Income and Corporation Taxes Act 1988

1988 CHAPTER 1

PART IV

PROVISIONS RELATING TO THE SCHEDULE D CHARGE

CHAPTER I

SUPPLEMENTARY CHARGING PROVISIONS

53 Farming and other commercial occupation of land (except woodlands).

(1) [M1]All farming and market gardening in the United Kingdom shall be treated as the carrying on of a trade or, as the case may be, of a part of a trade, and the profits and gains thereof shall be charged to tax under Case I of Schedule D accordingly.

(2) All the farming carried on by any particular person or partnership or body of persons shall be treated as one trade.

(3) [M2]Subject to subsection (4) below, the occupation of land in the United Kingdom for any purpose other than farming or market gardening shall, if the land is managed on a commercial basis and with a view to the realisation of profits, be treated as the carrying on of a trade or, as the case may be, of a part of a trade, and the profits or gains thereof shall be charged to tax under Case I of Schedule D accordingly.

[[F1](4) Subsection (3) above shall not apply in relation to the occupation of land which comprises woodlands or is being prepared for use for forestry purposes.**]**

Textual Amendments

F1 1988(F) Sch.6 para.6(7),*into force on* 6*April* 1988*subject to certain provisos. Previously*
"(4) Subsection (3) above shall not affect the taxation of woodlands which are managed on a commercial basis and with a view to the realisation of profits".

Marginal Citations
M1 SOURCE-1970 s. 110(1), (2)
M2 SOURCE-1970 s. 110(3)

[F2]54 Woodlands managed on a commercial basis.

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Textual Amendments
F2 S. 54 repealed (15.3.1988) by Finance Act 1988 (c. 39), **Sch. 14 Pt. 5**, Note 2

55 Mines, quarries and other concerns.

(1) [M3]Profits or gains arising out of land in the case of any concern specified in subsection (2) below shall be charged to tax under Case I of Schedule D.

(2) The concerns are—
- (a) mines and quarries (including gravel pits, sand pits and brickfields);
- (b) ironworks, gasworks, salt springs or works, alum mines or works (not being mines falling within the preceding paragraph) and waterworks and streams of water;
- (c) canals, inland navigation, docks and drains or levels;
- (d) fishings;
- (e) rights of markets and fairs, tolls, bridges and ferries;
- (f) railways and other ways;
- (g) other concerns of the like nature as any of the concerns specified in paragraphs (b) to (e) above.

Marginal Citations
M3 SOURCE-1970 s. 112

56 Transactions in deposits with and without certificates or in debts.

(1) [M4M5]Subsection (2) below applies to the following rights—
- (a) the right to receive the amount, with or without interest, stated in a certificate of deposit;
- (b) the right to receive an amount payable with interest—
  - (i) in a transaction in which no certificate of deposit or security is issued, and
  - (ii) which is payable by a bank or similar institution or a person regularly engaging in similar transactions;

  and the right to receive that interest.

(2) [M6]Profits or gains arising to a person from the disposal of a right to which this subsection applies or, except so far as it is a right to receive interest, from the exercise of any such right (whether by the person to whom the certificate was issued or by

some other person, or, as the case may be, by the person who acquired the right in the transaction referred to in subsection (1) above or by some person acquiring it directly or indirectly from that person), shall, if not falling to be taken into account as a trading receipt, be treated as annual profits or gains chargeable to tax under Case VI of Schedule D.

(3) [M7]Subsection (2) above does not apply in the case of the disposal or exercise of a right to receive an amount stated in a certificate of deposit or interest on such an amount—

(a) if the person disposing of the right acquired it before 7th March 1973;

(b) to any profits or gains arising to a fund or scheme in the case of which provision is made by section 592(2), 613, 614(1) to (3) or 620(6) for exempting the whole or part of its income from income tax;

(c) in so far as they are applied to charitable purposes only, to any profits or gains arising to a charity within the meaning of section 506.

(4) [M8]For the purposes of this section, profits or gains shall not be treated as falling to be taken into account as a trading receipt by reason only that they are included in the computation required by section 76(2).

(5) [M9] In this section—

"certificate of deposit" means a document relating to money, in any currency, which has been deposited with the issuer or some other person, being a document which recognises an obligation to pay a stated amount to bearer or to order, with or without interest, and being a document by the delivery of which, with or without endorsement, the right to receive that stated amount, with or without interest, is transferable; and

"security" has the same meaning as in section 82 of the 1979 Act.

Modifications etc. (not altering text)

C1 *See* s.608—*exemption for certain superannuation funds.*

Marginal Citations

M4 SOURCE-1973 s. 26(1)
M5 SOURCE-1974 s. 30(1)
M6 SOURCE-1973 s. 26(1); 1974 s. 30(1)
M7 SOURCE-1973 s. 26(1)(a)(b); 1975 (No. 2) s. 50(1)
M8 SOURCE-1973 s. 26(3); 1974 s. 30(2)
M9 SOURCE-1973 s. 26(4); 1974 s. 30(2), (1); 1968 s. 55(3); 1979(C) Sch. 7

VALID FROM 16/07/1992

[F3 56A Disposal or exercise of rights in pursuance of deposits.

(1) This section applies where there is an arrangement under which—

(a) there is a right to receive an amount (with or without interest)

in pursuance of a deposit of money,

(b) when the right comes into existence there is no certificate of deposit in respect of the right, and

(c) the person for the time being entitled to the right is entitled to call for the issue of a certificate of deposit in respect of the right.

(2) In such a case—

(a) the right shall be treated as not falling within section 56(1)(b), and

(b) if there is a disposal or exercise of the right before such time (if any) as a certificate of deposit is issued in respect of it, section 56(2) shall apply to it by virtue of this paragraph.

(3) In the application of section 56 by virtue of this section—

(a) subsection (2) shall have effect as if the words from "(whether" to "person)" read "(whether by the person originally entitled to the right or by some other person)", and

(b) subsection (3) shall have effect as if the words "stated in a certificate of deposit" read "under an arrangement".

(4) In this section "certificate of deposit" has the meaning given by section 56(5).**]**

Textual Amendments

F3 S. 56A inserted (with application in relation to arrangements made after 16.7.1992) by Finance (No. 2) Act 1992 (c. 48), s. 34, Sch. 8 paras.1, **6**.

57 Deep discount securities.

[M10]Schedule 4 shall have effect with respect to the treatment for the purposes of income tax and corporation tax of deep discount securities (within the meaning of that Schedule).

Marginal Citations

M10 SOURCE-1984 s. 36(1)

58 Foreign pensions.

(1) [M11]A pension which—

(a) is paid by or on behalf of a person outside the United Kingdom, and

(b) is not charged under paragraph 4 of Schedule E,

shall be charged to tax under Case V of Schedule D.

(2) Where—

(a) a person has ceased to hold any office or employment, and

(b) a pension or annual payment is paid to him, or to his widow or child or to any relative or dependant of his, by the person under whom he held the office or by whom he was employed, or by the successors of that person, and

(c) that pension or annual payment is paid by or on behalf of a person outside the United Kingdom,

then, notwithstanding that the pension or payment is paid voluntarily, or is capable of being discontinued, it shall be deemed to be income for the purposes of assessment to

tax and shall be assessed and charged to tax under Case V of Schedule D as income from a pension.

Marginal Citations
M11 SOURCE-1970 s. 113

59 Persons chargeable.

(1) [M12]Subject to subsections (2) and (3) below, income tax under Schedule D shall be charged on and paid by the persons receiving or entitled to the income in respect of which the tax is directed by the Income Tax Acts to be charged.

(2) Income tax to be charged under Schedule D in respect of any of the concerns mentioned in section 55 shall be assessed and charged on the person carrying on the concern, or on the agents or other officers who have the direction or management of the concern or receive the profits thereof.

(3) Where, in accordance with that section, income tax is charged under Schedule D on the profits of markets or fairs, or on tolls, fisheries or any other annual or casual profits not distrainable, the owner or occupier or receiver of the profits thereof shall be answerable for the tax so charged, and may retain and deduct the same out of any such profits.

(4) Subsections (1) to (3) above shall not apply for the purposes of corporation tax.

Marginal Citations
M12 SOURCE-1970 S. 114

CHAPTER II

INCOME TAX: BASIS OF ASSESSMENT ETC.

Cases I and II

60 Assessment on preceding year basis.

(1) [M13] Subject to the provisions of this section and sections 61 to 63, income tax shall be charged under Cases I and II of Schedule D on the full amount of the profits or gains of the year preceding the year of assessment.

(2) [M14]Subsection (3) or (4) below shall apply where, in the case of a trade, profession or vocation, an account has, or accounts have, been made up to a date or dates within the period of three years immediately preceding the year of assessment.

(3) [M15]If—

(a) an account was made up to a date within the year preceding the year of assessment, and

(b) that account was the only account made up to a date in that year, and

(c) it was for a period of one year beginning either—

(i) at the commencement of the trade, profession or vocation, or

(ii) at the end of the period on the profits or gains of which the assessment for the last preceding year of assessment was to be computed,

the profits or gains of the year ending on that date shall be taken to be the profits or gains of the year preceding the year of assessment.

(4) [M16]If subsection (3) does not apply, the Board shall decide what period of 12 months ending on a date within the year preceding the year of assessment shall be deemed to be the year the profits or gains of which are to be taken to be the profits or gains of the year preceding the year of assessment.

(5) [M17]Where—

(a) the Board have given a decision under subsection (4) above, and

(b) it appears to them that, in consequence of that decision, income tax for the last preceding year of assessment in respect of the profits or gains from the same source should be computed on the profits or gains of a corresponding period,

they may give a direction to that effect, and an assessment or, on a claim therefor, repayment of tax shall be made accordingly.

(6) The decision whether or not to give a direction under subsection (5) above shall be subject to an appeal which shall lie to the General Commissioners unless the appellant elects (in accordance with section 46(1) of the Management Act) to bring it before the Special Commissioners, and the Commissioners hearing the appeal shall grant such relief, if any, as is just.

(7) An appeal under subsection (6) above shall be brought within 30 days of receipt of notice of the decision, save that, if the decision is to give a direction and an assessment is made in accordance with the direction, the appeal against the decision shall be by way of an appeal against the assessment.

(8) In the case of the death of a person who, if he had not died, would under subsections (2) to (5) above have become chargeable to income tax for any year, the tax which would have been so chargeable shall be assessed and charged on his executors or administrators, and shall be a debt due from and payable out of his estate.

Marginal Citations

M13 SOURCE-1970 s. 115(1)
M14 SOURCE-1970 s. 115(2)
M15 SOURCE-1970 s. 115(2)(a)
M16 SOURCE-1970 s. 115(2)(b)
M17 SOURCE-1970 s. 115(3)–(6)

61 Special basis at commencement of trade, profession or vocation.

(1) [M18]Subject to subsection (4) below, where the trade, profession or vocation has been set up and commenced within the year of assessment, the computation of the profits or gains chargeable to income tax under Case I or Case II of Schedule D shall be made either on the full amount of the profits or gains arising in the year of assessment or according to the average of such period, not being greater than one year, as the case may require and as may be directed by the inspector.

(2) On an appeal to the General or Special Commissioners, the Commissioners shall have jurisdiction to review the inspector's decision under subsection (1) above.

(3) Where the trade, profession or vocation has been set up and commenced within the year preceding the year of assessment, the computation of the profits or gains chargeable to income tax under Case I or Case II of Schedule D shall be made on the profits or gains for one year from its first being set up.

(4) Subsections (1) to (3) above shall not apply in any case where **[**F4there is a change in the persons engaged in carrying on a trade, profession or vocation in partnership and**]** section 113(1) and (2) apply but no election is made under section 113(2), but in such a case the computation of the profits or gains chargeable to income tax under Case I or II of Schedule D for the year of assessment in which the new trade, profession or vocation is treated as having been set up and commenced, and for each of the three years following that year of assessment, shall be made on the full amount of the profits or gains arising in the year of assessment in question.

Textual Amendments

F4 1988(F) s.146*and* Sch.13 para.2 (*deemed always to have had effect*).

Marginal Citations

M18 SOURCE-1970 s. 116

62 Special basis for early years following commencement.

(1) M19In this section—

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

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

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

(2) M20Subject to subsection (4) below, the person charged, or liable to be charged, shall be entitled, on giving notice to the inspector within seven years after the end of the second year of assessment, to require that tax shall be charged for both the second year of assessment and the third year of assessment (but not for one or other only of those years) on the amount of the profits or gains for each such year respectively.

[F5(2A) Where—

(a) the second year of assessment is the year 1989-90,

(b) the person charged, or liable to be charged, for that year is a married man, and

(c) the person charged, or liable to be charged, for the year 1990-91 is his wife,

subsection (2) above shall have effect as if it conferred the right to give notice on her and not on him.**]**

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

(4) [M21]Subsections (2) and (3) above shall not apply in any case where—

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

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

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

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

(6) [M22]If at any time during the second or third year of assessment—

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

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

a notice given for the purposes of subsection (2) above must, if given after the occurrence of the change and after notice has been given as respects the change under section 113(2), comply with the requirements of subsection (7) or (8) below, as the case may require.

(7) A notice given within 12 months after the end of the second year of assessment must be signed by—

(a) each of the individuals who were engaged in the trade, profession or vocation at any time between the commencement of that year and the giving of the notice; or

(b) in the case of a deceased person, his personal representatives.

(8) A notice given after the end of the third year of assessment must be signed by—

(a) each of the individuals who were engaged in the trade, profession or vocation at any time during the second or third year of assessment; or

(b) in the case of a deceased person, his personal representatives.

(9) [M23]In the case of the death of a person who, if he had not died, would under the provisions of this section have become chargeable to income tax for any year, the tax which would have been so chargeable shall be assessed and charged on his personal representatives, and shall be a debt due from and payable out of his estate.

(10) There shall be made such assessments, reductions of assessments or, on a claim in that behalf, repayments of tax as may in any case be required in order to give effect to the preceding provisions of this section.

Textual Amendments

F5 1988(F) s.35*and* Sch.3 para.2.

Marginal Citations

M19 SOURCE-1970 s. 117(1); 1985 s. 47(2), (4)(a)
M20 SOURCE-1970 s. 117(2)
M21 SOURCE-1970 S. 117(2); 1985 S. 47(2), (4)(b)
M22 SOURCE-1970 s. 117(3); 1987 Sch. 15 para. 2(8)
M23 SOURCE-1970 s. 117(4), (5); 1987 Sch. 15 para. 2(8)

VALID FROM 03/05/1994

[F6 62A Conditions for such a change.

(1) This section applies in relation to an accounting change if the following are fulfilled, namely—

(a) the first and second conditions mentioned below, and

(b) either the third or the fourth condition so mentioned.

(2) The first condition is that the first accounting period ending with the new date does not exceed 18 months.

(3) The second condition is that notice of the accounting change is given to an officer of the Board on or before the 31st January next following the year of assessment.

(4) The third condition is that no accounting change as respects which section 62(2) has applied has been made or treated as made in any of the five years immediately preceding the year of assessment.

(5) The fourth condition is that—

(a) the notice required by the second condition sets out the reasons for which the change is made; and

(b) either the officer is satisfied that the change is made for bona fide commercial reasons or he does not, within 60 days of receiving the notice, give notice to the person carrying on the trade, profession or vocation that he is not so satisfied.

(6) An appeal may be brought against the giving of a notice under subsection (5)(b) above within the period of 30 days beginning with the date on which the notice is given.

(7) Subject to subsection (8) below, the provisions of the Management Act relating to appeals shall have effect in relation to an appeal under subsection (6) above as they have effect in relation to an appeal against an assessment to tax.

(8) On an appeal under subsection (6) above section 50(6) to (8) of the Management Act shall not apply but the Commissioners may—

(a) if they are satisfied that the change is made for bona fide commercial reasons, set the notice under subsection (5)(b) above aside; or

(b) if they are not so satisfied, confirm that notice.

(9) Obtaining a tax advantage shall not be regarded as a bona fide commercial reason for the purposes of subsections (5) and (8) above.

(10) In this section—

(a) "accounting period" means a period for which accounts are made up, and

(b) expressions which are also used in section 62 have the same meanings as in that section.**]**

Textual Amendments

F6 S. 62A inserted (with effect in accordance with s. 218 of the amending Act) by Finance Act 1994 (c. 9), **s. 203** (with Sch. 20)

63 Special basis on discontinuance.

(1) [M24]Where in any year of assessment a trade, profession or vocation is permanently discontinued, then notwithstanding anything in sections 60 to 62—

(a) the person charged or chargeable with income tax in respect thereof shall be charged for that year on the amount of the profits or gains of the period beginning on the 6th April in that year and ending on the date of the discontinuance, but subject to any deduction or set-off to which he may be entitled under section 385 in respect of any loss; and

(b) if the aggregate of the profits or gains (if any) of the years ending on the 5th April in each of the two years preceding the year of assessment in which the discontinuance occurs exceeds—

(i) the aggregate of the amounts on which **[**[F7]income tax**]** has been charged for each of those two years; or

(ii) the aggregate of the amounts on which **[**[F7]income tax**]** would have been so charged if no deduction or set-off under section 385 had been allowed;

[[F7]income tax**]** may be charged instead, for each of those two years, but subject to any such deduction or set-off, on the amount of the profits or gains of the year ending on the 5th April in that year.

(2) Where **[**[F7]income tax has been charged**]** otherwise than in accordance with subsection (1) above, any such assessment to tax, reduction or discharge of an assessment to tax, or on a claim therefor, repayment of tax shall be made as may be necessary to give effect to that subsection.

(3) In the case of the death of a person who, if he had not died, would under the provisions of this section have become chargeable to income tax for any year, the tax which would have been so chargeable shall be assessed and charged on his executors or administrators, and shall be a debt due from and payable out of his estate.

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

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

Textual Amendments

F7 1988(F) s.35*and* Sch.3 para.3.*Previously*
"that person", "he", and "a person has been charged with income tax"
respectively.

Marginal Citations

M24 SOURCE-1970 s. 118

VALID FROM 03/05/1994

[F8 63A Overlap profits and overlap losses.

(1) Where, in the case of any trade, profession or vocation, the basis period for a year of assessment is given by section 62(2)(b), a deduction shall be made in computing the profits or gains of that year of an amount equal to that. given by the formula in subsection (2) below.

(2) The formula referred to in subsection (1) above is—

$$A \times \frac{B - C}{D}$$

where—

A = the aggregate of any overlap profits less the aggregate of any amounts previously deducted under subsection (1) above;

B = the number of days in the basis period;

C = the number of days in the year of assessment;

D = the aggregate of the overlap periods of any overlap profits less the aggregate number of days given by the variable "B — C" in any previous applications of this subsection.

(3) Where, in the case of any trade, profession or vocation, the basis period for a year of assessment is given by section 63, a deduction shall be made in computing the profits or gains of that year of an amount equal to—

(a) the aggregate of any overlap profits, less

(b) the aggregate of any amounts deducted under subsection (1) above.

(4) Where, in the case of any trade, profession or vocation, an amount of a loss would, apart from this subsection, fall to be included in the computations for two successive years of assessment, that amount shall not be included in the computation for the second of those years.

(5) In this section—

"overlap profit" means an amount of profits or gains which, by virtue of sections 60 to 62, is included in the computations for two successive years of assessment; and

"overlap period", in relation to an overlap profit, means the number of days in the period in which the overlap profit arose.**]**

Textual Amendments

F8 S. 63A inserted (with effect in accordance with s. 218 of the amending Act) by Finance Act 1994 (c. 9), **s. 205** (with Sch. 20)

Modifications etc. (not altering text)

C2 Ss. 61-63A excluded (1.12.1997 with effect in accordance with reg. 1 of the excluding S.I.) by The Lloyd's Underwriters (Scottish Limited Partnerships) (Tax) Regulations 1997 (S.I. 1997/2681), **reg. 6(1)(a)**

Cases III, IV and V

64 Case III assessments: general.

M25 Subject to sections 66 and 67, income tax under Case III of Schedule D shall be computed on the full amount of the income arising within the year preceding the year of assessment, and shall be paid on the actual amount of that income, without any deduction.

Modifications etc. (not altering text)

C3 *See* 1990 s.56*and* Sch.10 para.12(4)—*tax on income in respect of chargeable securities on income of year of assessment.*

C4 *See* 1989(F) s.94*and* Sch. 11 para.5—*deep gain securities.*

Marginal Citations

M25 SOURCE-1970 s. 119

65 Cases IV and V assessments: general.

(1) **M26**subject to the provisions of this section and sections 66 and 67, income tax chargeable under Case IV or Case V of Schedule D shall be computed on the full amount of the income arising in the year preceding the year of assessment, whether the income has been or will be received in the United Kingdom or not, subject in the case of income not received in the United Kingdom—

(a) to the same deductions and allowances as if it had been so received, and

(b) to a deduction on account of any annuity or other annual payment (not being interest) payable out of the income to a person not resident in the United Kingdom.

(2) [M27]Subject to section 330, income tax chargeable under Case IV or V of Schedule D on income arising from any pension shall be computed on the amount of that income subject to a deduction of one-tenth of the amount of the income.

(3) [M28]Income tax chargeable under Case IV or V of Schedule D on income which is immediately derived by a person from the carrying on by him of any trade, profession or vocation either solely or in partnership shall be computed in accordance with the rules applicable to Cases I and II of Schedule D; and subsection (1)(a) above shall not apply.

Nothing in this subsection shall be taken to apply sections 60 to 63 or 113 in relation to income chargeable under Case V of Schedule D but computed in accordance with this subsection.

(4) [M29]Subsections (1), (2) and (3) above shall not apply to any person who, on a claim made to the Board, satisfies the Board that he is not domiciled in the United Kingdom, or that, being a Commonwealth citizen or a citizen of the Republic of Ireland, he is not ordinarily resident in the United Kingdom.

(5) [M30]Where subsection (4) above applies the tax shall, subject to sections 66 and 67, be computed—

(a) in the case of tax chargeable under Case IV, on the full amount, so far as the same can be computed, of the sums received in the United Kingdom in the year preceding the year of assessment, without any deduction or abatement; and

(b) in the case of tax chargeable under Case V, on the full amount of the actual sums received in the United Kingdom in the year preceding the year of assessment from remittances payable in the United Kingdom, or from property imported, or from money or value arising from property not imported, or from money or value so received on credit or on account in respect of any such remittances, property, money or value brought or to be brought into the United Kingdom, without any deduction or abatement other than is allowed under the provisions of the Income Tax Acts in respect of profits or gains charged under Case I of Schedule D.

(6) For the purposes of subsection (5) above, any income arising from securities or possessions out of the United Kingdom which is applied outside the United Kingdom by a person ordinarily resident in the United Kingdom in or towards satisfaction of—

(a) any debt for money lent to him in the United Kingdom or for interest on money so lent, or

(b) any debt for money lent to him outside the United Kingdom and received in or brought to the United Kingdom, or

(c) any debt incurred for satisfying in whole or in part a debt falling within paragraph (a) or (b) above,

shall be treated as received by him in the United Kingdom (and, for the purposes of subsection (5)(b) above, as so received from remittances payable in the United Kingdom).

(7) Where a person ordinarily resident in the United Kingdom receives in or brings to the United Kingdom money lent to him outside the United Kingdom, but the debt for that money is wholly or partly satisfied before he does so, subsection (6) above shall apply

as if the money had been received in or brought to the United Kingdom before the debt was so satisfied, except that any sums treated by virtue of that subsection as received in the United Kingdom shall be treated as so received at the time when the money so lent is actually received in or brought to the United Kingdom.

(8) Where—

(a) a person ("the borrower") is indebted for money lent to him, and

(b) income is applied by him in such a way that the money or property representing it is held by the lender on behalf of or to the account of the borrower in such circumstances as to be available to the lender for the purpose of satisfying or reducing the debt by set-off or otherwise,

that income shall be treated as applied by the borrower in or towards satisfaction of the debt if, under any arrangement between the borrower and the lender, the amount for the time being of the borrower's indebtedness to the lender, or the time at which the debt is to be repaid in whole or in part, depends in any respect directly or indirectly on the amount or value so held by the lender.

(9) For the purposes of subsections (6) to (8) above—

(a) a debt for money lent shall, to the extent to which that money is applied in or towards satisfying another debt, be deemed to be a debt incurred for satisfying that other debt, and a debt incurred for satisfying in whole or in part a debt falling within paragraph (c) of subsection (6) above shall itself be treated as falling within that paragraph; and

(b) "lender" includes, in relation to any money lent, any person for the time being entitled to repayment.

Modifications etc. (not altering text)

C5 *See* 1990 s.56*and* Sch.10 para.12(4)*—tax on income in respect of chargeable securities on income of year of assessment.*

C6 *See*—1979(C) s.14(2)*—capital gains tax on gains applied outside the United Kingdom in payment of certain debts.*1989 s.94*and* Sch.11 paras.5, 13*—deep gain securities.*

C7 *See* 1988(F) s.38(9)*—no deduction under* s.65(1)(b)*on account of a payment to which* s.38 (*maintenance payments*)*applies.*

C8 S. 65(6)-(9) applied (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), **ss. 12(2)**, 289 (with ss. 60, 101(1), 171, 201(3)).

Marginal Citations

M26 SOURCE-1970 s. 122(1)(a), (b)

M27 SOURCE-1974 S. 22(1)

M28 SOURCE-1974 s. 23(1), 6(b)

M29 SOURCE-1970 s. 122(2)(a)

M30 SOURCE-1970 s. 122(3)–(7)

VALID FROM 01/05/1995

[F9 65A Case V income from land overseas etc.

(1) Notwithstanding anything in section 21(4), subsection (2A) of section 65 shall require the rules referred to in that subsection to be applied separately in relation to—

(a) any business which is treated for the purposes of that subsection as if it were a Schedule A business, and

(b) any actual Schedule A business of the person chargeable,

as if, in each case, that business were the only Schedule A business carried on by that person.

(2) Section 21(3), so far as applied by virtue of section 65(2A) for the purposes of the computation of the amount of any income chargeable to tax under Case V of Schedule D, shall have effect as if it required sections 80 and 81 to be disregarded in the computation of the amount of any profits or gains, or losses, of a Schedule A business.

(3) Sections 503 and 504 of this Act and section 29 of the 1990 Act (furnished holiday accommodation) shall be disregarded in the computation in accordance with section 65(2A) of any income chargeable to tax under Case V of Schedule D.

(4) Section 65(2A) and this section shall not apply for the purposes of corporation tax.**]**

Textual Amendments

F9 S. 65A inserted (with effect in accordance with s. 41(5)-(10) of the amending Act) by Finance Act 1995 (c. 4), **s. 41(2)**

66 Special rules for fresh income.

(1) [M31]Income tax under Case III, IV or V of Schedule D shall, in the following cases, be computed on the following amounts, and, where the tax is charged under Case III, paid on those actual amounts without any deduction—

(a) as respects the year of assessment in which the income first arises, on the full amount of the income arising within that year;

(b) where the income first arose on some day in the year preceding the year of assessment other than 6th April, on the amount of the income of the year of assessment; and

(c) where the income first arose on 6th April in the year preceding the year of assessment, or on some day in the year next before the year preceding the year of assessment other than 6th April, and the person charged so requires by notice given to the inspector at any time within six years after the end of the year of assessment, on the amount of the income of that year.

(2) [M32]Where subsection (1)(c) above applies, and income tax charged otherwise than in accordance with that provision has been paid, any amount overpaid shall be repaid.

(3) [M33]If at any time a person acquires a new source of any income in respect of which he is chargeable under Case III, IV or V of Schedule D, or an addition to any source of any such income, then, for the year of assessment in which income first arises from the source or addition and the two following years of assessment, income tax in respect of the income from the source or addition shall, notwithstanding section 73, be computed separately and subsection (1) above shall apply.

(4) [M34]For the purposes of the charge under Case III, if at any time interest on a debt ceases to be payable subject to deduction of income tax, subsection (3) above shall apply as if the debt were a new source of income acquired by the creditor at that time.

(5) [M35]Where income arising to any person from any security or possession in any place out of the United Kingdom ceases at any time to be chargeable to income tax by deduction under the provisions of section 123, subsection (3) above shall apply as if that security or possession were a new source of income acquired by that person at that time.

(6) In any case where tax is to be charged under Case IV or V by reference to the amount of income received in the United Kingdom, references in this section to income which arises or arose shall have effect as references to income which is or was so received.

Modifications etc. (not altering text)
C9 *See* 1989 s.94 and Sch.11 para.5—*deep gain securities*

Marginal Citations
M31 SOURCE-1970 SS. 120(1), 123(1)
M32 SOURCE-1970 ss. 120(2), 123(2)
M33 SOURCE-1970 ss. 120(3), 123(3)
M34 SOURCE-1970 s. 120(4)
M35 SOURCE-1970 s. 123(4), (5)

67 Special rules where source of income disposed of or yield ceases.

(1) [M36]Subject to the provisions of this section, if in any year of assessment a person charged or chargeable to income tax in respect of any income chargeable under Case III, IV or V of Schedule D ceases to possess any particular source of any such income or any part of any such source, the following provisions shall apply to the tax in respect of the income from that source or part—

(a) notwithstanding section 73, the tax shall for that year, and (if necessary) for the preceding year, be computed separately;

(b) subject to paragraph (c) below, the tax shall for that year be computed on the amount of the income arising within the year (instead of the income arising within the preceding year), and shall for that preceding year also be computed on the amount of the income arising within it if greater than the amount on which tax is to be computed for that preceding year apart from this provision; and

(c) if no income arose within those two years and the person charged or chargeable makes a claim under this section not later than two years after the end of them, then, subject to subsection (4) below—

(i) paragraphs (a) and (b) above shall apply to the year of assessment in which income did last arise and the year preceding it as, apart from this paragraph, they would apply to the year in which he ceases to possess the source or part and the year preceding it, and

(ii) tax for the year of assessment following that in which income did last arise shall not be chargeable on the amount of the income so arising.

(2) [M37]For the purposes of the charge under Case III, if at any time interest on a debt begins to be payable subject to deduction of income tax, subsection (1) above shall apply as if the debt were a source of income which the creditor ceased to possess at that time.

(3) [M38]Where income in respect of which a person has previously been charged or chargeable to income tax under Case IV or V of Schedule D becomes at any time chargeable to income tax by deduction under the provisions of section 123, subsection (1) above shall apply as if the security or possession in question were a source of income which he ceased to possess at that time.

(4) [M39]Without prejudice to subsection (5) below, a person shall not be entitled by virtue of subsection (1)(c) above to make a claim under this section in respect of any source of income or any part of such a source more than eight years after the end of the year of assessment in which income last arose from that source.

(5) A person possessing a source of income chargeable to income tax under Case III, IV or V of Schedule D and having possessed it for six consecutive years of assessment without any income arising from it, shall be entitled, if income did arise from it in the year preceding those six years, to make a claim under this section not later than two years after the end of those six years; and if he does so—

(a) subsection (1) above shall apply as if he had ceased to possess the source of income immediately before the end of those six years; and

(b) section 66(3) shall apply in relation to later years of assessment as if he had acquired the source as a new source immediately after the end of those six years.

(6) [M40]References in this section to income arising shall, in cases where tax under Case IV or V is to be computed by reference to the amount of income received in the United Kingdom, be construed as references to income being so received.

(7) [M41]There shall be made all such adjustments, whether by way of repayment of tax, assessment or otherwise, as may be necessary to give effect to this section.

(8) [M42]A person's executors or administrators may make any claim under this section which he might have made, if he had not died, in respect of any source of income, or part of such a source, which he ceased to possess before his death, and may also make a claim under this section in respect of sources of income which he ceased to possess by dying; and after a person's death—

(a) any tax paid by him and repayable by virtue of a claim under this section (whether made by him or by his executors or administrators) shall be repaid to his executors or administrators, and

(b) any additional tax chargeable by virtue of such a claim shall be assessed and charged on his executors or administrators, and shall be a debt due from and payable out of his estate.

Modifications etc. (not altering text)

C10 *See* 1989 s.94*and* Sch.11 para.5—*deep gain securities.*

C11 *See*—1989 s.80*for amendment in case of certain gilt unit trusts.*1990 s.52(3), (4)*modification of* subs. (1)(b)*in the case of certain assessments under* Case III Sch.D*on unit trusts.*

Marginal Citations

M36 SOURCE-1970 ss. 121(1), 124(1)

M37 SOURCE-1970 s. 121(2)

M38 SOURCE-1970 s. 124(2)

M39 SOURCE-1970 SS. 121(3), 124(3)

M40 SOURCE-1970 s. 124(4)

M41 SOURCE-1970 ss. 121(4), 124(5)
M42 SOURCE-1970 ss. 121(5), 124(6)

68 Special rules where property etc. situated in Republic of Ireland.

(1) [M43]Notwithstanding anything in sections 65 or 66, but subject to the provisions of this section, income tax chargeable under Case IV or V of Schedule D shall, in the case of property situated and profits or gains arising in the Republic of Ireland, be computed on the full amount of the income arising in the year of assessment, whether the income has been or will be received in the United Kingdom or not, subject in the case of income not received in the United Kingdom—

(a) to the same deductions and allowances as if it had been so received; and

(b) to a deduction on account of any annuity or other annual payment (not being interest) payable out of the income to a person not resident in the United Kingdom.

(2) Subsection (1) above shall not apply—

(a) to any income which is immediately derived by a person from the carrying on by him of any trade, profession or vocation, either solely or in partnership; or

(b) to any income which arises from any pension.

(3) The tax in respect of any such income as is mentioned in subsection (2) above arising in the Republic of Ireland shall be computed either—

(a) on the full amount thereof arising in the year of assessment; or

(b) on the full amount thereof on an average of such period as the case may require and as may be directed by the inspector;

so that, according to the nature of the income, the tax may be computed on the same basis as that on which it would have been computed if the income had arisen in the United Kingdom, and subject in either case to a deduction on account of any annuity or other annual payment (not being interest) payable out of the income to a person not resident in the United Kingdom; and the person chargeable and assessable shall be entitled to the same allowances, deductions and reliefs as if the income had arisen in the United Kingdom.

The jurisdiction of the General or Special Commissioners on any appeal shall include jurisdiction to review the inspector's decision under this subsection.

