of a trade of a period of account in which waste materials are deposited on a waste disposal site if—
  - (a) the person carrying on the trade (“the trader”), or a predecessor, has incurred site preparation expenditure in relation to the site in the course of carrying on the trade, and
  - (b) at the time the trader first deposits waste materials on the site, the trader holds a waste disposal licence which is then in force.
- (2) A deduction is allowed for the amount of the site preparation expenditure allocated to the period of account under section 166.
- (3) For the purposes of this section “predecessor”, in relation to the trader, means a person who—

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- (a) has ceased to carry on the trade carried on by the trader or ceased to carry on a trade so far as relating to the site, and
  - (b) has transferred the whole of the site to the trader,
- and it does not matter for this purpose whether or not the estate or interest in the site transferred to the trader is the same as that held by that person.
- (4) For the purposes of this section and section 166, if site preparation expenditure has been incurred by a predecessor—
- (a) the trade carried on by the trader is treated as the same as the trade carried on by the predecessor, and
  - (b) deductions are to be allowed to the trader (and not to the predecessor) as if everything done to or by the predecessor were done to or by the trader.
- (5) For—
- (a) the meaning of “site preparation expenditure”, “waste disposal licence” and “waste disposal site”, and
  - (b) a rule about pre-trading expenditure,
- see section 167.

## **166 Allocation of site preparation expenditure**

- (1) The amount of site preparation expenditure allocated to a period of account for the purposes of section 165(2) is the amount given by the formula—

$$\text{RE} \times \frac{\text{WD}}{\text{SV} + \text{WD}}$$

where—

RE means residual expenditure (see subsection (2)),

WD means the volume of waste materials deposited on the waste disposal site during the period, and

SV means the volume of the waste disposal site not used up for the deposit of waste materials at the end of the period.

- (2) “Residual expenditure” means the total of all site preparation expenditure incurred by the trader in relation to the waste disposal site at any time before the end of the period, less—
- (a) any of that expenditure for which an allowance has been, or may be, made for income or corporation tax purposes under the enactments relating to capital allowances,
  - (b) any of that expenditure for which a deduction has been allowed in calculating for income or corporation tax purposes the profits of an earlier period of account, and
  - (c) if the trader started to carry on the trade before 6th April 1989, the excluded amount of any unrelieved old expenditure (see subsections (3) and (4)).
- (3) The excluded amount of unrelieved old expenditure is calculated by multiplying the unrelieved old expenditure (see subsection (4)) by the fraction—

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$$\frac{WD}{SV + WD}$$

where—

WD means the volume of waste materials deposited on the site before 6th April 1989, and

SV means the volume of the site not used up for the deposit of waste materials immediately before that date.

- (4) “Unrelieved old expenditure” means site preparation expenditure which—
- (a) was incurred by the trader in relation to the waste disposal site before 6th April 1989, and
  - (b) does not fall within subsection (2)(a) or (b).

#### **167 Site preparation expenditure: supplementary**

- (1) For the purposes of this section and sections 165 and 166—

“site preparation expenditure”, in relation to a waste disposal site, means expenditure incurred on preparing the site for the deposit of waste materials,

“waste disposal licence” means—

- (a) a disposal licence under Part 1 of the Control of Pollution Act 1974 (c. 40) or Part 2 of the Pollution Control and Local Government (Northern Ireland) Order 1978 (S.I. 1978/1049 (N.I. 19)),
- (b) a waste management licence under Part 2 of the Environmental Protection Act 1990 (c. 43) or any corresponding provision for the time being in force in Northern Ireland,
- (c) a permit under regulations under section 2 of the Pollution Prevention and Control Act 1999 (c. 24) or [<sup>F240</sup>a permit or authorisation under any corresponding provision for the time being in force in Northern Ireland or Scotland] ,
- (d) [<sup>F241</sup>an authorisation under the Radioactive Substances Act 1960 (c. 34) or the Radioactive Substances Act 1993 (c. 12) for the disposal of radioactive waste, or]
- (e) a nuclear site licence under the Nuclear Installations Act 1965 (c. 57), and

“waste disposal site” means a site used, or to be used, for the disposal of waste materials by their deposit on the site.

- (2) For the purposes of sections 165 and 166, expenditure incurred for the purposes of a trade by a person about to carry on the trade is treated as if it were incurred—
- (a) on the date on which the person starts to carry on the trade, and
  - (b) in the course of carrying it on.

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#### **Textual Amendments**

**F240** Words in s. 167(1) substituted (26.2.2015) by [The Regulatory Reform \(Scotland\) Act 2014 \(Consequential Modifications\) Order 2015 \(S.I. 2015/374\)](#), arts. 1(1), **7(2)**



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**F241** Words in s. 167(1) repealed (E.W.) (6.4.2010) by [The Environmental Permitting \(England and Wales\) Regulations 2010 \(S.I. 2010/675\)](#), reg. 1(1)(b), Sch. 26 para. 18, **Sch. 28** (with reg. 1(2), Sch. 4)

## 168 Site restoration payments

(1) This section applies for the purpose of calculating the profits of a trade if the person carrying on the trade makes a site restoration payment in the course of carrying it on.

(2) <sup>[F242]</sup> Subject to subsection (3A), ] A deduction is allowed for the unrelieved amount of the payment.

<sup>[F243]</sup>(3) The deduction is allowed—

- (a) (if the payment is made, whether directly or indirectly, to a connected person) for the period of account in which that part of the restoration work to which the payment relates is completed, or
- (b) (in any other case) for the period of account in which the payment is made.]

<sup>[F243]</sup>(3A) But no deduction is allowed if the payment arises from arrangements—

- (a) to which the person carrying on the trade is a party, and
- (b) the main purpose, or one of the main purposes, of which is to obtain a deduction under this section.]

(4) The unrelieved amount of a site restoration payment is the amount of the payment, less—

- (a) any amount of the payment that represents expenditure for which an allowance has been, or may be, made under the enactments relating to capital allowances, and
- (b) any amount of the payment that represents expenditure for which a deduction has been allowed in calculating the profits of the trade of an earlier period of account.

(5) A “site restoration payment” means a payment made in connection with the restoration of a site (or part of a site) in order to comply with—

- (a) a condition of a waste disposal licence (as defined in section 167(1)),
- (b) a condition imposed on the grant of planning permission to use the site for the collection, treatment, conversion and final depositing of waste materials or for the carrying out of any of those activities, or
- (c) a relevant planning obligation.

(6) For this purpose “a relevant planning obligation” means—

- (a) an obligation arising under an agreement made under section 106 of the Town and Country Planning Act 1990 (c. 8) (as originally enacted) or any corresponding provision for the time being in force in Northern Ireland,
- (b) an obligation arising under an agreement made under section 75 of the Town and Country Planning (Scotland) Act 1997 (c. 8),
- (c) a planning obligation entered into under section 106 of the Town and Country Planning Act 1990 (as substituted by section 12 of the Planning and Compensation Act 1991 (c. 34)) or any corresponding provision for the time being in force in Northern Ireland, or
- (d) a planning obligation entered into under section 299A of the Town and Country Planning Act 1990 or any corresponding provision for the time being in force in Northern Ireland.

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*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Part 2. (See end of Document for details)*

[<sup>F244</sup>(7) Arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable).]

#### Textual Amendments

- F242** Words in s. 168(2) inserted (with effect in accordance with s. 53(7)(8) of the amending Act) by [Finance Act 2012 \(c. 14\), s. 53\(1\)](#)
- F243** S. 168(3)(3A) substituted for s. 168(3) (with effect in accordance with s. 53(7)(8) of the amending Act) by [Finance Act 2012 \(c. 14\), s. 53\(2\)](#)
- F244** S. 168(7) inserted (with effect in accordance with s. 53(7)(8) of the amending Act) by [Finance Act 2012 \(c. 14\), s. 53\(3\)](#)

### *Cemeteries and crematoria*

#### 169 [<sup>F245</sup> *Cemeteries and crematoria: interests in land*]

- (1) This section and sections 170 to 172 apply for the purpose of calculating the profits of a period of account (“the relevant period”) of a trade which consists of or includes—
  - (a) the carrying on of a cemetery, or
  - (b) the carrying on of a crematorium and, in connection with doing so, the maintenance of memorial garden plots,
 and the following provisions of this section apply for the interpretation of this section and those sections.
- (2) References to the sale of land in a cemetery include the sale of a right of interment in land in a cemetery.
- (3) References to the sale of land in a memorial garden include the appropriation of part of a memorial garden in return for a dedication fee or similar payment.
- (4) “Ancillary capital expenditure” means capital expenditure incurred for the purposes of the trade by the person carrying on the trade (“the trader”), or a predecessor, on—
  - (a) any building or structure (other than a dwelling-house) which is in the cemetery or memorial garden and is likely to have little or no value when the cemetery or memorial garden is full,
  - (b) the purchase of an interest in, or the preparation of, any land taken up by such a building or structure, or
  - (c) the purchase of an interest in, or the preparation of, any other land in the cemetery or memorial garden which is not suitable or adaptable for use for interments or memorial garden plots and which is likely to have little or no value when the cemetery or memorial garden is full.
- (5) “Predecessor”, in relation to the trader, means a person who carried on the trade at any time before the trader started to do so.
- (6) “Preparation”, in relation to land, means levelling or draining the land or making it suitable in some other way for use as a cemetery or memorial garden.

*Status: Point in time view as at 15/09/2016.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Part 2. (See end of Document for details)*

### Textual Amendments

**F245** S. 169 cross-heading substituted (1.3.2012) by [The Enactment of Extra-Statutory Concessions Order 2012 \(S.I. 2012/266\)](#), arts. 1, **4(2)** (with art. 4(5))

## 170 Deduction for capital expenditure

- (1) This section applies if, in the relevant period, an interest in land in the cemetery or memorial garden is sold with a view to the land being used—
  - (a) for the purpose of interments, or
  - (b) for memorial garden plots.
- (2) A deduction is allowed for—
  - (a) capital expenditure incurred by the trader, or a predecessor, on the purchase of an interest in the land or on the preparation of the land, and
  - (b) ancillary capital expenditure allocated to the relevant period under section 171 (allocation of ancillary capital expenditure).
- (3) But no expenditure is to be brought into account—
  - (a) under both paragraphs (a) and (b) of subsection (2), <sup>F246</sup>...
  - (b) under both subsection (2)(a) above and [<sup>F247</sup>section 147(2)(b) of CTA 2009] (relief for corporation tax purposes) or under both subsection (2)(b) above and [<sup>F247</sup>section 147(2)(a) of CTA 2009], [<sup>F248</sup>or
  - (c) under both subsection (2)(b) above and section 172ZB(4), 172ZC(4) or 172ZD(3).]whether for the same or different periods of account.
- (4) Any purchase price paid on a sale in connection with a change in the persons carrying on the trade is ignored in calculating the amount of the deduction.
- (5) No deduction is allowed for any expenditure which is excluded by section 172 (exclusion of expenditure met by subsidies).

### Textual Amendments

**F246** Word in s. 170(3)(a) omitted (1.3.2012) by virtue of [The Enactment of Extra-Statutory Concessions Order 2012 \(S.I. 2012/266\)](#), arts. 1, **4(3)(a)** (with art. 4(5))

**F247** Words in s. 170(3)(b) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), **Sch. 1 para. 603** (with Sch. 2 Pts. 1, 2)

**F248** S. 170(3)(c) and word inserted (1.3.2012) by [The Enactment of Extra-Statutory Concessions Order 2012 \(S.I. 2012/266\)](#), arts. 1, **4(3)(b)** (with art. 4(5))

## 171 Allocation of ancillary capital expenditure

- (1) The amount of ancillary capital expenditure allocated to the relevant period for the purposes of section 170(2)(b) is the amount given by the formula—

$$RE \times \frac{PSR}{PAR + PSR}$$

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where—

RE means residual expenditure (see subsection (2)),

PSR means the number of grave-spaces or memorial garden plots in the cemetery or memorial garden sold in the relevant period, and

PAR means the number of grave-spaces or memorial garden plots in the cemetery or memorial garden which are or could be made available for sale at the end of the relevant period.

- (2) “Residual expenditure” means the total of all ancillary capital expenditure incurred at any time before the end of the relevant period, less—
- (a) ancillary capital expenditure incurred on buildings or structures which were destroyed before the beginning of the first sale period,
  - (b) the excluded amount of any remaining old expenditure (see subsection (3)),
  - (c) if, after the beginning of the first sale period and before the end of the relevant period, an asset representing ancillary capital expenditure was sold or destroyed, the net sale proceeds or the compensation, and
  - (d) any amount deducted under section 170(2)(b) above, or under <sup>F249</sup>section 147(2)(b) of CTA 2009], for a period of account ending before the relevant period.
- (3) The excluded amount of remaining old expenditure is calculated by multiplying the remaining old expenditure by the fraction—

$$\frac{\text{PSB}}{\text{PAB} + \text{PSB}}$$

where—

PSB means the number of grave-spaces or memorial garden plots in the cemetery or memorial garden sold before the beginning of the basis period for the tax year 1954-55, and

PAB means the number of grave-spaces or memorial garden plots in the cemetery or memorial garden which were or could have been made available for sale immediately before the beginning of the basis period for that tax year.

- (4) In this section—
- “compensation”, in relation to the destruction of an asset, means—
- (a) insurance money or other compensation received by the trader, or a predecessor, in respect of the destruction, and
  - (b) money received for the remains of the asset by the trader or predecessor,
- “the first sale period” means—
- (a) the period of account in which an interest in land in the cemetery or memorial garden was first sold for the purposes of the trade with a view to the land being used for the purpose of interments or for memorial garden plots, or
  - (b) if later, the basis period for the tax year 1954-55, and
- “remaining old expenditure” means ancillary capital expenditure which—

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- (a) was incurred before the beginning of the basis period for the tax year 1954-55, and
- (b) does not fall within subsection (2)(a).

#### Textual Amendments

**F249** Words in s. 171(2)(d) substituted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 604** (with Sch. 2 Pts. 1, 2)

### 172 Exclusion of expenditure met by subsidies

- (1) Expenditure is excluded for the purposes of section 170 so far as it has been, or is to be, met (directly or indirectly) by—
  - (a) the Crown,
  - (b) a government or local or other public authority (whether in the United Kingdom or elsewhere), or
  - (c) any person other than the person incurring the expenditure.
- (2) This is subject to the following exceptions.
- (3) Expenditure is not excluded for the purposes of section 170 if it is met (directly or indirectly) by a grant—
  - (a) made under Northern Ireland legislation, and
  - (b) declared by the Treasury by an order under section 534 of CAA 2001 to correspond to a grant under Part 2 of the Industrial Development Act 1982 (c. 52).
- (4) Expenditure is not excluded for the purposes of section 170 if it is met (directly or indirectly) by—
  - (a) insurance money, or
  - (b) other compensation money,payable in respect of an asset which has been destroyed, demolished or put out of use.
- (5) Expenditure is not excluded for the purposes of section 170 if—
  - (a) it has been, or is to be, met (directly or indirectly) by a person other than the Crown or a government or local or other public authority, and
  - (b) no deduction is allowed for the expenditure in calculating for income or corporation tax purposes the profits of a trade carried on by that person.

*<sup>F250</sup>Crematoria: niches, memorials and inscriptions*

#### Textual Amendments

**F250** Ss. 172ZA-172ZE and cross-heading inserted (1.3.2012) by [The Enactment of Extra-Statutory Concessions Order 2012 \(S.I. 2012/266\)](#), arts. 1, **4(4)** (with art. 4(5))

### 172ZA Niches, memorials and inscriptions: introduction

- (1) Sections 172ZB to 172ZE apply in calculating the profits of a trade which consists of or includes—

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- (a) the carrying on of a crematorium, and
- (b) in connection with carrying on the crematorium—
  - (i) the sale of niches or memorials, or
  - (ii) the making of inscriptions.
- (2) In those sections—
  - (a) “the trade” is the trade mentioned in subsection (1),
  - (b) “the trader” is the person carrying on the trade, and
  - (c) a “predecessor” is a person who carried on the trade at any time before the trader started doing so.

### **172ZB Allowable deductions: niches**

- (1) This section sets out the deductions that are allowed in respect of a niche if proceeds from the sale of the niche are brought into account as a receipt in calculating the profits of the trade.
- (2) A deduction is allowed for two-thirds of the costs incurred (by the trader or a predecessor) in the formation of the niche.
- (3) Formation of the lining and of any tablet associated with the niche is taken to be part of the formation of the niche.
- (4) If the niche is in a building that is used wholly or mainly for the purpose of providing niches, a further deduction is allowed for two-thirds of the associated building costs.
- (5) In relation to a niche in a building—
  - (a) “the associated building costs” is the relevant proportion of the costs of the building, and
  - (b) “the relevant proportion” is the proportion that the area occupied by the niche bears to the area of the building as a whole or, if the proportion cannot reasonably be calculated on that basis, such proportion as may be calculated on a just and reasonable basis.

### **172ZC Allowable deductions: memorials**

- (1) This section sets out the deductions that are allowed in respect of a memorial if proceeds from the sale of the memorial are brought into account as a receipt in calculating the profits of the trade.
- (2) A deduction is allowed for the costs incurred (by the trader or a predecessor) in producing the memorial.
- (3) If the memorial includes an inscription, making that inscription is taken to be part of producing the memorial.
- (4) If the memorial is attached to a building that is used wholly or mainly for the purpose of accommodating memorials or the memorial comprises an entire building, a further deduction is allowed for two-thirds of the associated building costs.
- (5) In relation to a memorial attached to or comprising a building, “the associated building costs” means—
  - (a) the amount found by dividing the costs of the building by the total number of memorials that the building is capable of accommodating, or

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- (b) if the memorial comprises an entire building, the costs of that building.

