



# Income and Corporation Taxes Act 1988

## 1988 CHAPTER 1

### PART IV

#### PROVISIONS RELATING TO THE SCHEDULE D CHARGE

#### CHAPTER VI

#### DISCONTINUANCE, AND CHANGE OF BASIS OF COMPUTATION

##### *Case VI charges on receipts*

#### **103 Receipts after discontinuance: earnings basis charge and related charge affecting conventional basis.**

<sup>M1</sup>(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.

*Status: Point in time view as at 03/05/1994.*

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- (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
  - [<sup>F1</sup>(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 [<sup>F2</sup>otherwise than as part of a relevant arrangement or compromise], 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.

[<sup>F3</sup>(4A) In subsection (4)(b) above “relevant arrangement or compromise” has the same meaning as in section 74.]

- (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

- F1** 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).
- F2** Words in s. 103(4)(b) inserted (with effect in accordance with s. 144(7) of the amending Act) by Finance Act 1994 (c. 9), s. 144(3)(b)
- F3** S. 103(4A) inserted (3.5.1994) by Finance Act 1994 (c. 9), s. 144(5)

#### Marginal Citations

- M1** Source—1970 s.143; 1983 s.27(b)

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#### **104 Conventional basis: general charge on receipts after discontinuance or change of basis.**

- (1)<sup>M2</sup>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)<sup>M3</sup>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)<sup>M4</sup>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.

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#### **Marginal Citations**

- M2** Source—1970 s.144(1)  
**M3** Source—1970 s.144(2)  
**M4** Source—1970 s.144(3), (4)

### **105 Allowable deductions.**

<sup>M5</sup>(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**

- M5** Source—1970 s.145

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## **106 Application of charges where rights to payments transferred.**

- <sup>M6</sup>(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**

**M6** Source—1970 s.147

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