[[F10](3A) The fact that the allocations of shares in the company to which persons who are not directors or employees of the company are entitled are smaller than those to which directors or employees of the company are entitled shall not be regarded for the purposes of subsection (2)(b) above as meaning that they are not entitled on similar terms if—

(a) each of the first-mentioned persons is also entitled, by reason of his office or employment and in priority to members of the public, to an allocation of shares in another company or companies which are offered to the public (at a fixed rate or by tender) at the same time as the shares in the company, and

(b) in the case of each of those persons the aggregate value (measured by reference to the fixed price or the lowest price successfully tendered) of all the shares included in the allocations to which he is entitled is the same, or as nearly the same as is reasonably practicable, as that of the shares in the company included in the entitlement of a comparable director or employee of the company.**]**

(4) In charging any income which is excluded from subsection (1) above by subsection (2)(a) above there shall be the same limitation on reliefs as under section 391(2) in the case of income computed by virtue of section 65(3) in accordance with the rules applicable to Cases I and II of Schedule D.

(5) In charging income arising from a pension under subsection (3) above, a deduction of one-tenth shall be allowed unless it is the income of a person falling within section 65(4).

Textual Amendments

F10 1990 s.79*in relation to offers made on or after* 26*July* 1990.

Marginal Citations

M43 SOURCE-1970 Sch. 12 Pt. III 2; 1976 s. 49(4), (6)

VALID FROM 06/04/2003

[F11 68A Share incentive plans: application of section 68B

(1) Section 68B applies for income tax purposes in connection with shares awarded under an approved share incentive plan.

(2) But that section does not apply to an individual if, at the time of the award of shares in question—

(a) the earnings from the eligible employment are not (or would not be if there were any) general earnings to which any of the charging provisions of Chapter 4 or 5 of Part 2 of ITEPA 2003 apply, or

(b) in the case of an award made before 6th April 2003, he was not chargeable to tax under Schedule E in respect of the employment by reference to which he met the requirement of paragraph 14 of Schedule 8 to the Finance Act 2000 (employee share ownership plans: the employment requirement) in relation to the plan.

(3) For the purposes of subsection (2)(a)—

(a) "the eligible employment" means the employment which results in the individual meeting the employment requirement in relation to the plan, and

(b) the reference to any of the charging provisions of Chapter 4 or 5 of Part 2 of ITEPA 2003 has the same meaning as it has in the employment income Parts of that Act (see sections 14(3) and 20(3) of that Act).**]**

Textual Amendments

F11 Ss. 68A-68C inserted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 10** (with Sch. 7)

Modifications etc. (not altering text)

C12 Ss. 68A-68C applied (6.4.2003 with effect in accordance with s. 723(1) of the affecting Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 2 para. 87** (with Sch. 7)

VALID FROM 06/04/2003

[F11 68B Share incentive plans: cash dividends and dividend shares

(1) Where a cash dividend is paid over to a participant under paragraph 68(4) of Schedule 2 to ITEPA 2003 (cash dividend paid over if not reinvested), the participant is chargeable to tax on the amount paid over, to the extent that it represents a foreign cash dividend, under Case V of Schedule D for the year of assessment in which the dividend is paid over to the participant.

(2) If dividend shares cease to be subject to the plan before the end of the period of three years beginning with the date on which the shares were acquired on the participant's behalf, the participant is chargeable to tax on the amount of the relevant dividend, to the extent that it represents a foreign cash dividend, under Case V of Schedule D for the year of assessment in which the shares cease to be subject to the plan.

For this purpose "the relevant dividend" is the cash dividend applied to acquire those shares on the participant's behalf.

(3) Where the participant is charged to tax under subsection (2) the tax due shall be reduced by the amount or aggregate amount of any tax paid on any capital receipts under section 501 of ITEPA 2003 in respect of those shares.

(4) Subsection (2) has effect subject to section 498 of that Act (no charge on shares ceasing to be subject to plan in certain circumstances).**]**

Textual Amendments

F11 Ss. 68A-68C inserted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 10** (with Sch. 7)

Modifications etc. (not altering text)

C13 Ss. 68A-68C applied (6.4.2003 with effect in accordance with s. 723(1) of the affecting Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 2 para. 87** (with Sch. 7)

VALID FROM 06/04/2003

[F11 68C Share incentive plans: interpretation

(1) Sections 68A and 68B and this section form part of the SIP code (see section 488 of ITEPA 2003 (approved share incentive plans)).

(2) Accordingly, expressions used in those sections and contained in the index at the end of Schedule 2 to that Act (approved share incentive plans) have the meaning indicated by that index.

(3) In section 68B, "foreign cash dividend" means a cash dividend paid in respect of plan shares in a company not resident in the United Kingdom.**]**

Textual Amendments

F11 Ss. 68A-68C inserted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 10** (with Sch. 7)

Modifications etc. (not altering text)

C14 Ss. 68A-68C applied (6.4.2003 with effect in accordance with s. 723(1) of the affecting Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 2 para. 87** (with Sch. 7)

Case VI

69 Assessment on current year basis unless otherwise directed.

(1) [M44]Income tax under Case VI of Schedule D shall be computed either on the full amount of the profits or gains arising in the year of assessment or according to an average of such period, not being greater than one year, as the case may require and as may be directed by the inspector.

(2) On an appeal to the General or Special Commissioners, the Commissioners shall have jurisdiction to review the inspector's decision under this section.

Marginal Citations

M44 SOURCE-1970 s. 125

CHAPTER III

CORPORATION TAX: BASIS OF ASSESSMENT ETC

70 Basis of assessment etc.

(1) [M45]In accordance with sections 6 to 12 and 337 to 344, for the purposes of corporation tax for any accounting period income shall be computed under Cases I to VI of Schedule D on the full amount of the profits or gains or income arising in the period (whether or not received in or transmitted to the United Kingdom), without any other deduction than is authorised by the Corporation Tax Acts.

(2) [M46]Where a company is chargeable to corporation tax in respect of a trade or vocation under Case V of Schedule D, the income from the trade or vocation shall be computed in accordance with the rules applicable to Case I of Schedule D.

(3) [M47]Cases IV and V of Schedule D shall for the purposes of corporation tax extend to companies not resident in the United Kingdom, so far as those companies are chargeable to tax on income of descriptions which, in the case of companies resident in the United Kingdom, fall within those Cases (but without prejudice to any provision of the Tax Acts specially exempting non-residents from tax on any particular description of income).

Marginal Citations

M45 SOURCE-1970 s. 129(1)
M46 SOURCE-1970 s. 129(4)
M47 SOURCE-1970 s. 129(5)

VALID FROM 31/07/1998

[F12 70A Case V income from land outside UK: corporation tax.

(1) This section applies where a company is chargeable to corporation tax under Case V of Schedule D in respect of income which—

(a) arises from a business carried on for the exploitation, as a source of rents or other receipts, of any estate, interest or rights in or over land outside the United Kingdom, and

(b) is not income to which section 70(2) applies (income from a trade or vocation).

(2) The provisions of Schedule A apply to determine whether income falls within subsection (1)(a) above as they would apply to determine whether the income fell within paragraph 1(1) of that Schedule if—

(a) the land in question were in the United Kingdom, or

(b) a caravan or houseboat which is to be used at a location outside the United Kingdom were to be used at a location in the United Kingdom.

(3) Any provision of the Taxes Acts which deems there to be a Schedule A business in the case of land in the United Kingdom applies where the corresponding circumstances arise with respect to land outside the United Kingdom so as to deem there to be a business within subsection (1)(a) above.

(4) All businesses and transactions carried on or entered into by a particular company or partnership, so far as they are businesses or transactions the income from which is chargeable to tax under Case V of Schedule D in accordance with this section, are treated for the purposes of the charge to tax under Case V as, or as entered into in the course of carrying on, a single business (an "overseas property business").

(5) The income from an overseas property business shall be computed for the purposes of Case V of Schedule D in accordance with the rules applicable to the computation of the profits of a Schedule A business.

Those rules apply separately in relation to—

(a) an overseas property business, and

(b) any actual Schedule A business of the company chargeable,

as if each were the only Schedule A business carried on by that company.

(6) Sections 503 and 504 of this Act and section 29 of the 1990 Act (provisions relating to furnished holiday accommodation) do not apply to the profits or losses of an overseas property business.

(7) Where under this section rules expressed by reference to domestic concepts of law apply in relation to land outside the United Kingdom, they shall be interpreted so

as to produce the result that most closely corresponds with the result produced for Schedule A purposes in relation to land in the United Kingdom.**]**

Textual Amendments

F12 S. 70A inserted (with effect in accordance with s. 38(2)(3) of the amending Act) by Finance Act 1998 (c. 36), s. 38(1), **Sch. 5 para. 25** (with Sch. 5 para. 73)

CHAPTER IV

PROVISIONS SUPPLEMENTARY TO CHAPTERS II AND III

71 Computation of income tax where no profits in year of assessment.

[M48]Where it is provided by the Income Tax Acts that income tax under Schedule D in respect of profits or gains or income from any source is to be computed by reference to the amount of the profits or gains or income of some period preceding the year of assessment, tax as so computed shall be charged for that year of assessment notwithstanding that no profits or gains or income arise from that source for or within that year.

Marginal Citations

M48 SOURCE-1970 s. 126

72 Apportionments etc. for purposes of Cases I, II and VI.

(1) [M49]Where in the case of any profits or gains chargeable under Case I, II or VI of Schedule D it is necessary in order to arrive for the purposes of income tax or corporation tax at the profits or gains or losses of any year of assessment, accounting period or other period, to divide and apportion to specific periods the profits or gains or losses for any period for which the accounts have been made up, or to aggregate any such profits, gains or losses or any apportioned parts thereof, it shall be lawful to make such a division and apportionment or aggregation.

(2) [M50]Any apportionment under this section shall be made in proportion to the number of months, or fractions of months, in the respective periods.

Modifications etc. (not altering text)

C15 *See* S.I. 1987 No. 530 (in Part III Vol. 5) regn. 16—*payments attributable to non-resident entertainers and sportsmen.*

Marginal Citations

M49 SOURCE-1970 ss. 127(1), 129(2)
M50 SOURCE-1970 s. 127(2), 527(4)

73 Single assessments for purposes of Cases III, IV and V.

M51Except as otherwise provided by the Tax Acts all income in respect of which a person is chargeable to tax under Case III, IV or V of Schedule D may respectively be assessed and charged in one sum.

Marginal Citations
M51 SOURCE-1970 ss. 128, 129(3)

CHAPTER V

COMPUTATIONAL PROVISIONS

Modifications etc. (not altering text)
C16 *See*—1979(C) s.122—*election to take capital gain or loss into account when asset appropriated to stock in trade.*1989 ss.67-74—*employee share ownership trusts.*Banking Act 1987 (c.22) s.66—*contributions to the Deposit Protection Fund.*

Deductions

74 General rules as to deductions not allowable.

M52Subject to the provisions of the Tax Acts, in computing the amount of the profits or gains to be charged under Case I or Case II of Schedule D, no sum shall be deducted in respect of—

(a) any disbursements or expenses, not being money wholly and exclusively laid out or expended for the purposes of the trade, profession or vocation;

(b) any disbursements or expenses of maintenance of the parties, their families or establishments, or any sums expended for any other domestic or private purposes distinct from the purposes of the trade, profession or vocation;

(c) the rent of the whole or any part of any dwelling-house or domestic offices, except any such part as is used for the purposes of the trade, profession or vocation, and where any such part is so used, the sum so deducted shall not, unless in any particular case it appears that having regard to all the circumstances some greater sum ought to be deducted, exceed two-thirds of the rent bona fide paid for that dwelling-house or those offices;

(d) any sum expended for repairs of premises occupied, or for the supply, repairs or alterations of any implements, utensils or articles employed, for the purposes of the trade, profession or vocation, beyond the sum actually expended for those purposes;

(e) any loss not connected with or arising out of the trade, profession or vocation;

(f) any capital withdrawn from, or any sum employed or intended to be employed as capital in, the trade, profession or vocation, but so that this paragraph shall not be treated as disallowing the deduction of any interest;

(g) any capital employed in improvements of premises occupied for the purposes of the trade, profession or vocation;

(h) any interest which might have been made if any such sums as aforesaid had been laid out at interest;

(j) any debts, except bad debts proved to be such, and doubtful debts to the extent that they are respectively estimated to be bad, and in the case of the bankruptcy or insolvency of a debtor the amount which may reasonably be expected to be received on any such debt shall be deemed to be the value thereof;

(k) any average loss beyond the actual amount of loss after adjustment;

(l) any sum recoverable under an insurance or contract of indemnity;

(m) any annuity or other annual payment (other than interest) payable out of the profits or gains;

(n) any interest paid to a person not resident in the United Kingdom if and so far as it is interest at more than a reasonable commercial rate;

(o) [M53]any relevant loan interest within the meaning of section 369, other than interest to which section 375(2) applies;

(p) [M54]any royalty or other sum paid in respect of the user of a patent;

(q) any rent, royalty or other payment which is by section 119 or 120 declared to be subject to deduction of tax under section 348 or 349 as if it were a royalty or other sum paid in respect of the user of a patent.

Modifications etc. (not altering text)

C17 *See* 1989 ss.112-113—*expenditure on security on or after* 6*April* 1989.

C18 *Other deductions, where allowed:*—1988(F) s.73(2)—*sums in connection with restrictive undertakings paid on or after* 6*June* 1988.1990 s.126(1), (2), (3)—*deduction for capital expenditure on improving safety etc. at football grounds as a result of reduction in pool betting duty under* 1990 s.4.1990(C) s.136—*expenditure on scientific research.*S.I. 1987 No.530 (*in* Part III Vol.5) regn.8(2)—*just and reasonable expenses incurred in relation to payments attributable to non resident entertainers or sportsmen.*

Marginal Citations

M52 SOURCE-1970 s. 130(a)–(m); 1987 Sch. 15para. 2(9)

M53 SOURCE-1982 s. 26(8)

M54 SOURCE-1970 s. 130(n), (o)

75 Expenses of management: investment companies.

(1) [M55]In computing for the purposes of corporation tax the total profits for any accounting period of an investment company resident in the United Kingdom there shall be deducted any sums disbursed as expenses of management (including commissions) for that period, except any such expenses as are deductible in computing profits apart from this section.

(2) For the purposes of subsection (1) above there shall be deducted from the amount treated as expenses of management the amount of any income derived from sources not charged to tax, other than franked investment income, group income and any regional development grant. In this subsection "regional development grant" means a payment by way of grant under Part II of the [M56]Industrial Development Act 1982.

(3) [M57]Where in any accounting period of an investment company the expenses of management deductible under subsection (1) above, together with any charges on income paid in the accounting period wholly and exclusively for purposes of

the company's business, exceed the amount of the profits from which they are deductible—

(a) the excess shall be carried forward to the succeeding accounting period; and

(b) the amount so carried forward to the succeeding accounting period shall be treated for the purposes of this section, including any further application of this subsection, as if it had been disbursed as expenses of management for that accounting period.

(4) For the purposes of this section there shall be added to a company's expenses of management in any accounting period the amount of any allowances falling to be made to the company for that period by virtue of **[**F13section 28 of the 1990 Act (capital allowances for investment and insurance companies)**]** in so far as effect cannot be given to them under subsection (2) of that section.

(5) M58Where an appeal against an assessment to corporation tax or against a decision on a claim under section 242 relates exclusively to the relief to be given under subsection (1) above, the appeal shall lie to the Special Commissioners, and if and so far as the question in dispute on any such appeal which does not lie to the Special Commissioners relates to that relief, that question shall, instead of being determined on the appeal, be referred to and determined by the Special Commissioners, and the Management Act shall apply as if that reference were an appeal.

Textual Amendments

F13 1990(C) s.164*and* Sch.1 para.8(4).*Previously*
"section 306 of the 1970 Act (capital allowances for machinery and plant)".

Modifications etc. (not altering text)

C19 *See the following sections of this Act:*—s.77—*incidental costs of obtaining loan finance.*s.78—*incidental costs in securing acceptance of bills of exchange by banks.*s.79—*contributions to approved local enterprise agencies on or after* 1*April* 1982*and before* 1*April* 1992.s.85—*profit sharing schemes.*s.86—*expenditure incurred in relation to employees seconded to charities; and, from* 26*November* 1986*to* 31*March* 1997,*educational establishments.*s.88—*sums paid to Export Credits Guarantee Dept. under investment insurance schemes.*s.90—*additional payments to redundant employees.*s.242(2)—*set-off of losses, etc., against franked investment income.*s.403—*group relief.*s.468—*application to authorised unit trusts.*s.573—*losses on unquoted shares in trading companies allowed before charges against income of investment companies.*s.577—*exclusion of certain entertaining expenses.*s.579—*inclusion of statutory redundancy payments.*s.586—*disallowance of deductions for war risk premiums.*s.587—*disallowance of certain payments in respect of war injuries to employees.*s.588—*relief for costs of training incurred on or after* 6*April* 1987.s.592—*inclusion of employer's contribution under exempt approved retirement benefits schemes.*s.779—*limitation on reliefs: land sold and leased back.*s.780—*land sold and leased back: relief in respect of rent under new lease.*s.834—*definitions of "profits" and "trade" in* s.6(4)*to apply for purposes of* s.75.

C20 *See*—1988(F) s.73(3)—*sums in connection with restrictive undertakings paid on or after* 6*June* 1988.1989 s.44*for periods of account ending after* 5*April* 1989*involving emoluments.*1989 s.67—*employee share ownership trusts.*1989 s.76—*non-approved retirement benefit schemes.*1989 ss.86-87—*changes in respect of insurance companies.*

Marginal Citations

M55 SOURCE-1970 s. 304(1); 1984 s. 54(2)(b); 1987 s. 41

M56 1982 c. 52.

M57 SOURCE-1970 s. 304(2), (3)

M58 SOURCE-1970 s. 304(4)

VALID FROM 22/07/2004

[F14 75A Accounting period to which expenses of management are referable

(1) This section has effect for the purpose of determining the accounting period to which expenses of management are referable for the purposes of section 75(1).

(2) Where—

(a) expenses of management are debited in accounts drawn up by a company for a period of account,

(b) the treatment of those expenses in those accounts is in accordance with generally accepted accounting practice, and

(c) the period of account coincides with an accounting period,

the expenses of management are referable to that accounting period.

(3) Where—

(a) expenses of management are debited in accounts drawn up by a company for a period of account, and

(b) the treatment of those expenses in those accounts is in accordance with generally accepted accounting practice, but

(c) the period of account does not coincide with an accounting period,

subsection (4) below applies.

(4) Where this subsection applies, the expenses of management—

(a) shall be apportioned between any accounting periods that fall within the period of account, and

(b) are referable to an accounting period to the extent that they are so apportioned to it.

(5) An apportionment under subsection (4) above shall be in accordance with section 834(4) (time basis) unless it appears that that method would work unreasonably or unjustly, in which case such other method shall be used as appears just and reasonable.

(6) Where—

(a) expenses of management are not referable to an accounting period by virtue of subsections (2) to (5) above, but

(b) accounts are drawn up by the company for a period of account, and

(c) if the expenses of management had been treated in those accounts in accordance with generally accepted accounting practice, they would fall to be debited in those accounts,

the expenses of management are referable to the accounting period to which they would have been referable in accordance with subsections (2) to (5) above if they had been so debited in those accounts.

(7) Where expenses of management are not referable to an accounting period by virtue of subsections (2) to (6) above, they are referable to the accounting period to which

they would be referable in accordance with subsections (2) to (5) above on the assumptions in subsection (8) below.

(8) Those assumptions are—

(a) that for each accounting period that does not coincide with, or fall within, any period of account, there is a period of account that coincides with that accounting period, and

(b) that so much of the expenses of management as would fall to be debited in accordance with generally accepted accounting practice in accounts drawn up by the company for any such deemed period of account are so debited.

(9) This section is without prejudice to any other provision of the Corporation Tax Acts which provides for amounts to be treated for the purposes of section 75 as expenses of management referable to an accounting period.

(10) Any reference in this section to expenses of management being debited in accounts is a reference to those expenses being brought into account, in accordance with generally accepted accounting practice, as a debit—

(a) in the company's profit and loss account, or

(b) in a statement of total recognised gains and losses or other statement of items brought into account in computing the company's profits and losses for accounting purposes.

For this purpose "debit" means an amount which for accounting purposes reduces a profit, or increases a loss, for a period of account.**]**

Textual Amendments

F14 S. 75A inserted (with effect in accordance with ss. 42, 43 of the amending Act) by Finance Act 2004 (c. 12), **s. 39**

VALID FROM 22/07/2004

[F15 75B Amounts reversing expenses of management deducted: charge to tax

(1) This section applies in any case where the following conditions are satisfied—

(a) a credit is brought into account by a company in a period of account (the "reversal period") which ends on or after the commencement date,

(b) the credit reverses (in whole or in part) a debit brought into account in a previous period of account of the company (whenever ending),

(c) the debit (in whole or in part) represents expenses of management deductible under section 75(1) for an accounting period of the company ("the period of deductibility"),

(d) the expenses of management were so deductible for that period otherwise than by virtue of section 75(9) (carry forward of unrelieved excess),

(e) the period of deductibility ends before, or at the same time as, the reversal period,

(f) the reversal period does not coincide with an accounting period beginning before the commencement date.

(2) In any such case, subsection (4) or (5) below (as the case may be) shall apply in relation to the reversal amount.

(3) In this section "the reversal amount" means so much of the credit as—

(a) reverses so much of the debit as represents the expenses of management, and

(b) does not represent sums otherwise taken into account in determining for the purposes of corporation tax the profits and losses of the company for the relevant accounting period or any earlier accounting period.

For this purpose the relevant accounting period is the latest accounting period of the company that falls wholly or partly within the reversal period.

(4) If the reversal period coincides with an accounting period of the company beginning on or after the commencement date, the reversal amount shall be dealt with for that period in accordance with subsection (7) below.

(5) If the reversal period does not coincide with an accounting period of the company—

(a) the reversal amount shall be apportioned between any accounting periods that fall within the reversal period, and

(b) any amount so apportioned to an accounting period beginning on or after the commencement date shall be dealt with for that period in accordance with subsection (7) below.

(6) An apportionment under subsection (5) above shall be in accordance with section 834(4) (time basis) unless it appears that that method would work unreasonably or unjustly, in which case such other method shall be used as appears just and reasonable.

(7) Where an amount falls to be dealt with in accordance with this subsection for an accounting period—

(a) it shall, so far as possible, be applied in reducing or further reducing (but not below nil) the company's expenses of management deductible for that period otherwise than by virtue of section 75(9) (carry forward of unrelieved excess), and

(b) so much of the amount as cannot be so applied shall be regarded as income of the company chargeable under Case VI of Schedule D for that accounting period.

(8) In subsection (1) above "brought into account", in relation to a period of account of a company, means brought into account in accordance with generally accepted accounting practice in determining, for accounting purposes, profit and loss for that period of account.

(9) If (apart from this subsection) an accounting period does not coincide with, or fall within, any period of account, it shall be assumed for the purposes of this section that there is a period of account of the company that coincides with that accounting period.

(10) It shall be assumed for the purposes of this section that, in determining for accounting purposes profit and loss for any period of account of any company, amounts fall to be brought into account in accordance with generally accepted accounting practice.

(11) For the purposes of this section a credit reverses a debit in whole or in part in any case where the sum represented in whole or in part by the debit is paid and then in

whole or in part repaid (as well as in a case where the sum represented by the debit is never paid).

(12) In this section—

"the commencement date" means 1st April 2004;

"credit" means an amount which for accounting purposes increases or creates a profit, or reduces a loss, for a period of account;

"debit" means an amount which for accounting purposes reduces a profit, or increases or creates a loss, for a period of account.**]**

Textual Amendments

F15 S. 75B inserted (22.7.2004) by Finance Act 2004 (c. 12), **s. 45(1)** (with s. 45(2)(3))

76 Expenses of management: insurance companies.

(1) [M59]Subject to the provisions of this section and of section 432, section 75 shall apply for computing the profits of a company carrying on life assurance business, whether mutual or proprietary, (and not charged to corporation tax in respect of it under Case I of Schedule D), whether or not the company is resident in the United Kingdom, as that section applies in relation to an investment company except that—

(a) there shall be deducted from the amount treated as the expenses of management for any accounting period the amount of any fines, fees or profits arising from reversions, and

(b) no deduction shall be made under section 75(2) **[**[F16]; and

(c) there shall be deducted from the amount treated as the expenses of management for any accounting period any repayment or refund (in whole or in part) of a sum disbursed by the company (for that or any earlier period) as acquisition expenses; and

[[F17](ca) there shall also be deducted from the amount treated as the expenses of management for any accounting period any reinsurance commission earned in the period which is referable to **[**[F18]basic life assurance and general annuity business**]**; and**]**

(d) the amount treated as expenses of management shall not include any amount in respect of expenses referable to [F19]. . . **[**[F20], pension business or overseas life assurance business**]**; and

(e) the amount of profits from which expenses of management may be deducted for any accounting period shall not exceed the net income and gains of that accounting period referable to **[**[F18]basic life assurance and general annuity business**]**;

and for this purpose "net income and gains" means income and gains after deducting any reliefs or exemptions which fall to be applied before taking account of this section.**]**

(2) [M60]Relief in respect of management expenses shall not be given to any such company, whether under section 242 or subsection (1) above, so far as it would, if given in addition to all other reliefs to which the company is entitled, reduce the corporation tax borne by the company on the income and gains of its life assurance business for any accounting period to less than would have been paid if the company had been charged to tax in respect of that business under Case I of Schedule D.

In this subsection the references to reliefs do not include references to any set-off under section 239.

(3) [M61]For the purposes of subsection (2) above—

(a) any tax credit to which the company is entitled in respect of a distribution received by it shall be treated as an equivalent amount of corporation tax borne or paid in respect of that distribution; and

(b) any payment in respect of that credit under section 242 shall be treated as reducing the tax so treated as borne or paid.

(4) In applying subsection (2) above to an accounting period in which a company—

(a) carries on any business in addition to life assurance business, or

(b) carries on both ordinary life assurance business and industrial life assurance business,

the tax that would have been paid if the company had been charged under Case I of Schedule D in respect of its life assurance business, or its life assurance business of either of those classes, shall be calculated as if any advance corporation tax set against the company's liability to corporation tax for that accounting period were apportioned to the corporation tax attributable to each business in proportion to the profits of that business charged to corporation tax for that accounting period.

(5) [M62]Where relief has been withheld in respect of any accounting period by virtue of subsection (2) above, the excess to be carried forward by virtue of section 75(3) shall be increased accordingly.

(6) [M63]The relief under this section available to an overseas life insurance company (within the meaning of section 431) in respect of its expenses of management shall be limited to expenses attributable to the life assurance business carried on by the company at or through its branch or agency in the United Kingdom.

(7) [M64]For the purposes of this section any sums paid by a company under **[**[F21](a)**]**a long term business levy imposed by virtue of the [M65]Policyholders Protection Act 1975 **[**[F22]or

(b) a levy imposed in pursuance of a scheme established by rules under section 54 of the 1986 Act (compensation fund for unsatisfied claims),**]**

shall be treated as part of its expenses of management.

[[F23](7A) The Treasury may by regulations make provision for any sums paid by a company under a prescribed levy imposed under a prescribed investor protection scheme established under the rules of a prescribed recognised self-regulating organisation to be treated for the purposes of this section as part of the company's expenses of management; and, without prejudice to the generality of the foregoing, regulations under this subsection may, in particular—

(a) provide for only a prescribed part of any sums so paid to be so treated;

(b) provide for sums paid before, as well as after, the coming into force of the regulations to be so treated; and

(c) make different provision for different cases or in relation to different levies, schemes or organisations.**]**

[[F24](8) In this section—

"the 1986 Act" means the Financial Services Act 1986;

"acquisition expenses" means expenses falling within paragraphs (a) to (c) of subsection (1) of section 86 of the Finance Act 1989;

"authorised person" has the same meaning as it has in the 1986 Act by virtue of section 207(1) of that Act;

"investment business" has the same meaning as it has in the 1986 Act by virtue of section 1(2) of that Act;

"investor" includes a person who is an investor for the purposes of the 1986 Act;

"investor protection scheme" means a scheme established under the rules of a recognised self-regulating organisation for purposes which consist of or include the compensating of investors in cases where persons, or persons of some class or description, who are or have been authorised persons, are, or are likely to be, unable to satisfy claims in respect of any description of civil liability incurred by them in connection with their investment businesses;

"prescribed" means specified in regulations made by the Treasury under subsection (7A) above;

"recognised self-regulating organisation" has the same meaning as it has in the 1986 Act;

and other expressions have the same meaning as in Chapter I of Part XII.**]**

Textual Amendments

F16 1989 s.87(2)*with respect to accounting periods beginning on or after* 1*January* 1990 (*see* s.87(5)*re straddling periods*).

F17 1990 s.44(3)*with respect to accounting periods beginning on or after* 1*January* 1990 (*see* 1989 s.87(5)*re straddling periods*).

F18 Words in s. 76(1)(ca)(e) substituted (1.1.1992) by Finance Act 1991 (c. 31, SIF 63:1), s. 48, Sch. 7 paras. 1(a), **18**

F19 Words in s. 76(1)(d) repealed (1.1.1992) by Finance Act 1991 (c. 31, SIF 63:1), ss. 48, 123, Sch. 7 paras. 1(b), 18, **Sch. 19 Pt. V** Note 3

F20 1990 s.42*and* Sch.7 para.1*for accounting periods beginning on or after* 1*January* 1990 (*see* para.10).*Previously*
"or pension business".

F21 '(a)' in s. 76(7) inserted by Finance Act 1991 (c. 31, SIF 63:1), **s. 47(1)**(with effect as mentioned in s. 47(4))

F22 Words in s. 76(7) inserted by Finance Act 1991 (c. 31, SIF 63:1), **s. 47(1)**(with effect as mentioned in s. 47(4))

F23 S. 76(7A) inserted by Finance Act 1991 (c. 31, SIF 63:1), **s. 47(2)**

F24 S. 76(8) substituted by Finance Act 1991 (c. 31, SIF 63:1), **s. 47(3)**

Modifications etc. (not altering text)

C21 See 1989 s. 44 - periods of assessment ending after 5 April 1989 involving endowments. 1989 ss. 85-88 - changes in respect of insurance companies.

C22 See the following sections of this Act:
—s.85—
profit sharing schemes.
s.88—
sums paid to Exports Credits Guarantee Dept. under investment insurance scheme.
s.90—
additional payments to redundant employees.
s.242—

set-off of losses etc., against franked investment income.
s.403—
management expenses of life assurance companies excluded from group relief.
s.573(4)—
losses on unquoted shares in trading companies allowed before charges against income of investment companies.
s.579—
deduction for statutory redundancy payments.
s.586—
disallowance of deductions for war risk premiums.
s.587—
disallowance of certain payments in respect of war injuries to employees.
s.779—
limitation on reliefs: land sold and leased back.
s.780—
land sold and leased back: relief in respect of rent under new lease.
s.781—
assets leased to traders and others: cancellation of reliefs.
s.834—
definitions of "profits" and "trade" in
s.6(4)
to apply for purposes of
s.76

C23 *See* S.I. 1989 No.2417 (*in* Part III Vol.5)*for modifications applicable to life or endowment business carried on by registered friendly societies.*

C24 S. 76(7) modified (31.7.1992 with effect as stated in reg. 1 of the amending instrument) by The Friendly Societies (Modification of the Corporation Tax Acts) Regulations (S.I. 1992/1655), {reg. 4}

C25 S. 76(7) amendment to earlier affecting provision S.I. 1992/1655 reg. 4 (31.12.1993 with effect as stated in reg. 1(2)(3) of the amending instrument) by The Friendly Societies (Modification of the Corporation Tax Acts) (Amendment) Regulations 1993 (S.I. 1993/3111) {reg. 5}

Marginal Citations

M59 SOURCE-1970 s. 305(1)
M60 SOURCE-1970 s. 305(2); 1972 Sch. 18 para. 1(2)
M61 SOURCE-1972 Sch. 18 para. 1(1), (3)
M62 SOURCE-1970 s. 305(2)
M63 SOURCE-1970 s. 317
M64 SOURCE-1976 s. 47
M65 1975 c. 75.

VALID FROM 01/12/2001

76A Levies and repayments under the Financial Services and Markets Act 2000.

(1) In computing the amount of the profits to be charged under Case I of Schedule D arising from a trade carried on by an authorised person (other than an investment company)—

(a) to the extent that it would not be deductible apart from this section, any sum expended by the authorised person in paying a levy may be deducted as an allowable expense;

(b) any payment which is made to the authorised person as a result of a repayment provision is to be treated as a trading receipt.

[F25(2) "Levy" means—

(a) a payment required under rules made under section 136(2) of the Financial Services and Markets Act 2000 ("the Act of 2000");

(b) a levy imposed under the Financial Services Compensation Scheme;

(c) a payment required under rules made under section 234 of the Act of 2000;

(d) a payment required under scheme rules in accordance with paragraph 15(1) of Schedule 17 to the Act of 2000;

(e) a payment required in accordance with the standard terms fixed under paragraph 18 of Schedule 17 to the Act of 2000 other than an award which is not an award of costs under cost rules.**]**

[F26(3) "Repayment provision" means—

(a) any provision made by virtue of section 136(7) or 214(1)(e) of the Act of 2000;

(b) any provision by scheme rules for fees to be refunded in specified circumstances.**]**

(4) "Authorised person" has the same meaning as in the Act of 2000.

[F27(5) "Scheme rules" means the rules referred to in paragraph 14(1) of Schedule 17 to the Act of 2000.

(6) "Costs rules" means—

(a) rules made under section 230 of the Act of 2000;

(b) provision relating to costs contained in the standard terms fixed under paragraph 18 of Schedule 17 to the Act of 2000.**]**

Textual Amendments

F25 S. 76A(2) substituted (1.12.2001 in accordance with art. 1(2)(a) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 16(3)**

F26 S. 76A(3) substituted (1.12.2001 in accordance with art. 1(2)(a) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 16(4)**

F27 S. 76A(5)(6) added (1.12.2001 in accordance with art. 1(2)(a) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 16(5)**

VALID FROM 01/12/2001

76B Levies and repayments under the Financial Services and Markets Act 2000: investment companies.

(1) For the purposes of section 75 any sums paid by an investment company—

(a) by way of a levy, or

(b) as a result of an award of costs under costs rules,

shall be treated as part of its expenses of management.

(2) If a payment is made to an investment company as a result of a repayment provision, the company shall be charged to tax under Case VI of Schedule D on the amount of that payment.

(3) "Levy" has the meaning given in section **[**F28**]**76A(2)**]**.

[F29**]**(4) "Costs rules" has the meaning given in section 76A(6).**]**

(5) "Repayment provision" has the meaning given in section 76A(3).