### **172ZD Allowable deductions: inscriptions**

- (1) This section sets out the deductions that are allowed in respect of an inscription if proceeds from making the inscription are brought into account in calculating the profits of the trade.
- (2) A deduction is allowed for the costs incurred (by the trader or a predecessor) in making the inscription.
- (3) If the inscription is made on an existing framework designed to hold more than one inscription, a further deduction is allowed for two-thirds of the associated framework costs.
- (4) In relation to an inscription made on an existing framework, “the associated framework costs”—
  - (a) is the amount found by dividing the costs of the framework by the total number of inscriptions that the framework is designed to hold, and
  - (b) includes, if the framework is attached to a building that is used wholly or mainly for the purpose of accommodating memorials, the amount found by dividing the costs of the building by the total number of memorials that the building is capable of accommodating.
- (5) This section does not apply to an inscription if it is made as part of producing a memorial (see section 172ZC).

### **172ZE Costs of the building**

- (1) For the purposes of sections 172ZB to 172ZD, the costs of a building are to be determined in accordance with this section.
- (2) If the building was acquired for the purposes of the trade, the costs of the building are the lower of—
  - (a) the market value of the building when it was acquired, and
  - (b) the costs incurred in acquiring the building.
- (3) If the building was constructed for the purposes of the trade, the costs of the building are the costs incurred in constructing the building.
- (4) In either case—
  - (a) the acquisition cost (or market value) of the land on which the building is situated is to be ignored, and
  - (b) for these purposes, costs (or values) are to be apportioned between the land and the building on a just and reasonable basis.
- (5) Any construction costs incurred with respect to the building after it was acquired or constructed for the purposes of the trade must be brought into account as costs of the building.
- (6) But costs incurred in maintaining the building must not be brought into account.
- (7) Costs must not be included as costs of the building if a deduction is or is to be brought into account for them under section 170(2) (deduction for capital expenditure).

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- (8) A reference in this section to costs incurred is to costs incurred either by the trader or a predecessor.
- (9) In sections 172ZB to 172ZD and this section, “building” includes any other type of structure.]

## [<sup>F251</sup>CHAPTER 11A

### TRADE PROFITS: CHANGES IN TRADING STOCK

#### Textual Amendments

**F251** Pt. 2 Ch. 11A inserted (with effect in accordance with s. 37(2) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 15 para. 2](#)

#### *Introduction*

#### **172A Meaning of “trading stock”**

- (1) In this Chapter “trading stock”, in relation to a trade, means anything (whether land or other property)—
- which is sold in the ordinary course of trade, or
  - which would be so sold if it were mature or its manufacture, preparation or construction were complete.
- (2) It does not include—
- materials used in the manufacture, preparation or construction of any such thing,
  - any services performed in the ordinary course of the trade, or
  - any article produced, or any material used, in the performance of any such services.

#### [<sup>F252</sup>Chapter not to apply where cash basis used

**172AA** Nothing in this Chapter applies in calculating the profits of a trade on the cash basis.]

#### Textual Amendments

**F252** S. 172AA inserted (with effect in accordance with Sch. 4 paras. 56, 57 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 4 para. 29](#)

#### *Transfers of trading stock between trade and trader*

#### **172B Trading stock appropriated by trader**

- (1) This section applies if trading stock of a person's trade is appropriated by the person for any other purpose.



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- (2) In calculating the profits of the trade—
  - (a) the amount which the stock appropriated would have realised if sold in the open market at the time of the appropriation is brought into account as a receipt, and
  - (b) the value of anything in fact received for it is left out of account.
- (3) The receipt is treated as arising on the date of the appropriation.

#### **172C Trading stock supplied by trader**

- (1) This section applies if something that—
  - (a) belongs to a person carrying on a trade, but
  - (b) is not trading stock of the trade,becomes trading stock of the trade.
- (2) In calculating the profits of the trade—
  - (a) the cost of the stock is taken to be the amount which it would have realised if sold in the open market at the time it became trading stock of the trade, and
  - (b) the value of anything in fact given for it is left out of account.
- (3) The cost is treated as being incurred on the date it became trading stock of the trade.

*Other disposals not made in the course of trade*

#### **172D Disposals not made in the course of trade**

- (1) This section applies if—
  - (a) trading stock of a trade is disposed of otherwise than in the course of a trade, and
  - (b) section 172B does not apply.
- (2) In calculating the profits of the trade—
  - (a) the amount which the stock disposed of would have realised if sold in the open market at the time of the disposal is brought into account as the receipt, and
  - (b) any consideration obtained for it is left out of account.
- (3) The receipt is treated as arising on the date of the disposal.
- (4) This section is subject to section 172F.

#### **172E Acquisitions not made in the course of trade**

- (1) This section applies if—
  - (a) trading stock of a trade has been acquired otherwise than in the course of trade, and
  - (b) section 172C does not apply.
- (2) In calculating the profits of the trade—
  - (a) the cost of the stock is taken to be the amount which it would have realised if sold in the open market at the time of the acquisition, and
  - (b) the value of anything in fact given for it is left out of account.

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- (3) The cost is treated as being incurred on the date of the acquisition.
- (4) This section is subject to section 172F.

*Relationship with transfer pricing rules*

**172F Transfer pricing rules to take precedence**

- (1) Section 172D or 172E does not apply if the relevant consideration—
  - (a) falls to be adjusted for tax purposes under [<sup>F253</sup>Part 4 of TIOPA 2010], or
  - (b) falls within [<sup>F254</sup>that Part] without falling to be so adjusted.

[ Subsection (1B) applies in relation to a disposal or acquisition if—

  - <sup>F255</sup>(1A) (a) by virtue of subsection (1), section 172D or 172E does not apply, and
  - (b) the market value amount is greater than the Part 4 TIOPA amount.

(1B) An amount equal to the market value amount less the Part 4 TIOPA amount is to be brought into account in calculating the profits of the trade (in addition to the Part 4 TIOPA amount).

(1C) In subsections (1A) and (1B)—

“market value amount” means the amount referred to in section 172D(2) (a) or 172E(2)(a);

“Part 4 TIOPA amount” means the amount which, following the application of Part 4 of TIOPA 2010 to the relevant consideration, is brought into account in respect of the relevant consideration in calculating the profits of the trade.]

  - (2) For the purposes of subsection (1)(b), the relevant consideration falls within [<sup>F256</sup>Part 4 of TIOPA 2010 without falling to be adjusted under that Part] if—
    - [<sup>F257</sup>(a) the condition in section 147(1)(a) of TIOPA 2010 is met, and
    - (aa) the participation condition is met (see subsection (2B)), but
    - (b) either—
      - (i) one of the conditions in section 147(1)(c) and (d) of TIOPA 2010 is not met, or
      - (ii) one of the exceptions mentioned in subsection (2A) applies.]

[ The exceptions are those in—

    - <sup>F258</sup>(2A) (a) section 447(5) of CTA 2009 (exchange gains or losses from loan relationships),
    - (b) section 694(8) of CTA 2009 (exchange gains or losses from derivative contracts),
    - (c) section 213 of TIOPA 2010 (saving for provisions relating to capital allowances), and
    - (d) section 214 of TIOPA 2010 (saving for provisions relating to chargeable gains).

(2B) Section 148 of TIOPA 2010 (when the participation condition is met) applies for the purposes of subsection (2)(aa) as it applies for the purposes of section 147(1)(b) of TIOPA 2010.]

    - (3) In this section “relevant consideration” means—

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- (a) in relation to section 172D, the consideration for the disposal of the stock, and
- (b) in relation to section 172E, the consideration for the acquisition of the trading stock.]

#### Textual Amendments

- F253** Words in s. 172F(1)(a) substituted (1.4.2010) (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 8 para. 121\(2\)](#) (with [Sch. 9 paras. 1-9, 22](#))
- F254** Words in s. 172F(1)(b) substituted (1.4.2010) (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 8 para. 121\(3\)](#) (with [Sch. 9 paras. 1-9, 22](#))
- F255** S. 172F(1A)-(1C) inserted (with application in accordance with s. 40(3) of the amending Act) by [Finance \(No. 2\) Act 2015 \(c. 33\), s. 40\(2\)](#)
- F256** Words in s. 172F(2) substituted (1.4.2010) (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 8 para. 121\(4\)](#) (with [Sch. 9 paras. 1-9, 22](#))
- F257** S. 172F(2)(a)(aa)(b) substituted (1.4.2010) for s. 172F(2)(a)(b) (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 8 para. 121\(5\)](#) (with [Sch. 9 paras. 1-9, 22](#))
- F258** S. 172F(2A)(2B) inserted (1.4.2010) (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 8 para. 121\(6\)](#) (with [Sch. 9 paras. 1-9, 22](#))

## CHAPTER 12

### TRADE PROFITS: VALUATION OF STOCK AND WORK IN PROGRESS [F259 ON CESSATION OF TRADE ]

#### Textual Amendments

- F259** Words in Pt. 2 Ch. 12 heading inserted (with effect in accordance with s. 37(2) of the amending Act) by [Finance Act 2008 \(c. 9\), Sch. 15 para. 3](#)

#### *Valuation of trading stock*

### 173 Valuation of trading stock on cessation

- (1) If a person permanently ceases to carry on a trade, in calculating the profits of the trade—
  - (a) trading stock belonging to the trade at the time of the cessation must be valued, and
  - (b) the value must be determined in accordance with sections 175 to 178 (bases of valuation).
- (2) But no valuation of the stock is required under this Chapter if [F260section 147(3) or (5) of TIOPA 2010] (provision not at arm's length) has effect in relation to any provision which—
  - (a) is made or imposed in relation to the stock, and

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(b) has effect in connection with the cessation.

[<sup>F261</sup>(2A) Subsection (2B) applies if—

- (a) by virtue of subsection (2), no valuation of the stock under this Chapter is required, and
- (b) the market value of the stock is greater than the Part 4 TIOPA amount.

(2B) An amount equal to the market value of the stock less the Part 4 TIOPA amount is to be brought into account in calculating the profits of the trade (in addition to the Part 4 TIOPA amount).

(2C) In subsections (2A) and (2B)—

“market value”, in relation to stock, is the value the stock would have been determined to have if it had been valued in accordance with sections 175 to 178, and

“Part 4 TIOPA amount” is the amount which, following the application of Part 4 of TIOPA 2010 in relation to the provision referred to in subsection (2), is brought into account in respect of that provision in calculating the profits of the trade.]

- (3) If there is a change in the persons carrying on a trade, no valuation of the stock is required under this Chapter so long as a person carrying on the trade immediately before the change continues to carry it on after the change.
- (4) If an individual carries on a trade alone, no valuation of the stock is required under this Chapter if the cessation is because of the individual's death.

#### Textual Amendments

**F260** Words in s. 173(2) substituted (1.4.2010) (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 8 para. 122](#) (with [Sch. 9 paras. 1-9, 22](#))

**F261** [S. 173\(2A\)-\(2C\)](#) inserted (with application in accordance with s. 41(3) of the amending Act) by [Finance \(No. 2\) Act 2015 \(c. 33\), s. 41\(2\)](#)

## 174 Meaning of “trading stock”

(1) In this Chapter “trading stock” means—

- (a) any property (whether land or other property) which is sold in the ordinary course of the trade or would be so sold if it were mature or its manufacture, preparation or construction were complete, or
- (b) materials used in the manufacture, preparation or construction of any property mentioned in paragraph (a).

(2) In this Chapter “trading stock” includes also any services performed in the ordinary course of the trade—

- (a) the performance of which is wholly or partly completed at the time of the cessation, and
- (b) for which it would be reasonable to expect that a charge would be made if there were no cessation and, in the case of partly completed services, their performance were fully completed,

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and any article produced, and any material used, in the performance of any such services.

- (3) In this Chapter references to the sale or transfer of trading stock include the sale or transfer of any benefits and rights which accrue, or might reasonably be expected to accrue, from the performance of any such services.

## 175 Basis of valuation of trading stock

- (1) The value of trading stock belonging to the trade at the time of the cessation is determined as follows.
- (2) If the stock is sold to a person who—
- (a) carries on, or intends to carry on, a trade<sup>F262</sup>, profession or vocation] in the United Kingdom, and
  - (b) is entitled to deduct the cost of the stock as an expense in calculating the profits of that trade<sup>F263</sup>, profession or vocation] for income or corporation tax purposes,
- the value is determined in accordance with section 176 (sale to unconnected person), 177 (sale to connected person) or 178 (election by connected persons).
- (3) But if section 127 (preventing abuse of the herd basis rules) applies—
- (a) the value is not determined in accordance with any of those sections, and
  - (b) the value is instead taken to be that given by section 127 (the price which the animals transferred would have fetched if sold in the open market at the time of the sale).
- (4) In any other case, the value is taken to be the amount which the stock would have realised if sold in the open market at the time of the cessation.

### Textual Amendments

**F262** Words in s. 175(2)(a) inserted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 605(a)** (with Sch. 2 Pts. 1, 2)

**F263** Words in s. 175(2)(b) inserted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 605(b)** (with Sch. 2 Pts. 1, 2)

## 176 Sale basis of valuation: sale to unconnected person

- (1) The value of trading stock is determined in accordance with this section if—
- (a) it is sold to a person who carries on, or intends to carry on, a trade<sup>F264</sup>, profession or vocation] in the United Kingdom and is entitled to deduct the cost of the stock as an expense in calculating the profits of that trade<sup>F264</sup>, profession or vocation] for income or corporation tax purposes, and
  - (b) the buyer is not connected with the seller.
- (2) The value is taken to be the amount in fact realised on the sale.
- (3) If the stock is sold together with other assets, so much of the amount realised on the sale as, on a just and reasonable apportionment, is properly attributable to each asset is treated as the amount realised on the sale of that asset.

*Status: Point in time view as at 15/09/2016.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Part 2. (See end of Document for details)*

### Textual Amendments

**F264** Words in s. 176(1)(a) inserted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 606** (with Sch. 2 Pts. 1, 2)

## 177 Sale basis of valuation: sale to connected person

- (1) The value of trading stock is determined in accordance with this section if—
  - (a) it is sold to a person who carries on, or intends to carry on, a trade<sup>F265</sup>, profession or vocation] in the United Kingdom and is entitled to deduct the cost of the stock as an expense in calculating the profits of that trade<sup>F265</sup>, profession or vocation] for income or corporation tax purposes,
  - (b) the buyer is connected with the seller, and
  - (c) no election is made under section 178 (election by connected persons).
- (2) The value is taken to be the amount which would have been realised if the sale had been between independent persons dealing at arm's length.

### Textual Amendments

**F265** Words in s. 177(1)(a) inserted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 607** (with Sch. 2 Pts. 1, 2)

## 178 Sale basis of valuation: election by connected persons

- (1) The value of trading stock is determined in accordance with this section if—
  - (a) it is sold to a person who carries on, or intends to carry on, a trade<sup>F266</sup>, profession or vocation] in the United Kingdom and is entitled to deduct the cost of the stock as an expense in calculating the profits of that trade<sup>F266</sup>, profession or vocation] for income or corporation tax purposes,
  - (b) the buyer is connected with the seller, and
  - (c) an election is made under this section.
- (2) The parties to the sale may make an election under this section if the value of the stock determined under section 177 exceeds both—
  - (a) its acquisition value, and
  - (b) the amount in fact realised on the sale.
- (3) If an election is made, the value is taken to be—
  - (a) its acquisition value, or,
  - (b) if greater, the amount in fact realised on the sale.
- (4) An election under this section must be made by both parties on or before the first anniversary of the normal self-assessment filing date for the tax year in which the cessation occurred.
- (5) The “acquisition value” of trading stock means the amount which would have been deductible as representing its acquisition value, in calculating the profits of the trade, on the following assumptions—

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- (a) that the stock had been sold in the course of the trade, immediately before the cessation, for a price equal to the value of the stock determined under section 177, and
  - (b) that the period for which those profits were to be calculated began immediately before the sale.
- (6) If the stock is sold together with other assets, so much of the amount realised on the sale as, on a just and reasonable apportionment, is properly attributable to each asset is treated as the amount realised on the sale of that asset.

#### Textual Amendments

**F266** Words in s. 178(1)(a) inserted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 608** (with Sch. 2 Pts. 1, 2)

### 179 Connected persons

For the purposes of sections 175 to 178 two persons are connected with each other if any of the following tests is met—

- (a) they are connected with each other within the meaning of [<sup>F267</sup>section 993 of ITA 2007] ,
- (b) one of them is a firm and the other has a right to a share of the assets or income of the firm,
- (c) one of them is a body corporate and the other has control over that body,
- (d) both of them are firms and some other person has a right to a share of the assets or income of both of them, or
- (e) both of them are bodies corporate, or one of them is a firm and the other is a body corporate, and in either case some other person has control over both of them.

#### Textual Amendments

**F267** Words in s. 179(a) substituted (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by Income Tax Act 2007 (c. 3), ss. 1027, 1034, **Sch. 1 para. 501** (with transitional provisions and savings in Sch. 2)

### 180 Cost to buyer of stock valued on sale basis of valuation

- (1) This section applies for the purpose of calculating the profits of the trade [<sup>F268</sup>, profession or vocation] carried on by the buyer of trading stock.
- (2) If the value of the stock is determined in accordance with—
  - (a) section 175(3) or sections 176 to 178 (sale basis of valuation), or
  - (b) [<sup>F269</sup>section 164(3) or sections 165 to 167 of CTA 2009] (corresponding corporation tax rules),
 the cost of the stock to the buyer is taken to be the value as so determined.

*Status: Point in time view as at 15/09/2016.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Part 2. (See end of Document for details)*

### Textual Amendments

**F268** Words in s. 180(1) inserted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 609(2)** (with Sch. 2 Pts. 1, 2)

**F269** Words in s. 180(2)(b) substituted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 609(3)** (with Sch. 2 Pts. 1, 2)

## 181 Meaning of “sale” and related expressions

- (1) In sections 175 to 178 (except in section 178(5)) references to a sale include a transfer for valuable consideration.
- (2) In relation to a transfer which is not a sale—
  - “amount realised on the sale” means the value of the consideration given for the transfer,
  - “buyer” means the person to whom the transfer is made, and
  - “seller” means the person who makes the transfer.

### *Valuation of work in progress*

## 182 Valuation of work in progress on cessation

- (1) If—
  - (a) a person permanently ceases to carry on a profession or vocation, and
  - (b) the work in progress is valued in calculating the profits of the profession or vocation,
 the value must be determined in accordance with section 184 (basis of valuation of work in progress) or 185 (election for valuation at cost).
- (2) If there is a change in the persons carrying on a profession, subsection (1) does not apply so long as a person carrying on the profession immediately before the change continues to carry it on after the change.
- (3) If an individual carries on a profession alone or a vocation, subsection (1) does not apply if the cessation is because of the individual's death.

## 183 Meaning of “work in progress”

- (1) In this Chapter “work in progress” means services performed in the ordinary course of the profession or vocation—
  - (a) the performance of which is wholly or partly completed at the time of the cessation, and
  - (b) for which it would be reasonable to expect that a charge would be made if there were no cessation and, in the case of partly completed services, their performance were fully completed,
 and includes any article produced, and any material used, in the performance of any such services.



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- (2) In this Chapter references to the transfer of work in progress include the transfer of any benefits and rights which accrue, or might reasonably be expected to accrue, from the performance of any such services.

#### **184 Basis of valuation of work in progress**

- (1) If the work in progress is transferred for money or other valuable consideration to a person who—
- carries on, or intends to carry on, a [<sup>F270</sup>trade,] profession or vocation in the United Kingdom, and
  - is entitled to deduct the cost of the work as an expense in calculating the profits of that [<sup>F271</sup>trade,] profession or vocation for income or corporation tax purposes,
- the value of the work is taken to be the amount paid or other consideration given for the transfer.
- (2) In any other case, the value of the work is taken to be the amount which would have been paid for a transfer of the work at the time of the cessation as between independent parties dealing at arm's length.
- (3) These rules are subject to any election under section 185 (election for valuation at cost).

#### **Textual Amendments**

**F270** Word in s. 184(1)(a) inserted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 610\(a\)](#) (with [Sch. 2 Pts. 1, 2](#))

**F271** Word in s. 184(1)(b) inserted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 610\(b\)](#) (with [Sch. 2 Pts. 1, 2](#))

#### **185 Election for valuation at cost**

- (1) The person who was carrying on the profession or vocation immediately before the cessation may elect that—
- the value of work in progress brought into account in calculating the profits of the period immediately before the cessation is to be the actual cost of the work, and
  - the amount by which any sums received for the transfer of the work exceed the actual cost of the work is to be treated as a post-cessation receipt (see Chapter 18).
- (2) An election under this section must be made on or before the first anniversary of the normal self-assessment filing date for the tax year in which the cessation occurred.

*Supplementary*

#### **186 Determination of questions <sup>F272</sup>...**

- (1) Any question arising under—

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- (a) section 175(3) or sections 176 to 178 (sale basis of valuation of trading stock),  
or
  - (b) section 184(1) (valuation of work in progress transferred for valuable consideration),
- must be determined <sup>F273</sup>... in the same way as an appeal.

F274(2) .....

F274(3) .....

F274(4) .....

#### **Textual Amendments**

**F272** Words in s. 186 heading omitted (1.4.2009) by virtue of [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 439(2)**

**F273** Words in s. 186(1) omitted (1.4.2009) by virtue of [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 439(3)**

**F274** S. 186(2)-(4) omitted (1.4.2009) by virtue of [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 439(4)**

## **CHAPTER 13**

### DEDUCTIONS FROM PROFITS: UNREMITTABLE AMOUNTS

#### **187 Professions and vocations**

The provisions of this Chapter apply to professions and vocations as they apply to trades.

#### **188 Application of Chapter**

- (1) This Chapter applies if—
  - (a) an amount received by, or owed to, a person carrying on a trade (“the trader”) is brought into account as a receipt in calculating the profits of the trade,
  - (b) the amount is paid or owed in a territory outside the United Kingdom, and
  - (c) some or all of the amount is unremittable.
- (2) An amount received is unremittable if it cannot be transferred to the United Kingdom merely because of foreign exchange restrictions.
- (3) An amount owed is unremittable if it cannot be paid in the United Kingdom and—
  - (a) it temporarily cannot be paid in the territory in which it is owed merely because of foreign exchange restrictions, or
  - (b) it can be paid in that territory but, if it were paid there, the amount paid would not be transferable to the United Kingdom merely because of foreign exchange restrictions.
- (4) “Foreign exchange restrictions” are restrictions imposed by any of the following—
  - (a) the laws of the territory where the amount is paid or owed,
  - (b) executive action of its government, and

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- (c) the impossibility of obtaining there currency that could be transferred to the United Kingdom.

[<sup>F275</sup> **188A Chapter not to apply where cash basis used**

Nothing in this Chapter applies in calculating the profits of a trade on the cash basis.]

**Textual Amendments**

**F275** S. 188AA inserted (with effect in accordance with Sch. 4 paras. 56, 57 of the amending Act) by Finance Act 2013 (c. 29), **Sch. 4 para. 30**

**189 Relief for unremittable amounts**

- (1) If—
- (a) the trader has profits from the trade in a period of account, and
  - (b) an unremittable amount has been brought into account as a receipt for that period,
- a deduction of the amount is allowed from those profits (but see subsection (5)).
- (2) If the trader has profits from the trade in a period of account and the total of—
- (a) any unremittable amounts brought into account as receipts for that period, and
  - (b) any amount carried forward under this subsection or subsection (3) from the previous period of account,
- exceeds the amount of those profits, the excess may be carried forward to the next period of account.
- (3) If the trader does not have profits from the trade in a period of account and an unremittable amount has been brought into account as a receipt for that period, the total of—
- (a) any unremittable amounts brought into account as receipts for that period, and
  - (b) any amount carried forward under this subsection or subsection (2) from the previous period of account,
- may be carried forward to the next period of account.
- (4) If an amount is carried forward under this section to a period of account in which the trader has profits from the trade, a deduction of the amount is allowed from those profits (but see subsection (5)).
- (5) The total amount deducted under this section from the profits from a trade in a period of account must not exceed the amount of the profits.

**190 Restrictions on relief**

- (1) No deduction is allowed under section 189 in relation to an amount so far as—
- (a) it is used to finance expenditure or investment outside the United Kingdom, or
  - (b) it is applied outside the United Kingdom in another way.
- (2) No deduction is allowed under section 189 in relation to an amount owed so far as a deduction is allowed in respect of it under section 35 (bad and doubtful debts).

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- (3) No deduction is allowed under section 189 in relation to an amount owed so far as a payment under a contract of insurance has been received in relation to it.
- (4) No deduction is allowed under section 189 in relation to an amount brought into account in calculating profits if relief under section 842 (unremittable income) may be claimed in relation to that amount.

## 191 Withdrawal of relief

- (1) This section applies if—
  - (a) some or all of an unremittable amount has been deducted from profits under section 189, and
  - (b) any of the following events occurs.
- (2) The events are that—
  - (a) the amount or part of it ceases to be unremittable,
  - (b) the amount or part of it is used to finance expenditure or investment outside the United Kingdom,
  - (c) the amount or part of it is applied outside the United Kingdom in another way,
  - (d) the amount or part of it is exchanged for, or discharged by, an amount that is not unremittable,
  - (e) a deduction is allowed in respect of the amount or part of it under section 35 (bad and doubtful debts), and
  - (f) if the amount is an amount owed, a payment under a contract of insurance is received in relation to the amount or part of it.
- (3) The amount or the part of it in question is brought into account as a receipt in calculating the profits of the trade for the period of account in which the event occurs, but only so far as—
  - (a) it has been deducted from profits under section 189, and
  - (b) it has not already been brought into account as a receipt in calculating the profits of the trade as a result of this section.
- (4) If the event is the receipt of a payment under a contract of insurance, the amount brought into account as a receipt must not exceed the amount of the payment.

## CHAPTER 14

### DISPOSAL AND ACQUISITION OF KNOW-HOW

#### [<sup>F276</sup>191] Chapter not to apply where cash basis used

Nothing in this Chapter applies in calculating the profits of a trade on the cash basis.]

#### Textual Amendments

**F276** S. 191A inserted (with effect in accordance with Sch. 4 paras. 56, 57 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 4 para. 31](#)

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## **192 Meaning of “know-how” etc.**

- (1) In this Chapter “know-how” means any industrial information or techniques likely to assist in—
  - (a) manufacturing or processing goods or materials,
  - (b) working a source of mineral deposits (including searching for, discovering or testing mineral deposits or obtaining access to them), or
  - (c) carrying out any agricultural, forestry or fishing operations.
- (2) For this purpose—

“mineral deposits” includes any natural deposits capable of being lifted or extracted from the earth and for this purpose geothermal energy is treated as a natural deposit, and

“source of mineral deposits” includes a mine, an oil well and a source of geothermal energy.
- (3) For the purposes of this Chapter any consideration received for giving, or wholly or partly fulfilling, an undertaking which—
  - (a) is given in connection with a disposal of know-how, and
  - (b) restricts, or is designed to restrict, any person's activities in any way,is treated as consideration received for the disposal of the know-how.
- (4) It does not matter whether or not the undertaking is legally enforceable.
- (5) For the purposes of this Chapter references to a sale of know-how include an exchange of know-how and any provision of this Chapter referring to a sale has effect with the necessary modifications.
- (6) Those modifications include, in particular, reading references to the proceeds of sale and to the price as including the consideration for the exchange.

## **193 Disposal of know-how if trade continues to be carried on**

- (1) This section applies if—
  - (a) a person carrying on a trade receives consideration for the disposal of know-how which has been used in the trade,
  - (b) the person continues to carry on the trade after the disposal, and
  - (c) neither section 194 (disposal of know-how as part of disposal of all or part of a trade) nor section 195 (seller controlled by buyer etc.) applies.
- (2) The amount or value of the consideration is treated for all purposes as a trading receipt, except so far as it is brought into account under section 462 of CAA 2001 (disposal values).
- (3) If the know-how is sold together with other property, the net proceeds of the sale of the know-how are treated as being so much of the net proceeds of the sale of all the property as, on a just and reasonable apportionment, is attributable to the know-how.
- (4) For this purpose all property sold as a result of one bargain is treated as sold together even though—
  - (a) separate prices are, or purport to be, agreed for separate items of that property, or
  - (b) there are, or purport to be, separate sales of separate items of that property.

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*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Part 2. (See end of Document for details)*

- (5) Any question about the way in which a sum is to be apportioned under this section must be determined in accordance with section 563(2) to (6) of CAA 2001 (procedure for determining certain questions affecting two or more persons) if it materially affects two or more taxpayers.
- (6) For this purpose a question materially affects two or more taxpayers if at the time when the question falls to be determined it appears that the determination is material to the liability to tax (for whatever period) of two or more persons.

## 194 Disposal of know-how as part of disposal of all or part of a trade

- (1) This section applies if —
- a person carrying on a trade receives consideration for the disposal of know-how which has been used in the trade, and
  - the know-how is disposed of as part of the disposal of all or part of the trade.
- (2) If the person disposing of the know-how is within the charge to income tax, the consideration is treated for income tax purposes as a capital receipt for goodwill.
- (3) If the person acquiring the know-how—
- is within the charge to income tax, and
  - provided the consideration,
- the consideration is treated for income tax purposes as a capital payment for goodwill.
- (4) But the consideration is not treated for income tax purposes as a capital payment for goodwill if, before the acquisition, the trade was carried on wholly outside the United Kingdom.
- (5) If the person disposing of the know-how is within the charge to income tax—
- that person, and
  - the person acquiring the know-how (whether or not within the charge to income tax),
- may jointly elect for this section not to apply (but see section 195).
- (6) The election must be made within two years of the disposal.
- (7) If—
- an election is made under [<sup>F277</sup>section 178 of CTA 2009] (corresponding corporation tax provision), and
  - the person making the acquisition mentioned in [<sup>F278</sup>that section] is within the charge to income tax,
- the persons making the election under [<sup>F278</sup>that section] are treated as also making an election under this section (even though the person disposing of the know-how is not within the charge to income tax).

### Textual Amendments

**F277** Words in s. 194(7)(a) substituted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 611(a)** (with Sch. 2 Pts. 1, 2)

**F278** Words in s. 194(7) substituted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 611(b)** (with Sch. 2 Pts. 1, 2)

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## **195 Seller controlled by buyer etc.**

- (1) This section applies if a disposal of know-how is by way of sale and—
  - (a) the seller is a body of persons over which the buyer has control,
  - (b) the buyer is a body of persons over which the seller has control, or
  - (c) both the seller and the buyer are bodies of persons and another person has control over both of them.
- (2) In such a case—
  - (a) section 193 does not apply, and
  - (b) no election may be made under section 194.
- (3) For the purposes of this section “body of persons” includes a firm.

## **CHAPTER 15**

### **BASIS PERIODS**

#### **Modifications etc. (not altering text)**

- C11** Pt. 2 Ch. 15 excluded (14.2.2006 with effect as mentioned in reg. 1(2) of the amending S.I.) by [S.I. 1997/2681](#) reg. 6(1)(a) as amended by [The Lloyd's Underwriters \(Scottish Limited Partnerships\) \(Tax\) \(Amendment\) Regulations 2006 \(S.I. 2006/111\)](#), **reg. 8**

#### *Introduction*

## **196 Professions and vocations**

The provisions of this Chapter apply to professions and vocations as they apply to trades.

#### *Accounting date*

## **197 Meaning of “accounting date”**

- (1) In this Chapter “accounting date”, in relation to a tax year, means—
  - (a) the date in the tax year to which accounts are drawn up, or
  - (b) if there are two or more such dates, the latest of them.
- (2) This is subject to—
  - (a) section 211(2) (middle date treated as accounting date), and
  - (b) section 214(3) (date treated as accounting date if date changed in tax year in which there is no accounting date).

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### *The normal rules*

#### **198 General rule**

- (1) The general rule is that the basis period for a tax year is the period of 12 months ending with the accounting date in that tax year.
- (2) This applies unless a different basis period is given by one of the following sections—
  - section 199 (first tax year),
  - section 200 (second tax year),
  - section 201 (tax year in which there is no accounting date),
  - section 202 (final tax year),
  - section 209 or 210 (first accounting date shortly before end of tax year),
  - section 212 (tax year in which middle date treated as accounting date),
  - section 215 (change of accounting date in third tax year), and
  - section 216 (change of accounting date in later tax year).

#### **199 First tax year**

- (1) The basis period for the tax year in which a person starts to carry on a trade—
  - (a) begins with the date on which the person starts to carry on the trade, and
  - (b) ends with 5th April in the tax year.
- (2) But if a person starts and permanently ceases to carry on a trade in the same tax year, the basis period for the tax year is that given by section 202(2).

#### **200 Second tax year**

- (1) The basis period for the second tax year in which a person carries on a trade is determined as follows.
- (2) If in that tax year—
  - (a) the accounting date falls less than 12 months after the date on which the person starts to carry on the trade, and
  - (b) the person does not permanently cease to carry on the trade,the basis period is the period of 12 months beginning with the date on which the person starts to carry on the trade.
- (3) If in that tax year—
  - (a) the accounting date falls 12 months or more after the date on which the person starts to carry on the trade, and
  - (b) the person does not permanently cease to carry on the trade,the basis period is that given by the general rule in section 198.
- (4) If in that tax year—
  - (a) there is no accounting date, and
  - (b) the person does not permanently cease to carry on the trade,the basis period is the same as the tax year.
- (5) If in that tax year the person permanently ceases to carry on the trade, the basis period is that given by section 202(1).



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## **201 Tax year in which there is no accounting date**

- (1) If a person carries on a trade in a tax year and—
  - (a) there is no accounting date in the tax year, and
  - (b) the person does not start or permanently cease to carry on the trade in the tax year,the basis period for the tax year is the period of 12 months beginning immediately after the end of the basis period for the previous tax year.
- (2) But this is subject to—
  - (a) section 200 (second tax year), and
  - (b) sections 215 and 216 (change of accounting date in third tax year or later tax year).

## **202 Final tax year**

- (1) The basis period for the tax year in which a person permanently ceases to carry on a trade—
  - (a) begins immediately after the end of the basis period for the previous tax year, and
  - (b) ends with the date on which the person permanently ceases to carry on the trade.
- (2) But if a person starts and permanently ceases to carry on a trade in the same tax year, the basis period—
  - (a) begins with the date on which the person starts to carry on the trade, and
  - (b) ends with the date on which the person permanently ceases to carry on the trade.

### *Apportionment of profits*

## **203 Apportionment etc. of profits to basis periods**

- (1) This section applies if the basis period for a tax year does not coincide with a period of account.
- (2) Any of the following steps may be taken if they are necessary in order to arrive at the profits or losses of the basis period—
  - (a) apportioning the profits or losses of a period of account to the parts of that period falling in different basis periods, and
  - (b) adding the profits or losses of a period of account (or part of a period) to profits or losses of other periods of account (or parts).
- (3) The steps must be taken by reference to the number of days in the periods concerned.
- (4) But the person carrying on the trade may use a different way of measuring the length of the periods concerned if—
  - (a) it is reasonable to do so, and
  - (b) the way of measuring the length of periods is used consistently for the purposes of the trade.

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*Status: Point in time view as at 15/09/2016.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Part 2. (See end of Document for details)*

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**Modifications etc. (not altering text)**

**C12** S. 203(3)(4) applied (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), [ss. 90\(4\)](#), 1034 (with transitional provisions and savings in [Sch. 2](#))

*Overlap profits and losses*

**204 Meaning of “overlap period” and “overlap profit”**

In this Chapter—

“overlap period” means a period which falls within two basis periods, and  
 “overlap profit” means profit which arises in an overlap period.

**205 Deduction for overlap profit in final tax year**

- (1) If a person permanently ceases to carry on a trade in a tax year, a deduction is allowed for overlap profit in calculating the profits of the trade of the tax year.
- (2) The amount of the deduction is calculated as follows.

*Step 1*

Add together the overlap profits arising in all overlap periods.