Textual Amendments

F28 Words in s. 76B(3) substituted (1.12.2001 in accordance with art. 1(2)(a) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 16(7)**

F29 S. 76B(4) substituted (1.12.2001 in accordance with art. 1(2)(a) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 16(8)**

77 Incidental costs of obtaining loan finance.

(1) **M66**Subject to subsection (5) below, in computing the profits or gains to be charged under Case I or II of Schedule D there may be deducted the incidental costs of obtaining finance by means of a qualifying loan or the issue of qualifying loan stock or a qualifying security; and the incidental costs of obtaining finance by those means shall be treated for the purposes of section 75 as expenses of management.

(2) Subject to subsections (3) and (4) below, in this section—

(a) **M67** "a qualifying loan" and "qualifying loan stock" mean a loan or loan stock the interest on which is deductible—

(i) in computing for tax purposes the profits or gains of the person by whom the incidental costs in question are incurred; or

(ii) under section 338 against his total profits; and

(b) **M68** "qualifying security" means any deep discount security, as defined by paragraph 1 of Schedule 4, in respect of which the income elements, as defined by paragraph 4 of that Schedule, are deductible under paragraph 5(1) of that Schedule in computing the total profits of the company by which the incidental costs in question are incurred.

(3) **M69**Except as provided by subsection (4) below, a loan or loan stock which carries the right of conversion into or to the acquisition of—

(a) shares, or

(b) other securities not being a qualifying loan or qualifying loan stock,

is not a qualifying loan or qualifying loan stock if that right is exercisable before the expiry of the period of three years from the date when the loan was obtained or the stock issued.

(4) **M70**A loan or loan stock—

(a) which carries such a right as is referred to in subsection (3) above, and

(b) which by virtue of that subsection is not a qualifying loan or qualifying loan stock,

shall nevertheless be regarded as a qualifying loan or qualifying loan stock, as the case may be, if the right is not, or is not wholly, exercised before the expiry of the period of three years from the date when the loan was obtained or the stock was issued.

(5) For the purposes of the application of subsection (1) above in relation to a loan or loan stock which is a qualifying loan or qualifying loan stock by virtue of subsection (4) above—

(a) if the right referred to in subsection (4)(a) above is exercised as to part of the loan or stock within the period referred to in that subsection, only that proportion of the incidental costs of obtaining finance which corresponds to the proportion of the stock in respect of which the right is not exercised within that period shall be taken into account; and

(b) in so far as any of the incidental costs of obtaining finance are incurred before the expiry of the period referred to in subsection (4) above they shall be treated as incurred immediately after that period expires.

(6) [M71]In this section "the incidental costs of obtaining finance" means expenditure on fees, commissions, advertising, printing and other incidental matters (but not including stamp duty), being expenditure wholly and exclusively incurred for the purpose of obtaining the finance (whether or not it is in fact obtained), or of providing security for it or of repaying it.

(7) This section shall not be construed as affording relief—

(a) for any sums paid in consequence of, or for obtaining protection against, losses resulting from changes in the rate of exchange between different currencies; or

(b) for the cost of repaying a loan or loan stock or a qualifying security so far as attributable to its being repayable at a premium or to its having been obtained or issued at a discount.

Marginal Citations

M66 SOURCE-1980 s. 38(1); 1984 s. 43(1), Sch. 9 para. 3(6)
M67 SOURCE-1980 s. 38(2); 1984 s. 43(1)
M68 SOURCE-1984 Sch. 9 para. 3(7)
M69 SOURCE-1980 S. 38(3); 1984 S. 43(1)
M70 SOURCE-1980 s. 38(3A), (3B); 1984 s. 43(2)
M71 SOURCE-1980 s. 38(4), (5); 1984 Sch. 9 para. 3(6)

78 Discounted bills of exchange.

(1) [M72]This section applies in any case where—

(a) a bill of exchange drawn by a company is or was accepted by a bank and discounted by that or any other bank or by a discount house; and

(b) the bill becomes or became payable on or after 1st April 1983; and

(c) the discount suffered by the company is not (apart from this section) deductible in computing the company's profits or any description of those profits for purposes of corporation tax.

(2) Subject to subsection (3) below, in computing, in a case where this section applies, the corporation tax chargeable for the accounting period of the company in which the bill

of exchange is paid, an amount equal to the discount referred to in subsection (1)(c) above shall be allowed as a deduction against the total profits for the period as reduced by any relief other than group relief and, except for the purposes of an allowance under section 338(1), that amount shall be treated for the purposes of the Corporation Tax Acts as a charge on income.

(3) Subsection (2) above shall not apply if the discount is not ultimately suffered by the company and shall not apply unless—

(a) the company exists wholly or mainly for the purposes of carrying on a trade; or

(b) the bill is drawn to obtain funds which are wholly and exclusively expended for the purposes of a trade carried on by the company; or

(c) the company is an investment company.

(4) Where an amount falls to be allowed as mentioned in subsection (2) above, there may be deducted, in computing the profits or gains of the company to be charged under Case I of Schedule D, the incidental costs incurred on or after 1st April 1983 in securing the acceptance of the bill by the bank; and those incidental costs shall be treated for the purposes of section 75 as expenses of management.

(5) For the purposes of subsection (4) above "incidental costs" means fees, commission and any other expenditure wholly and exclusively incurred for the purpose of securing the acceptance of the bill.

(6) In this section "bank" means a bank carrying on a bona fide banking business in the United Kingdom and "discount house" means a person bona fide carrying on the business of a discount house in the United Kingdom.

Marginal Citations

M72 SOURCE-1984 s. 42

79 Contributions to local enterprise agencies.

(1) [M73]Notwithstanding anything in section 74, but subject to the provisions of this section, where a person carrying on a trade, profession or vocation makes any contribution (whether in cash or in kind) to an approved local enterprise agency, any expenditure incurred by him in making the contribution may be deducted as an expense in computing the profits or gains of the trade, profession or vocation for the purposes of tax if it would not otherwise be so deductible.

(2) Where any such contribution is made by an investment company any expenditure allowable as a deduction under subsection (1) above shall for the purposes of section 75 be treated as expenses of management.

(3) Subsection (1) above does not apply in relation to a contribution made by any person if either he or any person connected with him receives or is entitled to receive a benefit of any kind whatsoever for or in connection with the making of that contribution, whether from the agency concerned or from any other person.

(4) In this section "approved local enterprise agency" means a body approved by the Secretary of State for the purposes of this section; but he shall not so approve a body unless he is satisfied that—

(a) its sole objective is the promotion or encouragement of 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; or

(b) one of its principal objectives is that set out in paragraph (a) above and it maintains or is about to maintain a fund separate from its other funds which is or is to be applied solely in pursuance of that objective;

and where the Secretary of State approves a body by virtue of paragraph (b) above, the approval shall specify the fund concerned and, in relation to a body so approved, any reference in this section to a contribution is a reference to a contribution which is made wholly to or for the purposes of that fund.

(5) [M74]A body may be approved under subsection (4) above whether or not it is a body corporate or a body of trustees or any other association or organisation and whether or not it is described as a local enterprise agency.

(6) A body may not be approved under subsection (4) above unless it is precluded, by virtue of any enactment, contractual obligation, memorandum or otherwise, from making any direct or indirect payment or transfer to any of its members, or to any person charged with the control and direction of its affairs, of any of its income or profit by way of dividend, gift, division, bonus or otherwise howsoever by way of profit.

(7) For the purposes of subsection (6) above, the payment—

(a) of reasonable remuneration for goods, labour or power supplied or for services rendered, or

(b) of reasonable interest for money lent, or

(c) of reasonable rent for any premises,

does not constitute a payment or transfer which is required to be so precluded.

(8) [M75]Any approval given by the Secretary of State may be made conditional upon compliance with such requirements as to accounts, provision of information and other matters as he considers appropriate; and if it appears to the Secretary of State that—

(a) an approved local enterprise agency is not complying with any such requirement, or

(b) one or other of the conditions for his approval contained in subsection (4) above or the precondition for his approval in subsection (6) above has ceased to be fulfilled with respect to an approved local enterprise agency,

he shall by notice withdraw his approval from the body concerned with effect from such date as he may specify in the notice (which may be a date earlier than the date on which the notice is given).

(9) In any case where—

(a) a contribution has been made to an approved local enterprise agency in respect of which relief has been given under subsection (1) above, and

(b) any benefit received in any chargeable period by the contributor or any person connected with him is in any way attributable to that contribution,

the contributor shall in respect of that chargeable period be charged to tax under Case I or Case II of Schedule D or, if he is not chargeable to tax under either of those Cases for that period, under Case VI of Schedule D on an amount equal to the value of that benefit.

(10) Section 839 applies for the purposes of subsections (3) and (9) above.

(11) This section applies to contributions made on or after 1st April 1982 and before 1st April **[**[F30]1995**]**.

Textual Amendments

F30 1990 s.75.*Previously* "1992".

Marginal Citations

M73 SOURCE-1982 s. 48(1)–(4)

M74 SOURCE-1982 s. 48(5)

M75 SOURCE-1982 s. 48(6)–(9)

[[F31]79A Contributions to training and enterprise councils and local enterprise companies.

(1) Notwithstanding anything in section 74, but subject to the provisions of this section, where a person carrying on a trade, profession or vocation makes any contribution (whether in cash or in kind) to a training and enterprise council or a local enterprise company, any expenditure incurred by him in making the contribution may be deducted as an expense in computing the profits or gains of the trade, profession or vocation for the purposes of tax if it would not otherwise be so deductible.

(2) Where any such contribution is made by an investment company any expenditure allowable as a deduction under subsection (1) above shall for the purposes of section 75 be treated as expenses of management.

(3) Subsection (1) above does not apply in relation to a contribution made by any person if either he or any person connected with him receives or is entitled to receive a benefit of any kind whatsoever for or in connection with the making of that contribution, whether from the council or company concerned or from any other person.

(4) In any case where—

(a) relief has been given under subsection (1) above in respect of a contribution, and

(b) any benefit received in any chargeable period by the contributor or any person connected with him is in any way attributable to that contribution,

the contributor shall in respect of that chargeable period be charged to tax under Case I or Case II of Schedule D, or if he is not chargeable to tax under either of those Cases for that period under Case VI of Schedule D, on an amount equal to the value of that benefit.

(5) In this section—

(a) "training and enterprise council" means a body with which the Secretary of State has made an agreement (not being one which has terminated) under which it is agreed that the body shall carry out the functions of a training and enterprise council, and

(b) "local enterprise company" means a company with which an agreement (not being one which has terminated) under which it is agreed that the company shall carry out the functions of a local enterprise company has been made by

the Scottish Development Agency, the Highlands and Islands Development Board, Scottish Enterprise or Highlands and Islands Enterprise.

(6) Section 839 applies for the purposes of subsections (3) and (4) above.

(7) This section applies to contributions made on or after 1st April 1990 and before 1st April 1995.**]**

Textual Amendments

F31 1990 s.76.

VALID FROM 10/07/2003

79B Contributions to urban regeneration companies

(1) Notwithstanding anything in section 74, but subject to the provisions of this section, where a person carrying on a trade, profession or vocation makes any contribution (whether in cash or in kind) to a designated urban regeneration company, any expenditure incurred by him in making the contribution may be deducted as an expense in computing the profits of the trade, profession or vocation if it would not otherwise be so deductible.

(2) Where any such contribution is made by an investment company, any expenditure allowable as a deduction under subsection (1) above shall for the purposes of section 75 be treated as expenses of management.

(3) Subsection (1) above does not apply in relation to a contribution made by any person if either he or any person connected with him receives or is entitled to receive a benefit of any kind whatsoever for or in connection with the making of that contribution, whether from the urban regeneration company concerned or from any other person.

(4) In any case where—

(a) relief has been given under subsection (1) above in respect of a contribution, and

(b) any benefit received in any chargeable period by the contributor or any person connected with him is in any way attributable to that contribution,

the contributor shall in respect of that chargeable period be charged to tax under Case I or Case II of Schedule D or, if he is not chargeable to tax under either of those Cases for that period, under Case VI of Schedule D on an amount equal to the value of that benefit.

(5) In this section "urban regeneration company" means any body of persons (whether corporate or unincorporate) which the Treasury by order designates as an urban regeneration company for the purposes of this section.

(6) The Treasury may only make an order under subsection (5) above designating a body as an urban regeneration company for the purposes of this section if they consider that each of the criteria in subsection (7) below is satisfied in the case of the body.

(7) The criteria are that—

(a) the sole or main function of the body is to co-ordinate the regeneration of a specific urban area in the United Kingdom;

(b) the body is expected to seek to perform that function by creating a plan for the development of that area and endeavouring to secure that the plan is carried into effect;

(c) in co-ordinating the regeneration of that area, the body is expected to work together with some or all of the public or local authorities which exercise functions in relation to the whole or part of that area.

(8) An order under subsection (5) above may be framed so as to take effect on a date earlier than the making of the order, but not earlier than—

(a) 1st April 2003, in the case of the first order under that subsection, or

(b) three months before the date on which the order is made, in the case of any subsequent order.

(9) Section 839 (connected persons) applies for the purposes of this section.

(10) This section applies to contributions made on or after 1st April 2003.

80 Expenses connected with foreign trades etc.

(1) [M76]This section applies in the case of a trade, profession or vocation carried on wholly outside the United Kingdom by an individual ("the taxpayer") who does not satisfy the Board as mentioned in section 65(4); and it is immaterial in the case of a trade or profession whether the taxpayer carries it on solely or in partnership.

(2) Expenses of the taxpayer—

(a) in travelling from any place in the United Kingdom to any place where the trade, profession or vocation is carried on;

(b) in travelling to any place in the United Kingdom from any place where the trade, profession or vocation is carried on; or

(c) on board and lodging for the taxpayer at any place where the trade, profession or vocation is carried on;

shall, subject to subsections (3) and (4) below, be treated for the purposes of section 74(a) as having been wholly and exclusively expended for the purposes of the trade, profession or vocation.

(3) Subsection (2) above does not apply unless the taxpayer's absence from the United Kingdom is occasioned wholly and exclusively for the purpose of performing the functions of the trade, profession or vocation or of performing those functions and the functions of any other trade, profession or vocation (whether or not one in the case of which this section applies).

(4) Where subsection (2) above applies and more than one trade, profession or vocation in the case of which this section applies is carried on at the place in question, the expenses shall be apportioned on such basis as is reasonable between those trades, professions or vocations; and the expenses so apportioned to a particular trade, profession or vocation shall be treated for the purposes of section 74(a) as having been wholly and exclusively expended for the purposes of that trade, profession or vocation.

(5) Where the taxpayer is absent from the United Kingdom for a continuous period of 60 days or more wholly and exclusively for the purpose of performing the functions of one or more trades, professions or vocations in the case of which this section applies,

expenses to which subsection (6) below applies shall be treated in accordance with subsection (7) or (8) below (as the case may be).

(6) This subsection applies to the expenses of any journey by the taxpayer's spouse, or any child of his, between any place in the United Kingdom and the place of performance of any of those functions outside the United Kingdom, if the journey—

(a) is made in order to accompany him at the beginning of the period of absence or to visit him during that period; or

(b) is a return journey following a journey falling within paragraph (a) above;

but this subsection does not apply to more than two outward and two return journeys by the same person in any year of assessment.

(7) The expenses shall be treated for the purposes of section 74(a) as having been wholly and exclusively expended for the purposes of the trade, profession or vocation concerned (if there is only one).

(8) The expenses shall be apportioned on such basis as is reasonable between the trades, professions or vocations concerned (if there is more than one) and the expenses so apportioned to a particular trade, profession or vocation shall be treated for the purposes of section 74(a) as having been wholly and exclusively expended for the purposes of that trade, profession or vocation.

(9) In subsection (6) above "child" includes a stepchild and an illegitimate child but does not include a person who is aged 18 or over at the beginning of the outward journey.

(10) Nothing in this section shall permit the same sum to be deducted for more than one trade, profession or vocation in respect of expenses in computing profits or gains.

Marginal Citations

M76 SOURCE-1986 s. 35

81 Travel between trades etc.

(1) [M77]Where a taxpayer (within the meaning of section 80) travels between a place where he carries on a trade, profession or vocation in the case of which section 80 applies and a place outside the United Kingdom where he carries on another trade, profession or vocation (whether or not one in the case of which that section applies) expenses of the taxpayer on such travel shall, subject to subsections (3) to (5) below, be treated for the purposes of section 74(a) as having been wholly and exclusively expended for the purposes of the trade, profession or vocation mentioned in subsection (2) below.

(2) The trade, profession or vocation is—

(a) the one carried on at the place of the taxpayer's destination; or

(b) if that trade, profession or vocation is not one in the case of which section 80 applies, the one carried on at the place of his departure.

(3) This section does not apply unless the journey was made—

(a) after performing functions of the trade, profession or vocation carried on at the place of departure; and

(b) for the purpose of performing functions of the trade, profession or vocation carried on at the place of destination.

(4) This section does not apply unless the taxpayer's absence from the United Kingdom is occasioned wholly and exclusively for the purpose of performing the functions of both the trades, professions or vocations concerned or of performing those functions and the functions of any other trade, profession or vocation.

(5) Where this section applies and more than one trade, profession or vocation in the case of which section 80 applies is carried on at the place of the taxpayer's destination or (in a case falling within subsection (2)(b) above) at the place of his departure, the expenses shall be apportioned on such basis as is reasonable between those trades, professions or vocations; and the expenses so apportioned to a particular trade, profession or vocation shall be treated for the purposes of section 74(a) as having been wholly and exclusively expended for the purposes of that trade, profession or vocation.

(6) Nothing in this section shall permit the same sum to be deducted for more than one trade, profession or vocation in respect of expenses in computing profits or gains.

Marginal Citations
M77 SOURCE-1986 s. 36

82 Interest paid to non-residents.

(1) [M78]In computing the profits or gains arising from a trade, profession or vocation, no sum shall be deducted in respect of any annual interest paid to a person not resident in the United Kingdom unless—

(a) the person making the payment has deducted income tax from the payment in accordance with section 349(2) and accounts for the tax so deducted, or

(b) the conditions set out in subsection (2) below are satisfied.

(2) The conditions referred to in subsection (1)(b) above are as follows—

(a) that the trade, profession or vocation is carried on by a person residing in the United Kingdom, and

(b) that the liability to pay the interest was incurred exclusively for the purposes of the trade, profession or vocation, and

(c) that either—

(i) the liability to pay the interest was incurred wholly or mainly for the purposes of activities of the trade, profession or vocation carried on outside the United Kingdom, or

(ii) the interest is payable in a currency other than sterling, and

(d) that, under the terms of the contract under which the interest is payable, the interest is to be paid, or may be required to be paid, outside the United Kingdom, and

(e) that the interest is in fact paid outside the United Kingdom.

(3) Where the trade, profession or vocation is carried on by a partnership, subsection (1)(b) above shall not apply to any interest which is payable to any of the partners, or is payable in respect of the share of any partner in the partnership capital.

(4) Subsection (1)(b) above shall not apply where—

(a) the trade, profession or vocation is carried on by a body of persons over whom the person entitled to the interest has control; or

(b) the person entitled to the interest is a body of persons over whom the person carrying on the trade, profession or vocation has control; or

(c) the person carrying on the trade, profession or vocation and the person entitled to the interest are both bodies of persons and some other person has control over both of them.

In this subsection, the references to a body of persons include references to a partnership, and "control" has the meaning given by section 840.

(5) If interest paid under deduction of tax in accordance with section 349(2) is deductible in computing the profits or gains of a trade, profession or vocation the amount so deductible shall be the gross amount.

(6) This section does not apply for the purposes of corporation tax.

Marginal Citations

M78 SOURCE-1970 s. 131(1)–(5), (7); 1982 s. 64(1)

VALID FROM 28/07/2000

82A Expenditure on research and development.

(1) Notwithstanding anything in section 74, where a person carrying on a trade incurs expenditure not of a capital nature on research and development—

(a) related to that trade, and

(b) directly undertaken by him or on his behalf,

the expenditure incurred may be deducted as an expense in computing the profits of the trade for the purposes of tax.

(2) For this purpose expenditure on research and development does not include expenditure incurred in the acquisition of rights in, or arising out of, research and development.

Subject to that, it includes all expenditure incurred in carrying out, or providing facilities for carrying out, research and development.

(3) The reference in subsection (1) above to research and development related to a trade includes—

(a) research and development which may lead to or facilitate an extension of that trade;

(b) research and development of a medical nature which has a special relation to the welfare of workers employed in that trade.

(4) The same expenditure may not be taken into account under this section in relation to more than one trade.

(5) In this section "research and development" has the meaning given by section 837A and includes oil and gas exploration and appraisal.

Modifications etc. (not altering text)

C26 S. 82A modified (1.1.2005 with effect in accordance with art. 2 of the commencing S.I.) by Finance Act 2004 (c. 12), **s. 53(2)**; S.I. 2004/3268, **art. 2**

VALID FROM 28/07/2000

82B Payments to research associations, universities etc.

(1) Notwithstanding anything in section 74, where a person carrying on a trade—

(a) pays any sum to a scientific research association that—

(i) has as its object the undertaking of scientific research related to the class of trade to which the trade he is carrying on belongs, and

(ii) is for the time being approved for the purposes of this section by the Secretary of State, or

(b) pays any sum to be used for such scientific research as is mentioned in paragraph (a) above to any such university, college research institute or other similar institution as is for the time being approved for the purposes of this section by the Secretary of State,

the sum paid may be deducted as an expense in computing the profits of the trade for the purposes of tax.

(2) In this section "scientific research" means any activities in the fields of natural or applied science for the extension of knowledge.

(3) The reference in this section to scientific research related to a class of trade includes—

(a) scientific research which may lead to or facilitate an extension of trades of that class;

(b) scientific research of a medical nature which has a special relation to the welfare of workers employed in trades of that class.

(4) If a question arises under this section whether, or to what extent, any activities constitute or constituted scientific research, the Board shall refer the question for decision to the Secretary of State.

The decision of the Secretary of State is final.

(5) The same expenditure may not be taken into account under this section in relation to more than one trade.

83 Patent fees etc. and expenses.

[M79]Notwithstanding anything in section 74, in computing the profits or gains of a trade there may be deducted as expenses any fees paid or expenses incurred—

(a) in obtaining for the purposes of the trade the grant of a patent, an extension of the term of a patent, the registration of a design or trade mark, **[**[F32]an extension of the period for which the right in a registered design subsists**]** or the renewal of registration of a trade mark, or

(b) in connection with a rejected or abandoned application for a patent made for the purposes of the trade.

References in this section to a trade mark include references to a service mark within the meaning of the [M80]Trade Marks (Amendment) Act 1984.

Textual Amendments

F32 Sch.7 para.36(2)Copyright, Designs and Patents Act 1988 (c.48)—*in force on* 1*August* 1989. (*Commencement order*—S.I. 1989 No.816—*not reproduced.*)*Previously* "the extension of the period of copyright in a design".

Marginal Citations

M79 SOURCE-1970 s. 132

M80 1984 c. 19.

VALID FROM 27/07/1999

83A Gifts in kind to charities etc.

(1) This section applies where a person carrying on a trade, profession or vocation gives an article falling within subsection (2) below to—

(a) a charity within the meaning of section 506, or

(b) a body listed in section 507(1).

(2) An article falls within this subsection if—

(a) it is an article manufactured, or of a class or description sold, by the donor in the course of his trade; or

(b) it is an article used by the donor in the course of his trade, profession or vocation which for the purposes of Part II of the 1990 Act constitutes machinery or plant used by him wholly or partly in the course of that trade, profession or vocation.

(3) Subject to subsection (4) below, where this section applies in the case of the gift of an article—

(a) no amount shall be required, in consequence of the donor's disposal of that article from trading stock, to be brought into account for the purposes of the Tax Acts as a trading receipt of the donor; and

(b) section 24(6) of the 1990 Act shall not require the donor to bring into account any disposal value in respect of the article for the purposes of that section.

(4) In any case where—

(a) relief is given under subsection (3) above in respect of the gift of an article, and

(b) any benefit received in any chargeable period by the donor or any person connected with him is in any way attributable to the making of that gift,

the donor shall in respect of that chargeable period be charged to tax under Case I or Case II of Schedule D or, if he is not chargeable to tax under either of those Cases for that period, under Case VI of Schedule D on an amount equal to the value of that benefit.

(5) Section 839 applies for the purposes of this section.

[84 F33Gifts to educational establishments.

(1) This section applies where a person carrying on a trade, profession or vocation ("the donor") makes a gift for the purposes of a designated educational establishment of—

(a) an article manufactured, or of a class or description sold, by the donor in the course of his trade which qualifies as machinery or plant in the hands of the educational establishment; or

(b) an article used by the donor in the course of his trade, profession or vocation—

(i) which, for the purposes of Part II of the 1990 Act (capital allowances for machinery and plant), constitutes machinery or plant used by him wholly or partly in the course of that trade, profession or vocation; and

(ii) in respect of which he has claimed an allowance under that Part of that Act.

(2) For the purposes of this section, an article "qualifies as machinery or plant in the hands of an educational establishment" if, and only if, it is an article such that—

(a) were the activities carried on by the educational establishment regarded as a trade carried on by a body of persons, and

(b) had that body, at the time of the gift, incurred capital expenditure wholly and exclusively on the provision of an identical article for the purposes of those activities, and

(c) had the identical article belonged to that body in consequence of the incurring of that expenditure,

the identical article would be regarded for the purposes of Part II of the 1990 Act as machinery or plant provided by the body for the purposes of that trade.

(3) Where this section applies—

(a) if the gift is of an article falling within paragraph (a) of subsection (1) above, then, for the purposes of the Tax Acts, no amount shall be required to be brought into account as a trading receipt of the donor in consequence of his disposal of that article from trading stock; and

(b) if the gift is of an article falling within paragraph (b) of that subsection, subsection (6) of section 24 of the 1990 Act shall not require the donor to bring into account any disposal value in respect of the article for the purposes of that section;

but this subsection shall not apply unless, within two years of making the gift, the donor makes a claim for relief under this subsection, specifying the article given and the name of the educational establishment in question.

(4) In any case where—

(a) relief is given under subsection (3) above in respect of the gift of an article, and

(b) any benefit received in any chargeable period by the donor or any person connected with him is in any way attributable to the making of that gift,

the donor shall in respect of that chargeable period be charged to tax under Case I or Case II of Schedule D or, if he is not chargeable to tax under either of those Cases for that period, under Case VI of Schedule D on an amount equal to the value of that benefit.

(5) In this section "designated educational establishment" means any educational establishment designated, or of a category designated,—

(a) as respects Great Britain, in regulations made by the Secretary of State; or

(b) as respects Northern Ireland, in regulations made by the Department of Education for Northern Ireland;

and any such regulations may make different provision for different areas.

(6) If any question arises as to whether a particular establishment falls within a category designated in regulations under subsection (5) above, the Board shall refer the question for decision—

(a) in the case of an establishment in Great Britain, to the Secretary of State, or

(b) in the case of an establishment in Northern Ireland, to the Department of Education for Northern Ireland.

(7) The power of the Secretary of State to make regulations under subsection (5) above shall be exercisable by statutory instrument; and a statutory instrument containing any such regulations shall be subject to annulment in pursuance of a resolution of the House of Commons.

(8) Regulations made under subsection (5) above for Northern Ireland—

(a) shall be a statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979; and

(b) shall be subject to negative resolution within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954.

(9) Section 839 applies for the purposes of subsection (4) above.**]**

Textual Amendments

F33 S. 84 substituted by Finance Act 1991 (c. 31, SIF 63:1), **s. 68(1)(2)**

[84A F34Costs of establishing share option or profit sharing schemes: relief.

(1) Subsection (2) below applies where—

(a) a company incurs expenditure on establishing a share option scheme which the Board approve and under which no employee or director obtains rights before such approval is given, or

(b) a company incurs expenditure on establishing a profit sharing scheme which the Board approve and under which the trustees acquire no shares before such approval is given.

(2) In such a case the expenditure—

(a) shall be deducted in computing for the purposes of Schedule D the profits or gains of a trade carried on by the company, or

(b) if the company is an investment company or a company in the case of which section 75 applies by virtue of section 76, shall be treated as expenses of management.

(3) In a case where—

(a) subsection (2) above applies, and

(b) the approval is given after the end of the period of nine months beginning with the day following the end of the period of account in which the expenditure is incurred,

for the purpose of applying subsection (2) above the expenditure shall be treated as incurred in the period of account in which the approval is given (and not the period of account mentioned in paragraph (b) above).

(4) References in this section to approving are to approving under Schedule 9.

(5) This section applies where the expenditure is incurred on or after 1st April 1991.**]**

Textual Amendments

F34 S. 84A inserted by Finance Act 1991 (c. 31, SIF 63:1), **s. 42**

85 Payments to trustees of approved profit sharing schemes.

(1) [M81]Any sum expended in making a payment to the trustees of an approved profit sharing scheme by a company which is in relation to that scheme the grantor or a participating company—

(a) shall be deducted in computing for the purposes of Schedule D the profits or gains of a trade carried on by that company; or

(b) if that company is an investment company or a company in the case of which section 75 applies by virtue of section 76, shall be treated as expenses of management,

if, and only if, one of the conditions in subsection (2) below is fulfilled.

(2) The conditions referred to in subsection (1) above are—

(a) that before the expiry of the relevant period the sum in question is applied by the trustees in the acquisition of shares for appropriation to individuals who are eligible to participate in the scheme by virtue of their being or having been employees or directors of the company making the payment; and

(b) that the sum is necessary to meet the reasonable expenses of the trustees in administering the scheme.

(3) For the purposes of subsection (2)(a) above "the relevant period" means the period of nine months beginning on the day following the end of the period of account in which the sum in question is charged as an expense of the company incurring the expenditure or such longer period as the Board may allow by notice given to that company.

(4) For the purposes of this section, the trustees of an approved profit sharing scheme shall be taken to apply sums paid to them in the order in which the sums are received by them.

(5) In this section—

"approved profit sharing scheme" means a profit sharing scheme approved under Schedule 9; and

"the grantor" and "participating company" have the meaning given by paragraph 1(3) and (4) of that Schedule.

Marginal Citations

M81 SOURCE-1978 s. 60

[85A F35 Costs of establishing employee share ownership trusts: relief.

(1) Subsection (2) below applies where a company incurs expenditure on establishing a qualifying employee share ownership trust.

(2) In such a case the expenditure—

(a) shall be deducted in computing for the purposes of Schedule D the profits or gains of a trade carried on by the company, or

(b) if the company is an investment company or a company in the case of which section 75 applies by virtue of section 76, shall be treated as expenses of management.

(3) In a case where—

(a) subsection (2) above applies, and

(b) the trust is established after the end of the period of nine months beginning with the day following the end of the period of account in which the expenditure is incurred,

for the purpose of applying subsection (2) above the expenditure shall be treated as incurred in the period of account in which the trust is established (and not the period of account mentioned in paragraph (b) above).

(4) In this section "qualifying employee share ownership trust" shall be construed in accordance with Schedule 5 to the Finance Act 1989.

(5) For the purposes of this section the trust is established when the deed under which it is established is executed.

(6) This section applies where the expenditure is incurred on or after 1st April 1991.**]**

Textual Amendments

F35 S. 85A inserted by Finance Act 1991 (c. 31, SIF 63:1), **s. 43**

VALID FROM 06/04/2003

85B Approved share incentive plans

Schedule 4AA (which provides for deductions relating to approved share incentive plans) shall have effect.

86 Employees seconded to charities and educational establishments.

(1) M82 If a person ("the employer") carrying on a trade, profession, vocation or business for the purposes of which he employs a person ("the employee") makes available to a charity, on a basis which is expressed and intended to be of a temporary nature,

the services of the employee then, notwithstanding anything in section 74 or 75, any expenditure incurred (or disbursed) by the employer which is attributable to the employment of that employee shall continue to be deductible in the manner and to the like extent as if, during the time that his services are so made available to the charity, they continued to be available for the purposes of the employer's trade, business, profession or vocation.

(2) In subsection (1) above—

"charity" has the same meaning as in section 506;

"deductible" means deductible as an expense in computing the profits or gains of the employer to be charged under Case I or II of Schedule D or, as the case may be, deductible as expenses of management for the purposes of section 75.

(3) With respect to expenditure attributable to the employment of a person on or after 26th November 1986 [F36]. . . , this section shall have effect as if the references to a charity included references to any of the following bodies, that is to say—

(a) in England and Wales, any local education authority and any educational institution maintained by such an authority;

(b) in Scotland, any education authority, any educational establishment maintained by such an authority, and any college of education or central institution within the meaning of the [M83]Education (Scotland) Act 1980;

(c) in Northern Ireland, any education and library board, college of education or controlled school within the meaning of the [M84]Education and Libraries (Northern Ireland) Order 1986 and any institution of further education which is under the management of an education and library board by virtue of Article 28 of that Order; 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 for Northern Ireland.

Textual Amendments

F36 Words in s. 86(3) repealed (retrospectively) by Finance Act 1999 (c. 16), s. 58(2)(5), **Sch. 20 Pt. 3(14)**, Note

Marginal Citations

M82 SOURCE-1983 s. 28; 1984 s. 33; 1987 s. 34

M83 1980 c. 44.

M84 S.I. 1986/594 (N.I. 3).

VALID FROM 27/07/1993

[F37 86A Charitable donations: contributions to agent's expenses.

(1) This section applies where—

(a) a person (the employer) is liable to make to any individual payments from which income tax falls to be deducted by virtue of section 203 and regulations under that section, and

(b) the employer withholds sums from those payments in accordance with a scheme falling within subsection (3) of section 202 and pays the sums to an agent (within the meaning of subsection (4)(a) of that section).

(2) Any relevant expenditure incurred by the employer on or after 16th March 1993—

(a) shall be deducted in computing for the purposes of Schedule D the profits or gains of a trade, profession or vocation carried on by the employer, or

(b) if the employer is an investment company or a company in the case of which section 75 applies by virtue of section 76, shall be treated as expenses of management.

(3) Relevant expenditure is expenditure incurred in making to the agent any payment in respect of expenses which have been or are to be incurred by the agent in connection with his functions under the scheme.**]**

Textual Amendments

F37 S. 86A inserted (27.7.1993) by 1993 c. 34, **s.69**

87 Taxable premiums etc.

(1) **M85**This section applies where in relation to any land used in connection with a trade, profession or vocation—

(a) tax has become chargeable under section 34 or 35 on any amount (disregarding any reduction in that amount under section 37(2) and (3)); or

(b) tax would have become so chargeable on that amount but for the operation of section 37(2) and (3) or but for any exemption from tax;

and that amount is referred to below as "the amount chargeable".

(2) **M86**Subject to subsections (3) to (8) below, where—

(a) during any part of the relevant period the land in relation to which the amount chargeable arose is occupied by the person for the time being entitled to the lease as respects which it arose, and

(b) that occupation is for the purposes of a trade, profession or vocation carried on by him,

he shall be treated, in computing the profits or gains of the trade, profession or vocation chargeable to tax under Case I or II of Schedule D, as paying in respect of that land rent for the period (in addition to any actual rent), becoming due from day to day, of an amount which bears to the amount chargeable the same proportion as that part of the relevant period bears to the whole.

(3) As respects any period during which a part only of the land in relation to which the amount chargeable arose is occupied as mentioned in subsection (2) above, that subsection shall apply as if the whole were so occupied, but the amount chargeable shall be treated as reduced by so much thereof as, on a just apportionment, is attributable to the remainder of the land.

(4) **M87**Where a person, although not in occupation of the land or any part of the land, deals with his interest in the land or that part as property employed for the purposes of a trade, profession or vocation carried on by him, subsections (2) and (3) above shall apply as if the land or part were occupied by him for those purposes.

(5) [M88]Where section 37(2) and (3) has effect in relation to a lease granted out of the interest referred to in subsection (4) above, subsections (5) and (6) of that section shall apply for modifying the operation of subsections (2) and (3) above as they apply for modifying the operation of subsection (4) of that section.

(6) [M89]In computing profits or gains chargeable under Case I or II of Schedule D for any chargeable period, rent shall not by virtue of subsection (4) above be treated as paid by a person for any period in respect of land in so far as rent treated under section 37(4) as paid by him for that period in respect of the land has in any previous chargeable period been deducted, or falls in that chargeable period to be deducted under Part II.

(7) [M90]Where, in respect of expenditure on the acquisition of his interest in the land in relation to which the amount chargeable arose, a person has become entitled to an allowance under **[**[F38]Part IV of the 1990 Act in respect of expenditure falling within section 105(1)(b) of that Act**]** (mineral depletion) for any chargeable period, then—

(a) if the allowance is in respect of the whole of the expenditure, no deduction shall be allowed him under this section for that or any subsequent chargeable period; or

(b) if the allowance is in respect of part only of the expenditure ("the allowable part"), a deduction allowed him under this section for that or any subsequent chargeable period shall be the fraction—

$$\frac{A-B}{A}$$

of the amount which apart from this subsection would fall to be deducted, where—

A is the whole of the expenditure, and

B is the allowable part of the expenditure;

. . . [F39]

(8) Where the amount chargeable arose under section 34(2) by reason of an obligation which included the carrying out of work in respect of which any capital allowance has fallen or will fall to be made, this section shall apply as if the obligation had not included the carrying out of that work and the amount chargeable had been calculated accordingly.

(9) [M91]In this section "the relevant period" means—

(a) where the amount chargeable arose under section 34, the period treated in computing that amount as the duration of the lease;

(b) where the amount chargeable arose under section 35, the period treated in computing that amount as the duration of the lease remaining at the date of the assignment.

Textual Amendments

F38 1990(C) s.164*and* Sch.1 para.8(5).*Previously* "section 60 of the 1968 Act".

F39 *Words repealed by* 1990(C) s.164(4)*and* Sch.2.*See* 1989*edition for these provisions.*

Modifications etc. (not altering text)

C27 *See*—1976(D) Sch.6 para.4(4)—*no account to be taken of any deduction of realised development value.* 1976(D)*repealed by* 1985 ss.93, 98(6)*and* Sch.27 Part X*from* 19*March* 1985.1990(C) s.111—*reduction of qualifying expenditure for premium relief.*

C28 S. 87 excluded (19.9.1994) by Coal Industry Act 1994 (c. 21), s. 68(4), **Sch. 4 para. 15(2)** (with s. 40(7)); S. I. 1994/2189, **art. 2**, Sch.

Marginal Citations

M85 SOURCE-1970 s. 134(1); 1978 s. 32
M86 SOURCE-1970 s. 134(2), (3); 1978 s. 32
M87 SOURCE-1970 s. 134(4)
M88 SOURCE-1970 s. 134(4)(a)
M89 SOURCE-1970 s. 134(4)(b)
M90 SOURCE-1970 s. 134(5), (6); 1986 Sch. 13 para. 26
M91 SOURCE-1970 s. 134(1)(i), (ii)

VALID FROM 06/04/2005

87A Section 87(2) and (3) and reductions in receipts under ITTOIA 2005

(1) This section applies if—

(a) a lease has been granted out of the interest referred to in section 87(4),

(b) in calculating the amount that falls to be treated as a receipt of a UK property business under Chapter 4 of Part 3 of ITTOIA 2005 in respect of the lease, there is a reduction under section 288 of that Act by reference to a taxed receipt, and

(c) the taxed receipt is the amount chargeable for the purposes of section 87.

(2) Section 37A (section 37(4) and reductions in receipts under ITTOIA 2005) shall apply for modifying the operation of section 87(2) and (3) as it applies for modifying the operation of section 37(4).

(3) In this section the following expressions have the same meaning as in Chapter 4 of Part 3 of ITTOIA 2005—

"reduction under section 288 by reference to a taxed receipt" (see section 290(6) of that Act), and

"taxed receipt" (see section 287(4) of that Act).

88 Payments to Export Credit Guarantee Department.

[M92]Any sums paid by a person to the Export Credits Guarantee Department under an agreement entered into under arrangements made by the Secretary of State in pursuance of section 11 of the [M93]Export Guarantees and Overseas Investment Act 1978, or with a view to entering into such an agreement, shall be included—

(a) in the sums to be deducted in computing for the purposes of Case I or Case II of Schedule D the profits or gains of any trade, profession or vocation carried on by that person; or

(b) if that person is an investment company or a company in the case of which section 75 applies by virtue of section 76, in the sums to be deducted as

expenses of management in computing the company's profits for the purposes of corporation tax;

whether or not they would fall to be so included apart from this section.

Marginal Citations

M92 SOURCE-1972 s. 124(1)

M93 1978 c. 18.

[F40 88A Debts of overseas governments etc.

(1) For any period of account of a company ending on or after 20th March 1990, section 88B shall have effect for the purpose of restricting the extent to which a debt to which subsection (2) below applies may be estimated to be bad for the purposes of section 74(j); and—

(a) any deduction which may fall to be made in computing the company's profits or gains for the period, and

(b) any addition which may fall to be so made (for example because the relevant percentage of the debt for the period is smaller than the amount estimated to be bad for an earlier period),

shall be determined accordingly.

(2) Subject to subsection (3) below, this subsection applies to any debt—

(a) which is owed by an overseas State authority, or

(b) payment of which is guaranteed by an overseas State authority, or

(c) which is estimated to be bad for the purposes of section 74(j) wholly or mainly because due payment is or may be prevented, restricted or subjected to conditions—

(i) by virtue of any law of a State or other territory outside the United Kingdom or any act of an overseas State authority, or

(ii) under any agreement entered into in consequence or anticipation of such a law or act.

(3) Subsection (2) above does not apply to interest on a debt or to a debt which represents the consideration for the provision of goods or services.

(4) In this section "overseas State authority" means—

(a) a State or other territory outside the United Kingdom,

(b) the government of such a State or territory,

(c) the central bank or other monetary authority of such a State or territory,

(d) a public or local authority in such a State or territory, or

(e) a body controlled by such a State, territory, government, bank or authority;

and for this purpose "controlled" shall be construed in accordance with section 840.**]**

Textual Amendments

F40 1990 s.74.

88B Section 88A debts: restriction on deductions under section 74(j).

(1) Where this section has effect in relation to a debt, no more than the relevant percentage of the debt shall be estimated to be bad for the purposes of section 74(j).

(2) The relevant percentage of a debt for any period of account of the company is such percentage (which may be zero) as may be determined in accordance with regulations by reference to the position at the end of that period.

(3) Subsection (2) above has effect subject to the following provisions of this section, and in those provisions—

(a) "the base period" means the last period of account of the company ending before 20th March 1990, and

(b) "the base percentage", in relation to a debt, means such percentage (which may be zero) as may be determined in accordance with regulations by reference to the position at the end of the base period.

(4) If for any period of account of the company which ends less than two years after the base period the percentage provided for in subsection (2) above in relation to a debt is greater than the base percentage, the base percentage shall be the relevant percentage for the first-mentioned period.

(5) If for any later period of account of the company the percentage provided for in subsection (2) above in relation to a debt is greater than the base percentage increased by five percentage points for each complete year (except the first) that has elapsed between—

(a) the end of the base period, and

(b) the end of the later period in question,

then the base percentage as so increased shall be the relevant percentage for the later period.

(6) In relation to a company which had no periods of account ending before 20th March 1990, the relevant percentage in relation to a debt shall be the same as it would have been on the assumption that the company had had such periods of account (and that any notional periods of account before its first actual period of account had been of one year each).

(7) In this section "regulations" means regulations made by the Treasury; but the Treasury shall not make any regulations under this section unless a draft of them has been laid before and approved by a resolution of the House of Commons.

88C Section 88A debts: restriction on other deductions.

(1) Where—

(a) on or after 20th March 1990 a company incurs in respect of a debt a loss which would be allowed as a deduction in computing the amount of the company's profits or gains under Case I or Case II of Schedule D,

(b) section 88A(2) applies to the debt,

(c) either—

(i) a deduction is made in respect of the debt in accordance with section 74(j) for any period of account of the company before that in which the loss is incurred, or

(ii) the debt was acquired by the company on or after 20th March 1990 for a consideration greater than the price which it might reasonably have been expected to fetch on a sale in the open market at the time of acquisition, and

(d) the amount of the loss is greater than 5 per cent. of the debt,

then, subject to subsection (3) below, only such part of the loss as equals 5 per cent. of the debt shall be allowed as a deduction for the period of account in which the loss is incurred; but further parts calculated in accordance with subsection (2) below may be allowed for subsequent periods until the loss is exhausted.

(2) The part of the loss allowed as a deduction for any period of account after that in which the loss is incurred shall not exceed such amount as, together with any parts allowed under this section for earlier periods, is equal to 5 per cent. of the debt for each complete year that has elapsed between—

(a) the beginning of the period in which the loss was incurred, and

(b) the end of the period in question.

(3) Subsections (1) and (2) above shall not apply to a loss incurred on a disposal of the debt to an overseas State authority if the State or territory by reference to which it is an overseas State authority is the same as that by reference to which section 88A(2) applies to the debt.

(4) References in subsections (1) and (2) above to the incurring of a loss in respect of a debt include references to the making of a deduction, otherwise than in accordance with section 74(j), in respect of a reduction in the value of a debt; and for the purposes of those subsections such a deduction shall be treated as made immediately before the end of the period of account for which it is made.

VALID FROM 07/05/2005

88D Restriction of deductions in respect of certain debts

(1) This section applies to debts to which the following provisions do not apply—

(a) Chapter 2 of Part 4 of the Finance Act 1996 (loan relationships, etc);

(b) Schedule 26 to the Finance Act 2002 (derivative contracts);

(c) Schedule 29 to that Act (intangible fixed assets).

(2) In calculating the profits of a company's trade for the purposes of corporation tax, no deduction is allowed in respect of a debt owed to the company, except—

(a) by way of impairment loss, or

(b) to the extent that the debt is released wholly and exclusively for the purposes of that trade as part of a statutory insolvency arrangement.

(3) In this section “debt” includes an obligation or liability that falls to be discharged otherwise than by the payment of money.

(4) In this section “trade” has the meaning given by section 6(4).

89 Debts proving irrecoverable after event treated as discontinuance.

M94Where section 113 or 337(1) applies to treat a trade, profession or vocation as discontinued by reason of any event, then, in computing for tax purposes the profits or gains of the trade, profession or vocation in any period after the event, there may be deducted a sum equal to any amount proved during that period to be irrecoverable in respect of any debts credited in computing for tax purposes the profits or gains for any period before the event (being debts the benefit of which was assigned to the persons carrying on the trade, profession or vocation after the event) in so far as the total amount proved to be irrecoverable in respect of those debts exceeds any deduction allowed in respect of them under section 74(j) in a computation for any period before the event.

Marginal Citations
M94 SOURCE-1970 s. 135

90 Additional payments to redundant employees.

(1) M95Where a payment is made by way of addition to a redundancy payment or to the corresponding amount of any other employer's payment and the additional payment would be—

(a) allowable as a deduction in computing for the purposes of Schedule D the profits or gains or losses of a trade, profession or vocation; or

(b) eligible for relief under section 75 or 76 as expenses of management of a business,

but for the permanent discontinuance of the trade, profession, vocation or business, the additional payment shall, subject to subsection (2) below, be so allowable or so eligible notwithstanding that discontinuance and, if made after the discontinuance, shall be treated as made on the last day on which the trade, profession, vocation or business was carried on.

(2) Subsection (1) above applies to an additional payment only so far as it does not exceed three times the amount of the redundancy payment or of the corresponding amount of the other employer's payment.

(3) In this section references to the permanent discontinuance of a trade, profession, vocation or business include references to any occasion on which it is treated as permanently discontinued by virtue of section 113(1) or 337(1).

(4) In this section references to a redundancy payment or to the corresponding amount of an employer's payment shall be construed as in sections 579 and 580.

Marginal Citations
M95 SOURCE-1980 s. 41

91 Cemeteries.

(1) M96In computing the profits or gains or losses for any period of a trade which consists of or includes the carrying on of a cemetery, there shall be allowed as a deduction—

(a) any capital expenditure incurred by the person engaged in carrying on the trade in providing any land in the cemetery sold during that period for the purpose of interments, and

(b) the appropriate fraction of the residue at the end of that period of the relevant capital expenditure.

(2) [M97]Subject to subsection (3) below, the relevant capital expenditure is capital expenditure incurred for the purposes of the trade in question by the person engaged in carrying it on, being—

(a) expenditure on any building or structure other than a dwelling-house, being a building or structure in the cemetery likely to have little or no value when the cemetery is full; and

(b) expenditure incurred in providing land taken up by any such building or structure, and any other land in the cemetery not suitable or adaptable for use for interments and likely to have little or no value when the cemetery is full.

(3) Relevant capital expenditure—

(a) does not include expenditure incurred on buildings or structures which have been destroyed before the beginning of the first period to which subsection (1) above applies in the case of the trade in question; and

(b) of other expenditure incurred before that time, includes only the fraction—

$$\frac{A}{A+B}$$

where—

A is the number of grave-spaces which at that time were or could have been made available in the cemetery for sale, and

B is the number already sold.

(4) [M98]For the purposes of this section—

(a) the residue of any expenditure at the end of a period is the amount incurred before that time which remains after deducting—

(i) any amount allowed in respect of that expenditure under subsection (1)(b) above in computing the profits or gains or losses of the trade for any previous period, and

(ii) if, after the beginning of the first period to which subsection (1) above applies in the case of a trade and before the end of the period mentioned at the beginning of this subsection, any asset representing that expenditure is sold or destroyed, the net proceeds of sale or, as the case may be, any insurance money or other compensation of any description received by the person carrying on the trade in respect of the destruction and any money received by him for the remains of the asset; and

(b) the appropriate fraction of the residue of any expenditure at the end of any period is—

$$\frac{A}{A+B}$$

where—

A is the number of grave-spaces in the cemetery sold in the period, and

B is the number of grave-spaces which at the end of the period are or could be made available in the cemetery for sale.

(5) Where in any chargeable period there is a change in the persons engaged in carrying on a trade which consists of or includes the carrying on of a cemetery, any allowance to be made under this section to the persons carrying on the trade after the change shall, whether or not it is to be assumed for other purposes that the trade was discontinued and a new trade set up and commenced, be computed—

(a) as if they had at all times been engaged in carrying on the trade;

(b) as if everything done to or by any of their predecessors in carrying on the trade had been done to or by them; and

(c) without regard to the price paid on any sale on the occasion of any such change.

(6) No expenditure shall be taken into account under both paragraph (a) and paragraph (b) of subsection (1) above, whether for the same or different periods.

(7) This section shall apply in relation to a trade which consists of or includes the carrying on of a crematorium and, in connection therewith, the maintenance of memorial garden plots, as it applies in relation to a trade which consists of or includes the carrying on of a cemetery, but subject to the modifications that—

(a) references to the cemetery or land in the cemetery shall be taken as references to the land which is devoted wholly to memorial garden plots, and

(b) references to grave-spaces shall be taken as references to memorial garden plots, and

(c) references to the sale or use of land for interments shall be taken as references to its sale or use for memorial garden plots.

(8) In this section—

(a) references to the sale of land include references to the sale of a right of interment in land, and to the appropriation of part of a memorial garden in return for a dedication fee or similar payment;

(b) references to capital expenditure incurred in providing land shall be taken as references to the cost of purchase and to any capital expenditure incurred in levelling or draining it or otherwise rendering it suitable for the purposes of a cemetery or a memorial garden; and

(c) the reference in subsection (4)(a)(ii) to subsection (1) above includes a reference to section 141 of the 1970 Act and section 22 of the [M99]Finance Act 1952 (which made similar provision to that made by this section).

(9) **[**[F41]Section 153 of the 1990 Act**]** (which relates to expenditure which is reimbursed to a person carrying on a trade) shall apply for the purposes of this section as it applies for the purposes of **[**[F41]that Act**]**.

Textual Amendments

F41 1990(C) Sch.1 para.8(6).*Previously*
"Section 84 of the 1968 Act"
and
"Part I of that Act"
respectively.

Marginal Citations

M96 SOURCE-1970 s. 141(1)
M97 SOURCE-1970 s. 141(2)
M98 SOURCE-1970 s. 141(3)–(8)
M99 1952 c. 33.

[F42 91A Waste disposal: restoration payments.

(1) This section applies where on or after 6th April 1989 a person makes a site restoration payment in the course of carrying on a trade.

(2) Subject to subsection (3) below, for the purposes of income tax or corporation tax the payment shall be allowed as a deduction in computing the profits or gains of the trade for the period of account in which the payment is made.

(3) Subsection (2) above shall not apply to so much of the payment as—

(a) represents expenditure which has been allowed as a deduction in computing the profits or gains of the trade for any period of account preceding the period of account in which the payment is made, or

(b) represents capital expenditure in respect of which an allowance has been, or may be, made under the enactments relating to capital allowances.

(4) For the purposes of this section a site restoration payment is a payment made—

(a) in connection with the restoration of a site or part of a site, and

(b) in order to comply with any condition of a relevant licence, or any condition imposed on the grant of planning permission to use the site for the carrying out of waste disposal activities, or any term of a relevant agreement.

(5) For the purposes of this section waste disposal activities are the collection, treatment, conversion and final depositing of waste materials, or any of those activities.

(6) For the purposes of this section a relevant icence is—

(a) a disposal licence under Part I of the M100Control of Pollution Act 1974 or Part II of the M101Pollution Control and Local Government (Northern Ireland) Order 1978, or

(b) a waste management licence under Part II of the Environmental Protection Act 1990 or any corresponding provision for the time being in force in Northern Ireland.

(7) For the purposes of this section a relevant agreement is an agreement made under section 52 of the M102Town and Country Planning Act 1971, section 50 of the M103Town and Country Planning (Scotland) Act 1972 or section 106 of the M104Town and Country Planning Act 1990 (all of which relate to agreements regulating the development or

use of land) or under any provision corresponding to section 106 of the Town and Country Planning Act 1990 and for the time being in force in Northern Ireland.

(8) For the purposes of this section a period of account is a period for which an account is made up.**]**

Textual Amendments

F42 1990 s.78.

Marginal Citations

M100 1974 c. 40.
M101 S.I. 1978/1049 (N.I.19).
M102 1971 c. 78.
M103 1972 c. 52.
M104 1990 c. 8.

91B Waste disposal: preparation expenditure.

(1) This section applies where a person—

(a) incurs, in the course of carrying on a trade, site preparation expenditure in relation to a waste disposal site (the site in question),

(b) holds, at the time the person first deposits waste materials on the site in question, a relevant licence which is then in force,

(c) makes a claim for relief under this section in such form as the Board may direct, and

(d) submits such plans and other documents (if any) as the Board may require;

and it is immaterial whether the expenditure is incurred before or after the coming into force of this section.

(2) In computing the profits or gains of the trade for a period of account ending after 5th April 1989, the allowable amount shall be allowed as a deduction for the purposes of income tax or corporation tax.

(3) In relation to a period of account (the period in question) the allowable amount shall be determined in accordance with the formula—

$$\left(A\text{-}B\right) \times \frac{C}{C+D}$$

(4) A is the site preparation expenditure incurred by the person at any time before the beginning of, or during, the period in question—

(a) in relation to the site in question, and

(b) in the course of carrying on the trade;

but this subsection is subject to subsections (5) and (9) below.

(5) A does not include any expenditure—

(a) which has been allowed as a deduction in computing the profits or gains of the trade for any period of account preceding the period in question, or

(b) which constitutes capital expenditure in respect of which an allowance has been, or may be, made under the enactments relating to capital allowances.

(6) B is an amount equal to any amount allowed as a deduction under this section, if allowed—

(a) in computing the profits or gains of the trade for any period of account preceding the period in question, and

(b) as regards expenditure incurred in relation to the site in question;

and if different amounts have been so allowed as regards different periods, B is the aggregate of them.

(7) C is the volume of waste materials deposited on the site in question during the period in question; but if the period is one beginning before 6th April 1989 C shall be reduced by the volume of any waste materials deposited on the site during the period but before that date.

(8) D is the capacity of the site in question not used up for the deposit of waste materials, looking at the state of affairs at the end of the period in question.

(9) Where any of the expenditure which would be included in A (apart from this subsection) was incurred before 6th April 1989, A shall be reduced by an amount determined in accordance with the formula—

$$E \times \frac{F}{F+G}$$

(10) For the purposes of subsection (9) above—

(a) E is so much of the initial expenditure (that is, the expenditure which would be included in A apart from subsection (9) above) as was incurred before 6th April 1989,

(b) F is the volume of waste materials deposited on the site in question before 6th April 1989, and

(c) G is the capacity of the site in question not used up for the deposit of waste materials, looking at the state of affairs immediately before 6th April 1989.

(11) For the purposes of this section—

(a) a waste disposal site is a site used (or to be used) for the disposal of waste materials by their deposit on the site,

(b) in relation to such a site, site preparation expenditure is expenditure on preparing the site for the deposit of waste materials (and may include expenditure on earthworks),

(c) in relation to such a site, "capacity" means capacity expressed in volume,

(d) "relevant licence" has the same meaning as in section 91A, and

(e) a period of account is a period for which an account is made up.

VALID FROM 28/07/2000

91BA Waste disposal: entitlement of successor to allowances.

(1) This section applies where—

(a) site preparation expenditure has been incurred in relation to a waste disposal site,

(b) that expenditure was incurred by a person in the course of carrying on a trade, and

(c) on or after 21st March 2000—

(i) that person ("the predecessor") ceases to carry on that trade, or ceases to carry it on so far as it relates to that site, and

(ii) another person ("the successor") begins to carry on that trade, or to carry on in the course of a trade the activities formerly carried on by the predecessor in relation to that site.

(2) If the conditions specified in the following provisions of this section are met, then, for the purposes of section 91B above—

(a) the trade carried on by the successor shall be treated as the same trade as that carried on by the predecessor, and

(b) allowances shall be made to the successor (and not to the predecessor) as if everything done to or by the predecessor had been done to or by the successor.

(3) The first condition is that the whole of the site in question is transferred to the successor.

Provided the successor holds an estate or interest in the whole of the site, it need not be the same as that held by the predecessor.

(4) The second condition is that the successor, at the time he first deposits waste material at the site, holds a relevant licence in respect of the site which is then in force.

(5) Expressions used in this section have the same meaning as in section 91B.

VALID FROM 19/03/1997

91C Mineral exploration and access.

Where—

(a) a person carrying on a trade incurs expenditure on mineral exploration and access as defined in section 121(1) of the [M105]Capital Allowances Act 1990 in an area or group of sands in which the presence of mineral deposits in commercial quantities has already been established, and

(b) if the presence in that area or group of sands of mineral deposits in commercial quantities had not already been established, that expenditure would not have been allowed to be deducted in computing the profits or gains of the trade for the purposes of tax,

that expenditure shall not be so deducted.

Marginal Citations

M105 1990 c. 1.

VALID FROM 01/04/2009

[F43 Payments for restrictive undertakings

Textual Amendments

F43 S. 76ZA and cross-heading inserted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), **Sch. 1 para. 31** (with Sch. 2 Pts. 1, 2)

76ZA Payments for restrictive undertakings

(1) This section applies if a payment—

(a) is treated as earnings of an employee by virtue of section 225 of ITEPA 2003 (payments for restrictive undertakings), and

(b) is made, or treated as made for the purposes of section 226 of that Act (valuable consideration given for restrictive undertakings), by a company in relation to which section 76 applies.

(2) The payment is treated as expenses payable which fall to be brought into account at Step 1 in section 76(7), so far as it otherwise would not be.**]**

VALID FROM 01/04/2009

[F44 Seconded employees

Textual Amendments

F44 S. 76ZB and cross-heading inserted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), **Sch. 1 para. 32** (with Sch. 2 Pts. 1, 2)

76ZB Employees seconded to charities and educational establishments

(1) This section applies if a company to which section 76 applies makes the services of a person employed for the purposes of the company's life assurance business available to—

(a) a charity, or

(b) an educational establishment,

on a basis that is stated and intended to be temporary.

(2) Expenses of the employer that are attributable to the employee's employment during the period of the secondment are treated as expenses payable which fall to be brought into account at Step 1 in section 76(7).

(3) In this section—

"educational establishment" has the same meaning as in section 70 of CTA 2009, and

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

VALID FROM 01/04/2009

[F45 Counselling and retraining expenses

Textual Amendments

F45 S. 76ZC and cross-heading inserted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), **Sch. 1 para. 33** (with Sch. 2 Pts. 1, 2)

76ZC Counselling and other outplacement services

(1) This section applies if—

(a) a company carrying on life assurance business ("the employer") incurs counselling expenses,

(b) the expenses are incurred in relation to a person ("the employee") who holds or has held an office or employment under the employer, and

(c) the relevant conditions are met.

(2) The expenses are brought into account under section 76 as expenses payable (so far as they otherwise would not be).

(3) In this section "counselling expenses" means expenses incurred—

(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.

(4) 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.

[F46 76ZD Retraining courses

(1) This section applies if—

(a) a company carrying on life assurance business ("the employer") incurs training course expenses,

(b) they are incurred in relation to a person ("the employee") who holds or has held an office or employment under the employer, and

(c) the relevant conditions are met.

(2) The expenses are brought into account under section 76 as expenses payable (so far as they otherwise would not be).

(3) 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.**]**

Textual Amendments

F46 S. 76ZD inserted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), **Sch. 1 para. 34** (with Sch. 2 Pts. 1, 2)

[F47 76ZE Retraining courses: recovery of tax]

(1) This section applies if—

(a) an employer's liability to corporation tax for an accounting period is determined on the assumption that it is entitled by virtue of section 76ZD to bring an amount into account in determining the amount of a deduction to be made under section 76, and

(b) without section 76ZD the employer would not have been so entitled.

(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 corporation tax due as a result of the condition not being met may be made under paragraph 41 of Schedule 18 to FA 1998.

(3) Such an assessment must be made before the end of the period of 6 years immediately following the end of the accounting period in which the failure to meet the condition occurred.

(4) If subsection (2) applies, the employer must give 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.

(5) If an officer of Revenue and Customs has reason to believe that the employer has failed to give such a notice, the officer may by notice require the employer to provide such information as the officer may reasonably require for the purposes of this section about—

(a) the failure to begin the course,

(b) the continued employment, or

(c) the re-employment.

(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

F47 S. 76ZE inserted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), **Sch. 1 para. 35** (with Sch. 2 Pts. 1, 2)

Modifications etc. (not altering text)

C29 S. 76ZE applied (with modifications) (1.4.2009 with effect in accordance with s. 1329(1) of the affecting Act) by Corporation Tax Act 2009 (c. 4), **Sch. 2 para. 139(3)(4)** (with Sch. 2 Pts. 1, 2)

VALID FROM 01/04/2009

[F48 Redundancy payments etc

Textual Amendments

F48 S. 76ZF and cross-heading inserted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), **Sch. 1 para. 36** (with Sch. 2 Pts. 1, 2)

76ZF Redundancy payments and approved contractual payments

(1) Sections 76ZG to 76ZI apply if—

(a) a company to which section 76 applies ("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 life assurance business or partly in the employer's life assurance business and partly in one or more other capacities.

(2) For the purposes of this section and sections 76ZG to 76ZH "redundancy payment" means a redundancy payment payable under—

(a) Part 11 of the Employment Rights Act 1996, or

(b) Part 12 of the Employment Rights (Northern Ireland) Order 1996.

(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.

[F49 76ZG Payments in respect of employment wholly in employer's business

(1) This section applies if the payment is in respect of the employee's employment wholly in the employer's life assurance business.

(2) The payment is treated as expenses payable which fall to be brought into account at Step 1 in section 76(7), so far as it otherwise would not be.

(3) The amount brought into account by virtue of 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 referable to an accounting period beginning after the business has permanently ceased to be carried on, it is treated as referable to the last accounting period in which the business was carried on.**]**

Textual Amendments

F49 S. 76ZG inserted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), **Sch. 1 para. 37** (with Sch. 2 Pts. 1, 2)

[F50 76ZH 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 life assurance business, 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 life assurance business, and

(b) the employment in the other capacities.

(3) The part of the payment apportioned to the employment in the life assurance business is treated as a payment in respect of the employee's employment wholly in the life assurance business for the purposes of section 76ZG.**]**

Textual Amendments

F50 S. 76ZH inserted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), **Sch. 1 para. 38** (with Sch. 2 Pts. 1, 2)

[F51 76ZI Additional payments

(1) This section applies if the employer's business, or part of it, ceases (permanently) to be carried on and the employer 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.

(2) If—

(a) the additional payment would not otherwise be regarded as expenses payable for the purposes of section 76, but

(b) that is only because the business, or the part of the business, has ceased to be carried on,

the additional payment is regarded as expenses payable for the purposes of section 76.

(3) So far as the additional payment would, apart from this subsection, be regarded as expenses payable for the purposes of Step 5 in subsection (7) of section 76, it is not to be so regarded for the purposes of that subsection (or of subsection (2) above so far as relating to section 76).

(4) The amount treated under this section as expenses payable for the purposes of section 76 is limited to 3 times the amount of—

(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.

(5) If the payment is referable to an accounting period beginning after the business or the part of the business has ceased to be carried on, it is treated as referable to the last accounting period in which the business, or the part concerned, was carried on.**]**

Textual Amendments

F51 S. 76ZI inserted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), **Sch. 1 para. 39** (with Sch. 2 Pts. 1, 2)

[F52 76ZJ Payments by the Government]

(1) This section applies if—

(a) a redundancy payment or an approved contractual payment is payable by a company to which section 76 applies ("the employer"), and

(b) a payment to which subsection (2) applies is made in respect of the payment.

(2) This subsection applies to—

(a) payments made by the Secretary of State under section 167 of the Employment Rights Act 1996, and

(b) payments made by the Department for Employment and Learning under Article 202 of the Employment Rights (Northern Ireland) Order 1996.

(3) So far as the employer reimburses the Secretary of State or Department for the payment, sections 76ZG to 76ZI apply as if the payment were—

(a) a redundancy payment, or

(b) an approved contractual payment,

made by the employer.**]**

Textual Amendments

F52 S. 76ZJ inserted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), **Sch. 1 para. 40** (with Sch. 2 Pts. 1, 2)

VALID FROM 01/04/2009

[F53 Contributions to local enterprise organisations or urban regeneration companies

Textual Amendments

F53 S. 76ZK and cross-heading inserted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), **Sch. 1 para. 41** (with Sch. 2 Pts. 1, 2)

76ZK Contributions to local enterprise organisations or urban regeneration companies

(1) This section applies if a company to which section 76 applies ("the contributor") incurs expenses in making a contribution (whether in cash or in kind)—

(a) to a local enterprise organisation, or

(b) to an urban regeneration company.

(2) The expenses are treated for the purposes of section 76 as expenses payable which fall to be brought into account at Step 1 in section 76(7).

(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 treated in accordance with subsection (2) 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 local enterprise organisation or urban regeneration company concerned, or

(b) from anyone else.

(5) Subsection (6) applies if—

(a) an amount has been brought into account in accordance with subsection (2), and

(b) the contributor or a connected person receives a disqualifying benefit that is in any way attributable to the contribution.

(6) The contributor is to be treated as receiving, when the benefit is received, an amount—

(a) which is equal to the value of the benefit (so far as not brought into account in determining the amount of the deduction), and

(b) to which the charge to corporation tax on income applies.

(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 expenses payable for the purposes of section 76,

"local enterprise organisation" has the meaning given by section 83 of CTA 2009,

"urban regeneration company" has the meaning given by section 86 of CTA 2009.

(8) Section 839 ("connected person") applies for the purposes of subsections (3) and (5).**]**

VALID FROM 01/04/2009

[F54 Unpaid remuneration

Textual Amendments

F54 S. 76ZL and cross-heading inserted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), **Sch. 1 para. 42** (with Sch. 2 Pts. 1, 2)

76ZL Unpaid remuneration

(1) This section applies if—

(a) an amount is charged in respect of employees' remuneration in the accounts for a period of a company to which section 76 applies,

(b) the amount would apart from this section be brought into account under section 76 as expenses payable, and

(c) the remuneration is not paid before the end of the period of 9 months immediately following the end of the period of account.

(2) If the remuneration is paid after the end of that period of 9 months, the amount is brought into account for the period of account in which it is paid.

(3) But—

(a) subsection (2) is subject to section 86 of FA 1989 (spreading of relief for acquisition expenses), and

(b) in interpreting that section the remuneration is treated as expenses payable which fall to be included at Step 1 in section 76(7) for the period of account in which the remuneration is paid.

(4) The amount is not brought into account under section 76 as expenses payable if it is not paid.

[F55 76ZM Unpaid remuneration: supplementary]

(1) For the purposes of section 76ZL 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 76ZL it does not matter whether an amount is charged for—

(a) particular employments, or

(b) employments generally.

(3) If the profits of the company are calculated before the end of the 9 month period mentioned in section 76ZL(1)(c)—

(a) 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

(b) 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 76ZL remuneration is paid when it—

(a) is treated as received by an employee for the purposes of ITEPA 2003 by section 18 or 19 of that Act (receipt of money and non-money earnings), or

(b) would be so treated if it were not exempt income.