*Step 2*

Subtract from that any deductions for overlap profit made under section 220 (deduction for overlap profit on change of accounting date).

The balance is the amount of the deduction allowed under this section.

**206 Restriction on bringing losses into account twice**

If a loss arises in, or is apportioned under section 203 to, two overlapping basis periods, the amount of the loss—

- (a) is brought into account in calculating the profits of the first basis period, and
- (b) is not brought into account in calculating the profits of the second basis period.

**207 Treatment of business start-up payments received in an overlap period**

- (1) This section applies if—
  - (a) a person carrying on a trade receives a business start-up payment (see subsection (3)) in a period which falls within two basis periods, and
  - (b) the payment is not a lump sum payment.
- (2) The payment—
  - (a) is brought into account in calculating the profits of the trade of the first basis period, and
  - (b) is not brought into account in calculating the profits of the trade of the second basis period.

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- (3) A “business start-up payment” means a payment under a Business Start-Up scheme which is of the kind originally known as enterprise allowance and is made—
- (a) in England and Wales, by a training and enterprise council pursuant to arrangements under section 2(2)(d) of the Employment and Training Act 1973 (c. 50),
  - (b) in Scotland, by a local enterprise company under section 2(4)(c) of the Enterprise and New Towns (Scotland) Act 1990 (c. 35) in relation to arrangements under section 2(3) of that Act, or
  - (c) in Northern Ireland, by or on behalf of the Department for Employment and Learning under section 1(1A)(d) of the Employment and Training Act (Northern Ireland) 1950 (c. 29 (N.I.)).

*Rules where first accounting date shortly before end of tax year*

## **208 When the late accounting date rules apply**

- (1) Sections 209 and 210 contain rules for the purpose of—
- (a) avoiding the need to apportion profits, and
  - (b) preventing overlap profit from arising,
- in relation to the tax year in which a person (“the trader”) starts to carry on a trade and the following tax year.
- (2) Sections 209 and 210 apply in relation to a tax year if—
- (a) the first accounting date is 31st March or 1st, 2nd, 3rd or 4th April, and
  - (b) that date falls in the tax year in which the trader starts to carry on the trade or in either of the following two tax years,
- but the trader may elect for those sections not to apply in relation to a tax year.
- (3) In this section and section 210 “the first accounting date” means—
- (a) the first accounting date after the trader starts to carry on the trade, or
  - (b) the date that is intended to be that accounting date if, at the time the trader delivers a return for a tax year, there has been no accounting date.
- (4) An election under this section must be made on or before the first anniversary of the normal self-assessment filing date for the tax year to which it relates.

## **209 Rule if there is an accounting date**

- (1) This section applies if there is an accounting date in a tax year and that date is 31st March or 1st, 2nd, 3rd or 4th April.
- (2) If—
- (a) the basis period for the tax year would otherwise end after the accounting date, and
  - (b) the part of the basis period that would otherwise fall after the accounting date is included in the basis period for the following tax year,
- the basis period for the tax year ends on the accounting date.

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## **210 Rules if there is no accounting date**

- (1) This section applies if there is no accounting date in a tax year (“the relevant tax year”).
- (2) If the trader—
  - (a) starts to carry on the trade in the relevant tax year, and
  - (b) does so before 1st April,
 the basis period ends on the date in the relevant tax year that corresponds to the first accounting date.
- (3) If the trader started to carry on the trade in the previous tax year and there was no accounting date in the previous tax year, the basis period for the relevant tax year—
  - (a) begins immediately after the end of the basis period for the previous tax year, and
  - (b) ends on the date in the relevant tax year that corresponds to the first accounting date.
- (4) If the trader—
  - (a) starts to carry on the trade in the relevant tax year, and
  - (b) does so after 31st March,
 the profits or losses of the trade of the relevant tax year are treated as nil.
- (5) In that case, the actual profits or losses of the trade of the relevant tax year are treated as arising in the basis period for the following tax year, so far as they do not already do so.

### *Slight variations in accounting date*

## **211 Treating middle date as accounting date**

- (1) This section applies for the purpose of preventing the rules in sections 215 to 220 from applying if—
  - (a) accounts of a trade are drawn up to a particular day (rather than to a particular date), and
  - (b) that day is capable of falling on one of only 7 consecutive dates (or, if that day is in February, on one of only 8 consecutive dates).
- (2) The person carrying on the trade may elect in relation to a tax year for the fourth of those dates (“the middle date”) to be treated as the accounting date in the tax year.
- (3) The election has effect for the purposes of this Chapter, but not for any other purposes.
- (4) An election under this section—
  - (a) must specify the day to which the accounts are drawn up and the middle date, and
  - (b) must be made on or before the first anniversary of the normal self-assessment filing date for the tax year to which it relates.

## **212 Consequence of treating middle date as accounting date**

- (1) If—

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- (a) a date (“the middle date”) is treated under section 211 as the accounting date in a tax year (“the current tax year”),
- (b) the basis period for the current tax year would otherwise be that given by the general rule in section 198, and
- (c) subsection (2) or (3) applies,

the basis period for the current tax year begins immediately after the end of the basis period for the previous tax year and ends with the middle date.

- (2) This subsection applies if—
  - (a) the accounting date in the previous tax year was not determined under section 211, and
  - (b) that accounting date was one of the 7 (or 8) dates on which the day in the current tax year to which accounts are drawn up is capable of falling.
- (3) This subsection applies if—
  - (a) the accounting date in the previous tax year was determined under section 211, and
  - (b) the accounting date in the current tax year is the same as the accounting date in the previous tax year.

### **213 Circumstances in which middle date not treated as accounting date**

- (1) If—
  - (a) a date (“the middle date”) is treated under section 211 as the accounting date in a tax year (“the earlier tax year”),
  - (b) the basis period for the earlier tax year ends on the middle date, and
  - (c) the basis period for the following tax year (“the later tax year”) is that given by one of the provisions listed in subsection (2),

the basis period for the later tax year is determined as if the basis period for the earlier tax year had ended on the date to which accounts were actually drawn up in the earlier tax year.

- (2) The provisions are—
  - (a) section 201(1) (tax year in which there is no accounting date),
  - (b) section 202(1) (tax year in which person permanently ceases to carry on a trade),
  - (c) section 215(2) (change of accounting date in third tax year), and
  - (d) section 216(3) (change of accounting date in later tax year).

*Special rules if accounting date changes*

### **214 When a change of accounting date occurs**

- (1) If there is a change from one accounting date (“the old accounting date”) to another accounting date (“the new accounting date”), the change of accounting date occurs—
  - (a) in the first tax year in which accounts are drawn up to the new accounting date, or
  - (b) if earlier, in the first tax year in which accounts are not drawn up to the old accounting date.

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- (2) A change from a date determined under section 211 to an actual accounting date is taken to be a change from one accounting date to another, even if the two dates are the same.
- (3) If, because of subsection (1)(b), a change of accounting date occurs in a tax year in which there is no actual accounting date, the date corresponding to the new accounting date is treated as the accounting date in that tax year for the purpose of determining—
  - (a) the basis period for that tax year, and
  - (b) if section 219 applies, the basis period for the following tax year.

### **215 Change of accounting date in third tax year**

- (1) This section applies if—
  - (a) a change of accounting date occurs in the third tax year in which a person carries on a trade,
  - (b) the person does not permanently cease to carry on the trade in that tax year, and
  - (c) the accounting date in that tax year falls more than 12 months after the end of the basis period for the second tax year in which the person carries on the trade.
- (2) The basis period—
  - (a) begins immediately after the end of the basis period for the second tax year in which the person carries on the trade, and
  - (b) ends with the accounting date in the third tax year in which the person carries on the trade.

### **216 Change of accounting date in later tax year**

- (1) This section applies if—
  - (a) a change of accounting date occurs in a tax year in which a person carries on a trade,
  - (b) the tax year is later than the third tax year in which the person carries on the trade, and
  - (c) the person does not permanently cease to carry on the trade in the tax year.
- (2) If—
  - (a) the conditions in section 217 are met (conditions for basis period to end with new accounting date), and
  - (b) the new accounting date falls less than 12 months after the end of the basis period for the previous tax year,
 the basis period is that given by the general rule in section 198.
- (3) If—
  - (a) the conditions in section 217 are met, and
  - (b) the new accounting date falls more than 12 months after the end of the basis period for the previous tax year,
 the basis period begins immediately after the end of the basis period for the previous tax year and ends with the accounting date.
- (4) If the conditions in section 217 are not met, the basis period for the tax year is the period of 12 months ending with the old accounting date.

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## 217 Conditions for basis period to end with new accounting date

- (1) The conditions in this section are met if—
- (a) the person carrying on the trade gives appropriate notice of the change of accounting date to [<sup>F279</sup>an officer of Revenue and Customs](see subsection (2)),
  - (b) the 18 month test is met (see subsection (3)), and
  - (c) either condition A or B is met (see subsections (4) to (6)).
- (2) Appropriate notice of the change of accounting date is given to [<sup>F279</sup>an officer of Revenue and Customs] if (and only if) the notice is given—
- (a) in a return under the provision of TMA 1970 that applies to the person carrying on a trade (see section 8, 8A or 12AA of that Act), and
  - (b) on or before the day on which the return is required to be made and delivered under that provision.
- (3) The 18 month test is met if the period of account ending—
- (a) with the new accounting date in the tax year in which the change of accounting date occurs, or
  - (b) if there is no new accounting date in that tax year, with the new accounting date in the first tax year in which accounts are drawn up to the new accounting date,
- is not longer than 18 months.
- (4) Condition A is that, in the 5 tax years immediately before the tax year in which the change of accounting date occurs, there has been no change of accounting date that counts for the purposes of this condition.
- (5) A change of accounting date counts for the purposes of condition A if it results in the basis period for the tax year in which the change occurs ending with the accounting date in that tax year.
- (6) Condition B is that—
- (a) the change of accounting date is made for commercial reasons (see section 218), and
  - (b) the notice under subsection (2) sets out the reasons for the change.

### Textual Amendments

**F279** Words in s. 217(1)(2) substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\), ss. 50, 53\(1\), Sch. 4 para. 132\(1\)](#); S.I. 2005/1126, [art. 2\(h\)](#)

## 218 Commercial reasons for change of accounting date

- (1) If the Inland Revenue [<sup>F280</sup>does] not give notice under this section to the person carrying on the trade, a change of accounting date is treated for the purposes of condition B in section 217 as made for commercial reasons.
- (2) If the Inland Revenue [<sup>F280</sup>does] give notice under this section to the person carrying on the trade, a change of accounting date is treated for the purposes of condition B in section 217 as made for reasons which are not commercial.
- (3) The notice must—

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- (a) state that [<sup>F281</sup>the officer is not] satisfied that the change of accounting date is made for commercial reasons, and
  - (b) be given within the period of 60 days beginning with the date on which the notice under section 217(2) is received.
- (4) A person to whom notice is given under this section may appeal against it within the period of 30 days beginning with the date on which it is given.
- (5) On an appeal [<sup>F282</sup>that is notified to the tribunal] —
- (a) if the [<sup>F283</sup>tribunal is] satisfied that the change is made for commercial reasons, [<sup>F284</sup>the tribunal] may set aside the notice, and
  - (b) if [<sup>F285</sup>the tribunal is] not satisfied that the change is made for commercial reasons, [<sup>F286</sup>the tribunal may] confirm the notice.
- (6) For the purposes of this section obtaining a tax advantage is not a commercial reason.
- (7) Part 5 of TMA 1970 (appeals against assessments to tax), apart from section 50, applies in relation to an appeal under this section as it applies in relation to an appeal against an assessment to tax.

#### Textual Amendments

- F280** Words in s. 218(1)(2) substituted (18.4.2005) by Commissioners for Revenue and Customs Act 2005 ss. 50, 53(1), {Sch. 4 para. 133(2)(a)}; [S.I. 2005/1126, art. 2\(h\)](#)
- F281** Words in s. 218(3)(a) substituted (18.4.2005) by Commissioners for Revenue and Customs Act 2005 ss. 50, 53(1), {Sch. 4 para. 133(2)(b)}; [S.I. 2005/1126, art. 2\(h\)](#)
- F282** Words in s. 218(5) inserted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), [Sch. 1 para. 440\(2\)\(a\)](#)
- F283** Words in s. 218(5)(a) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), [Sch. 1 para. 440\(2\)\(b\)\(i\)](#)
- F284** Words in s. 218(5)(a) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), [Sch. 1 para. 440\(2\)\(b\)\(ii\)](#)
- F285** Words in s. 218(5)(b) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), [Sch. 1 para. 440\(2\)\(c\)\(i\)](#)
- F286** Words in s. 218(5)(b) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), [Sch. 1 para. 440\(2\)\(c\)\(ii\)](#)

## 219 The year after an ineffective change of accounting date

- (1) This section applies to a tax year in which a person carries on a trade if—
- (a) the tax year falls immediately after a tax year in which a change of accounting date occurs, and
  - (b) the basis period for the tax year in which the change occurs ends with the old accounting date.
- (2) If the accounting date in the tax year is the new accounting date, a change of accounting date is treated as occurring in that tax year for the purposes of sections 216 to 220 (including this section).
- (3) If the accounting date in the tax year reverts to the old accounting date, that change of accounting date is ignored for the purposes of—
- (a) section 214, and



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(b) sections 216 to 220 (including this section).

## **220 Deduction for overlap profit on change of accounting date**

(1) This section applies for the purpose of calculating the profits of a trade of a tax year if—

- (a) a change of accounting date occurs in the tax year, and
- (b) the basis period for the tax year is longer than 12 months.

(2) A deduction must be made for overlap profit.

(3) The amount of the deduction is calculated as follows.

### *Step 1*

Add together the overlap profit arising in all overlap periods ending before the end of the tax year.

### *Step 2*

Subtract from that any deductions made under this section for previous tax years.

The balance is “the remaining overlap profit”.

### *Step 3*

Add together the number of days in all overlap periods ending before the end of the tax year.

Subtract from that the total number of days given by Step 5 on any previous occasions on which a deduction was made under this section.

The balance is “the number of days on which the remaining overlap profit arises”.

### *Step 4*

Divide the remaining overlap profit by the number of days on which the remaining overlap profit arises.

The result of this step is “one day's worth of remaining overlap profit”.

### *Step 5*

Subtract the number of days in the tax year from the number of days in the basis period.

The balance is “the number of days' worth of overlap profit that may be deducted on this occasion”.

### *Step 6*

Multiply one day's worth of remaining overlap profit (see Step 4) by the number of days' worth of overlap profit that may be deducted on this occasion (see Step 5).

The result of this step is the amount of the deduction.

(4) The above steps are expressed in terms of numbers of days in periods, but the person carrying on the trade may use a different way of measuring the length of the periods concerned if—

- (a) it is reasonable to do so, and

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- (b) the way of measuring the length of periods is used consistently for the purposes of the trade.
- (5) If the accounting date in the tax year is 31st March or 1st, 2nd, 3rd or 4th April, the person carrying on the trade may treat the basis period for the tax year as ending on 5th April for the purpose of calculating the amount of the deduction.
- (6) If a period used in calculating the amount of the deduction contains a 29th February and—
  - (a) the accounting date in the tax year is 5th April, or
  - (b) the basis period for the tax year is treated under subsection (5) as ending on 5th April,
 the person carrying on the trade may ignore the 29th February for the purpose of calculating the amount of the deduction.

## CHAPTER 16

### AVERAGING PROFITS OF FARMERS AND CREATIVE ARTISTS

#### 221 Claim for averaging of fluctuating profits

- (1) This Chapter enables an individual (a “taxpayer”) to make a claim (an “averaging claim”) if—
  - (a) the taxpayer is, or has been, carrying on a qualifying trade, profession or vocation (alone or in partnership), and
  - (b) the taxpayer's profits from it (“the relevant profits”) fluctuate from one tax year to the next.
- (2) [<sup>F287</sup>For the purposes of section 222 (two-year averaging)] a trade, profession or vocation is a “qualifying trade, profession or vocation” if—
  - (a) it is farming or market gardening in the United Kingdom,
  - (b) it is the intensive rearing in the United Kingdom of livestock or fish on a commercial basis for the production of food for human consumption, or
  - (c) the taxpayer's profits from it are derived wholly or mainly from creative works.
- [<sup>F288</sup>(2A) For the purposes of section 222A (five-year averaging), a trade, profession or vocation is a “qualifying trade, profession or vocation” if it falls within subsection (2)(a) or (b).]
- (3) For [<sup>F289</sup>the purpose of subsection (2)] “creative works” means—
  - (a) literary, dramatic, musical or artistic works, or
  - (b) designs,
 created by the taxpayer personally or, if the qualifying trade, profession or vocation is carried on in partnership, by one or more of the partners personally.
- (4) For the purposes of this Chapter references to the relevant profits of a tax year are to profits before making any deduction for a loss made in any tax year.
- (5) If the taxpayer makes a loss in the qualifying trade, profession or vocation in a tax year, the relevant profits of the tax year for the purposes of this Chapter are nil.

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[<sup>F290</sup>(6) For the purposes of this Chapter references to the relevant profits of a tax year are to profits after any adjustment made under Chapter 16ZA (compensation for compulsory slaughter of animals).]

#### Textual Amendments

- F287** Words in s. 221(2) inserted (with effect in accordance with s. 25(12) of the amending Act) by [Finance Act 2016 \(c. 24\), s. 25\(2\)\(a\)](#)
- F288** S. 221(2A) inserted (with effect in accordance with s. 25(12) of the amending Act) by [Finance Act 2016 \(c. 24\), s. 25\(2\)\(b\)](#)
- F289** Words in s. 221(3) substituted (with effect in accordance with s. 25(12) of the amending Act) by [Finance Act 2016 \(c. 24\), s. 25\(2\)\(c\)](#)
- F290** S. 221(6) inserted (1.3.2012) by [The Enactment of Extra-Statutory Concessions Order 2012 \(S.I. 2012/266\), arts. 1, 7 \(with art. 9\)](#)

#### [<sup>F291</sup>221A] **Claim not available where cash basis used**

Nothing in this Chapter applies in calculating the profits of a trade on the cash basis.]

#### Textual Amendments

- F291** S. 221A inserted (with effect in accordance with Sch. 4 paras. 56, 57 of the amending Act) by [Finance Act 2013 \(c. 29\), Sch. 4 para. 32](#)

#### **222 Circumstances in which claim [<sup>F292</sup>for two-year averaging] may be made**

- (1) An averaging claim may be made [<sup>F293</sup>under this section] in relation to two consecutive tax years in which a taxpayer is or has been carrying on the qualifying trade, profession or vocation if—
- the relevant profits of one of the tax years are less than 75% of the relevant profits of the other tax year, or
  - the relevant profits of one (but not both) of the tax years are nil.

[<sup>F294</sup>(2) The earlier of the two years to which an averaging claim under this section relates may be a tax year in relation to which an averaging claim under this section or section 222A has already been made.]

- (3) An averaging claim may not be made [<sup>F295</sup>under this section] in relation to a tax year if an averaging claim has already been made [<sup>F296</sup>under this section or section 222A] in relation to a later tax year in respect of the trade, profession or vocation.
- (4) An averaging claim may not be made [<sup>F297</sup>under this section] in relation to the tax year in which—
- the taxpayer starts, or permanently ceases, to carry on the trade, profession or vocation, or
  - in the case of a trade, profession or vocation within section 221(2)(c), it begins or ceases to be a qualifying trade, profession or vocation.
- (5) An averaging claim [<sup>F298</sup>under this section] must be made on or before the first anniversary of the normal self-assessment filing date for the second of the tax years to which the claim relates.

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(6) But see section 225(4) (extended time limit if profits adjusted for some other reason).

#### **Textual Amendments**

- F292** Words in s. 222 heading inserted (with effect in accordance with s. 25(12) of the amending Act) by Finance Act 2016 (c. 24), s. 25(4)(a)
- F293** Words in s. 222(1) inserted (with effect in accordance with s. 25(12) of the amending Act) by Finance Act 2016 (c. 24), s. 25(4)(b)
- F294** S. 222(2) substituted (with effect in accordance with s. 25(12) of the amending Act) by Finance Act 2016 (c. 24), s. 25(4)(c)
- F295** Words in s. 222(3) inserted (with effect in accordance with s. 25(12) of the amending Act) by Finance Act 2016 (c. 24), s. 25(4)(d)(i)
- F296** Words in s. 222(3) inserted (with effect in accordance with s. 25(12) of the amending Act) by Finance Act 2016 (c. 24), s. 25(4)(d)(ii)
- F297** Words in s. 222(4) inserted (with effect in accordance with s. 25(12) of the amending Act) by Finance Act 2016 (c. 24), s. 25(4)(e)
- F298** Words in s. 222(5) inserted (with effect in accordance with s. 25(12) of the amending Act) by Finance Act 2016 (c. 24), s. 25(4)(f)

#### **[<sup>F299</sup>222A] Circumstances in which claim for five-year averaging may be made**

- (1) An averaging claim may be made under this section in relation to five consecutive tax years in which a taxpayer is or has been carrying on the qualifying trade, profession or vocation if the volatility condition in subsection (2) is met.
- (2) The volatility condition is that—
  - (a) one of the following is less than 75% of the other—
    - (i) the average of the relevant profits of the first four tax years to which the claim relates;
    - (ii) the relevant profits of the last of the tax years to which the claim relates; or
  - (b) the relevant profits of one or more (but not all) of the five tax years to which the claim relates are nil.
- (3) Any of the first four tax years to which an averaging claim under this section relates may be a tax year in relation to which an averaging claim under this section or section 222 has already been made.
- (4) An averaging claim (“the subsequent claim”) may not be made under this section if an averaging claim in respect of the trade, profession or vocation has already been made under this section or section 222 in relation to a tax year which is later than the last of the tax years to which the subsequent claim relates.
- (5) An averaging claim may not be made under this section in relation to the tax year in which the taxpayer starts, or permanently ceases, to carry on the trade, profession or vocation.
- (6) An averaging claim under this section must be made on or before the first anniversary of the normal self-assessment filing date for the last of the tax years to which the claim relates.
- (7) But see section 225(4) (extended time limit if profits adjusted for some other reason).]

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*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Part 2. (See end of Document for details)*

### Textual Amendments

**F299** S. 222A inserted (with effect in accordance with s. 25(12) of the amending Act) by [Finance Act 2016 \(c. 24\), s. 25\(3\)](#)

## 223 Adjustment of profits

- (1) If a taxpayer makes an averaging claim, the amount taken to be the taxpayer's profits of each of the tax years for which the claim is made is adjusted in accordance with this section.
- (2) But this is subject to paragraph 3 of Schedule 1B to TMA 1970 (claim given effect in the <sup>F300</sup>last of the two or five tax years)].
- <sup>F301</sup>(3) The amount of the adjusted profits of each of the tax years to which the claim relates is the average of the relevant profits of those tax years.]
- <sup>F302</sup>(4) . . . . .

### Textual Amendments

- F300** Words in s. 223(2) substituted (with effect in accordance with s. 25(12) of the amending Act) by [Finance Act 2016 \(c. 24\), s. 25\(5\)\(a\)](#)
- F301** S. 223(3) substituted (with effect in accordance with s. 25(12) of the amending Act) by [Finance Act 2016 \(c. 24\), s. 25\(5\)\(b\)](#)
- F302** S. 223(4) omitted (with effect in accordance with s. 25(12) of the amending Act) by virtue of [Finance Act 2016 \(c. 24\), s. 25\(5\)\(c\)](#)

## 224 Effect of adjustment

- (1) The adjusted profits are taken to be the relevant profits of the tax years to which the claim relates for all income tax purposes, including the further application of this Chapter.
- (2) This is subject to—
  - (a) subsection (3) of this section and section 225(2), and
  - (b) paragraph 3 of Schedule 1B to TMA 1970.
- (3) If the relevant profits of one of the tax years are nil, this Chapter does not prevent the taxpayer from obtaining relief under the Income Tax Acts for a loss made by the taxpayer in the tax year in question or any other tax year.
- (4) A claim by the taxpayer for relief under any other provision of the Income Tax Acts for <sup>F303</sup>any] of the tax years to which an averaging claim relates (“the other claim”)—
  - (a) is not out of time if made on or before the last date on which the averaging claim could have been made, and
  - (b) if already made, may be amended or revoked on or before that date.
- (5) For this purpose—
  - (a) references to a claim include an election or notice, and

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- (b) if the other claim is made in a return, the reference to amending or revoking the other claim is to amending the return by amending or omitting the other claim.
- (6) For provision determining in which tax year a claim, amendment or revocation made as a result of subsection (4) has effect, see paragraph 4 of Schedule 1B to TMA 1970 (claim, amendment or revocation given effect in the [<sup>F304</sup>last of the two or five tax years]).

#### Textual Amendments

**F303** Word in s. 224(4) substituted (with effect in accordance with s. 25(12) of the amending Act) by [Finance Act 2016 \(c. 24\), s. 25\(6\)\(a\)](#)

**F304** Words in s. 224(6) substituted (with effect in accordance with s. 25(12) of the amending Act) by [Finance Act 2016 \(c. 24\), s. 25\(6\)\(b\)](#)

## 225 Effect of later adjustment of profits

- (1) This section applies if, after the taxpayer has made an averaging claim, the relevant profits in [<sup>F305</sup>any one or more] of the tax years to which the claim relates are adjusted for another reason.
- (2) The averaging claim is ignored.
- (3) But this does not prevent a further averaging claim from being made in relation to the taxpayer's profits as adjusted for the other reason.
- (4) A further averaging claim is not out of time as long as it is made on or before the first anniversary of the normal self-assessment filing date for the tax year in which the adjustment for the other reason is made.

#### Textual Amendments

**F305** Words in s. 225(1) substituted (with effect in accordance with s. 25(12) of the amending Act) by [Finance Act 2016 \(c. 24\), s. 25\(7\)](#)

## [<sup>F306</sup>CHAPTER 16ZA

### COMPENSATION FOR COMPULSORY SLAUGHTER OF ANIMALS

#### Textual Amendments

**F306** Pt. 2 Ch. 16ZA inserted (1.3.2012) by [The Enactment of Extra-Statutory Concessions Order 2012 \(S.I. 2012/266\), arts. 1, 6 \(with art. 9\)](#)

## 225ZA Application of Chapter 16ZA

- (1) This Chapter applies if—
- (a) an animal treated as trading stock of a farming trade is slaughtered under a disease control order,

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- (b) the animal is not part of a production herd of a class in respect of which a herd basis election may be made under section 126, and
  - (c) the farmer receives or will receive compensation for the animal.
- (2) Such an animal is referred to in this Chapter as a “relevant animal”.
- (3) “Disease control order” has the same meaning as in section 126.

### **Chapter not to apply where cash basis used**

**F307 225ZAA** Nothing in this Chapter applies in calculating the profits of a trade on the cash basis.]

#### **Textual Amendments**

**F307** S. 225ZAA inserted (with effect in accordance with Sch. 4 paras. 56, 57 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 4 para. 33](#)

### **225ZB Right to make claim**

- (1) The farmer may make a claim under this section.
- (2) A claim may only be made in respect of the total compensation profit for a period of account.
- (3) The total compensation profit for a period of account is the sum of the profits which the farmer makes for all the relevant animals slaughtered in that period.
- (4) For the purposes of this Chapter the profit which the farmer makes for a relevant animal is—
  - (a) the amount by which the compensation for the animal exceeds its book value, or
  - (b) if the trade is carried on in partnership, the farmer’s share of that amount, determined in accordance with Part 9.
- (5) Nothing in this section prevents a claim being made before the amount of the compensation has been finally determined.

### **225ZC Book value**

- (1) For the purposes of this Chapter the book value of an animal is the value shown in the accounts as the value of the animal at the start of the period of account in which it was slaughtered.
- (2) If, for an animal, no value is shown in the accounts as that value, the book value is as follows—
  - (a) in the case of an animal which was born in the period of account in which it was slaughtered and did not become part of the trading stock in any other way, the book value is 75% of the compensation payable for it,
  - (b) in the case of an animal in relation to which section 172C (trading stock supplied by trader) or 172E (acquisitions not made in the course of trade) applies, the book value is the cost treated as incurred under section 172C(2) or 172E(2) as the case may be, and

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- (c) in any other case, the book value is the cost of acquiring the animal for the purposes of the trade.

### **225ZD Effect of claim for spreading profits**

- (1) If the farmer makes a claim under section 225ZB in respect of the total compensation profit for a period of account (“period X”), the profits of the trade carried on by the farmer are to be adjusted for income tax purposes as follows—

*Step 1*

Treat the compensation payable for all of the relevant animals slaughtered in period X as a receipt of that period (regardless of when the compensation is finally determined or paid).

*Step 2*

If the farmer makes a profit in the trade in Year 1, deduct from the profits of Year 1 an amount equal to—

- (a) the total compensation profit for period X, or  
 (b) if the total compensation profit exceeds the profits of Year 1, such portion of the total compensation profit as will reduce the profits to nil.

“Year 1” is—

- (a) the tax year whose basis period includes the whole or a part of period X, or  
 (b) if there is more than one, the earliest of those tax years.

*Step 3*

If—

- (a) there is more than one tax year whose basis period includes the whole or a part of period X,  
 (b) either—  
     (i) the farmer did not make a profit in the trade in Year 1, or  
     (ii) by virtue of step 2, a portion only of the total compensation profit for period X is deducted from the profits of Year 1, and  
 (c) the farmer makes a profit in the trade in the next tax year (“Year 2”),  
 deduct from the profits of Year 2 the applicable amount.

In a case where the farmer did not make a profit in Year 1, “the applicable amount” is—

- (a) the total compensation profit for period X, or  
 (b) if the total compensation profit exceeds the profits of Year 2, such portion of the total compensation profit as will reduce the profits to nil.

In a case where a portion only of the total compensation profit for period X is deducted from the profits of Year 1, “the applicable amount” is—

- (a) an amount equal to the difference between the total compensation profit for period X and the portion so deducted, or  
 (b) if that amount exceeds the profits of Year 2, such portion of that amount as will reduce the profits to nil.

No further deduction is to be made in respect of the total compensation profit for period X from the profits of any later tax year whose basis period includes a part of that period.



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#### *Step 4*

Include in the profits of each of the 3 consecutive tax years following Year 1 an amount equal to one third of the total amount deducted by virtue of steps 2 and 3.

- (2) Nothing in this section affects the calculation of overlap profit (within the meaning of Chapter 15 of this Part).

### **225ZE Adjustment: cessation of trading**

If the farmer permanently ceases to carry on the farming trade before the end of the second of the 3 consecutive tax years following Year 1, step 4 in section 225ZD(1) is to be replaced by the following two steps—

#### *Step 4*

Divide the total amount deducted by virtue of steps 2 and 3 by the number of tax years (“the remaining tax years”) in which, or in any part of which, the farmer carried on the farming trade, starting with Year 1.

#### *Step 5*

Include in the profits of each of the remaining tax years the amount resulting from the division in step 4.

### **225ZF Time limits etc for spreading claim**

- (1) A claim under section 225ZB must be made on or before the first anniversary of the normal self-assessment filing date for Year 1.
- (2) If the profits of a tax year are to be adjusted or further adjusted in accordance with this Chapter after an assessment for that tax year has become final and conclusive, any assessment or repayment or discharge of tax that is necessary to give effect to this Chapter must be made.
- (3) But repayment or discharge of tax is due only if a claim for it is made.

### **225ZG Interpretation**

In this Chapter—

“animal” means any animal or other living creature;

“farming trade” means a trade of farming;

“the farmer”, in relation to a farming trade, means the individual who (alone or in partnership) carries on that trade;

“total compensation profit” has the meaning given by section 225ZB.]

## **[<sup>F308</sup>CHAPTER 16A**

### **OIL ACTIVITIES**

#### **Textual Amendments**

**F308** Pt. 2 Ch. 16A inserted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 1 para. 2](#) (with Sch. 9 paras. 1-9, 22)

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*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Part 2. (See end of Document for details)*

## *F<sup>309</sup> Application of Chapter*

### **Textual Amendments**

**F309** S. 225ZH and cross-heading inserted (with effect in accordance with Sch. 4 paras. 56, 57 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 4 para. 34](#)

## **225ZH Chapter not to apply where cash basis used**

Nothing in this Chapter applies in calculating the profits of a trade on the cash basis.]

### *Basic definitions*

## **225A Meaning of “oil extraction activities”**

- (1) In this Chapter “oil extraction activities” means activities within any of subsections (2) to (5) (but see also section 225M(6)).
- (2) Activities of a person in searching for oil in the United Kingdom or a designated area or causing such searching to be carried out for that person.
- (3) Activities of a person in extracting, or causing to be extracted for that person, oil at any place in the United Kingdom or a designated area under rights which—
  - (a) authorise the extraction, and
  - (b) are held by that person.
- (4) Activities of a person in transporting, or causing to be transported for that person, oil extracted at any such place not on dry land under rights which—
  - (a) authorise the extraction, and
  - (b) are held by that person,
 if the transportation meets condition A or B (see subsections (6) and (7)).
- (5) Activities of a person in effecting, or causing to be effected for that person, the initial treatment or initial storage of oil won from any oil field under rights which—
  - (a) authorise its extraction, and
  - (b) are held by that person.
- (6) Condition A is that the transportation is to the place where the oil is first landed in the United Kingdom.
- (7) Condition B is that the transportation—
  - (a) is to the place in the United Kingdom, or
  - (b) in the case of oil first landed in another country, is to the place in that or any other country (other than the United Kingdom),
 at which the seller in a sale at arm's length could reasonably be expected to deliver it (or, if there is more than one such place, the one nearest to the place of extraction).
- (8) The definition of “initial storage” in section 12(1) of OTA 1975 applies for the purposes of this section.
- (9) But in its application for those purposes in relation to the person mentioned in subsection (5) and to oil won from any one oil field, that definition is to have effect

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as if the reference to the maximum daily production rate of oil for the field mentioned in that definition were to a share of that maximum daily production rate proportionate to that person's share of the oil won from that field.

- (10) In this section “initial treatment” has the same meaning as in Part 1 of OTA 1975 (see section 12(1) of that Act).

### **225B Meaning of “oil rights”**

In this Chapter “oil rights” means—

- (a) rights to oil to be extracted at any place in the United Kingdom or a designated area, or
- (b) rights to interests in or to the benefit of such oil.

### **225C Meaning of “ring fence income”**

In this Chapter “ring fence income” means income arising from oil extraction activities or oil rights.

### **225D Meaning of “ring fence trade”**

In this Chapter “ring fence trade” means activities which—

- (a) are within the definition of “oil-related activities” in section 16(2) (oil extraction and related activities), and
- (b) constitute a separate trade (whether because of section 16(1) or otherwise).

### **225E Other definitions**

In this Chapter—

“chargeable period” has the same meaning as in Part 1 of OTA 1975 (see section 1(3) of that Act),

“designated area” means an area designated by Order in Council under section 1(7) of the Continental Shelf Act 1964,

“oil” means any substance won or capable of being won under the authority of a licence granted under Part 1 of the Petroleum Act 1998 or the Petroleum (Production) Act (Northern Ireland) 1964 (c. 28 (N.I.)), other than methane gas won in the course of operations for making and keeping mines safe,

“oil field” has the same meaning as in Part 1 of OTA 1975 (see section 12(1) of that Act),

“OTA 1975” means the Oil Taxation Act 1975, and

“participator” has the same meaning as in Part 1 of OTA 1975 (see section 12(1) of that Act).