(5) In this section and section 76ZL—

"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 Parts 2 to 7 of ITEPA 2003.**]**

Textual Amendments

F55 S. 76ZM inserted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), **Sch. 1 para. 43** (with Sch. 2 Pts. 1, 2)

VALID FROM 01/04/2009

[F56Car or motor cycle hire]

Textual Amendments

F56 S. 76ZN and cross-heading inserted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), **Sch. 1 para. 44** (with Sch. 2 Pts. 1, 2)

[F57 76ZN Car or motor cycle hire

(1) Subsection (2) applies if—

(a) in calculating the corporation tax to which a company is liable for an accounting period, an amount representing expenses incurred on the hiring of a car or motor cycle can be brought into account under section 76 as expenses payable,

(b) the car or motor cycle is not a qualifying hire car or motor cycle, and

(c) the retail price of the car or motor cycle when new exceeds £12,000.

(2) The amount that would otherwise be capable of being brought into account as expenses payable is reduced by multiplying the amount by the fraction—

$$\frac{£\ 12{,}000 + RP}{2 \times RP}$$

where RP is the retail price of the car or motor cycle when new.

(3) Subsection (4) applies if an amount is reduced as a result of subsection (2), or a corresponding provision, and—

(a) subsequently—

(i) there is a rebate (however described) of the hire charges, or

(ii) a debt in respect of any of the hire charges is released otherwise than as part of a statutory insolvency agreement, and

(b) an amount is brought into account in respect of the rebate or release.

(4) For the purposes of subsection (3)(b) an amount is brought into account in respect of a rebate of hire charges or the release of a debt if—

(a) the amount of a reversal representing the rebate or release falls to be deducted under Step 4 in section 76(7), or

(b) (in the case of a rebate of hire charges) an amount representing the rebate is chargeable under section 85(1) of the Finance Act 1989 (c. 26).

(5) The amount that would otherwise be deductible as mentioned in subsection (4)(a) or chargeable as mentioned in subsection (4)(b) is reduced by multiplying it by the fraction set out in subsection (2).

(6) In this section "corresponding provision" means—

(a) section 56(2) of CTA 2009 (car or motor cycle hire: trade profits and property income),

(b) section 1251(2) of CTA 2009 (car or motor cycle hire: companies with investment business), and

(c) section 48(2) of ITTOIA 2005 (car or motor cycle hire: trade profits and property income).

(7) The power under section 74(4) of CAA 2001 to increase or further increase the sums of money specified in Chapter 8 of Part 2 of CAA 2001 includes the power to increase or further increase the sum of money specified in subsection (1)(c) or (2).

(8) In this section "car or motor cycle" and "qualifying hire car or motor cycle" have the meanings given by section 57 of CTA 2009.**]**

Textual Amendments

F57 S. 76ZN and cross-heading inserted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), **Sch. 1 para. 44** (with Sch. 2 Pts. 1, 2)

[F58 76ZO Hiring cars (but not motor cycles) with low CO_2 emissions before 1 April 2013

(1) Section 76ZN does not apply to expenses incurred on the hiring of a car with low CO_2 emissions, or an electrically-propelled car, if—

(a) the car was first registered on or after 17 April 2002, and

(b) the period of hire begins before 1 April 2013 under a contract entered into before that date.

(2) For this purpose—

"car with low CO_2 emissions" has the meaning given by section 45D of CAA 2001, and

"electrically-propelled car" has the meaning given by that section.**]**

Textual Amendments

F58 S. 76ZO inserted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), **Sch. 1 para. 45** (with Sch. 2 Pts. 1, 2)

Treatment of regional development and other grants and debts released etc.

92 Regional development grants.

(1) [M106]A regional development grant which, apart from this subsection, would be taken into account as a receipt in computing the profits of a trade, profession or vocation which are chargeable under Case I or II of Schedule D, shall not be taken into account as a receipt in computing those profits.

(2) [M107]A regional development grant which is made to an investment company—

(a) shall not be taken into account as a receipt in computing its profits under Case VI of Schedule D; and

(b) shall not be deducted, by virtue of section 75(2), from the amount treated as expenses of management.

(3) In this section "regional development grant" means a payment by way of grant under Part II of the [M108]Industrial Development Act 1982.

Marginal Citations

M106 SOURCE-1984 s. 54(1), (4)
M107 SOURCE-1984 s. 54(2), (3)
M108 1982 c. 52.

93 Other grants under Industrial Development Act 1982 etc.

(1) [M109]A payment to which this section applies which is made to a person carrying on a trade the profits of which are chargeable under Case I of Schedule D shall be taken into account as a receipt in computing those profits; and any such payment which is made to an investment company shall be taken into account as a receipt in computing its profits under Case VI of Schedule D.

(2) [M110]This section applies to any payment which would not, apart from this section, be taken into account as mentioned in subsection (1) above, being a payment by way of a grant under—

(a) section 7 or 8 of the Industrial Development Act 1982 or section 7 or 8 of the [M111]Industry Act 1972; or

(b) section 1 of the [M112]Industries Development Act (Northern Ireland) 1966 or section 4 of the [M113]Industries Development Act (Northern Ireland) 1971; or

(c) [M114]any of Articles 7, 9 and 30 of the [M115]Industrial Development (Northern Ireland) Order 1982;

other than a grant designated as made towards the cost of specified capital expenditure or as made by way of compensation for the loss of capital assets and other than a grant falling within subsection (3) below.

(3) [M116]A payment by way of grant which is made—

(a) under Article 7 of the Order referred to in subsection (2)(c) above, and

(b) in respect of a liability for corporation tax (including a liability which has already been met),

shall not be taken into account as mentioned in subsection (1) above, whether by virtue of this section or otherwise.

Marginal Citations

M109 SOURCE-1980 s. 42(1)
M110 SOURCE-1980 s. 42(2)
M111 1972 c. 63.
M112 1966 c. 36 (N.I.).
M113 1971 c. 22 (N.I.).
M114 SOURCE-1980 s. 42(2); 1984 s. 55(1)
M115 S.I. 1982/1083 (N.I. 15).
M116 SOURCE-1980 s. 42(3); 1984 s. 55(2)

94 Debts deducted and subsequently released.

[M117]Where, in computing for tax purposes the profits or gains of a trade, profession or vocation, a deduction has been allowed for any debt incurred for the purposes of the trade, profession or vocation, then, if the whole or any part of the debt is thereafter released, the amount released shall be treated as a receipt of the trade, profession or vocation arising in the period in which the release is effected.

Marginal Citations

M117 SOURCE-1970 s. 136

95 Taxation of dealer's receipts on purchase by company of own shares.

(1) [M118]Where a company purchases its own shares from a dealer, the purchase price shall be taken into account in computing the profits of the dealer chargeable to tax under Case I or II of Schedule D; and accordingly—

(a) tax shall not be chargeable under Schedule F in respect of any distribution represented by any part of the price, and

(b) the dealer shall not be entitled in respect of the distribution to a tax credit under section 231, and

(c) sections 208 and 234(1) shall not apply to the distribution.

(2) For the purposes of subsection (1) above a person is a dealer in relation to shares of a company if the price received on their sale by him otherwise than to the company would be taken into account in computing his profits chargeable to tax under Case I or II of Schedule D.

(3) Subject to subsection (4) below, in subsection (1) above—

(a) the reference to the purchase of shares includes a reference to the redemption or repayment of shares and to the purchase of rights to acquire shares, and

(b) the reference to the purchase price includes a reference to any sum payable on redemption or repayment.

(4) Subsection (1) above shall not apply in relation to—

(a) the redemption of fixed-rate preference shares, or

(b) the redemption, on terms settled or substantially settled before 6th April 1982, of other preference shares issued before that date,

if in either case the shares were issued to and continuously held by the person from whom they are redeemed.

(5) In this section—

"fixed-rate preference shares" means shares which—

(a) were issued wholly for new consideration, and

(b) do not carry any right either to conversion into shares or securities of any other description or to the acquisition of any additional shares or securities, and

(c) do not carry any right to dividends other than dividends which—

(i) are of a fixed amount or at a fixed rate per cent. of the nominal value of the shares, and

(ii) together with any sum paid on redemption, represent no more than a reasonable commercial return on the consideration for which the shares were issued;

"new consideration" has the meaning given by section 254; and

"shares" includes stock.

Marginal Citations

M118 SOURCE-1982 s. 54

VALID FROM 21/07/2008

[F59 95ZA Taxation of UK distributions received by insurance companies

(1) If the total amount of relevant distributions received by a company in an accounting period exceeds £50,000, those distributions are to be taken into account in calculating for corporation tax purposes the profits of the company in that period (and accordingly section 208 does not apply in relation to those distributions).

(2) A company ("company A") receives a "relevant distribution" if—

(a) it receives a distribution made by a company resident in the United Kingdom ("company B"),

(b) the value of the shares or stock in respect of which the distribution is made ("the holding") is materially reduced by reason of the distribution,

(c) a profit on the sale of the holding (to anyone other than company B) would be taken into account in calculating company A's profits in respect of relevant insurance business, and

(d) either—

(i) the holding amounts to, or is an ingredient in a holding amounting to, 10% of all holdings of the same class in company B, or

(ii) the period between the acquisition by company A of the holding and that company first taking steps to dispose of the holding does not exceed 30 days.

(3) In this section "relevant insurance business" means any kind of insurance business other than life assurance business.

(4) Section 177(7) of TCGA 1992 (provision supplementing provision corresponding to subsection (2)(d)(i) above) applies for the purposes of subsection (2)(d)(i).

(5) Section 731(4) below (interpretation of "taking steps to dispose of securities") applies for the purposes of subsection (2)(d)(ii) as if the reference to the securities were to the holding.**]**

Textual Amendments

F59 S. 95ZA inserted (with effect in accordance with Sch. 17 para. 16(2) of the amending Act) by Finance Act 2008 (c. 9), **Sch. 17 para. 16(1)**

Special provisions

VALID FROM 11/05/2001

[F60 95A Creative artists: relief for fluctuating profits

Schedule 4A (which enables individuals to make an averaging claim in respect of profits derived wholly or mainly from creative works) shall have effect.

The provisions of that Schedule apply for the year 2000-01 and subsequent years of assessment (so that the first years which may be the subject of an averaging claim are 2000-01 and 2001-02).**]**

Textual Amendments

F60 S. 95A inserted (11.5.2001) by Finance Act 2001 (c. 9), **s. 71(1)**

96 Farming and market gardening: relief for fluctuating profits.

(1) M119 Subject to the provisions of this section, a person who is or has been carrying on a trade of farming or market gardening in the United Kingdom may claim that subsection (2) or (3) below shall have effect in relation to his profits from that trade

for any two consecutive years of assessment if his profits for either year do not exceed such part of his profits for the other year as is there specified.

(2) If the claimant's profits for either year do not exceed seven-tenths of his profits for the other year or are nil, his profits for each year shall be adjusted so as to be equal to one-half of his profits for the two years taken together or, as the case may be, for the year for which there are profits.

(3) If the claimant's profits for either year exceed seven-tenths but are less than three-quarters of his profits for the other year, his profits for each year shall be adjusted by adding to the profits that are lower and deducting from those that are higher an amount equal to three times the difference between them less three-quarters of those that are higher.

(4) No claim shall be made under this section—

(a) in respect of any year of assessment before a year in respect of which a claim has already been made under this section; or

(b) in respect of a year of assessment in which the trade is (or by virtue of section 113(1) is treated as) set up and commenced or permanently discontinued.

(5) Any adjustment under this section shall have effect for all the purposes of the Income Tax Acts (including any further application of this section where the second of any two years of assessment is the first of a subsequent pair) except that—

(a) subsection (2) above shall not prevent a person obtaining relief under those Acts for a loss sustained by him in any year of assessment;

(b) any adjustment under this section shall be disregarded for the purposes of section 63(1)(b); and

(c) where, after a claim has been made under this section in respect of the profits for any two years of assessment, the profits for both or either of those years are adjusted for any other reason, this section shall have effect as if the claim had not been made but without prejudice to the making of a further claim in respect of those profits as so adjusted.

(6) This section applies to the profits of a trade carried on by a person in partnership as it applies to the profits of a sole trader except that—

(a) the profits to which the claim relates shall be those chargeable in accordance with section 111; and

(b) any claim in respect of those profits shall be made jointly by all the partners who are individuals;

and where during the years of assessment to which the claim relates there is a change in the persons engaged in carrying on the trade but a notice is given under section 113(2), the claim shall be made jointly by all the persons who are individuals and have been engaged in carrying on the trade at any time during those years.

Where a person who is required by this subsection to join in the making of a claim has died, this subsection shall have effect as if it required his personal representatives to join in making the claim.

(7) In this section references to profits from a trade for a year of assessment are references to the profits or gains from that trade which are chargeable to income tax for that year before—

(a) any deduction for losses sustained in any year of assessment;

(b) any deduction or addition for capital allowances or charges (not being allowances or charges given or made by deduction or addition in the computation of profits or gains);

(c) any deduction for relief under Schedule 9 to the Finance Act 1981 (stock relief).

(8) Any claim under this section shall be made by notice given to the inspector not later than two years after the end of the second of the years of assessment to which the claim relates but any such further claim as is mentioned in subsection (5)(c) above shall not be out of time if made before the end of the year of assessment following that in which the adjustment is made.

(9) Where a person makes a claim under this section in respect of any year of assessment, any claim by him for relief for that year under any other provision of the Income Tax Acts—

(a) shall not be out of time if made before the end of the period in which the claim under this section is required to be made; and

(b) if already made, may be revoked or amended before the end of that period;

but no claim shall by virtue of this subsection be made, revoked or amended after the determination of the claim under this section.

(10) There shall be made all such alterations of assessments or repayments of tax (whether in respect of such profits as are mentioned in subsection (1) above or of other income of the person concerned) as may be required in consequence of any adjustment under this section.

(11) Nothing in this section shall be construed as applying to profits chargeable to corporation tax.

(12) This section applies where the first of the two years mentioned in subsection (1) above is the year 1987-88 or a subsequent year of assessment.

Modifications etc. (not altering text)

C30 S. 96(8) modified for the year of assessment 1988-89 by S.I. 1991/851, regs. 1(1), 9, **Sch.2**.
S. 96(8) modified for the year of assessment 1989-90 by S.I. 1992/511, regs. 1(1), 9, **Sch.2**.
S. 96(8) applied (with modifications) for the year of assessment 1990-91 by S.I. 1993/415, regs. 1(1), 9, **Sch.2**

C31 S. 96(8) modified (5.4.1994 with effect in accordance with reg. 1 of the modifying S.I.) by The Lloyd's Underwriters (Tax) (1991-92) Regulations 1994 (S.I. 1994/728) {reg. 9}, Sch. 2

Marginal Citations

M119 SOURCE-1978 s. 28; 1981 s. 35(4)

97 Treatment of farm animals etc.

[M120]Schedule 5 shall have effect with respect to the treatment, in computing profits or gains for the purposes of Case I of Schedule D, of animals and other living creatures kept for the purposes of farming or any other trade.

Marginal Citations
M120 SOURCE-1970 s. 139

98 Tied premises.

(1) [M121]In computing for tax purposes the profits or gains or losses of a trade carried on by a lessor of tied premises—

(a) there shall be taken into account as a trading receipt any rent payable for the premises to him, and there shall be allowed as deduction any rent paid for the premises by him, but

(b) no deduction shall be allowed in respect of the premises either by reference to his being entitled to a rent for the premises which is less than the rent which might have been obtained (or less than their annual value or the rent payable by him for them) or in respect of the annual value of the premises.

(2) For the purposes of this section, premises shall be deemed to be tied premises in relation to any lessor of the premises, and in relation to any trade carried on by him, if, but only if, in the course of that trade, he is concerned (whether as principal or agent) in the supply of goods sold or used on the premises and accordingly deals with the premises or his interest in the premises as property employed for the purposes of that trade; and in this section "the relevant trade", in relation to any tied premises and to any lessor thereof, means any trade carried on by him in relation to which they are tied premises.

(3) Where part only of premises in respect of which rent is paid by or payable to a lessor of the premises are tied premises in relation to him, the rent paid or payable for the tied premises shall for the purposes of this section be taken to be that part of the entire rent which, on a fair and just apportionment, is attributable to them.

(4) Subject to subsection (5) below, a lessor of tied premises who is chargeable to tax for any chargeable period in respect of the profits or gains of the relevant trade shall not be liable for that period (or for the part of it during which he carries on that trade) to any tax in respect of the premises under Schedule A.

(5) Where, for any chargeable period or part of a chargeable period, a lessor of tied premises becomes entitled to any rent under a lease comprising the tied premises and other premises, but is by virtue of subsection (4) above relieved of liability to tax in respect of the tied premises under Schedule A—

(a) his liability in respect of the rent shall be computed in the first instance as it would be apart from this section, but

(b) his total liability (so computed) in respect of the rent shall be reduced by the part which, on a fair and just apportionment, is attributable to the tied premises for the chargeable period or part thereof for which he is so relieved of liability in respect of them.

(6) If the lessor of tied premises outside the United Kingdom is chargeable to tax for any chargeable period in respect of the profits or gains of the relevant trade, he shall not be liable for that period (or for the part of it during which he carries on that trade) to tax under Case V of Schedule D in respect of any rent for the premises.

(7) Where the person carrying on a trade is, in the case of any premises, entitled in equity to the interest of any lessor of those premises, then, in relation to that person, subsections

(1) to (3) above shall apply as if he were the lessor of the premises, and as if any rent payable to or paid by the lessor were payable to or paid by him; and, in relation to the lessor of the premises, subsections (4) and (5) above (or, in the case of premises outside the United Kingdom, subsection (6) above) shall apply as they would apply to the person carrying on the trade if the lessor's interest in the premises and in any other relevant land were vested in him.

(8) In this section "lease" includes an agreement for a lease if the term to be covered by the lease has begun, and any tenancy, but does not include a mortgage or heritable security, and "lessor" shall be construed accordingly, and includes the successors in title of a lessor.

Modifications etc. (not altering text)

C32 S. 98(2) applied (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), **ss.156**, 289 (with ss. 60, 101(1), 171, 201(3)).

Marginal Citations

M121 SOURCE-1970 s. 140

99 Dealers in land.

(1) [M122]In computing for tax purposes the profits or gains of a trade of dealing in land, there shall be disregarded—

(a) so much of the cost of woodlands in the United Kingdom purchased in the course of the trade as is attributable to trees or saleable underwood growing on the land; and

(b) where any amount has been disregarded under paragraph (a) above and, on a subsequent sale of the woodlands in the course of the trade, all or any of the trees or underwood to which the amount disregarded was attributable are still growing on the land, so much of the price for the land as is equal to the amount so disregarded in respect of those trees or underwood.

(2) [M123]In computing the profits or gains of a trade of dealing in land, any trading receipt falling within subsection (1), (4) or (5) of section 34 or section 35 or 36 shall be treated as reduced by the amount on which tax is chargeable by virtue of that section.

(3) Where, on a claim being made under subsection (2)(b) of section 36, the amount on which tax was chargeable by virtue of that section is treated as reduced, subsection (2) above shall be deemed to have applied to the amount as reduced, and any such adjustment of liability to tax shall be made (for all relevant chargeable periods) whether by means of an assessment or otherwise, as may be necessary, and may be so made at any time at which it could be made if it related only to tax for the chargeable period in which that claim is made.

(4) [M124]Subsection (1) above shall not apply where the purchase mentioned in paragraph (a) of that subsection was made under a contract entered into before 1st May 1963.

Marginal Citations

M122 SOURCE-1970 s. 142(1)

M123 SOURCE-1970 s. 142(2), (4)
M124 SOURCE-1970 s. 142(2), (4)

CHAPTER VI

DISCONTINUANCE, AND CHANGE OF BASIS OF COMPUTATION

Valuation of trading stock etc.

100 Valuation of trading stock at discontinuance of trade.

(1) [M125]In computing for any tax purpose the profits or gains of a trade which has been discontinued, any trading stock belonging to the trade at the discontinuance shall be valued as follows—

(a) if—

(i) the stock is sold or transferred for valuable consideration to a person who carries on, or intends to carry on, a trade in the United Kingdom, and

(ii) the cost of the stock may be deducted by the purchaser as an expense in computing for any tax purpose the profits or gains of that trade,

the value of the stock shall be taken to be the amount realised on the sale or the value of the consideration given for the transfer; and

(b) if the stock does not fall to be valued under paragraph (a) above, its value shall be taken to be the amount which it would have realised if it had been sold in the open market at the discontinuance of the trade.

(2) [M126]For the purposes of this section "trading stock", in relation to any trade—

(a) means property of any description, whether real or personal, being either—

(i) property such as is sold in the ordinary course of the trade, or would be so sold if it were mature or if its manufacture, preparation or construction were complete; or

(ii) materials such as are used in the manufacture, preparation or construction of any such property as is referred to in sub-paragraph (i) above; and

(b) includes also any services, article or material which would, if the trade were a profession or vocation, be treated, for the purposes of section 101, as work in progress of the profession or vocation, and references to the sale or transfer of trading stock shall be construed accordingly.

Modifications etc. (not altering text)
C33 *See*—1988(F) Sch.12 para.2—*building societies converting to companies.*Trustee Savings Bank Act 1985 (c.58) s.5*and* Sch.2 para.6(1)—*this provision not to apply to the discontinuance of an existing bank under the* TSB Act 1985.

Marginal Citations
M125 Source—1970 s.137(1)
M126 Source—1970 s.137(4)

101 Valuation of work in progress at discontinuance of profession or vocation.

(1) [M127]Where, in computing for any tax purpose the profits or gains of a profession or vocation which has been discontinued, a valuation is taken of the work of the profession or vocation in progress at the discontinuance, that work shall be valued as follows—

(a) if—

(i) the work is transferred for money or any other valuable consideration to a person who carries on, or intends to carry on, a profession or vocation in the United Kingdom, and

(ii) the cost of the work may be deducted by that person as an expense in computing for any tax purpose the profits or gains of that profession or vocation,

the value of the work shall be taken to be the amount paid or other consideration given for the transfer; and

(b) if the work does not fall to be valued under paragraph (a) above, its value shall be taken to be the amount which would have been paid for a transfer of the work on the date of the discontinuance as between parties at arm's length.

(2) [M128]Where a profession or vocation is discontinued, and the person by whom it was carried on immediately before the discontinuance so elects by notice sent to the inspector at any time within 12 months after the discontinuance—

(a) the amount (if any) by which the value of the work in progress at the discontinuance (as ascertained under subsection (1) above) exceeds the actual cost of the work shall not be brought into account in computing the profits or gains of the period immediately before the discontinuance; but

(b) the amount by which any sums received for the transfer of the work exceed the actual cost of the work shall be included in the sums chargeable to tax by virtue of section 103 as if it were a sum to which that section applies received after the discontinuance.

(3) [M129]References in this section to work in progress at the discontinuance of a profession or vocation shall be construed as references to—

(a) any services performed in the ordinary course of the profession or vocation, the performance of which was wholly or partly completed at the time of the discontinuance and for which it would be reasonable to expect that a charge would have been made on their completion if the profession or vocation had not been discontinued; and

(b) any article produced, and any such material as is used, in the performance of any such services,

and references in this section to the transfer of work in progress shall include references to the transfer of any benefits and rights which accrue, or might reasonably be expected to accrue, from the carrying out of the work.

Marginal Citations

M127 Source—1970 s.138(1)

M128 Source—1970 s.138(3)

M129 Source—1970 s.138(5)

102 Provisions supplementary to sections 100 and 101.

(1) [M130]Any question arising under section 100(1)(a) or 101(1)(a) shall be determined as follows, for the purpose of computing for any tax purpose the profits or gains of both the trades or, as the case may be, the professions or vocations concerned—

(a) in a case where the same body of General Commissioners have jurisdiction with respect to both the trades, professions or vocations concerned, the question shall be determined by those Commissioners unless all parties concerned agree that it shall be determined by the Special Commissioners;

(b) in any other case, the question shall be determined by the Special Commissioners; and

(c) the General or Special Commissioners shall determine the question in like manner as an appeal.

(2) [M131]Where, by virtue of section 113 or 337(1), a trade, profession or vocation is treated as having been permanently discontinued for the purpose of computing tax, it shall also be so treated for the purposes of sections 100 and 101; but those sections shall not apply in a case where a trade, profession or vocation carried on by a single individual is discontinued by reason of his death.

Marginal Citations

M130 Source—1970 s.137(2), 138(2)

M131 Source—1970 s.137(3), 138(4)

Case VI charges on receipts

103 Receipts after discontinuance: earnings basis charge and related charge affecting conventional basis.

[M132](1) Where any trade, profession or vocation the profits or gains of which are chargeable to tax under Case I or II of Schedule D has been permanently discontinued, tax shall be charged under Case VI of that Schedule in respect of any sums to which this section applies which are received after the discontinuance.

(2) Subject to subsection (3) below, this section applies to the following sums arising from the carrying on of the trade, profession or vocation during any period before the discontinuance (not being sums otherwise chargeable to tax)—

(a) where the profits or gains for that period were computed by reference to earnings, all such sums in so far as their value was not brought into account in computing the profits or gains for any period before the discontinuance, and

(b) where those profits or gains were computed on a conventional basis (that is to say, were computed otherwise than by reference to earnings), any sums which, if those profits or gains had been computed by reference to earnings, would not have been brought into the computation for any period before the discontinuance because the date on which they became due, or the date on which the amount due in respect thereof was ascertained, fell after the discontinuance.

(3) This section does not apply to any of the following sums—

(a) sums received by a person beneficially entitled thereto who is not resident in the United Kingdom, or by a person acting on his behalf, which represent

income arising directly or indirectly from a country or territory outside the United Kingdom, or

(b) a lump sum paid to the personal representatives of the author of a literary, dramatic, musical or artistic work as consideration for the assignment by them, wholly or partially, of the copyright in the work, or

[F61(bb) a lump sum paid to the personal representatives of the designer of a design which design right subsists as consideration for the assignment by them, wholly or partially, of that right,**]**

(c) sums realised by the transfer of trading stock belonging to a trade at the discontinuance of the trade, or by the transfer of the work of a profession or vocation in progress at its discontinuance.

Paragraph (b) above shall have effect in relation to public lending right as it has effect in relation to copyright.

(4) Where—

(a) in computing for tax purposes the profits or gains of a trade, profession or vocation a deduction has been allowed for any debt incurred for the purposes of the trade, profession or vocation, and

(b) the whole or any part of that debt is thereafter released, and

(c) the trade, profession or vocation has been permanently discontinued at or after the end of the period for which the deduction was allowed and before the release was effected,

subsections (1) to (3) above shall apply as if the amount released were a sum received after the discontinuance.

(5) For the purposes of this section the value of any sum received in payment of a debt shall be treated as not brought into account in the computation of the profits or gains of a trade, profession or vocation to the extent that a deduction has been allowed in respect of that sum under section 74(j).

Textual Amendments

F61 Sch.7 para.36(3)Copyright Designs and Patents Act 1988 (c.48)*in force on* 1*August* 1989. (*Commencement order*—S.I. 1989 No.816—*not reproduced*).

Marginal Citations

M132 Source—1970 s.143; 1983 s.27(b)

104 Conventional basis: general charge on receipts after discontinuance or change of basis.

(1) **M133**Where any trade, profession or vocation the profits or gains of which are chargeable to tax under Case I or II of Schedule D has been permanently discontinued, and the profits or gains for any period before the discontinuance were computed on a conventional basis, tax shall be charged under Case VI of that Schedule in respect of any sums to which this subsection applies which are received on or after the discontinuance.

(2) Subject to subsection (3) below, subsection (1) above applies to all sums arising from the carrying on of the trade, profession or vocation during any period before the discontinuance, not being sums otherwise chargeable to tax, in so far as the amount

or value of the sums was not brought into account in computing the profits or gains for any period before the discontinuance.

(3) In subsection (2) above the reference to sums otherwise chargeable to tax includes any sums which (disregarding this section) are chargeable to tax under section 103 or to which that section would have applied but for subsection (3)(a) and (b) of that section.

(4) [M134]Where, in the case of any trade, profession or vocation the profits or gains of which are chargeable to tax under Case I or II of Schedule D, there has been—

(a) a change from a conventional basis to the earnings basis, or

(b) a change of conventional basis which may result in receipts dropping out of computation,

tax shall be charged under Case VI of that Schedule in respect of sums to which this subsection applies which are received after the change and before the trade, profession or vocation is permanently discontinued.

(5) Subsection (4) above applies to all sums arising from the carrying on of the trade, profession or vocation during any period before the change, not being sums otherwise chargeable to tax, in so far as the amount or value of the sums was not brought into account in computing the profits or gains for any period.

(6) [M135]It is hereby declared that where work in progress at the discontinuance of a profession or vocation, or the responsibility for its completion, is transferred, the sums to which subsection (1) above applies include any sums received by way of consideration for the transfer, and any sums received by way of realisation by the transferee, on behalf of the transferor, of the work in progress transferred.

(7) Where in the case of any profession or vocation, the profits or gains of which are chargeable to tax under Case II of Schedule D—

(a) there has been a change from a conventional basis to the earnings basis, or a change of conventional basis, and

(b) the value of the work in progress at the time of the change was debited in the accounts and allowed as a deduction in computing profits for tax purposes for a period after the change,

then, in so far as no counterbalancing credit was brought into account in computing profits for tax purposes for any period ending before or with the date of the change, tax shall be charged under subsection (4) above in respect of that amount for the year of assessment in which the change occurred as if that amount were a sum to which that subsection applies, and the change of basis were a change of the kind described in that subsection.

Marginal Citations

M133 Source—1970 s.144(1)

M134 Source—1970 s.144(2)

M135 Source—1970 s.144(3), (4)

105 Allowable deductions.

[M136](1) In computing the charge to tax in respect of sums received by any person which are chargeable to tax by virtue of section 103 or 104(1) (including amounts treated as sums

received by him by virtue of section 103(4)), there shall be deducted from the amount which, apart from this subsection, would be chargeable to tax—

(a) any loss, expense or debit (not being a loss, expense or debit arising directly or indirectly from the discontinuance itself) which, if the trade, profession or vocation had not been discontinued, would have been deducted in computing for tax purposes the profits or gains of the person by whom it was carried on before the discontinuance, or would have been deducted from or set off against those profits or gains as so computed, and

(b) any capital allowance to which the person who carried on the trade, profession or vocation was entitled immediately before the discontinuance and to which effect has not been given by way of relief before the discontinuance.

(2) No amount shall be deducted under subsection (1) above if that amount has been allowed under any other provision of the Tax Acts.

(3) No amount shall be deducted more than once under subsection (1) above; and—

(a) any expense or debit shall be apportioned between a sum chargeable under section 103 and a sum chargeable under section 104(1) in such manner as may be just;

(b) as between sums chargeable, whether under section 103 or 104(1), for one chargeable period and sums so charged for a subsequent chargeable period, any deduction in respect of a loss or capital allowance shall be made against sums chargeable for the earlier chargeable period;

(c) subject to paragraph (b) above, as between sums chargeable for any chargeable period under section 103 and sums so chargeable under section 104(1), any deduction in respect of a loss or capital allowance shall be made against the last-mentioned sums rather than the first-mentioned;

but, in the case of a loss which is to be allowed after the discontinuance, not so as to authorise its deduction from any sum chargeable for a chargeable period preceding that in which the loss is incurred.

(4) In computing the charge to tax in respect of sums received by any person which are chargeable to tax by virtue of section 104(4), there shall be deducted any expense or debit which is not otherwise allowable and which, but for the change in basis, would have been deducted in computing for tax purposes the profits or gains of the trade, profession or vocation, but no amount shall be deducted more than once under this subsection.

Marginal Citations
M136 Source—1970 s.145

106 Application of charges where rights to payments transferred.

M137(1) Subject to subsection (2) below, in the case of a transfer for value of the right to receive any sum to which section 103, 104(1) or 104(4) applies, any tax chargeable by virtue of either of those sections shall be charged in respect of the amount or value of the consideration (or, in the case of a transfer otherwise than at arm's length, in respect of the value of the right transferred as between parties at arm's length), and references in this Chapter, except section 101(2), to sums received shall be construed accordingly.

(2) Where a trade, profession or vocation is treated as permanently discontinued by reason of a change in the persons carrying it on, and the right to receive any sum to which section 103 or 104(1) applies is or was transferred at the time of the change to the persons carrying on the trade, profession or vocation after the change, tax shall not be charged by virtue of either of those sections, but any sum received by those persons by virtue of the transfer shall be treated for all purposes as a receipt to be brought into the computation of the profits or gains of the trade, profession or vocation in the period in which it is received.

Marginal Citations
M137 Source—1970 s.147

Reliefs

107 Treatment of receipts as earned income.

M138Where an individual is chargeable to tax by virtue of section 103 or 104, and the profits or gains of the trade, profession or vocation to which he was entitled before the discontinuance or, as the case may be, change of basis fell to be treated as earned income for the purposes of income tax, the sums in respect of which he is so chargeable shall also be treated as earned income for those purposes (but, in the case of sums chargeable by virtue of section 104, after any reduction in those sums under section 109).

Marginal Citations
M138 Source—1970 s.148

108 Election for carry-back.

M139Where any sum is—

(a) chargeable to tax by virtue of section 103 or 104, and

(b) received in any year of assessment beginning not later than six years after the discontinuance or, as the case may be, change of basis by the person by whom the trade, profession or vocation was carried on before the discontinuance or change, or by his personal representatives,

that person or (in either case) his personal representatives may, by notice sent to the inspector within two years after that year of assessment, elect that the tax so chargeable shall be charged as if the sum in question were received on the date on which the discontinuance took place or, as the case may be, on the last day of the period at the end of which the change of basis took place; and, in any such case, an assessment shall (notwithstanding anything in the Tax Acts) be made accordingly, and, in connection with that assessment, no further deduction or relief shall be made or given in respect of any loss or allowance deducted in pursuance of section 105.

Marginal Citations
M139 Source—1970 s.149

109 Charge under section 104: relief for individuals born before 6th April 1917.

M140(1) If an individual born before 6th April 1917, or the personal representatives of such an individual, is chargeable to tax under section 104 and—

(a) the individual was engaged in carrying on a trade, profession or vocation on 18th March 1968, and

(b) the profits or gains of the trade, profession or vocation were not computed by reference to earnings in the period in which that 18th March fell, or in any subsequent period ending before or with the relevant date,

the net amount with which he is so chargeable to tax shall be reduced by multiplying that net amount by the fraction given below.

(2) Where section 104(4) applies in relation to a change of basis taking place on a date before 19th March 1968, then, in relation to tax chargeable by reference to that change of basis, that earlier date shall be substituted for the date in subsection (1)(a) above and subsection (1)(b) above shall be omitted.