## *Oil valuation*

### **225F Valuation where market value taken into account under section 2 of OTA 1975**

- (1) This section applies if a person disposes of oil in circumstances such that the market value of the oil—

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- (a) falls to be taken into account under section 2 of OTA 1975, otherwise than by virtue of paragraph 6 of Schedule 3 to that Act, in calculating for petroleum revenue tax purposes the assessable profit or allowable loss accruing to that person in a chargeable period from an oil field, or
  - (b) would so fall but for section 10 of that Act.
- (2) For income tax purposes, the disposal of the oil, and its acquisition by the person to whom it was disposed of, are to be treated as having been for a consideration equal to the market value of the oil—
- (a) as so taken into account under section 2 of that Act, or
  - (b) as would have been so taken into account under that section but for section 10 of that Act.

### **225G Valuation where disposal not sale at arm's length**

- (1) This section applies if conditions A, B and C are met.
- (2) Condition A is that a person disposes of oil acquired by the person—
  - (a) in the course of oil extraction activities carried on by the person, or
  - (b) as a result of oil rights held by the person.
- (3) Condition B is that the disposal is not a sale at arm's length (as defined in paragraph 1 of Schedule 3 to OTA 1975).
- (4) Condition C is that section 225F does not apply in relation to the disposal.
- (5) For income tax purposes, the disposal of the oil, and its acquisition by the person to whom it was disposed of, are to be treated as having been for a consideration equal to the market value of the oil.
- (6) Paragraphs 2 and 3A of Schedule 3 to OTA 1975 (definition of market value of oil including light gases) apply for the purposes of this section as they apply for the purposes of Part 1 of that Act, but with the following modifications.
- (7) Those modifications are that—
  - (a) any reference in paragraph 2 to the notional delivery day for the actual oil is to be read as a reference to the day on which the oil is disposed of as mentioned in this section, and
  - (b) paragraph 2(4) is to be treated as omitted.

### **225H Valuation where excess of nominated proceeds**

- (1) This section applies if an excess of nominated proceeds for a chargeable period—
  - (a) is taken into account in calculating a person's profits under section 2(5)(e) of OTA 1975, or
  - (b) would have been so taken into account if the person were chargeable to tax under OTA 1975 in respect of an oil field.
- (2) For income tax purposes, the amount of the excess is to be added to the consideration which the person is treated as having received in respect of oil disposed of by that person in the period.

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## **225I Valuation where relevant appropriation but no disposal**

- (1) This section applies if conditions A and B are met.
- (2) Condition A is that a person makes a relevant appropriation of oil without disposing of it.
- (3) Condition B is that the person does so in circumstances such that the market value of the oil—
  - (a) falls to be taken into account under section 2 of OTA 1975 in calculating for petroleum revenue tax purposes the assessable profit or allowable loss accruing to that person in a chargeable period from an oil field, or
  - (b) would so fall but for section 10 of that Act.
- (4) For income tax purposes, the person is to be treated as having, at the time of the appropriation—
  - (a) sold the oil in the course of the separate trade consisting of activities falling within the definition of “oil-related activities” in section 16(2) (oil extraction and related activities), and
  - (b) purchased it in the course of the separate trade consisting of activities not so falling.
- (5) For income tax purposes, that sale and purchase is to be treated as having been at a price equal to the market value of the oil—
  - (a) as so taken into account under section 2 of OTA 1975, or
  - (b) as would have been so taken into account under that section but for section 10 of that Act.
- (6) In this section “relevant appropriation” has the meaning given by section 12(1) of OTA 1975.

## **225J Valuation where appropriation to refining etc**

- (1) This section applies if conditions A, B and C are met.
- (2) Condition A is that a person appropriates oil acquired by the person—
  - (a) in the course of oil extraction activities carried on by the person, or
  - (b) as a result of oil rights held by the person.
- (3) Condition B is that the oil is appropriated to refining or to any use except the production purposes of an oil field (as defined in section 12(1) of OTA 1975).
- (4) Condition C is that section 225I does not apply in relation to the appropriation.
- (5) For income tax purposes—
  - (a) the person is to be treated as having, at the time of the appropriation, sold and purchased the oil as mentioned in section 225I(4)(a) and (b), and
  - (b) that sale and purchase is to be treated as having been at a price equal to the market value of the oil.
- (6) Paragraphs 2 and 3A of Schedule 3 to OTA 1975 (definition of market value of oil including light gases) apply for the purposes of this section as they apply for the purposes of Part 1 of that Act, but with the following modifications.
- (7) Those modifications are that—

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- (a) any reference in paragraph 2 to the notional delivery day for the actual oil is to be read as a reference to the day on which the oil is appropriated as mentioned in this section,
- (b) any reference in paragraphs 2 and 2A to oil being relevantly appropriated is to be read as a reference to its being appropriated as mentioned in this section, and
- (c) paragraph 2(4) is to be treated as omitted.

### *Regional development grants*

#### **225K Reduction of expenditure by reference to regional development grant**

- (1) This section applies if conditions A and B are met.
- (2) Condition A is that a person has incurred expenditure (by way of purchase, rent or otherwise) on the acquisition of an asset in a transaction to which paragraph 2 of Schedule 4 to OTA 1975 applies (transactions between connected persons or otherwise than at arm's length).
- (3) Condition B is that the expenditure incurred by the other person mentioned in that paragraph in acquiring, bringing into existence or enhancing the value of the asset as mentioned in that paragraph—
  - (a) has been or is to be met by a regional development grant, and
  - (b) falls (in whole or in part) to be taken into account under Part 2 or 6 of CAA 2001 (capital allowances relating to plant and machinery or research and development).
- (4) Subsection (5) applies for the purposes of the charge to income tax on the income arising from the activities of the person mentioned in subsection (2) which are treated by section 16(1) (oil extraction and related activities) as a separate trade for those purposes.
- (5) The expenditure mentioned in subsection (2) is to be reduced by the amount of the regional development grant mentioned in subsection (3).
- (6) In this section “regional development grant” means a grant falling within section 534(1) of CAA 2001 (Northern Ireland regional development grant).

#### **Modifications etc. (not altering text)**

- C13** S. 225K(3)(b) modified (1.4.2010) (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 9 para. 35\(a\)](#) (with Sch. 9 paras. 1-9, 22))

#### **225L Adjustment as a result of regional development grant**

- (1) This section applies if conditions A, B and C are met.
- (2) Condition A is that expenditure incurred by a person in relation to an asset in a tax year (“the initial period”) has been or is to be met by a regional development grant.
- (3) Condition B is that, despite the provisions of section 534(2) and (3) of CAA 2001 (Northern Ireland regional development grants) and section 225K of this Act, in

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determining that person's liability to income tax for the initial period, the whole or some part of that expenditure falls to be taken into account under Part 2 or 6 of CAA 2001.

- (4) Condition C is that—
- (a) expenditure on the asset becomes allowable under section 3 or 4 of OTA 1975 in a tax year (an “adjustment period”) subsequent to the initial period, or
  - (b) the proportion of any such expenditure which is allowable in an adjustment period is different as compared with the initial period.
- (5) There is to be redetermined for the purposes of subsections (7) and (8) the amount of the expenditure mentioned in subsection (2) which would have been taken into account as mentioned in subsection (3) if the circumstances mentioned in subsection (4) had existed in the initial period.
- (6) According to whether the amount as so redetermined is greater or less than the amount actually taken into account as mentioned in subsection (3), the difference is referred to in subsections (7) and (8) as the increase or the reduction in the allowance.
- (7) If there is an increase in the allowance, an amount of capital expenditure equal to the increase is to be treated, for the purposes of Part 2 or 6 of CAA 2001, as having been incurred by the person concerned in the adjustment period on an extension of, or addition to, the asset mentioned in subsection (2).
- (8) If there is a reduction in the allowance, the person concerned is to be treated, for the purpose of determining that person's liability to income tax, as having received in the adjustment period, as income of the trade in connection with which the expenditure mentioned in subsection (2) was incurred, a sum equal to the amount of the reduction in the allowance.
- (9) In this section “regional development grant” has the meaning given by section 225K(6).

**Modifications etc. (not altering text)**

- C14** S. 225L(3) modified (1.4.2010) (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 9 para. 35\(b\)](#) (with [Sch. 9 paras. 1-9, 22](#))
- C15** S. 225L(7) modified (1.4.2010) (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 9 para. 35\(b\)](#) (with [Sch. 9 paras. 1-9, 22](#))

*Tariff receipts etc*

**225M Tariff receipts etc**

- (1) Subsection (5) applies to a sum which meets conditions A, B and C.
- (2) Condition A is that the sum constitutes a tariff receipt or tax-exempt tariffing receipt of a person who is a participator in an oil field.
- (3) Condition B is that the sum constitutes consideration in the nature of income rather than capital.

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- (4) Condition C is that the sum would not, but for subsection (5), be treated as mentioned in that subsection.
- (5) The sum is to be treated as a receipt of the separate trade mentioned in section 16(1) (oil extraction and related activities).
- (6) So far as they would not otherwise be so treated, the activities—
  - (a) of a participator in an oil field, or
  - (b) of a person connected with the participator,
 in making available an asset in a way which gives rise to tariff receipts or tax-exempt tariffing receipts of the participator are to be treated for the purposes of this Chapter as oil extraction activities.
- (7) In determining for the purposes of subsection (2) whether a sum constitutes a tariff receipt or tax-exempt tariffing receipt of a person who is a participator, no account may be taken of any sum which—
  - (a) is in fact received or receivable by a person connected with the participator, and
  - (b) constitutes a tariff receipt or tax-exempt tariffing receipt of the participator.
 But in relation to the person by whom such a sum is actually received, subsection (2) has effect as if the person were a participator and as if condition A were met.
- (8) References in this section to a person connected with a participator include a person with whom the person is associated, within the meaning of paragraph 11 of Schedule 2 to the Oil Taxation Act 1983, but section 878(5) of this Act (application of definition of “connected” persons) does not apply for the purposes of this section.
- (9) In this section—
  - “tax-exempt tariffing receipt” has the meaning given by section 6A(2) of the Oil Taxation Act 1983, and
  - “tariff receipt” has the same meaning as in that Act.

*Abandonment guarantees*

**225N [F310 Expenditure on abandonment guarantees]**

- (1) Subsection (2) applies if, as a result of section 3(1)(hh) of OTA 1975 (obtaining abandonment guarantee), expenditure incurred by a participator in an oil field is allowable (in whole or in part) for petroleum revenue tax purposes under section 3 of that Act.
  - [ Subsection (2) also applies if expenditure incurred by a participator in an oil field <sup>F311</sup>(1A) would be so allowable as a result of section 3(1)(hh) of that Act but for the fact that the oil field is a non-taxable oil field within the meaning of Part 3 of FA 1993 (see section 185 of that Act).]
- (2) So far as [<sup>F312</sup>the expenditure mentioned in subsection (1) or (1A) is or would be so allowable], it is to be allowed as a deduction in calculating the participator's ring fence income.
- <sup>F313</sup>(3) .....
- <sup>F313</sup>(4) .....



*Status: Point in time view as at 15/09/2016.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Part 2. (See end of Document for details)*

<sup>F314</sup>(5) .....

(6) In this Chapter—

“abandonment guarantee” has the same meaning as it has for the purposes of [<sup>F315</sup>section 3 of OTA 1975] (see section 104 of [<sup>F316</sup>FA 1991]), and “the guarantor” and “the relevant participator” have the same meaning as in section 104 of that Act.

**Textual Amendments**

- F310** S. 225N heading substituted (with effect in accordance with Sch. 31 para. 23 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), **Sch. 31 para. 14(4)**
- F311** S. 225N(1A) inserted (with effect in accordance with Sch. 31 para. 23 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), **Sch. 31 para. 1(2)(a)**
- F312** Words in s. 225N(2) substituted (with effect in accordance with Sch. 31 para. 23 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), **Sch. 31 para. 1(2)(b)**
- F313** S. 225N(3)(4) omitted (with effect in accordance with Sch. 31 para. 23 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), **Sch. 31 para. 6(2)**
- F314** S. 225N(5) omitted (with effect in accordance with Sch. 31 para. 23 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), **Sch. 31 para. 14(2)**
- F315** Words in s. 225N(6) substituted (with effect in accordance with Sch. 31 para. 23 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), **Sch. 31 para. 14(3)(a)**
- F316** Words in s. 225N(6) substituted (with effect in accordance with Sch. 31 para. 23 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), **Sch. 31 para. 14(3)(b)**

<sup>F317</sup>**225O Relief for reimbursement expenditure under abandonment guarantees**

.....

**Textual Amendments**

- F317** S. 225O omitted (with effect in accordance with Sch. 31 para. 23 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), **Sch. 31 para. 6(3)**

<sup>F318</sup>**225P Payment under abandonment guarantee not immediately applied**

.....

**Textual Amendments**

- F318** Ss. 225P, 225Q omitted (with effect in accordance with Sch. 31 para. 23 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), **Sch. 31 para. 15**

<sup>F318</sup>**225Q Amounts excluded from section 225O(1)**

.....

*Status: Point in time view as at 15/09/2016.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Part 2. (See end of Document for details)*

### Textual Amendments

**F318** Ss. 225P, 225Q omitted (with effect in accordance with Sch. 31 para. 23 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 31 para. 15](#)

### *Abandonment expenditure*

#### **225R** [<sup>F319</sup>**Introduction to section 225S**]

- (1) [<sup>F320</sup>Section 225S applies] if—
- paragraph 2A of Schedule 5 to OTA 1975 applies <sup>F321</sup>..., and
  - the default payment falls (in whole or part) to be attributed to the contributing participator under paragraph 2A(2) of that Schedule [<sup>F322</sup>, or would fall to be so attributed if a claim under paragraph 2A(2) of that Schedule were made ].

[ The condition in subsection (1)(b) is to be treated as met for the purposes of this <sup>F323</sup>(1A) section if it would be met but for the fact that the contributing participator is (or was) a participator in an oil field that is a non-taxable oil field within the meaning of Part 3 of FA 1993 (see section 185 of that Act).]

- In section 225S “the additional abandonment expenditure” means the amount which is [<sup>F324</sup>or would be] attributed to the contributing participator as mentioned in subsection (1)(b) (whether representing the whole or only part of the default payment).
- In this Chapter “default payment”, “the defaulter” and “contributing participator” have the same meaning as in paragraph 2A of Schedule 5 to OTA 1975.

### Textual Amendments

**F319** S. 225R heading substituted (with effect in accordance with Sch. 31 para. 23 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 31 para. 16\(b\)](#)

**F320** Words in s. 225R(1) substituted (with effect in accordance with Sch. 31 para. 23 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 31 para. 16\(a\)](#)

**F321** Words in s. 225R(1)(a) omitted (with effect in accordance with Sch. 31 para. 23 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 31 para. 1\(3\)\(a\)](#)

**F322** Words in s. 225R(1)(b) inserted (with effect in accordance with Sch. 31 para. 23 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 31 para. 1\(3\)\(b\)](#)

**F323** S. 225R(1A) inserted (with effect in accordance with Sch. 31 para. 23 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 31 para. 1\(3\)\(c\)](#)

**F324** Words in s. 225R(2) inserted (with effect in accordance with Sch. 31 para. 23 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 31 para. 1\(3\)\(d\)](#)

#### **225S** **Relief for expenditure incurred by a participator in meeting defaulter's abandonment expenditure**

- (1) Relief by way of capital allowance, or a deduction in calculating ring fence income, is to be available to the contributing participator in respect of the additional abandonment expenditure if any such relief or deduction would have been available to the defaulter if—
- the defaulter had incurred the additional abandonment expenditure, and

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- (b) at the time that that expenditure was incurred the defaulter continued to carry on a ring fence trade.
- (2) The basis of qualification for or entitlement to any relief or deduction which is available to the contributing participator under this section is to be determined on the assumption that the conditions in subsection (1)(a) and (b) are met.
- (3) But, subject to subsection (2), any such relief or deduction is to be available in the same way as if the additional abandonment expenditure had been incurred by the contributing participator for the purposes of the ring fence trade carried on by the contributing participator.

<sup>F325</sup>**225T Reimbursement by defaulter in respect of certain abandonment expenditure**

.....

**Textual Amendments**

**F325** S. 225T omitted (with effect in accordance with Sch. 31 para. 23 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 31 para. 9](#)

*Interest on repayment of APRT*

**225U Interest on repayment of APRT**

- (1) Subsection (2) applies if interest is paid to a participator under paragraph 10(4) of Schedule 19 to FA 1982 (interest on advance petroleum revenue tax which becomes repayable).
- (2) The interest paid is to be disregarded in calculating the participator's income for income tax purposes.]

<sup>F326</sup>*Receipts arising from decommissioning*

**Textual Amendments**

**F326** S. 225V and cross-heading inserted (with effect in accordance with Sch. 31 para. 23 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 31 para. 22](#)

**225V Receipts arising from decommissioning**

- (1) This section applies if—
- (a) a person that is or has been carrying on a ring fence trade (“the defaulter”) has defaulted on a liability under—
- (i) a relevant agreement, or
- (ii) an abandonment programme,
- to make a payment towards decommissioning expenditure,
- (b) another person that is or has been carrying on a ring fence trade (“the contributing person”) pays an amount (“the relevant contribution”) in or towards meeting the whole or part of the default, and

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- (c) the amount of the relevant contribution is less than the sum of the amounts within subsection (2).
- (2) The amounts within this subsection are—
- (a) any payments made (directly or indirectly) to the contributing person by the guarantor under an abandonment guarantee as a result of the defaulter defaulting on the liability,
  - (b) any reimbursement payments, and
  - (c) any relief from tax which the contributing person obtains in respect of the relevant contribution.
- (3) The difference between—
- (a) the sum of the amounts within subsection (2), and
  - (b) the relevant contribution,
- (“the relevant difference”) is to be treated as a receipt (in the nature of income) of the contributing person's ring fence trade for the relevant tax year (see subsection (4)).
- (4) “The relevant tax year” means the tax year that includes the day on which the Secretary of State certifies that the relevant abandonment programme has been satisfactorily completed (“the certification date”).
- This is subject to subsection (5).
- (5) If the contributing person's ring fence trade is permanently discontinued before the certification date, “the relevant tax year” is the last tax year in which that trade is carried on.
- (6) The relevant difference is to be determined—
- (a) in a case where subsection (5) applies, at the end of the tax year in which the certification date falls, and
  - (b) in any other case, at the end of the relevant tax year.
- (7) In a case where subsection (5) applies, any income tax chargeable for the relevant tax year by virtue of this section is due and payable for the tax year in which the certification date falls.
- (8) Any additional assessment to income tax required in order to take account of a receipt arising under this section may be made at any time not later than 4 years after the end of the tax year in which the certification date falls.
- (9) In this section—
- “abandonment programme” means an abandonment programme approved under Part 4 of the Petroleum Act 1998 (including such a programme as revised),
- “decommissioning expenditure” has the meaning given by section 330C of CTA 2010,
- “reimbursement payment” means any payment made to the contributing person by the defaulter in reimbursing the contributing person in respect of, or otherwise making good to the contributing person, the whole or any part of the relevant contribution,
- “the relevant abandonment programme” means the abandonment programme in respect of which the decommissioning expenditure mentioned in subsection (1)(a) was incurred, and

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“relevant agreement” has the meaning given by section 104(5)(a) of FA 1991.]