(3) The fraction referred to in subsection (1) above is—

(a) where on 5th April 1968 the individual had not attained the age of 52—

$$\frac{19}{20}$$

(b) where on that date he had attained the age of 52, but had not attained the age of 53—

$$\frac{18}{20}$$

and so on, reducing the fraction by—

$$\frac{1}{20}$$

for each year he had attained up to the age of 64;

(c) where on that date he had attained the age of 65, or any greater age—

$$\frac{5}{20}$$

(4) In this section—

"the net amount" with which a person is chargeable to tax under section 104 means the amount with which he is so chargeable after making any deduction authorised by section 105 but before giving any relief under this section; and

"relevant date"—

(a) in relation to tax under section 104(1), means the date of the permanent discontinuance, and

(b) in relation to tax under section 104(4), means the date of the change of basis.

(5) Subsections (1) to (4) above shall apply as follows as respects the net amount of any sum chargeable under section 104 which is assessed by reference to a sum accruing to a partnership—

(a) the part of that net amount which is apportioned to any partner (who is an individual), or the personal representative of such an individual, shall be a net amount with which that person is chargeable under that section, and

(b) if the part of that net amount which is so apportioned is a greater proportion of that amount than is the individual's share (that is to say, the part to be included in his total income) of the total amount of the partnership profits assessed to income tax for the three years of assessment ending with the year in which the discontinuance or change of basis took place, the amount of the reduction to be given by way of relief shall not exceed the amount of relief which would have been so given if the apportionment had been made by reference to his share of that total amount.

(6) For the purposes of this section the trade, profession or vocation carried on before a permanent discontinuance shall not be treated as the same as any carried after the discontinuance.

Marginal Citations

M140 Source—1970 s.150

VALID FROM 01/05/1995

[F62 Relief for post-cessation expenditure

Textual Amendments

F62 S. 109A and preceding cross-heading inserted (with effect in accordance with s. 90(7) of the amending Act) by Finance Act 1995 (c. 4), **s. 90(1)**

109A Relief for post-cessation expenditure.

(1) Where in connection with a trade, profession or vocation formerly carried on by him which has been permanently discontinued a person makes, within seven years of the discontinuance, a payment to which this section applies, he may, by notice given within twelve months from the 31st January next following the year of assessment in which the payment is made, claim relief from income tax on an amount of his income for that year equal to the amount of the payment.

(2) This section applies to payments made wholly and exclusively—

(a) in remedying defective work done, goods supplied or services rendered in the course of the former trade, profession or vocation or by way of damages (whether awarded or agreed) in respect of any such defective work, goods or services; or

(b) in defraying the expenses of legal or other professional services in connection with any claim that work done, goods supplied or services rendered in the course of the former trade, profession or vocation was or were defective;

(c) in insuring against any liabilities arising out of any such claim or against the incurring of such expenses; or

(d) for the purpose of collecting a debt taken into account in computing the profits or gains of the former trade, profession or vocation.

(3) Where a payment of any of the above descriptions is made in circumstances such that relief under this section is available, the following shall be treated as sums to which section 103 applies (whether or not they would be so treated apart from this subsection)—

(a) in the case of a payment within paragraph (a) or (b) of subsection (2) above, any sum received, by way of the proceeds of insurance or otherwise, for the purpose of enabling the payment to be made or by means of which it is reimbursed,

(b) in the case of a payment within paragraph (c) of that subsection, any sum (not falling within paragraph (a) above) received by way of refund of premium or otherwise in connection with the insurance, and

(c) in the case of a payment within paragraph (d) of that subsection, any sum received to meet the costs of collecting the debt;

and no deduction shall be made under section 105 in respect of any such sums.

Where such a sum is received in a year of assessment earlier than that in which the related payment is made, it shall be treated as having been received in that later year and not in the earlier year; and any such adjustment shall be made, by way of modification of any assessment or discharge or repayment of tax, as is required to give effect to this subsection.

(4) Where a trade, profession or vocation carried on by a person has been permanently discontinued and subsequently an unpaid debt which was taken into account in computing the profits or gains of that trade, profession or vocation and to the benefit of which he is entitled—

(a) is proved to be bad, or

(b) is released, in whole or in part, as part of a relevant arrangement or compromise (within the meaning of section 74),

he shall be treated as making a payment to which this section applies of an amount equal to the amount of the debt or, as the case may be, the amount released or, if he was entitled to only part of the benefit of the debt, to an appropriate proportion of that amount.

If any sum is subsequently received by him in payment of a debt for which relief has been given by virtue of this subsection, the sum shall be treated as one to which section 103 applies; and no deduction shall be made under section 105 in respect of any such sum.

(5) Where in the case of a trade, profession or vocation which has subsequently been permanently discontinued a deduction was made in computing the profits or losses of the trade, profession or vocation in respect of an expense not actually paid (an "unpaid expense"), then—

(a) if relief under this section in connection with that trade, profession or vocation is claimed in respect of any year of assessment, the amount of the relief shall be reduced by the amount of any unpaid expenses at the end of that year;

(b) for the purposes of the application of paragraph (a) above in relation to a subsequent year of assessment, any amount by which relief under this section has been reduced by virtue of that paragraph shall be treated as having been paid in respect of the expense in question; and

(c) if subsequently any amount is in fact paid in respect of an expense in respect of which a reduction has been made under paragraph (a), that amount (or, if less, the amount of the reduction) shall be treated as a payment to which this section applies.

(6) Relief shall not be given under this section in respect of an amount for which relief has been given or is available under any other provision of the Income Tax Acts.

In applying this subsection relief available under section 105 shall be treated as given in respect of other amounts before any amount in respect of which relief is available under this section.

(7) This section does not apply for the purposes of corporation tax.**]**

Modifications etc. (not altering text)
C34 S. 109A(1) modified (with application as stated in s. 90(7) of the modifying Act) by Finance Act 1995 (c. 4), **s. 90(2)**

Supplemental

110 Interpretation etc.

(1) **M141**The following provisions have effect for the purposes of sections 103 to 109.

(2) **M142**For the purposes of those sections, any reference to the permanent discontinuance of a trade, profession or vocation includes a reference to the occurring of any event which, under section 113 or 337(1), is to be treated as equivalent to the permanent discontinuance of a trade, profession or vocation.

(3) **M143**The profits or gains of a trade, profession or vocation in any period shall be treated as computed by reference to earnings where all credits and liabilities accruing during that period as a consequence of its being carried on are brought into account in computing those profits or gains for tax purposes, and not otherwise, and "earnings basis" shall be construed accordingly.

(4) "Conventional basis" has the meaning given by section 103(2), so that profits or gains are computed on a conventional basis if computed otherwise than by reference to earnings.

(5) There is a change from a conventional basis to the earnings basis at the end of a period the profits or gains of which were computed on a conventional basis if the profits or gains of the next succeeding period are computed by reference to earnings; and, if the profits or gains of two successive periods are computed on different conventional bases, a change of conventional basis occurs at the end of the earlier period.

(6) In sections 103 and 104—

(a) "trading stock" has the meaning given by section 100(2);

(b) references to work in progress at the discontinuance of a profession or vocation, and to the transfer of work in progress, are to be construed in accordance with section 101(3); and

(c) the reference to work in progress at the time of a change of basis is also to be construed in accordance with section 101(3), substituting therein for this purpose references to the change of basis for references to the discontinuance.

Marginal Citations

M141 Source—1970 s.151(1)

M142 Source—1970 s.146

M143 Source—1970 s.151(2)-(5)

VALID FROM 01/05/1995

Change of residence

110A Change of residence.

(1) Where there is a change of residence by an individual who is carrying on any trade, profession or vocation wholly or partly outside the United Kingdom and otherwise than in partnership with others, tax shall be chargeable, and loss relief may be claimed, as if the change—

(a) constituted the permanent discontinuance of the trade, profession or vocation; and

(b) was immediately followed, in so far as the trade, profession or vocation continues to be carried on by that individual, by the setting up and commencement of a new one;

but nothing in this subsection shall prevent any portion of a loss sustained before the change from being carried forward under section 385 and set against profits or gains arising or accruing after the change.

(2) For the purposes of this section there is a change of residence by an individual if—

(a) not being resident in the United Kingdom, he becomes so resident; or

(b) being so resident, he ceases to be so resident.

CHAPTER VII

PARTNERSHIPS AND SUCCESSIONS

Modifications etc. (not altering text)
C35 *See also*—1970(M) s.9—*partnership returns.*1990(C), ss.65, 78—*capital allowances for machinery, etc., used for trade carried on in partnership.*

General

111 Partnership assessments to income tax.

M144Where a trade or profession is carried on by two or more persons jointly, income tax in respect thereof shall be computed and stated jointly, and in one sum, and shall be separate and distinct from any other tax chargeable on those persons or any of them, and a joint assessment shall be made in the partnership name.

Marginal Citations
M144 Source—1970 s.152

112 Partnerships controlled abroad.

M145(1) Where a trade or business is carried on by two or more persons in partnership, and the control and management of the trade or business is situated abroad, the trade or business shall be deemed to be carried on by persons resident outside the United Kingdom, and the partnership shall be deemed to reside outside the United Kingdom, notwithstanding the fact that some of the members of the partnership are resident in the United Kingdom and that some of its trading operations are conducted within the United Kingdom.

(2) Where any part of the trade or business of a partnership firm whose management and control is situated abroad consists of trading operations within the United Kingdom, the firm shall, subject to subsection (3) below, be chargeable in respect of the profits of those trading operations within the United Kingdom to the same extent as, and no further than, a person resident abroad is chargeable in respect of trading operations by him within the United Kingdom, notwithstanding the fact that one or more members of the firm are resident in the United Kingdom.

(3) For the purpose of charging any such firm as is mentioned in subsection (2) above in respect of the profits of its trading operations within the United Kingdom, an assessment may be made on the firm in respect of those profits in the name of any partner resident in the United Kingdom.

(4) In any case where—

(a) a person resident in the United Kingdom (in this subsection and subsection (5) below referred to as "the resident partner") is a member of a partnership which resides or is deemed to reside outside the United Kingdom; and

(b) by virtue of any arrangements falling within section 788 any of the income or capital gains of the partnership is relieved from tax in the United Kingdom,

the arrangements referred to in paragraph (b) above shall not affect any liability to tax in respect of the resident partner's share of any income or capital gains of the partnership.

(5) If, in a case where subsection (4) above applies, the resident partner's share of the income of the partnership consists of or includes a share in a qualifying distribution made by a company resident in the United Kingdom, then, notwithstanding anything in the arrangements, the resident partner (and not the partnership as a whole) shall be regarded as entitled to that share of the tax credit in respect of the distribution which corresponds to his share of the distribution.

(6) Section 115(5) has effect as respects the application of this section where the partners in a partnership include a company.

Modifications etc. (not altering text)

C36 S. 112(1)(2) applied (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), **ss. 59(c)**, 289 (with ss. 60, 101(1), 171, 201(3)).

C37 S. 112(4)-(6) modified (with retrospective effect) by Finance Act 2008 (c. 9), **s. 58(5)(6)(b)**

Marginal Citations

M145 1970 s.153; 1987 (No.2) s.62

113 Effect, for income tax, of change in ownership of trade, profession or vocation.

M146(1) Where there is a change in the persons engaged in carrying on any trade, profession or vocation chargeable under Case I or II of Schedule D, then, subject to the provisions of this section and of section 114(3)(b), the amount of the profits or gains of the trade, profession or vocation on which income tax is chargeable for any year of assessment and the persons on whom it is chargeable, shall be determined as if the trade, profession or vocation had been permanently discontinued, and a new one set up and commenced, at the date of the change.

(2) Subject to section 114(3)(b), where there is such a change as is mentioned in subsection (1) above, and a person engaged in carrying on the trade, profession or vocation immediately before the change continues to be so engaged immediately after it, the persons so engaged immediately before and the persons so engaged immediately after the change may, by notice signed by them and sent to the inspector at any time within two years after the date of the change, elect that subsection (1) above shall not apply to treat the trade, profession or vocation as discontinued or a new one as set up and commenced.

(3) Where there is in any year of assessment a change in the persons engaged in carrying on a trade, profession or vocation, and subsection (1) above does not apply by reason of a notice under subsection (2) above, then—

(a) income tax in respect of the trade, profession or vocation for that year shall be assessed and charged separately on those so engaged before the change and on those so engaged after the change, but the amount on which tax is chargeable shall be computed as if there had been no such change in that year, and shall be apportioned as may be just; and

(b) if, after the change but before the end of the second year of assessment following that in which the change occurred, there is a permanent

discontinuance of the trade, profession or vocation (including a change treated as such), then, on that discontinuance, section 63 shall apply, as respects any period before the first-mentioned change, to the persons charged or chargeable for that period as it would apply if no such change had taken place and they had been charged to tax accordingly for the subsequent period up to the discontinuance.

(4) There shall be made any such assessment, reduction of an assessment or, on the making of a claim therefor, repayment of income tax as may in any case be necessary for giving effect to this section.

(5) Any question which arises as to the manner in which any sum is to be apportioned under subsection (3)(a) above shall be determined, for the purposes of the tax of all of the persons as respects whose liability to tax the apportionment is material—

(a) in a case where the same body of General Commissioners have jurisdiction with respect to all those persons, by those Commissioners, unless all those persons agree that it shall be determined by the Special Commissioners;

(b) in a case where different bodies of Commissioners have jurisdiction with respect to those persons, by such of those bodies as the Board may direct, unless all those persons agree that it shall be determined by the Special Commissioners; and

(c) in any other case, by the Special Commissioners;

and any such Commissioners shall determine the question in like manner as an appeal, except that all those persons shall be entitled to appear and be heard by the Commissioners who are to make the determination, or to make representations to them in writing.

(6) In the case of the death of a person who, if he had not died, would under the provisions of this section have become chargeable to tax for any year, the tax which would have been so chargeable shall be assessed and charged upon his executors or administrators, and shall be a debt due from and payable out of his estate; and where under those provisions an election may be made by any person, it may in the case of his death be made by his executors or administrators instead of by him.

(7) For the purposes of this section, a change in the personal representatives of any person, or in the trustees of any trust, shall not be treated as a change in the persons engaged in carrying on any trade, profession or vocation carried on by those personal representatives or trustees as such.

Modifications etc. (not altering text)
C38 *See* 1990(C) s.134(4)*—treatment of succession for purposes of capital allowances for dredging.*

Marginal Citations
M146 Source—1970 s.154; 1971 s.17(1)

Partnerships involving companies

114 Special rules for computing profits and losses.

(1) **M147**So long as a trade is carried on by persons in partnership, and any of those persons is a company, the profits and losses (including terminal losses) of the trade shall be

computed for the purposes of corporation tax in like manner, and by reference to the like accounting periods, as if the partnership were a company, and without regard to any change in the persons carrying on the trade, except that—

(a) references to distributions shall not apply; and

(b) subject to section 116(5), no deduction or addition shall be made for charges on income, or for capital allowances and charges, nor in any accounting period for losses incurred in any other period nor for any expenditure to which section 401(1) applies; and

(c) a change in the persons engaged in carrying on the trade shall be treated as the transfer of the trade to a different company if there continues to be a company so engaged after the change, but not a company that was so engaged before the change.

(2) [M148]A company's share in the profits or loss of any accounting period of the partnership, or in any matter excluded from the computation by subsection (1)(b) above, shall be determined according to the interests of the partners during that period, and corporation tax shall be chargeable as if that share derived from a trade carried on by the company alone in its corresponding accounting period or periods; and the company shall be assessed and charged to tax for its corresponding accounting period or periods accordingly.

In this subsection "corresponding accounting period or periods" means the accounting period or periods of the company comprising or together comprising the accounting period of the partnership, and any necessary apportionment shall be made between corresponding accounting periods if more than one.

(3) [M149]Where any of the persons engaged in carrying on the trade is an individual, income tax shall be chargeable in respect of his share of the profits, and he shall be entitled to relief for his share of any loss, as if all the partners had been individuals except that—

(a) income tax shall be chargeable, and any relief from income tax shall be given, by reference to the computations made for corporation tax, but so that the amounts so computed for an accounting period of the capital allowances and charges falling to be made in taxing the trade shall (as regards the individual's share of them) be given or made for the year or years of assessment comprising that period and, where necessary, apportioned accordingly; and

(b) section 113 shall not apply by reason of any change in the persons engaged in carrying on the trade unless an individual begins or ceases to be so engaged, and, where it does apply, an election under subsection (2) of that section shall be made only by the individuals so engaged, and only if an individual so engaged before the change continues to be so engaged after it; [F63] . . .

[F63](c) . . .

(4) Section 111 shall apply to income tax chargeable in accordance with this section, matters relevant only to corporation tax being omitted from the assessment.

Textual Amendments

F63 S. 114(3)(c) and the word 'and' preceding it repealed by Finance Act 1991 (c. 31, SIF 63:1), ss. 73(3)-(5), 123, Sch. 15 para. 3, **Sch. 19 Pt.V** Note 4.(in relation to losses incurred in accounting periods ending on or after 1.4.1991)

Marginal Citations

M147 Source—1970 s.155(1); 1973 s.31(5); 1980 s.39(3)

M148 Source—1970 s.155(2); 1972 s.107(2)
M149 Source—1970 s.155(3), (4)

115 Provisions supplementary to section 114.

(1) [M150]Subsections (2) and (3) below have effect as respects income tax chargeable in accordance with section 114 for any year of assessment throughout all or any part of which one or more of the persons engaged in carrying on the trade is an individual.

(2) Notwithstanding any difference between the partners' interests during the basis period and their interests during the year of assessment, the amount of the individual's income from the partnership for the year of assessment, or the total of the amounts of the individuals' incomes from the partnership for that year, shall be deemed to be not less than the profits of the basis period, reduced, where any share was apportioned to a company under section 114(2), by the amount of that company's share.

(3) Where there are two or more individuals and, but for subsection (2) above, the total of the amounts of the individuals' incomes from the partnership for the year would fall short of the profits of the basis period reduced, where any share was apportioned to a company under section 114(2), by the amount of that company's share, that amount shall be apportioned—

(a) according to the individuals' interests during the year of assessment, disregarding any company's interest; and

(b) in so far as that does not determine, or fully determine, the apportionment, between the individuals in equal shares.

(4) [M151]Where a trade or business is carried on by two or more persons in partnership, and the control and management of the trade or business is situated abroad but those persons include a company resident in the United Kingdom, then as regards that company, this section and section 114 shall have effect as if the partnership were resident in the United Kingdom, and an assessment may be made on the company accordingly.

(5) Subject to subsection (4) above, where the partners in a partnership include a company, section 112 shall apply whether for corporation tax or for income tax; and this section and section 114 shall have effect accordingly.

[[F64](5C) For the purposes of subsections (5) to (5B) the members of a partnership include any company which is entitled to a share of income or capital gains of the partnership.**]**

(6) In this section and section 114—

"basis period", in relation to a year of assessment, means any accounting period or part of an accounting period which is, or forms part of, the period on the profits or gains of which income tax for the year of assessment in question falls to be computed under Schedule D in respect of the trade;

"capital allowances and charges" means any allowances or charges under any of the Capital Allowances Acts, not being allowances or charges which, for income tax, are given or made by deduction or addition in the computation of profits or gains;

and references in subsection (1) above to an individual's income from the partnership are references to that income before deduction of capital allowances or charges on income.

(7) For the purposes of this section and section 114 "profits" shall not be taken as including chargeable gains.

Textual Amendments

F64 S. 115(5C) inserted (retrospectively) by Finance Act 2008 (c. 9), **s. 58(1)(4)**

Modifications etc. (not altering text)

C39 S. 115(5) modified (with retrospective effect) by Finance Act 2008 (c. 9), **s. 58(5)(6)(b)**

Marginal Citations

M150 Source—1970 s.155(5)

M151 Source—1970 s.155(6)-(9); 1971 Sch.8 16(5); 1986 s.56(7)(a), Sch.13 2(5)(a)

116 Arrangements for transferring relief.

M152(1) The provisions of subsection (2) below shall apply in relation to a company ("the partner company") which is a member of a partnership carrying on a trade if arrangements are in existence (whether as part of the terms of the partnership or otherwise) whereby—

(a) in respect of the whole or any part of the value of, or of any portion of, the partner company's share in the profits or loss of any accounting period of the partnership, another member of the partnership or any person connected with another member of the partnership receives any payment or acquires or enjoys, directly or indirectly, any other benefit in money's worth; or

(b) in respect of the whole or any part of the cost of, or of any portion of, the partner company's share in the loss of any accounting period of the partnership, the partner company or any person connected with that company receives any payment or acquires or enjoys, directly or indirectly, any other benefit in money's worth, other than a payment in respect of group relief to the partner company by a company which is a member of the same group as the partner company for the purposes of group relief.

(2) In any case where the provisions of this subsection apply in relation to the partner company—

(a) the company's share in the loss of the relevant accounting period of the partnership and its share in any charges on income, within the meaning of section 338, paid by the partnership in that accounting period shall not be available for set-off for the purposes of corporation tax except against its share in the profits of the trade carried on by the partnership; and

(b) except in accordance with paragraph (a) above, no trading losses shall be available for set-off for the purposes of corporation tax against the company's share in the profits of the relevant accounting period of the partnership; and

(c) except in accordance with paragraphs (a) and (b) above, no amount which, apart from this subsection, would be available for relief against profits shall be available for set-off for the purposes of corporation tax against so much of the company's total profits as consists of its share in the profits of the relevant accounting period of the partnership; and

(d) notwithstanding anything in section 239, no advance corporation tax may be set against the company's liability to corporation tax on its share in the profits of the relevant accounting period of the partnership.

(3) In subsection (2) above "relevant accounting period of the partnership" means any accounting period of the partnership in which any such arrangements as are specified in subsection (1) above are in existence or to which any such arrangements apply.

(4) If a company is a member of a partnership and tax in respect of any profits of the partnership is chargeable under Case VI of Schedule D, this section shall apply in relation to the company's share in the profits or loss of the partnership as if—

(a) the profits or loss to which the company's share is attributable were the profits of, or the loss incurred in, a trade carried on by the partnership; and

(b) any allowance which falls to be made under section **[**F65**]**61(1) of the 1990 Act**]** (machinery and plant on lease) were an allowance made in taxing that trade.

(5) For the purposes of this section, subsection (2) of section 114 shall have effect for determining a company's share in the profits or loss of any accounting period of a partnership as if, in subsection (1)(b) of that section, the words " or for capital allowances and charges " were omitted.

(6) In this section "arrangements" means arrangements of any kind whether in writing or not.

(7) Section 839 shall apply for the purposes of this section.

Textual Amendments

F65 1990(C) s.164*and* Sch.1 para.8(7).*Previously* "46(1) of the Finance Act 1971".

Marginal Citations

M152 Source—1973 s.31(1)-(5), (9), 32(6)

Limited partners

117 Restriction on relief: individuals.

(1) **M153**An amount which may be given or allowed to an individual under section 353, 380 or 381 below or section **[**F66**]**141 of the 1990 Act**]**—

(a) in respect of a loss sustained by him in a trade, or of interest paid by him in connection with the carrying on of a trade, in a relevant year of assessment; or

(b) as an allowance falling to be made to him for a relevant year of assessment either in taxing a trade or by way of discharge or repayment of tax to which he is entitled by reason of his participation in a trade,

may be given or allowed otherwise than against income consisting of profits or gains arising from the trade only to the extent that the amount given or allowed or (as the case may be) the aggregate amount does not exceed the relevant sum.

(2) **M154**In this section—

"limited partner" means—

(i) a person who is carrying on a trade as a limited partner in a limited partnership registered under the [M155]Limited Partnerships Act 1907;

(ii) a person who is carrying on a trade as a general partner in a partnership, who is not entitled to take part in the management of the trade and who is entitled to have his liabilities, or his liabilities beyond a certain limit, for debts or obligations incurred for the purposes of the trade discharged or reimbursed by some other person; or

(iii) a person who carries on a trade jointly with others and who, under the law of any territory outside the United Kingdom, is not entitled to take part in the management of the trade and is not liable beyond a certain limit for debts or obligations incurred for the purposes of the trade;

"relevant year of assessment" means a year of assessment at any time during which the individual carried on the trade as a limited partner;

"the aggregate amount" means the aggregate of any amounts given or allowed to him at any time under section 353, 380 or 381 below or section **[**[F67]141 of the 1990 Act**]**—

(a) in respect of a loss sustained by him in the trade, or of interest paid by him in connection with carrying it on, in a relevant year of assessment; or

(b) as an allowance falling to be made to him for a relevant year of assessment either in taxing the trade or by way of discharge or repayment of tax to which he is entitled by reason of his participation in the trade;

"the relevant sum" means the amount of his contribution to the trade as at the appropriate time; and

"the appropriate time" is the end of the relevant year of assessment in which the loss is sustained or the interest paid or for which the allowance falls to be made (except that where he ceased to carry on the trade during that year of assessment it is the time when he so ceased).

(3) [M156]A person's contribution to a trade at any time is the aggregate of—

(a) the amount which he has contributed to it as capital and has not, directly or indirectly, drawn out or received back (other than anything which he is or may be entitled so to draw out or receive back at any time when he carries on the trade as a limited partner or which he is or may be entitled to require another person to reimburse to him), and

(b) the amount of any profits or gains of the trade to which he is entitled but which he has not received in money or money's worth.

(4) [M157]To the extent that an allowance is taken into account in computing profits or gains or losses in the year of the loss by virtue of section 383(1) it shall, for the purposes of this section, be treated as falling to be made in the year of the loss (and not the year of assessment for which the year of loss is the basis year).

Textual Amendments

F66 1990(C) s.164*and* Sch.1 para.8(8).*Previously* "71 of the 1968 Act".

F67 1990(C) s.164*and* Sch.1 para.8(8).*Previously* "71 of the 1968 Act".

Marginal Citations

M153 Source—1985 Sch.12 2(1)-(3).

M154 1985 Sch.12 1, 2(4)
M155 1907 c. 24.
M156 Source—1985 Sch.12 4
M157 Source—1985 Sch.12 2(5)

118 Restriction on relief: companies.

(1) M158An amount which may be given or allowed under section 338, **[**F68393A(1)**]**or 403(1) to (3) and (7) below or section **[**F69145 of the 1990 Act**]**—

(a) in respect of a loss incurred by a company in a trade, or of charges paid by a company in connection with the carrying on of a trade, in a relevant accounting period; or

(b) as an allowance falling to be made to a company for a relevant accounting period either in taxing a trade or by way of discharge or repayment of tax to which it is entitled by reason of its participation in a trade,

may be given or allowed to that company ("the partner company") otherwise than against profits or gains arising from the trade, or to another company, only to the extent that the amount given or allowed or (as the case may be) the aggregate amount does not exceed the relevant sum.

(2) M159In this section—

"relevant accounting period" means an accounting period of the partner company at any time during which it carried on the trade as a limited partner (within the meaning of section 117(2));

"the aggregate amount" means the aggregate of any amounts given or allowed to the partner company or another company at any time under section 338, **[**F70393A(1)**]**or 403(1) to (3) and (7) below or section **[**F69145 of the 1990 Act**]**—

(a) in respect of a loss incurred by the partner company in the trade, or of charges paid by it in connection with carrying it on, in any relevant accounting period; or

(b) as an allowance falling to be made to the partner company for any relevant accounting period either in taxing the trade or by way of discharge or repayment of tax to which it is entitled by reason of its participation in the trade;

"the relevant sum" means the amount of the partner company's contribution (within the meaning of section 117(3)) to the trade as at the appropriate time; and

"the appropriate time" is the end of the relevant accounting period in which the loss is incurred or the charges paid or for which the allowance falls to be made (except that where the partner company ceased to carry on the trade during that accounting period it is the time when it so ceased).

Textual Amendments

F68 Words in s. 118(1) substituted by Finance Act 1991 (c. 31, SIF 63:1), s. 73(3)-(5), **Sch. 15 para. 4(a)**(in relation to losses incurred in accounting periods ending on or after 1.4.1991)

F69 1990(C) s.164*and* Sch.1 para.8(9).*Previously*
"74 of the 1968 Act".

F70 Words in s. 118(2) substituted by Finance Act 1991 (c. 31, SIF 63:1), s. 73(3)-(5), **Sch. 15 para. 4(b)**(in relation to losses incurred in accounting periods ending on or after 1.4.1991)

Marginal Citations

M158 Source—1985 Sch.12 3(1)-(3)

M159 Source—1985 Sch.12 3(4), 1, 4

VALID FROM 06/04/2001

[F71 Limited liability partnerships

Textual Amendments

F71 Ss. 118ZA-118ZD and preceding cross-heading inserted (6.4.2001) by Limited Liability Partnerships Act 2000 (c. 12), **ss. 10(1)**, 19(1); S.I. 2000/3316, **art. 2**

118ZA Treatment of limited liability partnerships.

For the purposes of the Tax Acts, a trade, profession or business carried on by a limited liability partnership with a view to profit shall be treated as carried on in partnership by its members (and not by the limited liability partnership as such); and, accordingly, the property of the limited liability partnership shall be treated for those purposes as partnership property.

118ZB Restriction on relief.

Sections 117 and 118 have effect in relation to a member of a limited liability partnership as in relation to a limited partner, but subject to sections 118ZC and 118ZD.

118ZC Member's contribution to trade.

(1) Subsection (3) of section 117 does not have effect in relation to a member of a limited liability partnership.

(2) But, for the purposes of that section and section 118, such a member's contribution to a trade at any time ("the relevant time") is the greater of—

(a) the amount subscribed by him, and

(b) the amount of his liability on a winding up.

(3) The amount subscribed by a member of a limited liability partnership is the amount which he has contributed to the limited liability partnership as capital, less so much of that amount (if any) as—

(a) he has previously, directly or indirectly, drawn out or received back,

(b) he so draws out or receives back during the period of five years beginning with the relevant time,

(c) he is or may be entitled so to draw out or receive back at any time when he is a member of the limited liability partnership, or

(d) he is or may be entitled to require another person to reimburse to him.

(4) The amount of the liability of a member of a limited liability partnership on a winding up is the amount which—

(a) he is liable to contribute to the assets of the limited liability partnership in the event of its being wound up, and

(b) he remains liable so to contribute for the period of at least five years beginning with the relevant time (or until it is wound up, if that happens before the end of that period).

118ZD Carry forward of unrelieved losses.

(1) Where amounts relating to a trade carried on by a member of a limited liability partnership are, in any one or more chargeable periods, prevented from being given or allowed by section 117 or 118 as it applies otherwise than by virtue of this section (his "total unrelieved loss"), subsection (2) applies in each subsequent chargeable period in which—

(a) he carries on the trade as a member of the limited liability partnership, and

(b) any of his total unrelieved loss remains outstanding.

(2) Sections 380, 381, 393A(1) and 403 (and sections 117 and 118 as they apply in relation to those sections) shall have effect in the subsequent chargeable period as if—

(a) any loss sustained or incurred by the member in the trade in that chargeable period were increased by an amount equal to so much of his total unrelieved loss as remains outstanding in that period, or

(b) (if no loss is so sustained or incurred) a loss of that amount were so sustained or incurred.

(3) To ascertain whether any (and, if so, how much) of a member's total unrelieved loss remains outstanding in the subsequent chargeable period, deduct from the amount of his total unrelieved loss the aggregate of—

(a) any relief given under any provision of the Tax Acts (otherwise than as a result of subsection (2)) in respect of his total unrelieved loss in that or any previous chargeable period, and

(b) any amount given or allowed in respect of his total unrelieved loss as a result of subsection (2) in any previous chargeable period (or which would have been so given or allowed had a claim been made).**]**

VALID FROM 22/07/2004

[F72Non-active general partners and non-active members of limited liability partnerships

Textual Amendments

F72 Ss. 118ZE-118ZK and preceding cross-heading inserted (22.7.2004) by Finance Act 2004 (c. 12), **s. 124(1)**

118ZE Restriction on relief for non-active partners

(1) This section applies to an amount which may be given to an individual under section 353, 380 or 381 in respect of a loss sustained by him in a trade, or interest

paid by him in connection with the carrying on of a trade, in a qualifying year of assessment.

(2) The amount may be given otherwise than against income consisting of profits arising from the trade only to the extent that—

(a) the amount given, or

(b) (as the case may be) the aggregate amount,

does not exceed the amount of the individual's contribution to the trade as at the end of that year of assessment.

(3) A "qualifying year of assessment" means a year of assessment—

(a) at any time during which the individual carried on the trade as a general partner or a member of a limited liability partnership,

(b) in which he did not devote a significant amount of time to the trade (within the meaning given by section 118ZH),

(c) which is the year of assessment in which the trade is first carried on by him or any of the next three years of assessment,

(d) the basis period for which ends on or after 10 February 2004, and

(e) which is not a year of assessment at any time during which he carried on the trade as a limited partner.

(4) In this section—

(a) a "general partner" means any partner who is not a limited partner, and

(b) "limited partner" has the meaning given by section 117(2),

and in paragraph (a) "any partner" does not include a member of a limited liability partnership.

(5) In this section and sections 118ZF to 118ZK, "basis period" means (subject to subsection (6)) the basis period given by sections 60 to 63 as applied by section 111(4) and (5).

(6) The basis period for a year of assessment to which section 61(1) applies is to be taken for the purposes of this section and sections 118ZF to 118ZK to be the period beginning with the date when the individual first carried on the trade and ending with the end of the year of assessment.

(7) In subsection (1) "a trade" does not include underwriting business within the meaning of section 184 of the Finance Act 1993 (Lloyd's underwriters).

(8) This section has effect subject to sections 118ZJ and 118ZK (transitional provision).

118ZF Meaning of "the aggregate amount"

(1) In section 118ZE(2) "the aggregate amount" means (subject to section 118ZK) the aggregate of any amounts given to the individual at any time under section 353, 380 or 381 in respect of a loss sustained by him in the trade, or of interest paid by him in connection with carrying it on, in a year of assessment falling within subsection (2).

(2) A year of assessment falls within this subsection if—

(a) it is a qualifying year of assessment within the meaning of section 118ZE, or

(b) it is a year of assessment—

(i) at any time during which the individual carried on the trade as a member of a limited liability partnership or as a limited partner within the meaning given by section 117(2), and

(ii) the basis period for which ends on or after 10 February 2004.

118ZG "The individual's contribution to the trade"

(1) For the purposes of section 118ZE(2), the individual's contribution to the trade at any time ("the relevant time") is the sum of—

(a) the amount subscribed by him,

(b) the amount of any profits of the trade to which he is entitled but which he has not received in money or money's worth, and

(c) where there is a winding up, the amount that he has contributed to the assets of the partnership on its winding up.

(2) For the purposes of subsection (1)(a) the "amount subscribed"by an individual is the sum of—

(a) the total amount (if any) contributed by him to the trade as capital on or after 10 February 2004, reduced (but not below nil) by his withdrawn capital, and

(b) the total amount (if any) contributed by him to the trade as capital before 10 February 2004, reduced (but not below nil) by—

(i) the pre-announcement allowance (within the meaning given by section 118ZJ),

(ii) the aggregate of any amounts given to him at any time under section 353, 380 or 381 in respect of a loss sustained by him in a trade, or of interest paid by him in connection with carrying it on, in a year of assessment falling within subsection (3), and

(iii) the amount (if any) of his withdrawn capital that has not been used in the reduction to nil required by paragraph (a).

(3) A year of assessment falls within this subsection if—

(a) it does not fall within section 118ZE(3)(d), and

(b) it is either—

(i) a year of assessment that would be a qualifying year of assessment but for section 118ZE(3)(d), or

(ii) a year of assessment at any time during which the individual carried on the trade as a member of a limited liability partnership or as a limited partner within the meaning given by section 117(2).

(4) The individual's "withdrawn capital"is so much, if any, of the amount that he has contributed to the trade as capital as—

(a) he has previously, directly or indirectly, drawn out or received back,

(b) he so draws out or receives back during the period of five years beginning with the relevant time,

(c) he is or may be entitled so to draw out or receive back at any time when he carries on the trade as a member of the partnership, or

(d) he is or may be entitled to require another person to reimburse to him.

(5) An amount drawn out or received back that would otherwise fall within subsection (4)(a) or (b), or an entitlement that would otherwise fall within

subsection (4)(c), shall be treated as not so falling if the amount drawn out or received back is chargeable to income tax as profits of the trade.

(6) In relation to a member of a limited liability partnership, references in this section to an amount contributed to the trade as capital shall be read as references to an amount contributed to the limited liability partnership as capital.

118ZH "A significant amount of time"

(1) For the purposes of section 118ZE the individual shall be treated as having "devoted a significant amount of time to the trade"in a given year of assessment if, for the whole of the relevant period, he spent an average of at least ten hours a week personally engaged in activities carried on for the purposes of the trade.

(2) "The relevant period" means the basis period for the year of assessment in question, except that—

(a) if the basis period is less than six months and begins with the date when the individual first carried on the trade, "the relevant period" means six months beginning with that date, and

(b) if the basis period is less than six months and ends with the date when the individual ceased to carry on the trade, "the relevant period" means six months ending with that date.

(3) Where relief has been given on the assumption that an individual will meet the condition in subsection (1) and he fails to do so, the relief shall be withdrawn by the making of an assessment under Case VI of Schedule D.

118ZI Carry forward of unrelieved losses of non-active partners

(1) Where amounts relating to a trade carried on by an individual in a qualifying year of assessment are prevented from being given by section 118ZE as it applies otherwise than by virtue of this section or section 118ZD, subsection (3) of this section applies as respects each subsequent year of assessment in which—

(a) the individual carries on the trade in partnership or makes a contribution to the assets of the partnership on its winding up, and

(b) any of his total restricted loss remains outstanding.

(2) His "total restricted loss" means the total of any amounts, relating to any one or more qualifying years of assessment, that have been prevented from being given by section 118ZE as it applies otherwise than by virtue of this section or section 118ZD.

(3) Sections 380 and 381 (and section 118ZE as it applies in relation to those sections) shall have effect in the subsequent year of assessment as if—

(a) any loss sustained by the individual in the trade in that year of assessment were increased by an amount equal to so much of his total restricted loss as remains outstanding in that year of assessment, or

(b) (if no loss is sustained) a loss of that amount were so sustained.

(4) To ascertain whether any (and, if so, how much) of the individual's total restricted loss remains outstanding in the subsequent year of assessment, deduct from the amount of his total restricted loss the aggregate of—

(a) any relief given (otherwise than as a result of subsection (3)) under any provision of the Tax Acts, in that or any previous year of assessment, in respect of any of his total restricted loss, and

(b) any amount which was given as a result of subsection (3), in any previous year of assessment, in respect of any of his total restricted loss (or which would have been so given had a claim been made).

(5) For the purposes of sections 118ZE and 118ZF (and of sections 117 and 118ZB(2))—

(a) any additional amount of loss deemed by subsection (3)(a) to have been sustained in the subsequent year of assessment, and

(b) any loss deemed by subsection (3)(b) to have been so sustained,

shall be treated as having been sustained in a qualifying year of assessment.

(6) Subsection (7) applies where the subsequent year of assessment—

(a) is one in which the trade is not carried on in partnership by the individual, but

(b) is one in which he contributes to the assets of the partnership on its winding up.

(7) Where this subsection applies, nothing in section 381(4) or 384 (restrictions on right of set-off) applies to—

(a) an additional amount of loss deemed by subsection (3)(a) to have been sustained in the subsequent year of assessment, or

(b) a loss deemed by subsection (3)(b) to have been so sustained.

(8) In this section "qualifying year of assessment" has the meaning given by section 118ZE.

18ZJ Commencement: the first restricted year

(1) This section applies where the year of assessment referred to in section 118ZE(1) is a year of assessment the basis period for which includes 10 February 2004 ("the first restricted year").

(2) If this section would (but for this subsection) apply in relation to more than one year of assessment as respects the same individual and the same trade, it applies only in relation to the first of those years of assessment and "the first restricted year" means that year of assessment.

(3) Where this section applies, section 118ZE(2) shall have effect as if for the words from "only to the extent that" there were substituted only to the extent that the total amount given under section 353, 380 and 381 in respect of losses sustained by him in the trade, and interest paid by him in connection with carrying it on, in that year of assessment does not exceed the sum of—

(a) the pre-announcement allowance, and

(b) the post-announcement allowance.

(4) The "pre-announcement allowance"is the sum of—

(a) the loss (if any) sustained by the individual in the trade in the period beginning with the start of the basis period for the first restricted year and ending with 9 February 2004, and

(b) any interest paid by him in that period in connection with the carrying on of the trade.

(5) The "post-announcement allowance"is so much of—

(a) the loss (if any) sustained by the individual in the trade in the period beginning with 10 February 2004 and ending with the end of the basis period for the first restricted year, and

(b) any interest paid by him in that period in connection with the carrying on of the trade,

as does not exceed the individual's contribution to the trade as at the end of the year of assessment, computed in accordance with section 118ZG.

(6) In each of subsections (4)(a) and (5)(a), the reference to the loss sustained by the individual in the trade in the period there mentioned is a reference to his share of any losses of the partnership arising for that period from the trade, and—

(a) subject to subsection (7), the losses of the partnership arising for that period from the trade shall be computed in the same way as if the period were one for which profits and losses had to be computed for the purposes of section 111(2), and

(b) subject to subsection (8), the individual's share of the losses shall be determined according to his interest in the partnership during that period.

(7) In computing for the purposes of subsection (6) the losses of the partnership arising for the period mentioned in subsection (4)(a) or (5)(a)—

(a) any capital allowance treated as an expense of the trade for the purposes of the computation required by section 111(2) for the first restricted year is to be regarded as belonging to the period mentioned in subsection (4)(a) unless the capital expenditure to which it relates is incurred after 9 February 2004, and

(b) any amount deducted under section 42(1) of the Finance (No. 2) Act 1992 for the purposes of that computation is to be regarded as belonging to the period mentioned in subsection (4)(a) unless the expenditure to which it relates is incurred after 9 February 2004.

(8) If the individual had an interest in the partnership at any time that falls within—

(a) the basis period for the first restricted year, and

(b) the period beginning with 10 February 2004 and ending with 25 March 2004,

he shall be deemed for the purposes of subsection (6)(b) to have had the interest on 9 February 2004.

118ZK Transitional provision for years after the first restricted year

(1) This section applies where the year of assessment referred to in section 118ZE(1) is a year of assessment later than the first restricted year.

(2) Section 118ZE(2) shall not apply to any part of the amount mentioned in section 118ZE(1) that—

(a) derives from a capital allowance treated as an expense of the trade where the capital expenditure to which the allowance relates was incurred before 10 February 2004, or

(b) derives from a deduction made under section 42(1) of the Finance (No. 2) Act 1992 where the expenditure to which the deduction relates was incurred before 10 February 2004.

(3) In computing for the purposes of section 118ZE(2)(a) or (b) the amount given or (as the case may be) the aggregate amount, any part of an amount given that falls within subsection (2)(a) or (b) of this section shall be left out of account.

(4) In computing the aggregate amount for the purposes of section 118ZE(2), any amount given in respect of the pre-announcement allowance shall be left out of account.

(5) For the purposes of subsections (2) and (3) the part of an amount that derives from a capital allowance or a deduction made under section 42(1) of the Finance (No. 2) Act 1992 shall be determined on such basis as is just and reasonable.

(6) In this section "the first restricted year" and "the pre-announcement allowance" have the meanings given by section 118ZJ.**]**

VALID FROM 22/07/2004

[F73 Partnerships exploiting films

Textual Amendments

F73 Ss. 118ZL, 118ZM and preceding cross-heading inserted (22.7.2004) by Finance Act 2004 (c. 12), **s. 125**

118ZL Partnerships exploiting films

(1) Where (apart from this section) an amount may be given to an individual under section 380 or 381 in respect of a loss ("the loss in question") sustained by him—

(a) in a trade consisting of or including the exploitation of films, and

(b) in an affected year of assessment,

none of that amount may be given otherwise than against income consisting of profits arising from the trade; but this is subject to subsection (4).

(2) An "affected year of assessment" means a year of assessment at any time during which the individual carried on the trade in partnership which is also—

(a) the year of assessment in which the trade is first carried on by him or any of the next three years of assessment,

(b) a year of assessment in which he did not devote a significant amount of time to the trade, and

(c) a year of assessment at any time during which there existed a relevant agreement guaranteeing him an amount of income.

(3) For the purposes of subsection (2)(c)—

(a) "a relevant agreement" means—

(i) an agreement that was made with a view to the individual's carrying on the trade or in the course of his carrying it on (including any agreement under which he is or may be required to contribute an amount to the trade), or

(ii) an agreement related to an agreement falling within sub-paragraph (i),

(b) an agreement "guarantees" the individual an amount of income if the agreement, or any part of it, is designed to secure the receipt by the individual of that amount (or at least that amount) of income, and

(c) it is immaterial when the amount of income would be received under the agreement.

(4) If the loss in question derives to any extent from exempt expenditure, amounts that (apart from this section) may be given under section 380 or 381 in respect of the loss otherwise than against income consisting of profits arising from the trade may be so given to the extent that the total of the amounts so given does not exceed the exempt part of the loss.

(5) The exempt part of the loss is so much of the loss in question as derives from exempt expenditure.

(6) Expenditure is exempt expenditure for the purposes of this section if it is—

(a) expenditure incurred before 26 March 2004 in a case where this paragraph applies, or

(b) expenditure that, for the purposes of the computation required by section 111(2), was deducted under section 41 or 42 of the Finance (No. 2) Act 1992, or

(c) incidental expenditure that, although deductible apart from section 41 or 42 of that Act, was incurred in connection with the production or acquisition of a film in relation to which expenditure was deducted under either of those sections.

(7) Subsection (6)(a) applies where the individual carried on the trade before 26 March 2004.

118ZM Partnerships exploiting films: supplementary

(1) In section 118ZL and this section any reference to a film is to be construed in accordance with paragraph 1 of Schedule 1 to the Films Act 1985.

(2) Section 118ZH (meaning of "a significant amount of time" etc) applies for the purposes of section 118ZL as it applies for the purposes of section 118ZE.

(3) For the purposes of section 118ZL(3) agreements are related if they are entered into in pursuance of the same arrangement (regardless of the date on which either agreement is entered into).

(4) The reference in section 118ZL(6) to the acquisition of a film is a reference to the acquisition of the master negative or any master tape or master disc of the film; and this subsection is to be construed in accordance with section 43(1) and (2)(b) of the Finance (No. 2) Act 1992.

(5) In section 118ZL(6) "incidental expenditure" means expenditure on management, administration or obtaining finance.

(6) The part of the loss in question that derives from exempt expenditure shall be determined on such basis as is just and reasonable.

(7) The extent to which any expenditure falls within section 118ZL(6)(c) shall be determined on such basis as is just and reasonable.

(8) In any case where sections 380 and 381 have effect as mentioned in section 118ZD(2) or 118ZI(3) (cases where sections 380 and 381 have effect as if loss carried forward from earlier year sustained in subsequent year), section 118ZL also has effect as mentioned in section 118ZD(2) or (as the case may be) section 118ZI(3).**]**

Modifications etc. (not altering text)
C40 S. 118ZM modified (retrospective to 2.12.2004) by Finance Act 2005 (c.7), Sch. 3 paras. 17, **31(3)**

VALID FROM 02/12/2004

[F74 Partners: meaning of "contribution to the trade"

Textual Amendments
F74 Ss. 118ZN, 118ZO and preceding cross-heading inserted (retrospective to 2.12.2004) by Finance Act 2005 (c. 7), **s. 73(1)(5)**

118ZN Partners: meaning of "contribution to the trade"

(1) This section applies for the purposes of the application of any of the following provisions ("the relevant provisions")—

(a) section 117 (restriction on relief for limited partners),

(b) that section as applied by section 118ZB in relation to a member of a limited liability partnership, and

(c) section 118ZE (restriction on relief for non-active partners),

to an amount which may be given to an individual under section 380 or 381 in respect of a relevant loss sustained by him in a trade ("the relevant trade").

(2) The Board may by regulations provide that, for those purposes, any amount of a description specified in the regulations is to be excluded when computing the amount of the individual's contribution to the relevant trade at any time for the purposes of the relevant provisions.

(3) Regulations under this section may—

(a) make provision having effect before the date on which the regulations are made,

(b) make such supplementary, incidental, consequential or transitional provision as appears to the Board to be necessary or expedient, and

(c) make different provision for different cases or different purposes.

(4) The provision mentioned in subsection (3)(b) may include provision amending or repealing any provision of an Act passed before the passing of the Finance Act 2005.

(5) No regulations may be made under this section unless a draft has been laid before and approved by a resolution of the House of Commons.

118ZO Meaning of "relevant loss" in section 118ZN

(1) For the purposes of section 118ZN a "relevant loss" means—

(a) a loss sustained by the individual in the relevant trade in a year of assessment the basis period for which begins on or after 2nd December 2004, or

(b) a post-announcement loss sustained by the individual in the relevant trade in a straddling year of assessment.

(2) For the purposes of this section—

"basis period" means the basis period given by Chapter 15 of Part 2 of ITTOIA 2005, as applied by section 853 of that Act, except that the basis period for a year of assessment to which section 199(1) of that Act applies is to be taken to be the period beginning with the date when the individual first carried on the relevant trade and ending with the end of the year of assessment;

"post-announcement loss", in relation to a straddling year of assessment, means the loss (if any) sustained by the individual in the relevant trade in the period which—

(a) begins with 2nd December 2004, and

(b) ends with the end of the basis period for that straddling year of assessment;

"straddling year of assessment" means a year of assessment the basis period for which begins before and includes 2nd December 2004.

(3) In the definition of "post-announcement loss" in subsection (2), the reference to the loss sustained by the individual in the relevant trade in a period is a reference to his share of any losses of the partnership arising for that period from the trade, and—

(a) the losses of the partnership arising for that period from the trade are to be computed in the same way as if the period were one for which profits and losses had to be computed for the purposes of section 849 of ITTOIA 2005, and

(b) the individual's share of the losses is to be determined according to his interest in the partnership during that period.

(4) In subsection (3) the references to "the partnership" are to the partnership as a member of which the individual carries on the relevant trade.

(5) In relation to years of assessment which are before the year 2005-06, this section has effect as if—

(a) in subsection (2) for the definition of "basis period" there were substituted—

""basis period" means the basis period given by sections 60 to 63 as applied by section 111(4) and (5), except that the basis period for a year of assessment to which section 61(1) applies is to be taken to be the period beginning with the date when the individual first carried on the trade and ending with the end of the year of assessment;", and

(b) the reference in subsection (3)(a) to section 849 of ITTOIA 2005 were a reference to section 111(2) of this Act.**]**

VALID FROM 29/04/1996

CHAPTER VIIA

PAYING AND COLLECTING AGENTS

118A Definitions.

In this Chapter—

(a) except in the terms "agent concerned", "collecting agent" and "paying agent", references to an "agent" include a person acting as nominee or sub-agent for an agent;

(b) "bank" has the meaning given by section 840A;

(c) the "chargeable date"—

(i) in the case of a relevant payment, has the meaning given by section 118B(5); and

(ii) in the case of a relevant receipt, has the meaning given by section 118C(4);

(d) "collecting agent" has the meaning given by section 118C(1), and in relation to any relevant receipt or chargeable receipt, a reference to the collecting agent is a reference to the collecting agent by virtue of whose performance of a relevant function that receipt was received or arose;

(e) in relation to any dividends, references to "coupons" include warrants for and bills of exchange purporting to be drawn or made in payment of those dividends;

(f) references to a depositary include references to a person acting as agent or nominee for a depositary;

(g) except in paragraph (h) below, references to "dividends" are references to foreign dividends, United Kingdom public revenue dividends or relevant dividends as the context requires;

(h) "foreign dividends" means any annual payments, interest or dividends payable out of or in respect of foreign holdings;

(i) "foreign holdings" means the stocks, funds, shares or securities of any body of persons not resident in the United Kingdom or of a government or public or local authority in a country outside the United Kingdom;

(j) "gilt-edged securities" means any securities which—

(i) are gilt-edged securities for the purposes of the 1992 Act; or

(ii) will be such securities on the making of any order under paragraph 1 of Schedule 9 to that Act the making of which is anticipated in the prospectus under which they were issued;

(k) "international organisation" has the meaning given by section 51A(8);

(l) references to a "nominee" include a person acting as agent or nominee for a nominee;

(m) "paying agent" has the meaning given by section 118B(1);

(n) "prescribed" means prescribed in regulations made by the Board under this Chapter or prescribed by the Board in accordance with such regulations;

(o) "quoted Eurobond" means a quoted Eurobond within the meaning of section 124 the interest on which is chargeable to tax under Case III of Schedule D, and "quoted Eurobond interest" means interest on such a quoted Eurobond;

(p) "relevant dividends" means foreign dividends and quoted Eurobond interest;

(q) "relevant holdings" means foreign holdings and quoted Eurobonds;

(r) "relevant payment" has the meaning given by section 118B(5);

(s) "relevant receipt" has the meaning given by section 118C(2);

(t) "securities" includes any loan stocks or similar securities, whether secured or unsecured; and

(u) "United Kingdom public revenue dividends" means income from securities which is payable out of the public revenue of the United Kingdom or Northern Ireland.

118B Paying agents.

(1) A person specified in column 1 of Table A below shall be a paying agent for the purposes of this Chapter in relation to such dividends as are—

(a) of a description set out in column 2 of that Table opposite his specification; and

(b) entrusted to him for payment or distribution.

Table A

1	2
1. Any person in the United Kingdom.	United Kingdom public revenue dividends
2. The Bank of England	United Kingdom public revenue dividends paid on securities entered in the register of the Bank of Ireland in Dublin
3. Any person in the United Kingdom	foreign dividends which are payable to persons in the United Kingdom and do not fall within subsection (4) below

(2) The Bank of England and the Bank of Ireland shall be treated as paying agents for the purposes of this Chapter in relation to United Kingdom public revenue dividends which are payable to them.

(3) The National Debt Commissioners shall be treated as paying agents for the purposes of this Chapter in relation to United Kingdom public revenue dividends payable by them.

(4) Foreign dividends fall within this subsection if they are payable out of, or in respect of, the stocks, funds, shares or securities of an organisation which is for the time being designated for the purposes of this subsection pursuant to section 582A(1).

(5) Any payment in relation to which a person is a paying agent shall be a relevant payment for the purposes of this Chapter; and the chargeable date is—

(a) in relation to such a payment as is mentioned in subsection (2) above, the date on which the payment is received; and

(b) in relation to any other relevant payment, the date on which the payment is made.

118C Collecting agents.

(1) Subject to subsection (3) below, a person described in column 1 of Table B below shall be a collecting agent for the purposes of this Chapter in relation to such functions performed by him as are set out in that description, which shall be relevant functions for the purposes of this Chapter.

(2) Such dividends or proceeds of sale or other realisation as—

(a) are set out in column 2 of Table B below opposite the description of a collecting agent in column 1; and

(b) are received or arise by virtue of that collecting agent's performance of a relevant function comprised in that description

shall be relevant receipts for the purposes of this Chapter.

Table B

1	2
1. Any person in the United Kingdom who, in the course of a trade or profession, acts as custodian of any relevant holdings	any relevant dividends in respect of those relevant holdings which are received by him or are paid to another person at his direction or with his consent
2. Any person in the United Kingdom who, in the course of a trade or profession, by means of coupons collects or secures payment of or receives relevant dividends for another person	the relevant dividends which he so collects or receives or of which he so secures payment
3. Any person in the United Kingdom who, in the course of a trade or profession, otherwise acts for another person in arranging to collect or secure payment of relevant dividends	the relevant dividends which he so collects or of which he so secures payment
4. Any bank in the United Kingdom which sells or otherwise realises coupons for relevant dividends and pays over the proceeds or carries them into an account	the proceeds of sale or other realisation of those coupons
5. Any dealer in coupons in the United Kingdom who purchases any coupons for relevant dividends otherwise than from a bank or another dealer in coupons	the proceeds of sale of those coupons

(3) Neither the clearing of a cheque, nor the arranging for the clearing of a cheque, shall of itself be a relevant function.

(4) The chargeable date, in relation to a relevant receipt, is—

(a) in the case of a relevant receipt falling within paragraph 4 or 5 of Table B above, the date on which the sale or realisation is effected, and

(b) in any other case, the date on which the dividends are paid.

(5) For the purposes of paragraph 1 of Table B above, a person acts as a custodian of relevant holdings if he holds them, or an entitlement to them, for another person.

(6) The Board may by regulations provide for the application of the provisions of this Chapter relating to collecting agents where—

(a) a person in the United Kingdom—

(i) holds, beneficially or otherwise, a right (the relevant right) which is a right to delivery of, or to amounts representing the whole or substantially the whole of the value of, a specified quantity of shares or securities comprised in a relevant holding which is held by a person outside the United Kingdom, and

(ii) is entitled to receive income (the relevant income) which is derived from, or which represents, foreign dividends or quoted Eurobond interest on that quantity of shares or securities; and

(b) apart from the provisions of the regulations, the relevant right is not a relevant holding, or the relevant income does not constitute foreign dividends or quoted Eurobond interest.

(7) Regulations under subsection (6) above may—

(a) treat the relevant right as a foreign holding or, as the case may be, a holding of quoted Eurobonds (the notional holding); and

(b) treat the relevant income as foreign dividends or, as the case may be, quoted Eurobond interest paid on the notional holding.

118D Chargeable payments and chargeable receipts.

(1) For the purposes of this Chapter, every relevant payment shall be a chargeable payment unless—

(a) it is made in respect of a foreign dividend—

(i) which is payable on foreign holdings held in a recognised clearing system; and

(ii) in respect of which any conditions imposed by virtue of subsection (8) below are satisfied; or

(b) it is a payment of interest on an exempted certificate of deposit; or

(c) the making of the payment is excluded from being a chargeable payment by subsections (4), (5) or (6) below or by section 118G.

(2) For the purposes of this Chapter, every relevant receipt shall be a chargeable receipt, unless—

(a) it arises in respect of relevant holdings which are held in a recognised clearing system and—

(i) the collecting agent pays or accounts for the relevant receipt directly or indirectly to the recognised clearing system, and

(ii) any conditions imposed by virtue of subsection (8) below are satisfied; or

(b) it arises in respect of relevant holdings which are held in a recognised clearing system for which the collecting agent is acting as depositary; or

(c) it is excluded from being a chargeable receipt by subsection (7) below or by section 118G.

(3) In subsection (1)(b) above, "exempted certificate of deposit" means a certificate of deposit (within the meaning of section 56(5)) issued by a person in the United Kingdom relating to a deposit with a branch in the United Kingdom through which a company resident outside, and not resident in, the United Kingdom carries on a trade.

(4) The payment of United Kingdom public revenue dividends on securities the interest on which is, by virtue of directions given (or treated by section 51 as having been given) under section 50(1), payable without deduction of income tax shall not be a chargeable payment unless the interest is for the time being payable under deduction of income tax pursuant to an application made (or treated by section 51 as having been made) under section 50(2).

(5) The payment of United Kingdom public revenue dividends in respect of securities standing in the name of the official custodian for charities, or in respect of which there is given to the paying agent a certificate from the Board to the effect that the dividends are subject only to charitable trusts and are exempt from tax, shall not be a chargeable payment.

(6) In a case where—

(a) foreign dividends are entrusted by a company which at the time they are entrusted (the "relevant time") is not resident in the United Kingdom,

(b) they are entrusted for payment to a company which at the relevant time is resident in the United Kingdom, and

(c) at the relevant time the company mentioned in paragraph (b) above directly or indirectly controls not less than 10 per cent. of the voting power in the company mentioned in paragraph (a) above,

the payment of those dividends shall not be a chargeable payment.

(7) In a case where—

(a) foreign dividends are payable by a company which at the time of the payment (the "relevant time") is not resident in the United Kingdom,

(b) payment of those dividends is collected, received or secured, or coupons for those dividends are realised, on behalf of a company which at the relevant time is resident in the United Kingdom, and

(c) at the relevant time the company mentioned in paragraph (b) above directly or indirectly controls not less than 10 per cent. of the voting power in the company mentioned in paragraph (a) above,

those dividends or, as the case may be, the proceeds of realisation of those coupons shall not be a chargeable receipt.

(8) The Board may by regulations provide that subsection (1)(a) above does not apply in respect of a relevant payment, or that subsection (2)(a) above does not apply in respect of a relevant receipt, unless the paying agent or, as the case may be, the collecting agent has obtained a declaration from the recognised clearing system or its depositary in such form, and containing such information, as may be required by those regulations.

(9) The Board may by regulations make such provision as they may consider appropriate for requiring paying agents and collecting agents to deliver returns setting out particulars of—

(a) any relevant payments made by them which would have been chargeable payments but for the provisions of section 118D(1)(a);

(b) any relevant receipts which would have been chargeable receipts but for the provisions of section 118D(2)(a) or (b);

and for the keeping and production to, or to an officer of, the Board of any document in which any such declaration as is mentioned in subsection (8) above is contained.

Modifications etc. (not altering text)

C41 S. 118D(1)(a) excluded (30.7.1996) by The Income Tax (Paying and Collecting Agents) Regulations 1996 (S.I. 1996/1780), **reg. 3(1)**

C42 S. 118D(2)(a) excluded (30.7.1996) by The Income Tax (Paying and Collecting Agents) Regulations 1996 (S.I. 1996/1780), **reg. 3(1)**

118E Deduction of tax from chargeable payments and chargeable receipts.

(1) Subject to subsection (2) below, where a paying agent makes a chargeable payment—

(a) he shall, on making the payment, deduct from it a sum representing the amount of income tax thereon;

(b) he shall become liable to account for that sum;

(c) the person to whom the chargeable payment is made shall allow the deduction on receipt of the residue of the payment, and the paying agent shall be acquitted and discharged of so much money as is represented by the deduction, as if that sum had actually been paid; and

(d) the deduction shall be treated as income tax paid by the person entitled to the chargeable payment.

(2) In relation to United Kingdom public revenue dividends payable to the Bank of Ireland out of the public revenue of the United Kingdom, or which are entrusted to the Bank of Ireland for payment and distribution and are not payable by that Bank out of its principal office in Belfast, subsection (1) above shall not apply, but—

(a) the money which, apart from this subsection, would be issuable to the Bank of Ireland under section 14 of the [M160]National Debt Act 1870, or otherwise payable to the Bank of Ireland for the purpose of dividends on securities of the United Kingdom government entered in the register of the Bank of Ireland in Dublin, shall be issued and paid to the Bank of England;

(b) the Bank of England shall deduct from the money so issued and paid to it a sum representing the amount of income tax on the dividends payable to the Bank of Ireland, and on the dividends on the securities of the United Kingdom government entered in the register of the Bank of Ireland in Dublin, and shall become liable to account for the same under section 118F(1);

(c) the Bank of England shall pay to the Bank of Ireland the residue of the money so issued and paid to it, to be applied by the Bank of Ireland in payment of the dividends; and

(d) the deduction shall be treated as income tax paid by the person entitled to the dividends, and the Bank of England and the Bank of Ireland shall

be acquitted and discharged of so much money as is represented by the deduction, as if that sum had actually been paid.

(3) Where a collecting agent performs a relevant function—

(a) he shall on the chargeable date become liable to account for a sum representing the amount of income tax on any chargeable receipt in relation to which he is the collecting agent;

(b) he shall be entitled—

(i) to be indemnified by the person entitled to the chargeable receipt against the income tax for which he is liable to account in accordance with paragraph (a) above; and

(ii) to deduct out of the chargeable receipt or to retain from any other sums otherwise due from him to the person entitled to the chargeable receipt, or received by him on behalf of that person, amounts sufficient for meeting any liability to account for such income tax which he has discharged or to which he is subject;

(c) the person entitled to the chargeable receipt shall allow the deduction or retention on receipt of the residue of the chargeable receipt, and the collecting agent shall be acquitted and discharged of so much money as is represented by the deduction, as if that sum had actually been paid; and

(d) the amount for which the collecting agent is liable to account shall be treated as income tax paid by the person entitled to the chargeable receipt.

(4) A paying agent who makes a chargeable payment, or a collecting agent who is required to account for tax on a chargeable receipt, shall, if the person entitled to the chargeable payment or, as the case may be, the chargeable receipt so requests in writing, furnish him within thirty days after receiving that request with a certificate showing—

(a) the gross amount of the payment or receipt;

(b) the amount of income tax treated as paid by him;

(c) the actual amount actually paid or accounted for to him; and

(d) the chargeable date.

(5) The Board may by regulations—

(a) require a certificate furnished pursuant to subsection (4) above to contain information additional to that set out in paragraphs (a) to (d) of that subsection or a declaration made by or on behalf of the paying agent or collecting agent;

(b) make provision for the form of such a certificate or declaration.

(6) The duty imposed by subsection (4) above shall be enforceable at the suit or instance of the person requesting the certificate.

Marginal Citations
M160 1870 c. 71.

118F Accounting for tax on chargeable payments and chargeable receipts.

(1) Income tax in respect of United Kingdom public revenue dividends for which the Bank of England, the Bank of Ireland, the National Debt Commissioners or

any public office or department of the Crown are liable to account pursuant to section 118E(1) or (2) shall become due and payable on the seventh day after the chargeable date and shall be paid into the general account of the Board at the Bank of England or, in the case of the Bank of Ireland, at the Bank of Ireland.

(2) Any other income tax for which a paying agent is liable to account under section 118E(1), and any income tax for which a collecting agent is liable to account under section 118E(3), shall become due and payable on the fourteenth day from the end of the month in which the chargeable date falls.

(3) Any tax due under subsection (1) or (2) above shall carry interest, at the rate applicable under section 178 of the [M161]Finance Act 1989, from the date on which it becomes due until it is paid.

(4) The Board may by regulations make such provision as they may consider appropriate—

(a) for requiring paying agents and collecting agents to deliver returns setting out particulars of—

(i) chargeable payments made by them;

(ii) chargeable receipts in respect of which they are liable to account for tax;

(iii) any relevant payments made by them which would have been chargeable payments but for the provisions of section 118G;

(iv) any relevant receipts which would have been chargeable receipts but for the provisions of section 118G;

(v) the amount of any tax accounted for by them, or for which they are liable to account, in relation to chargeable payments or chargeable receipts;

(vi) in the case of relevant payments falling within sub-paragraph (iii) above, the paragraphs of subsection (3) or (4) of section 118G that applied to them;

(vii) in the case of relevant receipts falling within sub-paragraph (iv) above, the paragraphs of subsection (4) of section 118G that applied to them;

(viii) the names and addresses of the persons entitled to the relevant payments or relevant receipts;

(b) with respect to the furnishing of information by paying agents or collecting agents, including the inspection of books, documents and other records on behalf of the Board;

(c) for the assessment under the regulations of amounts due and for appeals against such assessments;

(d) for the repayment in specified circumstances of amounts paid (or purporting to be paid) under this Chapter.

Subordinate Legislation Made

P1 9.12.1997 appointed for s. 118F (for periods beginning on or after which s. 178(1) of the Finance Act 1989 (c. 26) shall have effect) by S.I. 1997/2708, **art. 2**

Marginal Citations

M161 1989 c. 26.

118G Relevant securities of eligible persons.

(1) Subject to subsection (2) below, and to the provisions of any regulations under section 118H—

(a) any relevant payment to which subsection (3) or (4) below applies shall not be a chargeable payment; and

(b) any relevant receipt to which subsection (4) below applies shall not be a chargeable receipt.

(2) Regulations made under paragraph (g), (h) or (i) of subsection (4) below may provide that only one of paragraphs (a) and (b) of subsection (1) above is to apply by virtue of those regulations in relation to relevant payments or relevant receipts of a particular kind or from a particular source.

(3) This subsection applies to payments of United Kingdom public revenue dividends so long as—

(a) they are exempt from tax by virtue of section 46, 49, 516 or 517;

(b) they are payable in respect of gilt-edged securities which for the time being are treated by section 51A as issued subject to the condition that interest on them is paid without deduction of income tax;

(c) they are payable in respect of securities which have been issued with such a condition as is authorised by section 22(1) of the [M162]Finance (No. 2) Act 1931 and which are for the time being beneficially owned by a person who is not ordinarily resident in the United Kingdom;

(d) they are eligible for relief from tax by virtue of section 505(1)(c) or (d), or would be so eligible but for section 505(3);

(e) they are eligible for relief from tax by virtue of section 592(2), 608(2)(a), 613(4), 614(2), (3) or (4) or 643(2); or

(f) they are payable in respect of securities held by or on behalf of a person of such a description as may be prescribed.