## CHAPTER 17

### ADJUSTMENT INCOME

#### *Introduction*

#### **226 Professions and vocations**

The provisions of this Chapter apply to professions and vocations as they apply to trades.

#### *Adjustment on change of basis*

#### **227 Application of Chapter**

- (1) This Chapter applies if—
  - (a) a person carrying on a trade changes, from one period of account to the next, the basis on which profits of the trade are calculated for income tax purposes,
  - (b) the old basis accorded with the law or practice applicable in relation to the period of account before the change, and
  - (c) the new basis accords with the law and practice applicable in relation to the period of account after the change,but does not apply to income which is charged in accordance with section 832 (relevant foreign income charged on the remittance basis).
- (2) The practice applicable in any case means the accepted practice in cases of that description as to how profits of a trade should be calculated for income tax purposes.
- (3) A person changes the basis on which profits of a trade are calculated for income tax purposes if the person makes—
  - (a) a [<sup>F327</sup> change of accounting policy ] (see subsection (4)), or
  - (b) a change in the tax adjustments applied (see subsections (5) and (6)).
- [<sup>F328</sup>(4) A “change of accounting policy” includes, in particular—
  - (a) a change from using UK generally accepted accounting practice to using generally accepted accounting practice with respect to accounts prepared in accordance with international accounting standards, and
  - (b) a change from using generally accepted accounting practice with respect to accounts prepared in accordance with international accounting standards to using UK generally accepted accounting practice.]
- (5) A “tax adjustment” means any adjustment required or authorised by law in calculating profits of a trade for income tax purposes.
- (6) A “change in the tax adjustments applied”—
  - (a) does not include a change made in order to comply with amending legislation not applicable to the previous period of account, but

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- (b) includes a change resulting from a change of view as to what is required or authorised by law or as to whether any adjustment is so required or authorised.

#### Textual Amendments

**F327** Words in s. 227(3)(a) substituted (with effect in accordance with s. 54(5)(6) of the amending Act) by [Finance Act 2012 \(c. 14\), s. 54\(1\)\(a\)](#)

**F328** S. 227(4) substituted (with effect in accordance with s. 54(5)(6) of the amending Act) by [Finance Act 2012 \(c. 14\), s. 54\(1\)\(b\)](#)

### [<sup>F329</sup>227A] **Application of Chapter where cash basis used**

- (1) This Chapter applies if—
- an election under section 25A (cash basis for small businesses) has effect in relation to a trade for a tax year but no such election has effect in relation to the trade for the following tax year, or
  - no such election has effect in relation to a trade for a tax year but such an election has effect in relation to the trade for the following tax year.
- (2) But this Chapter does not apply to income which is charged in accordance with section 832.]

#### Textual Amendments

**F329** S. 227A inserted (with effect in accordance with Sch. 4 paras. 56, 57 of the amending Act) by [Finance Act 2013 \(c. 29\), Sch. 4 para. 36](#)

### **228 Adjustment income and adjustment expense**

- An amount by way of adjustment must be calculated in accordance with section 231.
- If the amount produced by the calculation is positive, it is treated as income and charged to income tax under this Chapter.  
It is referred to in this Chapter as “adjustment income”.
- If the amount produced by the calculation is negative, a deduction is allowed for it in calculating the profits of the trade.  
It is referred to in this Chapter as an “adjustment expense”.
- This section is subject to section 234 (no adjustment for certain expenses previously brought into account).

### **229 Income charged**

- Tax is charged under this Chapter on the full amount of any adjustment income arising in the tax year.
- This is subject to—
  - [<sup>F330</sup>sections 237 to 239B] (which provide for spreading of adjustment income), and

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(b) Part 8 (foreign income: special rules).

#### Textual Amendments

**F330** Words in s. 229(2)(a) substituted (with effect in accordance with Sch. 4 paras. 56, 57 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 4 para. 52\(2\)](#)

### 230 Person liable

The person liable for any tax charged under this Chapter is the person receiving or entitled to the adjustment income.

### 231 Calculation of the adjustment

The amount of the adjustment is calculated as follows. *Step 1*

Add together any amounts representing the extent to which, comparing the two bases, profits were understated (or losses overstated) on the old basis.

The amounts are—

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#### *Amounts*

- |   |   |
|---|---|
| 1 | Receipts which on the new basis would have been brought into account in calculating the profits of a period of account before the change, so far as they were not so brought into account.  |
| 2 | Expenses which on the new basis fall to be brought into account in calculating the profits of a period of account after the change, so far as they were brought into account in calculating the profits of a period of account before the change.   |
| 3 | Deductions in respect of opening trading stock or opening work in progress in the first period of account on the new basis, so far as they— <ul style="list-style-type: none"> <li>(a) are not matched by credits in respect of closing trading stock or closing work in progress in the last period of account before the change, or</li> <li>(b) are calculated on a different basis that if used to calculate those credits would have given a higher figure.</li> </ul> |
| 4 | Amounts recognised for accounting purposes in respect of depreciation in the last period of account before the change, so far as they were not the subject of   |

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an adjustment for income tax purposes, where such an adjustment would be required on the new basis.

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*Step 2*

Then deduct any amounts representing the extent to which, comparing the two bases, profits were overstated (or losses understated) on the old basis.

The amounts are—

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***Amounts***

- |   |  |
|---|--|
| 1 | Receipts which were brought into account in a period of account before the change, so far as they would not have been so brought into account if the profits had been calculated on the new basis.   |
| 2 | Expenses which were not brought into account in calculating the profits of a period of account before the change, so far as they— <ul style="list-style-type: none"> <li>(a) would have been brought into account for a period of account before the change if the profits had been calculated on the new basis, and</li> <li>(b) would have been brought into account for a period of account after the change if the profits had continued to be calculated on the old basis.</li> </ul> |
| 3 | Credits in respect of closing trading stock or closing work in progress in the last period of account before the change, so far as they— <ul style="list-style-type: none"> <li>(a) are not matched by deductions in respect of opening trading stock or opening work in progress in the first period of account on the new basis, or</li> <li>(b) are calculated on a different basis that if used to calculate those deductions would have given a lower figure.</li> </ul>              |
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An amount so deducted may not be deducted again in calculating the profits of a period of account.



*Status: Point in time view as at 15/09/2016.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Part 2. (See end of Document for details)*

### *Treatment of adjustment income and adjustment expense*

#### **232 Treatment of adjustment income**

- (1) Adjustment income is treated as arising on the last day of the first period of account for which the new basis is adopted.
- (2) But this is subject to sections 235 (cases where adjustment not required until assets realised or written off) and 236 (change from realisation basis to mark to market).
- (3) Adjustment income is treated for the purposes of [F331Part 4 of ITA 2007](loss relief) as profits of the trade for the tax year in which tax is charged on it.
- (4) In the case of an individual whose income from [F332the trade is relevant UK earnings within section 189(2)(b) of FA 2004, adjustment income is similarly relevant UK earnings.]

#### **Textual Amendments**

**F331** Words in s. 232(3) substituted (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\), ss. 1027, 1034, Sch. 1 para. 502\(2\)](#) (with transitional provisions and savings in [Sch. 2](#))

**F332** Words in s. 232(4) substituted (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\), ss. 1027, 1034, Sch. 1 para. 502\(3\)](#) (with transitional provisions and savings in [Sch. 2](#))

#### **Modifications etc. (not altering text)**

**C16** S. 232(1)(2) applied (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\), ss. 524\(5\), 526\(6\), 1034](#) (with transitional provisions and savings in [Sch. 2](#))

#### **233 Treatment of adjustment expense**

- (1) An adjustment expense is treated as an expense of the trade arising on the last day of the first period of account for which the new basis is adopted.
- (2) But this is subject to sections 235 (cases where adjustment not required until assets realised or written off) and 236 (change from realisation basis to mark to market).

### *Expenses previously brought into account*

#### **234 No adjustment for certain expenses previously brought into account**

- (1) This section applies if, as a result of a change of basis, expenses brought into account before the change on the old basis would on the new basis be brought into account over more than one period of account after the change.
- (2) In such a case—
  - (a) no adjustment is made under this Chapter, and
  - (b) in calculating the profits of the trade no deduction is allowed for the expenses for any period of account after the change.

*Status: Point in time view as at 15/09/2016.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Part 2. (See end of Document for details)*

### *Realising or writing off assets*

#### **235 Cases where adjustment not required until assets realised or written off**

- (1) This section applies if there is a change of basis resulting from a tax adjustment affecting the calculation of any of the following amounts.
- (2) The amounts are—
  - (a) any amount brought into account in respect of closing trading stock or closing work in progress in the last period of account before the change of basis,
  - (b) any amount brought into account in respect of opening trading stock or opening work in progress in the first period of account on the new basis, and
  - (c) any amount brought into account in respect of depreciation.
- (3) Adjustment income or (as the case may be) an adjustment expense is treated as arising only when the asset to which it relates is realised or written off.

#### **Modifications etc. (not altering text)**

**C17** S. 235 applied (6.4.2007 with effect as stated in [s. 1034\(1\)](#) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), [ss. 524\(5\), 526\(6\), 1034](#) (with transitional provisions and savings in [Sch. 2](#))

### *Mark to market*

#### **236 Change from realisation basis to mark to market**

- (1) This section applies if there is a change of basis from—
  - (a) not recognising a profit or loss on an asset until the asset is realised, to
  - (b) bringing assets into account in each period of account at a fair value.
- (2) So far as—
  - (a) a receipt within item 1 of step 1 in section 231 represents the fair value of an asset that is trading stock, or
  - (b) an expense within item 2 of that step relates to such an asset,
 adjustment income or (as the case may be) an adjustment expense is treated as not arising until the period of account in which the value of the asset is realised.
- (3) In the case of adjustment income, this is subject to any election under section 237 (election for spreading).
- (4) In this section “trading stock” has the same meaning as in section 174.

#### **Modifications etc. (not altering text)**

**C18** S. 236 applied (6.4.2007 with effect as stated in [s. 1034\(1\)](#) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), [ss. 524\(5\), 526\(6\), 1034](#) (with transitional provisions and savings in [Sch. 2](#))

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*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Part 2. (See end of Document for details)*

### **237 Election for spreading if section 236 applies**

- (1) If section 236 applies, the person who is liable to tax on any adjustment income may elect for the adjustment income to be spread over 6 periods of account.
- (2) The election must be made on or before the first anniversary of the normal self-assessment filing date for the tax year in which the change of basis occurs.
- (3) If an election is made, an amount equal to one-sixth of the amount of the adjustment income—
  - (a) is treated as arising, and
  - (b) is charged to tax,in each of the 6 periods of account beginning with the first period to which the new basis applies.
- (4) But if, before the whole of the adjustment income has been charged to tax, the person permanently ceases to carry on the trade, the whole of the amount so far as not previously brought into charge to tax—
  - (a) is treated as arising, and
  - (b) is charged to tax,immediately before the cessation.

*Spreading of adjustment income: barristers and advocates*

### **<sup>F333</sup>238 Spreading on ending of exemption for barristers and advocates**

.....

#### **Textual Amendments**

**F333** Ss. 238, 239 omitted (with effect in accordance with Sch. 4 paras. 56, 57 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 4 para. 52\(3\)](#)

### **<sup>F333</sup>239 Election to accelerate charge under section 238**

.....

#### **Textual Amendments**

**F333** Ss. 238, 239 omitted (with effect in accordance with Sch. 4 paras. 56, 57 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 4 para. 52\(3\)](#)

*<sup>F334</sup>Spreading of adjustment income on leaving cash basis*

#### **Textual Amendments**

**F334** Ss. 239A, 239B and cross-heading inserted (with effect in accordance with Sch. 4 paras. 56, 57 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 4 para. 37](#)

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*Status: Point in time view as at 15/09/2016.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Part 2. (See end of Document for details)*

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### **239A Spreading on leaving cash basis**

- (1) This section applies if—
  - (a) an election under section 25A (cash basis for small businesses) has effect in relation to a trade for a tax year, and
  - (b) no such election has effect in relation to the trade for the following tax year.
- (2) Any adjustment income is spread over 6 tax years as follows.
- (3) In each of the 6 tax years beginning with that in which the whole amount of the adjustment income would otherwise be chargeable to tax, an amount equal to one-sixth of the amount of the adjustment income is treated as arising and is charged to tax.
- (4) This section is subject to any election under section 239B (election to accelerate charge).

### **239B Election to accelerate charge under section 239A**

- (1) A person who under section 239A is liable to tax for a tax year on an amount of adjustment income may elect for an additional amount to be treated as arising in the tax year.
- (2) The election must be made on or before the first anniversary of the normal self-assessment filing date for the tax year.
- (3) The election must specify the amount to be treated as income arising in the tax year (which may be any amount of the adjustment income not previously charged to tax).
- (4) If an election is made, section 239A applies in relation to any subsequent tax year as if the amount of adjustment income (as reduced by any previous application of this section) were reduced by the amount given by the following formula—

$$A \times 6 T$$

where—

A is the additional amount treated as arising in the tax year for which the election is made, and

T is the number of tax years remaining after that tax year in the period of 6 tax years referred to in section 239A.]

### *Supplementary*

### **240 Liability of personal representatives if person liable dies**

- (1) This section applies in the case of the death of a person who would otherwise have been liable to tax under this Chapter on adjustment income.
- (2) The tax under this Chapter for which the person would otherwise have been liable—
  - (a) is to be assessed and charged on the personal representatives, and
  - (b) is to be a debt due from and payable out of the deceased's estate.
- (3) The personal representatives may make any election under this Chapter that the deceased might have made.

*Status: Point in time view as at 15/09/2016.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Part 2. (See end of Document for details)*

## <sup>F335</sup>CHAPTER 17A

### CASH BASIS: ADJUSTMENTS FOR CAPITAL ALLOWANCES

#### Textual Amendments

**F335** Pt. 2 Ch. 17A inserted (with effect in accordance with Sch. 4 paras. 56, 57 of the amending Act) by Finance Act 2013 (c. 29), **Sch. 4 para. 38**

#### *Introduction*

#### **240A Professions and vocations**

The provisions of this Chapter apply to professions and vocations as they apply to trades.

#### *Adjustments on entering cash basis*

#### **240B “Entering the cash basis”**

For the purposes of this Chapter a person carrying on a trade enters the cash basis for a tax year if—

- (a) an election under section 25A has effect in relation to the trade for the tax year, and
- (b) immediately before the beginning of the basis period for the tax year, such an election does not have effect in relation to the trade.

#### **240C Unrelieved qualifying expenditure**

- (1) This section applies if—
  - (a) a person carrying on a trade enters the cash basis for a tax year (“the current tax year”), and
  - (b) at the end of the basis period for the previous tax year, the person has unrelieved qualifying expenditure to carry forward from the chargeable period ending with that basis period.
- (2) But this section does not apply if section 240D (assets not fully paid for) applies.
- (3) In calculating the profits of the trade for the current tax year, a deduction is allowed for the relevant portion of the expenditure.
- (4) The “relevant portion” of the expenditure means the amount of the expenditure for which a deduction would be allowed in calculating the profits of the trade on the cash basis for a period if the expenditure was paid during that period.
- (5) The relevant portion of the expenditure is to be determined on such basis as is just and reasonable in all the circumstances.
- (6) Section 59(1) and (2) of CAA 2001 (unrelieved qualifying expenditure) has effect for the purposes of this section.

*Status: Point in time view as at 15/09/2016.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Part 2. (See end of Document for details)*

## **240D Assets not fully paid for**

- (1) This section applies if—
  - (a) a person carrying on a trade enters the cash basis for a tax year,
  - (b) at any time before the beginning of the basis period for that tax year the person has obtained capital allowances in respect of expenditure on the provision of plant or machinery (“the relevant expenditure”), and
  - (c) not all of the relevant expenditure has actually been paid by the person.
- (2) If the amount of the relevant expenditure that the person has actually paid exceeds the amount of capital allowances given in respect of the relevant expenditure, the difference is to be deducted in calculating the profits of the trade for the tax year.
- (3) If the amount of the relevant expenditure that the person has actually paid is less than the amount of capital allowances given in respect of the relevant expenditure, the difference is to be treated as a receipt in calculating the profits of the trade for the tax year.
- (4) The amount of any capital allowance obtained in respect of expenditure on the provision of any plant or machinery is to be determined on such basis as is just and reasonable in all the circumstances.
- (5) If the amount of capital allowances given in respect of the relevant expenditure has been reduced under section 205 or 207 of CAA 2001 (reduction where asset provided or used only partly for qualifying activity), the amount of the relevant expenditure that the person has actually paid is to be proportionately reduced for the purposes of this section.
- (6) This section does not apply where the relevant expenditure was incurred on the provision of a car.

In this subsection “car” has the same meaning as in Part 2 of CAA 2001 (see section 268A of that Act).