(4) This subsection applies to relevant payments (not being payments of United Kingdom public revenue dividends) and relevant receipts—

(a) to which a person who, at the chargeable date—

(i) is not resident in the United Kingdom, and

(ii) beneficially owns the relevant holdings from which they are derived,

is beneficially entitled;

(b) which consist of, or of the proceeds of sale or other realisation of coupons for, interest (other than quoted Eurobond interest) to which a bank which, at the chargeable date—

(i) is resident in the United Kingdom, and

(ii) beneficially owns the foreign holdings from which they are derived,

is beneficially entitled;

(c) which arise to the trustees of a qualifying discretionary or accumulation trust in their capacity as such in respect of relevant holdings held on the trusts thereof;

(d) which are eligible for relief from tax by virtue of section 505(1)(c) or (d), or would be so eligible but for section 505(3);

(e) which are eligible for relief from tax by virtue of section 592(2), 608(2)(a), 613(4), 614(2), (3) or (4), 620(6) or 643(2);

(f) which consist of, or of the proceeds of sale or other realisation of coupons for, dividends payable out of the public revenue of the Republic of Ireland or out of or in respect of shares or securities issued by or on behalf of any Republic of Ireland company, society, adventure or concern;

(g) to which a person of such a description as may be prescribed and who, at the chargeable date, beneficially owns the securities from which they are derived, is beneficially entitled;

(h) which are derived from relevant holdings held by or on behalf of a person of such a description as may be prescribed;

(i) which are of such a description as may be prescribed; or

(j) which fall to be treated as the income of, or of the government of, a sovereign power or of an international organisation.

(5) For the purposes of subsection (4)(c) above, a trust is a qualifying discretionary or accumulation trust if—

(a) it is such that some or all of any income arising to the trustees would fall (unless treated as income of the settlor or applied in defraying expenses of the trustees) to be comprised for the year of assessment in which it arises in income to which section 686 (liability to additional rate tax of certain income of discretionary trusts) applies;

(b) the trustees are not resident in the United Kingdom; and

(c) none of the beneficiaries of the trust is resident in the United Kingdom.

(6) The persons who are to be taken for the purposes of subsection (5) above to be the beneficiaries of a discretionary or accumulation trust shall be every person who, as a person falling wholly or partly within any description of actual or potential beneficiaries, is either—

(a) a person who is, or will or may become, entitled under the trust to receive the whole or any part of any income under the trust; or

(b) a person to or for the benefit of whom the whole or any part of such income may be paid or applied in exercise of any discretion conferred by the trust;

and for the purposes of this subsection references, in relation to a trust, to income under the trust shall include references to so much (if any) of any property falling to be treated as capital under the trust as represents amounts originally received by the trustees as income.

(7) The Board may by regulations provide that a paying agent who is entrusted with the payment or distribution of—

(a) United Kingdom public revenue dividends on securities which are held by a nominee approved for the purposes of this subsection, or

(b) foreign dividends on foreign holdings held by such a nominee,

shall treat those dividends as not being chargeable payments.

(8) For the purpose of giving relief from tax pursuant to arrangements which have effect by virtue of section 788, the Board may by regulations provide that a paying agent who is entrusted with the payment or distribution of United Kingdom public revenue dividends on gilt-edged securities held by a nominee approved for the purposes of this subsection shall—

(a) treat those dividends as not being chargeable payments, or

(b) deduct tax from them at such reduced rates (being lower than the rate that would otherwise be applicable by virtue of section 118E(1)) as may be prescribed.

(9) Where, pursuant to subsection (7) or (8) above, dividends are paid without deduction of tax, or subject to deduction of tax at a reduced rate, the provisions of this Chapter shall apply, subject to subsection (10) below and to the provisions of regulations under section 118H, as though the nominee was the paying agent in relation to those dividends and the chargeable date was the date on which he received them.

(10) Where tax has been deducted from dividends at a reduced rate pursuant to regulations under subsection (8) above, the tax for which the nominee is liable to account by virtue of subsection (9) above shall not exceed the difference between the amount of tax on those dividends at the rate that is applicable by virtue of section 118E(1) and the tax already deducted from them.

Modifications etc. (not altering text)
C43 S. 118G(1) excluded (30.7.1996) by The Income Tax (Paying and Collecting Agents) Regulations 1996 (S.I. 1996/1780), **reg. 4(1)**

Marginal Citations
M162 1931 c. 49.

118H Relevant securities of eligible persons: administration.

(1) The Board may by regulations provide that section 118G(1) shall not apply as regards relevant payments or relevant receipts—

(a) unless such conditions as may be prescribed are fulfilled;

(b) where the Board have reason to believe that section 118G(3) does not apply to, or to the whole of, any relevant payments; or

(c) where the Board have reason to believe that section 118G(4) does not apply to, or to the whole of, any relevant payments or relevant receipts.

(2) In subsection (3) below, references to the relevant exclusion are to exclusion from being a chargeable payment or chargeable receipt pursuant to section 118G(1) or regulations made under section 118G(7) or (8), or to the deduction of tax at a reduced rate pursuant to regulations under section 118G(8), as the case may be; and references to the agent concerned are to the paying agent or collecting agent or, as the case may be, to the nominee approved for the purpose of section 118G(7) or (8).

(3) Regulations under this section or section 118G(7) or (8) may—

(a) disapply the relevant exclusion in respect of any relevant payments or relevant receipts derived from any securities or relevant holdings unless the appropriate person has made a declaration in writing to the agent concerned, in such form as may be prescribed or authorised by the Board, confirming that the requirements for the exclusion are satisfied;

(b) require the person who makes such a declaration to undertake in the declaration to notify the agent concerned if the circumstances set out in the declaration change;

(c) require the agent concerned to consider the accuracy of any declaration made pursuant to a requirement imposed by virtue of paragraph (a) above;

(d) impose obligations—

(i) on persons having any rights in relation to relevant payments or relevant receipts in respect of which the relevant exclusion applies or is claimed to apply; and

(ii) on persons who are the agents concerned in relation to such relevant payments or relevant receipts as are mentioned in sub-paragraph (i) above

as to the provision of information, and the production of documents, to the Board or, on request, to an officer of the Board;

(e) provide for notices to be issued by the Board to persons who fail to comply with requirements for the provision of information or documents mentioned in paragraph (d) above, disapplying the relevant exclusion in relation to relevant payments or relevant receipts in relation to which they have any rights or in relation to which they are the agents concerned;

(f) impose requirements as to—

(i) the form and contents of any declaration to be made in accordance with the regulations under this section;

(ii) the appropriate person to make such a declaration;

(iii) the form and manner in which, and the time at which, any declaration is to be made or provided; and

(iv) the keeping and production to, or to an officer of, the Board of any document in which any such declaration is contained;

(g) provide for notices to be issued by the Board to such persons as may be described in the regulations where the Board are satisfied that the relevant exclusion applies, or where the Board are satisfied or have reason to believe that the relevant exclusion does not apply.

(4) Regulations under section 118G(7) or (8) may—

(a) prescribe conditions for the inclusion of securities or foreign holdings in arrangements established under that subsection;

(b) set out procedures for the approval of nominees for the purpose of that subsection and for the withdrawal of such approval.

118I Deduction of tax at reduced rate.

The Board may make regulations which provide for the amount of any income tax which a paying agent would otherwise be liable to deduct under section 118E(1)(a), or for which a collecting agent would otherwise be liable to account under section 118E(3)(a), to be reduced by reference to liabilities for such tax paid under the law of a territory outside the United Kingdom as may be prescribed.

118J Prevention of double accounting.

(1) A relevant dividend the payment of which is a chargeable payment shall not be a chargeable receipt for the purpose of this Chapter.

(2) Subsection (1) above does not prevent the proceeds of sale or other realisation of a coupon from being a chargeable receipt.

(3) The Board may make regulations—

(a) for preventing more than one collecting agent from being liable to account for tax on the same dividend; or

(b) which provide that—

(i) where more than one person is a collecting agent in relation to a dividend, those persons may agree between themselves which one of their number shall be treated as the collecting agent in relation to that dividend; and

(ii) the person so identified shall for all the purposes of this Chapter be treated as the sole collecting agent in relation to that dividend.

118K Regulations.

(1) Any power to make regulations under this Chapter—

(a) may be exercised as regards prescribed cases or descriptions of case; and

(b) may be exercised differently in relation to different cases or descriptions of case, or in relation to different persons or descriptions of person.

(2) Regulations under this Chapter may include such supplementary, incidental, consequential or transitional provisions as appear to the Board to be necessary or expedient.

(3) No specific provision of this Chapter about regulations shall prejudice the generality of subsections (1) and (2) above.

CHAPTER VIII

MISCELLANEOUS AND SUPPLEMENTAL

119 Rent etc. payable in connection with mines, quarries and similar concerns.

[M163](1) Where rent is payable in respect of any land or easement, and either—

(a) the land or easement is used, occupied or enjoyed in connection with any of the concerns specified in section 55(2); or

(b) the lease or other agreement under which the rent is payable provides for the recoupment of the rent by way of reduction of royalties or payments of a similar nature in the event of the land or easement being so used, occupied or enjoyed,

the rent shall, subject to section 122, be charged to tax under Schedule D, and, subject to subsection (2) below, shall be subject to deduction of income tax under section 348 or 349 as if it were a royalty or other sum paid in respect of the user of a patent.

(2) Where the rent is rendered in produce of the concern, it shall, instead of being treated as provided by subsection (1) above, be charged under Case III of Schedule D, and the value of the produce so rendered shall be taken to be the amount of the profits or income arising therefrom.

(3) For the purposes of this section—

"easement" includes any right, privilege or benefit in, over or derived from land; and

"rent" includes a rent service, rentcharge, fee farm rent, feuduty or other rent, toll, duty, royalty or annual or periodical payment in the nature of rent, whether payable in money or money's worth or otherwise.

Marginal Citations
M163 Source—1970 s.156

120 Rent etc. payable in respect of electric line wayleaves.

M164(1) Where rent is payable in respect of any easement enjoyed in the United Kingdom in connection with any electric, telegraphic or telephonic wire or cable (not being such an easement as is mentioned in section 119(1)), the rent shall be charged to tax under Schedule D, and, subject to subsections (2) to (5) below, shall be subject to deduction of income tax under section 348 or 349 as if it were a royalty or other sum paid in respect of the user of a patent.

(2) Any payment of rent to which subsection (1) above applies which does not exceed £2.50 per year may, if the payer so elects, be treated as not affected by so much of that subsection as provides that the rent shall be subject to deduction of income tax, and shall in that event be made without deduction of income tax accordingly.

(3) Any payment of rent to which subsection (1) above applies which is made without deduction of income tax, whether by virtue of subsection (2) above or otherwise, shall, unless income tax is assessed thereon under section 350, be chargeable to tax under Case III of Schedule D.

(4) Any payment of rent to which subsection (1) above applies which is made subject to deduction of income tax shall, if it is paid by a person carrying on a trade which consists of or includes the provision of a radio relay service and the wire or cable in question is used by that person for the purposes of that service—

(a) be deductible (notwithstanding anything in section 74(q)) in computing the amount of the profits or gains of the trade to be charged under Case I of Schedule D, and

(b) be deemed for the purposes of sections 348 and 349 not to be payable out of profits or gains brought into charge to income tax.

(5) In this section—

(a) "easement" and "rent" have the same meanings as in section 119;

(b) the reference to easements enjoyed in connection with any electric, telegraphic or telephonic wire or cable includes (without prejudice to the generality of that expression) references to easements enjoyed in connection with any pole or pylon supporting any such wire or cable, or with any apparatus (including any transformer) used in connection with any such wire or cable; and

(c) "radio relay service" means the retransmission by wire to their customers of broadcast programmes (which may or may not be television programmes) which the persons carrying on the service receive either by wire or by wireless from the British Broadcasting Corporation or from the persons outside the United Kingdom who broadcast the programmes in question.

Marginal Citations
M164 Source—1970 s.157

121 Management expenses of owner of mineral rights.

M165(1) Where for any year of assessment rights to work minerals in the United Kingdom are let, the lessor shall, subject to subsection (2) below, be entitled, on making a claim for the purpose, to be repaid so much of the income tax paid by him by deduction or otherwise in respect of the rent or royalties for that year as is equal to the amount of the tax on any sums proved to have been wholly, exclusively and necessarily disbursed by him as expenses of management or supervision of those minerals in that year.

(2) No repayment of tax shall be made under subsection (1) above if, or to such extent as, the expenses in question have been otherwise allowed as a deduction in computing income for the purposes of income tax.

(3) In computing for the purposes of corporation tax the income of a company for any accounting period from the letting of rights to work minerals in the United Kingdom, there may be deducted any sums disbursed by the company wholly, exclusively and necessarily as expenses of management or supervision of those minerals in that period.

Marginal Citations
M165 Source—1970 s.158(1), (2)

122 Relief in respect of mineral royalties.

(1) M166Subject to the following provisions of this section, a person resident or ordinarily resident in the United Kingdom who in any year of assessment or accounting period is entitled to receive any mineral royalties under a mineral lease or agreement shall be treated—

(a) for the purposes of income tax, or as the case may be for the purposes of corporation tax on profits exclusive of chargeable gains, as if the total of the mineral royalties receivable by him under that lease or agreement in that year or period and any management expenses available for set-off against those royalties in that year or period were each reduced by one-half; and

(b) for the purposes of the 1979 Act or as the case may be for the purposes of corporation tax on chargeable gains, as if there accrued to him in that year or period a chargeable gain equal to one-half of the total of the mineral royalties receivable by him under that lease or agreement in that year or period;

and this section shall have effect notwithstanding any provision of section 119(1) making the whole of certain kinds of mineral royalties chargeable to tax under Schedule D, but without prejudice to any provision of that section providing for any such royalties to be subject to deduction of income tax under section 348 or 349.

(2) M167For the purposes of subsection (1)(a) above, "management expenses available for set-off" against royalties means—

(a) where section 121 applies in respect of the royalties, any sum brought into account under subsection (1) of that section in determining the amount of the repayment of income tax in respect of those royalties or, as the case may

be, deductible from those royalties under subsection (2) of that section in computing the income of a company for the purposes of corporation tax; and

(b) if the royalties are chargeable to tax under Schedule A, any sums deductible under Part II as payments made in respect of management of the property concerned;

and if neither paragraph (a) nor paragraph (b) above applies, the reference in subsection (1)(a) above to management expenses available for set-off shall be disregarded.

(3) [M168]The amount of the chargeable gain treated as accruing to any person by virtue of subsection (1)(b) above shall, notwithstanding anything in the enactments relating to the computation of chargeable gains, be the whole amount calculated in accordance with that subsection, and, accordingly, no reduction shall be made on account of expenditure incurred by that person or of any other matter whatsoever.

(4) [M169]Where subsection (1) above applies in relation to mineral royalties receivable under a mineral lease or agreement by a person not chargeable to corporation tax in respect of those royalties, then, in so far as the amount of income tax paid, by deduction or otherwise, by him in respect of those mineral royalties in any year of assessment exceeds the amount of income tax for which he is liable in respect of those royalties by virtue of subsection (1)(a) above—

(a) the amount of the excess shall in the first instance be set against the tax for which he is chargeable by virtue of subsection (1)(b) above; and

(b) on the making of a claim in that behalf, he shall be entitled to repayment of tax in respect of the balance of that excess.

(5) In this section references to mineral royalties refer only to royalties receivable on or after 6th April 1970, and the expression "mineral royalties" means so much of any rents, tolls, royalties and other periodical payments in the nature of rent payable under a mineral lease or agreement as relates to the winning and working of minerals; and the Board may by regulations—

(a) provide whether, and to what extent, payments made under a mineral lease or agreement and relating both to the winning and working of minerals and to other matters are to be treated as mineral royalties; and

(b) provide for treating the whole of such payments as mineral royalties in cases where the extent to which they relate to matters other than the winning and working of minerals is small.

(6) In this section—

"minerals" means all minerals and substances in or under land which are ordinarily worked for removal by underground or surface working but excluding water, peat, top-soil and vegetation; and

"mineral lease or agreement" means—

(a) a lease, profit à prendre, licence or other agreement conferring a right to win and work minerals in the United Kingdom;

(b) a contract for the sale, or a conveyance, of minerals in or under land in the United Kingdom; and

(c) a grant of a right under section 1 of the [M170]Mines (Working Facilities and Support) Act 1966, other than an ancillary right within the meaning of that Act.

(7) In the application of this section to Northern Ireland—

(a) references to mineral royalties include references to periodical payments—

(i) of compensation under section 29 or 35 of the [M171]Mineral Development Act (Northern Ireland) 1969 ("the 1969 Act") or under section 4 of the [M172]Petroleum (Production) Act (Northern Ireland) 1964 ("the 1964 Act"); and

(ii) made as mentioned in section 37 of the 1969 Act or under section 55(4)(b) of that Act or under section 11 of the 1964 Act (payments in respect of minerals to persons entitled to a share of royalties under section 13(3) of the [M173]Irish Land Act 1903); and

(b) in its application to any such payments as are mentioned in paragraph (a) above, references to the mineral lease or agreement under which mineral royalties are payable shall be construed as references to the enactment under which the payments are made.

(8) In any case where, before the commencement of this section, for the purposes of the 1979 Act or of corporation tax on chargeable gains, a person was treated as if there had accrued to him in any year of assessment or accounting period ending before 6th April 1988 a chargeable gain equal to the relevant fraction, determined in accordance with section 29(3)(b) of the Finance Act 1970, of the total of the mineral royalties receivable by him under that lease or agreement in that year or period, subsection (1)(b) above shall have effect in relation to any mineral royalties receivable by him under that lease or agreement in any later year or period with the substitution for the reference to one-half of a reference to the relevant fraction as so determined.

Modifications etc. (not altering text)
C44 *For regulations see* Part III Vol.5.

Marginal Citations
M166 Source—1970(F) s.29(1), (3); 1971 Sch.9 4
M167 Source—1970(F) s.29(2)
M168 Source—1970(F) s.29(3)
M169 Source—1970(F) s.29(4), (6)-(9)
M170 1966 c. 4.
M171 1969 c. 35 (N.I.).
M172 1964 c. 28 (N.I.).
M173 1903 c. 37.

123 Foreign dividends.

[M174](1) In this section—

(a) "foreign dividends" means any interest, dividends or other annual payments payable out of or in respect of the stocks, funds, shares or securities of any body of persons not resident in the United Kingdom (but not including any such payment to which section 348 or 349(1) applies) and references to dividends shall be construed accordingly;

(b) "relevant foreign dividends" means foreign dividends payable out of or in respect of stocks, funds, shares or securities which are not held in a recognised clearing system;

(c) "banker" includes a person acting as a banker; and

(d) references to coupons include, in relation to any dividends, warrants for or bills of exchange purporting to be drawn or made in payment of those dividends.

(2) Where relevant foreign dividends are entrusted to any person in the United Kingdom for payment to any persons in the United Kingdom, they shall be assessed and charged to income tax under Schedule D by the Board, and Parts III and IV of Schedule 3 shall apply in relation to the income tax to be so assessed and charged.

(3) Where—

(a) a banker or any other person in the United Kingdom, by means of coupons received from any other person or otherwise on his behalf, obtains payment of any foreign dividends **[**F75and either—

(i) the payment of those dividends was not entrusted to any person in the United Kingdom, or

(ii) the stocks, funds, shares or securities in respect of which those dividends are paid are held in a recognised clearing system,**]** or

(b) any banker in the United Kingdom sells or otherwise realises coupons for foreign dividends, and pays over the proceeds to any person or carries them to his account, or

(c) any dealer in coupons in the United Kingdom purchases any such coupons otherwise than from a banker or another dealer in coupons,

tax under Schedule D shall extend, in the cases mentioned in paragraph (a) above, to the dividends, and, in the cases mentioned in paragraphs (b) and (c) above, to the proceeds of the sale or other realisation, and income tax shall be assessed and charged and paid under this subsection in accordance with Parts III and IV of Schedule 3.

(4) In the cases mentioned in subsections (2) and (3) above, no tax shall be chargeable if it is proved, on a claim in that behalf made to the Board, that the person owning the stocks, funds, shares or securities and entitled to the dividends or proceeds is not resident in the United Kingdom.

(5) Where stocks, funds, shares or securities are held under a trust, and the person who is the beneficiary in possession under the trust is the sole beneficiary in possession and can, by means either of the revocation of the trust or the exercise of any power under the trust, call upon the trustees at any time to transfer the stocks, funds, shares or securities to him absolutely free from the trust, that person shall, for the purposes of subsection (4) above, be deemed to be the person owning the stocks, funds, shares or securities.

(6) Where any income of any person is by virtue of any provision of the Tax Acts (and in particular, but without prejudice to the generality of the preceding words, Chapter III of Part XVII) to be deemed to be income of any other person, that income is not exempt from tax by virtue of subsection (4) above by reason of the first mentioned person not being resident in the United Kingdom.

Textual Amendments

F75 1988(F) s.76(3)*in respect of payments obtained on or after* 29*July* 1988.*Previously* "elsewhere than in the United Kingdom".

Modifications etc. (not altering text)

C45 *See* 1989 s.94*and* Sch.11 para.18*—deep gain securities.*

Marginal Citations

M174 Source—1970 s.159; 1986 s.48(2)-(5)

124 Interest on quoted Eurobonds.

M175(1) Section 349(2) shall not apply to interest paid on any quoted Eurobond where—

(a) the person by or through whom the payment is made is not in the United Kingdom; or

(b) the payment is made by or through a person who is in the United Kingdom but either of the conditions mentioned in subsection (2) below is satisfied.

(2) The conditions are—

(a) that it is proved, on a claim in that behalf made to the Board, that the person who is the beneficial owner of the quoted Eurobond and is entitled to the interest is not resident in the United Kingdom;

(b) that the quoted Eurobond is held in a recognised clearing system.

(3) In a case falling within subsection (1)(b) above the person by or through whom the payment is made shall deliver to the Board—

(a) on demand by the Board an account of the amount of any such payment; and

(b) not later than 12 months after making any such payment, and unless within that time he delivers an account with respect to the payment under paragraph (a) above, a written statement specifying his name and address and describing the payment.

(4) Where by virtue of any provision of the Tax Acts interest paid on any quoted Eurobond is deemed to be income of a person other than the person who is the beneficial owner of the quoted Eurobond, subsection (2)(a) above shall apply as if it referred to that other person.

(5) Subsections (3) to (6) of section 123 shall apply in relation to interest on quoted Eurobonds as they apply to foreign dividends but with the following modifications—

[F76(za) subsection (3)(a)(i) shall have effect in relation to quoted Eurobonds not held in a recognised clearing system as if the words " made by or " were inserted immediately before the words "entrusted to any person in the United Kingdom".**]**

(a) subsection (4) shall apply as if it required a claim to have been made on or before the event by virtue of which tax would otherwise be chargeable; and

(b) paragraph 6(1) of Schedule 3 shall apply with the omission of paragraphs (a) and (b).

(6) In this section—

"quoted Eurobond" means a security which—

(a) is issued by a company;

(b) is quoted on a recognised stock exchange;

(c) is in bearer form; and

(d) carries a right to interest; and

"recognised clearing system" means any system for clearing quoted Eurobonds **[**F77or relevant foreign securities**]** which is for the time being designated for the purposes of this section by order made by the Board, as a recognised clearing system.

[[F77]"relevant foreign securities" means any of the following, that is to say—

(a) any such stocks, funds, shares or securities as give rise to foreign dividends, within the meaning of section 123; and

(b) any such securities as give rise to overseas public revenue dividends, within the meaning of Part III.**]**

(7) An order under subsection (6) above—

(a) may contain such transitional and other supplemental provisions as appear to the Board to be necessary or expedient; and

(b) may be varied or revoked by a subsequent order so made.

Textual Amendments

F76 1988(F) s.76(4)*in respect of payments obtained on or after* 29*July* 1988.

F77 1988(F) s.76(5).

Marginal Citations

M175 Source—1984 s.35 (1)-(3), (5)-(8)

125 Annual payments for non-taxable consideration.

[M176](1) Any payment to which this subsection applies shall be made without deduction of income tax, shall not be allowed as a deduction in computing the income or total income of the person by whom it is made and shall not be a charge on income for the purposes of corporation tax.

(2) Subject to the following provisions of this section, subsection (1) above applies to any payment which—

(a) is an annuity or other annual payment charged with tax under Case III of Schedule D, not being interest; and

(b) is made under a liability incurred for consideration in money or money's worth all or any of which is not required to be brought into account in computing for the purposes of income tax or corporation tax the income of the person making the payment.

(3) Subsection (1) above does not apply to—

(a) any payment which in the hands of the recipient is income falling within **[**[F78]subsection (1)(a) or (c) of section 674A or 683 or subsection (6) of section 683 (including that subsection as it applies in relation to section 674A(1))**]**;

(b) any payment made to an individual under a liability incurred in consideration of his surrendering, assigning or releasing an interest in settled property to or in favour of a person having a subsequent interest;

(c) any annuity granted in the ordinary course of a business of granting annuities; or

(d) any annuity charged on an interest in settled property and granted at any time before 30th March 1977 by an individual to a company whose business at that time consisted wholly or mainly in the acquisition of interests in settled property or which was at that time carrying on life assurance business in the United Kingdom.

(4) In the application of this section to Scotland the references in subsection (3) above to settled property shall be construed as references to property held in trust.

(5) Subsection (1) above applies to a payment made after 5th April 1988 irrespective of when the liability to make it was incurred.

Textual Amendments

F78 1989 s.109(2).*Previously*
"section 683(1)(a) or (c) or (6)".

Modifications etc. (not altering text)

C46 *See* 1989 s.59—*rights of admission disregarded in the case of certain covenanted subscriptions.*

Marginal Citations

M176 Source—1977 s.48

126 Treasury securities issued at a discount.

M177(1) Where a security to which this section applies is issued at a discount, tax shall not be charged in respect of the discount under Case III of Schedule D; but the discount shall not for that reason be regarded as annual profits or gains chargeable to tax under Case VI of Schedule D.

(2) This section applies to all securities issued by the Treasury after 6th March 1973 **[**F79except—

(a) Treasury bills,

(b) relevant deep discount securities, and

(c) deep gain securities.**]**

[F79(3) For the purposes of subsection (2) above—

(a) a relevant deep discount security is a security falling within paragraph 1(1)(dd) of Schedule 4 to this Act, and

(b) a deep gain security is a security which is a deep gain security for the purposes of Schedule 11 to the Finance Act 1989.**]**

Textual Amendments

F79 1989 s.95(2)(3)*on or after* 14*March* 1989*in relation to transfers or disposals of certain deep discount securities or deep gain securities. Previously*
"except Treasury bills"
in subs.(2).

Modifications etc. (not altering text)

C47 *See* 1989 s.95(5)(6)(7)*for cases where* s.126*does not apply.*

Marginal Citations

M177 Source—1973 s.27

VALID FROM 06/03/1992

[F80 126A Charge to tax on appropriation of securities and bonds.

(1) In any case where—

(a) any specified securities were held by a company in such circumstances that any gain or loss on their disposal would, apart from section 115 of the 1992 Act, have been taken into account in determining the company's liability to corporation tax on chargeable gains, and

(b) those securities are subsequently appropriated by the company in such circumstances that if they were disposed of after the appropriation, any profit accruing on their disposal would be brought into account in computing the company's income for corporation tax,

then for the purposes of corporation tax any loss incurred by the company on the disposal of those securities shall not exceed the loss which would have been incurred on that disposal if the amount or value of the consideration for the acquisition of the securities had been equal to their market value at the time of the appropriation.

(2) In any case where—

(a) any specified securities were held by a company in such circumstances that any profit accruing on their disposal would be brought into account in computing the company's income for corporation tax, and

(b) those securities are subsequently appropriated by the company in such circumstances that any gain accruing on their disposal would, by virtue of section 115 of the 1992 Act, be exempt from corporation tax on chargeable gains,

then for the purposes of corporation tax the company shall be treated as if, immediately before the appropriation, it had sold and repurchased the specified securities at their market value at the time of the appropriation.

(3) In this section "specified securities" means gilt-edged securities or qualifying corporate bonds.**]**

Textual Amendments

F80 S. 126A inserted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 14(6)** (with ss. 60, 101(1), 171, 201(3)).

127 Enterprise allowance.

M178(1) This section applies to—

(a) payments known as enterprise allowance and made **[**F81(whether before or after the coming into force of Section 25 of the M179Employment Act 1988)**]** in pursuance of arrangements under section 2(2)(d) of the M180Employment and Training Act 1973; and

(b) corresponding payments made in Northern Ireland by the Department of Economic Development.

(2) Any such payment which would (apart from this section) be charged to tax under Case I or II of Schedule D shall be charged to tax under Case VI of that Schedule.

(3) Nothing in subsection (2) above shall prevent such a payment—

(a) being treated for the purposes of section 623(2)(c) or 833(4)(c) as immediately derived from the carrying on or exercise of a trade, profession or vocation; or

(b) *being treated for the purposes of paragraph* 1*of Schedule* 19*as trading income*[F82].

Textual Amendments

F81 Para.15 Sch.3 Employment Act 1988.*Previously*
"by the Manpower Services Commission".

F82 *Repealed by* 1989 s.187*and* Sch.17 Part V*in relation to accounting periods beginning after* 31*March* 1989.

Marginal Citations

M178 Source—1986 s.41

M179 1988 c.19

M180 1973 c. 50.

VALID FROM 19/03/1997

[F83127AFutures and options: transactions with guaranteed returns.

Schedule 5AA (which makes provision for the taxation of the profits and gains arising from transactions in futures and options that are designed to produce guaranteed returns) shall have effect.**]**

Textual Amendments

F83 S. 127A inserted (with effect in accordance with s. 80(6) of the amending Act) by Finance Act 1997 (c. 16), **s. 80(1)**

128 Commodity and financial futures etc.: losses and gains.

M181Any gain arising to any person in the course of dealing in commodity or financial futures or in qualifying options, which apart from this section would constitute profits or gains chargeable to tax under Schedule D otherwise than as the profits of a trade, shall not be chargeable to tax under that Schedule.

In this section "commodity or financial futures" and "qualifying options" have the same meaning as in section 72 of the Finance Act 1985, and the reference to a gain arising in the course of dealing in commodity or financial futures includes any gain which is regarded as arising in the course of such dealing by virtue of subsection (2A) of that section.

Marginal Citations

M181 Source—1985 s.72(1), (2); 1987 (No.2) s.81(1)

129 Stock lending.

M182(1) Subject to subsection (4) below, this section applies where a person ("A") has contracted to sell securities and, to enable him to fulfil the contract, he enters into an arrangement under which—

(a) another person ("B") is to transfer securities to A or his nominee; and

(b) in return securities of the same kind and amount are to be transferred (whether or not by A or his nominee) to B or his nominee.

(2) Subject to subsection (4) below, this section also applies where, to enable B to make the transfer to A or his nominee, B enters into an arrangement under which—

(a) another person ("C") is to transfer securities to B or his nominee; and

(b) in return securities of the same kind and amount are to be transferred (whether or not by B or his nominee) to C or his nominee.

[F84(2A) Subject to subsection (4) below—

(a) this section also applies where an arrangement in addition to those mentioned in subsections (1) and (2) above, and similar to that mentioned in subsection (2) above, is entered into as part of a chain of arrangements all having the effect of enabling A to fulfil his contract, and

(b) it is immaterial how many separate arrangements there are in the chain.**]**

(3) Any transfer made in pursuance of an arrangement mentioned in subsection (1) or (2) **[**F85or (2A)**]** above shall not be taken into account for the purposes of the Tax Acts in computing the profits or losses of any trade carried on by the transferor or transferee.

(4) The Treasury may provide by regulations that this section or any provision of it or section 149B(9) of the 1979 Act does not apply unless such conditions as are specified in the regulations are fulfilled; and the conditions may relate to the capacity in which any person involved in any arrangement is acting, the Board's approval of any such person or of the arrangement, the nature of the securities or otherwise.

(5) In this section "securities" includes stocks and shares.

(6) This section applies to transfers made after such date as is specified for this purpose by regulations made under section 61 of the Finance Act 1986 or, if no such regulations have been made before 6th April 1988, under this section.

Textual Amendments

F84 S. 129(2A) inserted by Finance Act 1991 (c. 31, SIF 63:1), **s. 57(2)(5)**

F85 Words in s. 129(3) inserted by Finance Act 1991 (c. 31, SIF 63:1), **s. 57(3)(5)**

Modifications etc. (not altering text)

C48 *See* 1990 s.56*and* Sch.10 para.23—*convertible securities.*

C49 *For regulations see* S.I. 1989 No.1299*in* Part III Vol.5*in relation to transfers after* 17*August* 1989.

Marginal Citations

M182 Source—1986 s.61

VALID FROM 01/05/1995

[F86 129A Stock lending: interest on cash collateral.

The provisions of Schedule 5A have effect with respect to the tax treatment of interest earned on cash collateral provided in connection with certain stock lending arrangements.]

Textual Amendments

F86 S. 129A inserted (with application in accordance with s. 85(3) of the amending Act) by Finance Act 1995 (c. 4), **s. 85(1)**

VALID FROM 29/04/1996

[F87 129B Stock lending fees.

(1) The income which, as income deriving from investments of a description specified in any of the relevant provisions, is eligible for relief from tax by virtue of that provision shall be taken to include any relevant stock lending fee.

(2) For the purposes of this section the relevant provisions are sections 592(2), 608(2)(a), 613(4), 614(3), 620(6) and 643(2).

(3) In this section "relevant stock lending fee", in relation to investments of any description, means any amount, in the nature of a fee, which is payable in connection with an approved stock lending arrangement relating to investments which, but for any transfer under the arrangement, would be investments of that description.

(4) In this section "approved stock lending arrangement" has the same meaning as in Schedule 5A.]

Textual Amendments

F87 S. 129B inserted (with effect in accordance with s. 157(2) of the amending Act) by Finance Act 1996 (c. 8), **s. 157(1)**

130 Meaning of "investment company" for purposes of Part IV.

M183 In this Part of this Act "investment company", means any company whose business consists wholly or mainly in the making of investments and the principal part of whose income is derived therefrom, but includes any savings bank or other bank for savings except any which, for the purposes of the M184 Trustee Savings Bank Act 1985, is a successor or a further successor to a trustee savings bank.

Modifications etc. (not altering text)

C50 *See*—1988 s.338(6)—*definition applied for purposes of* s.338(3) (*charges*).1988 s.576(5)—*definition applied for purposes of* ss.573 to 576 (*losses on unquoted shares in trading companies*).Trustee Savings Banks Act 1985 (c.58) s.5*and* Sch.2 para.6(6).

Marginal Citations

M183 Source—1970 s.304(5); 1980 Sch.11

M184 1985 c. 58.

Status:
Point in time view as at 25/09/1991. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation:
Income and Corporation Taxes Act 1988, PART IV is up to date with all changes known to be in force on or before 06 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.