*Successions where predecessor and successor are connected persons*

## **240E Effect of election where predecessor and successor are connected persons**

- (1) This section applies if—
  - (a) a person carrying on a trade enters the cash basis for a tax year,
  - (b) the person is the successor for the purposes of section 266 of CAA 2001, and
  - (c) as a result of an election under section 267 of that Act, relevant plant or machinery is treated as sold by the predecessor to the successor at any time during the basis period for the tax year.
- (2) The provisions of this Chapter have effect in relation to the successor as if everything done to or by the predecessor had been done to or by the successor.
- (3) Any expenditure actually incurred by the successor on acquiring the relevant plant or machinery is to be ignored for the purposes of calculating the profits of the trade for the tax year.
- (4) In this section “the predecessor” and “relevant plant or machinery” have the same meaning as in section 267 of CAA 2001.]

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*Status: Point in time view as at 15/09/2016.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Part 2. (See end of Document for details)*

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## CHAPTER 18

### POST-CESSATION RECEIPTS

#### *Introduction*

#### **241 Professions and vocations**

The provisions of this Chapter apply to professions and vocations as they apply to trades.

#### *Charge to tax on post-cessation receipts*

#### **242 Charge to tax on post-cessation receipts**

Income tax is charged on post-cessation receipts arising from a trade.

#### **243 Extent of charge to tax**

- (1) A post-cessation receipt is chargeable to tax under this Chapter only so far as it is not otherwise chargeable to income or corporation tax.
- (2) Accordingly, a post-cessation receipt arising from a trade is not chargeable to tax under this Chapter so far as it is brought into account in calculating the profits of the trade for any period.
- (3) A post-cessation receipt is not chargeable to tax under this Chapter if—
  - (a) it is received by or on behalf of a non-UK resident who is beneficially entitled to it, and
  - (b) it represents income arising outside the United Kingdom.
- (4) A post-cessation receipt is not chargeable to tax under this Chapter if it arises from a trade carried on wholly outside the United Kingdom<sup>[F336]</sup>, other than a person's trade of dealing in or developing UK land].
- (5) A post-cessation receipt is not chargeable to tax under this Chapter in the case of a partner in a firm if—
  - (a) it represents income arising outside the United Kingdom from a trade carried on by the firm, and
  - (b) the partner's share of the firm's income arising out of the United Kingdom is treated as relevant foreign income by section 857(3) (partners to whom the remittance basis applies).

<sup>[F337]</sup>(6) If the tax year is a split year as respects a UK resident individual, this section has effect as if, for the overseas part of that year, the individual were non-UK resident.]

#### **Textual Amendments**

**F336** Words in s. 243(4) inserted (with effect in accordance with s. 82 of the amending Act) by [Finance Act 2016 \(c. 24\), s. 78\(4\)](#) (and also with effect in accordance with [Finance \(No. 2\) Act 2017 \(c. 32\)](#), s. 39(1)(2))

*Status: Point in time view as at 15/09/2016.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Part 2. (See end of Document for details)*

**F337** S. 243(6) inserted (with effect in accordance with Sch. 45 para. 153(2) of the amending Act) by Finance Act 2013 (c. 29), **Sch. 45 para. 77**

## 244 Income charged

- (1) Tax is charged under this Chapter on the full amount of the receipts received in the tax year.
- (2) This is subject to—
  - (a) sections 254 and 255 (allowable deductions), and
  - (b) section 257 (election to carry back).

## 245 Person liable

The person liable for any tax charged under this Chapter is the person receiving or entitled to the receipts.

*Meaning of “post-cessation receipts”*

## 246 Basic meaning of “post-cessation receipt”

- (1) In this Part “post-cessation receipt” means a sum—
  - (a) which is received after a person permanently ceases to carry on a trade, and
  - (b) which arises from the carrying on of the trade before the cessation.
- (2) For this purpose the reference to a person permanently ceasing to carry on a trade includes <sup>F338</sup> a reference to a company ceasing to be within the charge to corporation tax in respect of a trade.]
- <sup>F339</sup>(2A) If, immediately before a person permanently ceases to carry on a trade, an election under section 25A (cash basis for small businesses) has effect in relation to the trade, a sum is to be treated as a post-cessation receipt only if it would have been brought into account in calculating the profits of the trade on the cash basis had it been received at that time.]
- (3) Subsection (4) applies if—
  - (a) a firm carries on a trade,
  - (b) a person ceases to be a partner in the firm, and
  - (c) the departure results in the partner permanently ceasing to carry on the notional trade (see section 852).
- (4) The partner is treated for the purposes of this Chapter as permanently ceasing to carry on the trade.

### Textual Amendments

**F338** Words in s. 246(2) substituted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 612** (with Sch. 2 Pts. 1, 2)

**F339** S. 246(2A) inserted (with effect in accordance with Sch. 4 paras. 56, 57 of the amending Act) by Finance Act 2013 (c. 29), **Sch. 4 para. 39(2)**



*Status: Point in time view as at 15/09/2016.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Part 2. (See end of Document for details)*

## 247 Other rules about what counts as post-cessation receipts

- (1) The following provisions treat certain amounts as post-cessation receipts for the purposes of this Part—
- section 82(6) (contributions to local enterprise organisations or urban regeneration companies),
  - section 104(3) (distribution of assets of mutual concerns),
  - section 109(2) (receipt by donor or connected person of benefit attributable to certain gifts),
  - section 185(1) (election for valuation at cost),
  - section 248 (debts paid after cessation),
  - section 249 (debts released after cessation), as qualified, where appropriate, by section 48(4) (car <sup>F340</sup>... hire),
  - section 250 (receipts relating to post-cessation expenditure),
  - section 251 (transfer of rights if transferee does not carry on trade), and
  - section 844 (income charged on withdrawal of relief after source ceases: unremittable income).
- (2) Section 98 (acquisition of trade: receipts from transferor's trade) and section 251 (transfer of rights if transferee does not carry on trade) treat certain amounts as not being post-cessation receipts for the purposes of this Part.

### Textual Amendments

**F340** Words in s. 247(1) omitted (with effect in accordance with Sch. 11 paras. 65-67 of the amending Act) by virtue of [Finance Act 2009 \(c. 10\)](#), [Sch. 11 para. 40](#)

### *Sums treated as post-cessation receipts*

## 248 Debts paid after cessation

- (1) Subsection (2) applies if, in calculating the profits of a trade for income or corporation tax purposes, a deduction is made in respect of a debt under—
- (a) section 35 (bad and doubtful debts), or
  - (b) section 74(1)(j) of ICTA (corresponding corporation tax provision),
- and a person permanently ceases to carry on the trade.
- (2) A sum received after the cessation is treated as a post-cessation receipt so far as the deduction is made.
- (3) Subsection (4) applies if relief is given under [<sup>F341</sup>section 96 of ITA 2007](relief for post-cessation expenditure) [<sup>F342</sup>as a result of subsection (1)(b) of that section] in respect of a debt owed to a person who has permanently ceased to carry on a trade.
- (4) A sum received by the person in payment of the debt is treated as a post-cessation receipt so far as relief is given in respect of the sum.

### Textual Amendments

**F341** Words in s. 248(3) substituted (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), ss. 1027, 1034, [Sch. 1 para. 503\(a\)](#)

*Status: Point in time view as at 15/09/2016.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Part 2. (See end of Document for details)*

**F342** Words in s. 248(3) inserted (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by Income Tax Act 2007 (c. 3), ss. 1027, 1034, **Sch. 1 para. 503(b)**

## 249 Debts released after cessation

- (1) This section applies if—
- in calculating the profits of a trade for any period for income or corporation tax purposes, a deduction is allowed for the expense giving rise to a debt owed by the person who carried on the trade,
  - the person has permanently ceased to carry on the trade at or after the end of that period,
  - after the cessation, all or part of the debt is released, and
  - the release is not part of a statutory insolvency arrangement.
- (2) The amount released is treated as a post-cessation receipt.
- (3) For the purposes of this section the reference to a person permanently ceasing to carry on a trade includes [<sup>F343</sup>a reference to a company ceasing to be within the charge to corporation tax in respect of a trade.]

### Textual Amendments

**F343** Words in s. 249(3) substituted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 613** (with **Sch. 2 Pts. 1, 2**)

## 250 Receipts relating to post-cessation expenditure

- (1) This section applies if a person who has permanently ceased to carry on a trade makes a payment in circumstances where relief is available under [<sup>F344</sup>section 96 of ITA 2007](relief for post-cessation expenditure).
- (2) The following sums are treated as post-cessation receipts—
- in the case of a payment within [<sup>F345</sup>section 97(2) or (3) of ITA 2007](payment to remedy defective work etc. or to defray expenses of a claim), the proceeds of insurance, or other sum received, for the purpose of enabling the payment to be made or by means of which it is reimbursed,
  - in the case of a payment within [<sup>F346</sup>section 97(4) of ITA 2007](payment to insure against claims for defective work etc.), a refund of the premium, or other sum received, in connection with the insurance, and
  - in the case of a payment within [<sup>F347</sup>section 97(5) of ITA 2007](payment for the purpose of collecting a debt), any sum received towards the cost of collecting the debt.
- (3) If a sum mentioned in subsection (2) is received in a tax year earlier than the tax year in which the related payment is made, it is treated as having been received in the later tax year (and not the earlier tax year).
- (4) Any adjustment required to give effect to subsection (3) is to be made by way of—
- amendment of an assessment, or
  - discharge or repayment of tax.

*Status: Point in time view as at 15/09/2016.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Part 2. (See end of Document for details)*

### Textual Amendments

- F344** Words in s. 250(1) substituted (6.4.2007 with effect as noted in s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), ss. 1027, 1034, [Sch. 1 para. 504\(2\)](#) (with transitional provisions and savings in [Sch. 2](#))
- F345** Words in s. 250(2)(a) substituted (6.4.2007 with effect as noted in s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), ss. 1027, 1034, [Sch. 1 para. 504\(3\)\(a\)](#) (with transitional provisions and savings in [Sch. 2](#))
- F346** Words in s. 250(2)(b) substituted (6.4.2007 with effect as noted in s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), ss. 1027, 1034, [Sch. 1 para. 504\(3\)\(b\)](#) (with transitional provisions and savings in [Sch. 2](#))
- F347** Words in s. 250(2)(c) substituted (6.4.2007 with effect as noted in s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), ss. 1027, 1034, [Sch. 1 para. 504\(3\)\(c\)](#) (with transitional provisions and savings in [Sch. 2](#))

## 251 Transfer of rights if transferee does not carry on trade

- (1) This section applies if—
- a person (“the transferor”) permanently ceases to carry on a trade,
  - the transferor transfers to another person (“the transferee”) for value the right to receive sums arising from the carrying on of the trade, and
  - the transferee does not subsequently carry on the trade.
- (2) The transferor is treated as receiving a post-cessation receipt.
- (3) The amount of the receipt is—
- the amount or value of the consideration for the transfer, if the transfer is at arm's length, or
  - the value of the rights transferred as between parties at arm's length, if the transfer is not at arm's length.
- (4) Any sums mentioned in subsection (1)(b) which are received after the cessation of the trade are not post-cessation receipts.
- (5) This section is subject to—
- section 252 (transfer of trading stock or work in progress), and
  - section 253 (lump sums paid to personal representatives for copyright etc.).

*Sums that are not post-cessation receipts*

## 252 Transfer of trading stock or work in progress

- (1) When a person permanently ceases to carry on a trade, a sum realised by—
- the transfer of trading stock, or
  - the transfer of work in progress,
- is not a post-cessation receipt if a valuation of the stock or work is brought into account in accordance with Chapter 12 (valuation of stock and work in progress).
- (2) This does not prevent a sum from being treated as a post-cessation receipt as a result of an election under section 185 (election for valuation of work in progress at cost).

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*Status: Point in time view as at 15/09/2016.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Part 2. (See end of Document for details)*

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(3) In this section—

- (a) “trading stock” has the meaning given by section 174, and
- (b) “work in progress” and “transfer of work in progress” have the meaning given by section 183.

### **253 Lump sums paid to personal representatives for copyright etc.**

- (1) A lump sum which is paid to the personal representatives of the author of a literary, dramatic, musical or artistic work as consideration for the assignment by them of—
  - (a) the copyright in the work, or
  - (b) the public lending right in the work,
 is not a post-cessation receipt.
- (2) A lump sum which is paid to the personal representatives of the designer of a design in which design right subsists as consideration for the assignment by them of that right is not a post-cessation receipt.
- (3) For the purposes of this section it does not matter whether the whole or a part of the right is assigned.

## *Deductions*

### **254 Allowable deductions**

- (1) In calculating the amount on which tax is charged under this Chapter, deductions are allowed in accordance with—
  - (a) this section, and
  - (b) section 255,
 from the amount which would otherwise be chargeable to tax under this Chapter.
- (2) A deduction is allowed for a loss, expense or debit which, if the person carrying on the trade had not permanently ceased to do so—
  - (a) would have been deducted in calculating the profits of the trade for income or corporation tax purposes, or
  - (b) would have been deducted from or set off against the profits of the trade for income or corporation tax purposes,
 but no deduction is allowed if the loss, expense or debit arises directly or indirectly from the cessation itself.

[<sup>F348</sup>(2A) If, immediately before the person permanently ceases to carry on the trade, an election under section 25A (cash basis for small businesses) has effect in relation to the trade, assume for the purposes of subsection (2) that such an election has effect in relation to the trade.]

[<sup>F349</sup>(2B) If—

- (a) the loss or expense is incurred, or the debit arises, in relation to a vehicle, and
- (b) immediately before the person permanently ceases to carry on the trade, section 94D (deduction allowable at fixed rate for expenditure on vehicles) applies in relation to the vehicle,

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*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Part 2. (See end of Document for details)*

assume for the purposes of subsection (2) that that section applies in relation to the vehicle.]

- (3) No deduction for an amount is allowed under this section if the amount has been allowed—
- (a) under any other provision of the Tax Acts, or
  - (b) as a result of [<sup>F350</sup>section 261D of TCGA 1992] (capital gains tax relief for post-cessation expenditure).

#### Textual Amendments

- F348** S. 254(2A) inserted (with effect in accordance with Sch. 4 paras. 56, 57 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 4 para. 39\(3\)](#)
- F349** S. 254(2B) inserted (with effect in accordance with Sch. 5 para. 6 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 5 para. 4](#)
- F350** Words in s. 254(3)(b) substituted (6.4.2007 with effect as noted in [s. 1034\(1\)](#) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), [ss. 1027, 1034](#), [Sch. 1 para. 505](#) (with transitional provisions and savings in [Sch. 2](#))

## 255 Further rules about allowable deductions

- (1) An amount may not be deducted more than once under section 254.
- (2) A deduction under that section of a loss must be made from post-cessation receipts charged for an earlier tax year in preference to those charged for a later tax year.
- (3) But this does not authorise the deduction of a loss from post-cessation receipts charged for a tax year before the tax year in which the loss is made.
- (4) No deduction may be made under section 254 from any amount that is treated as a post-cessation receipt under—
- (a) section 248(4) (debts paid after cessation), or
  - (b) section 250 (receipts relating to post-cessation expenditure).

### *Reliefs*

## 256 Treatment of post-cessation receipts

- (1) This section applies if—
- (a) an individual has permanently ceased to carry on a trade, and
  - (b) the income arising to the individual from the trade was <sup>F351</sup> . . . relevant UK earnings within section 189(2)(b) of FA 2004.
- (2) Any post-cessation receipts arising to the individual from the trade are similarly <sup>F351</sup> . . . relevant UK earnings.

#### Textual Amendments

- F351** Words in s. 256(1)(b)(2) repealed (6.4.2007 with effect as noted in [s. 1034\(1\)](#) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), [ss. 1027, 1031, 1034](#), [Sch. 1 para. 506\(2\)\(3\)](#), [Sch. 3 Pt. 1](#) (with transitional provisions and savings in [Sch. 2](#))

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*Status: Point in time view as at 15/09/2016.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Part 2. (See end of Document for details)*

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## 257 Election to carry back

- (1) This section applies if a post-cessation receipt is received by a person (or a person's personal representatives) in a tax year beginning no later than 6 years after the person permanently ceased to carry on the trade.
- (2) The person (or the person's personal representatives) may elect that the tax chargeable in respect of the receipt is to be charged as if the receipt had been received on the date of the cessation.
- (3) But this is subject to paragraph 5 of Schedule 1B to TMA 1970 (election given effect in the tax year in which the receipt is actually received).
- (4) The election must be made on or before the first anniversary of the normal self-assessment filing date for the tax year.

## CHAPTER 19

### SUPPLEMENTARY

## 258 Changes in trustees and personal representatives

- (1) This section applies if there is a change—
  - (a) in the trustees of a trust, or
  - (b) in the personal representatives of a person,
 at a time when they are carrying on a trade, profession or vocation.
- (2) For income tax purposes, the change does not result in—
  - (a) any of the trustees or personal representatives before the change permanently ceasing to carry on the trade, profession or vocation, or
  - (b) any of the trustees or personal representatives after the change starting to carry on the trade, profession or vocation.

## [<sup>F352</sup>259 Meaning of “statutory insolvency arrangement”

In this Part “statutory insolvency arrangement” means—

- (a) a voluntary arrangement that has taken effect under or as a result of the Insolvency Act 1986, Schedule 4 or 5 to the Bankruptcy (Scotland) Act 1985 or the Insolvency (Northern Ireland) Order 1989,
- (b) [<sup>F353</sup>a compromise or arrangement that has taken effect under Part 26 of the Companies Act 2006]
- (c) any arrangement or compromise of a kind corresponding to any of those mentioned in paragraph (a) or (b) that has taken effect under or by virtue of the law of a country or territory outside the United Kingdom.]

### Textual Amendments

**F352** S. 259 substituted (with effect as mentioned in [Sch. 6 para. 3\(2\)](#) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), s. 37, [Sch. 6 para.3\(1\)](#)

**F353** S. 259(b) substituted (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments\) \(Taxes and National Insurance\) Order 2008 \(S.I. 2008/954\)](#), arts. 1(1), [37](#) (with art. 4)

**Status:**

Point in time view as at 15/09/2016.

**Changes to legislation:**

There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Part 2.