



Income and Corporation Taxes Act 1988

1988 CHAPTER 1

PART IV

PROVISIONS RELATING TO THE SCHEDULE D CHARGE

CHAPTER VII

PARTNERSHIPS AND SUCCESSIONS

General

[^{F1}111 Treatment of partnerships.

- (1) Where a trade or profession is carried on by persons in partnership, the partnership shall not, unless the contrary intention appears, be treated for the purposes of the Tax Acts as an entity which is separate and distinct from those persons.
- (2) So long as a trade or profession is carried on by persons in partnership, and any of those persons is chargeable to income tax, the [^{F2}profits] or losses arising from the trade or profession (“the actual trade or profession”) shall be computed for the purposes of income tax in like manner as if—
 - (a) the partnership were an individual; and
 - (b) that individual were an individual resident in the United Kingdom.
- (3) A person’s share in the [^{F2}profits] or losses arising from the actual trade or profession which for any period are computed in accordance with subsection (2) above shall be determined according to the interests of the partners during that period.
- (4) Where a person’s share in any [^{F2}profits] or losses is determined in accordance with subsection (3) above, sections 60 to 63A shall apply as if—
 - (a) that share of the [^{F2}profits] or losses derived from a trade or profession carried on by him alone;

Status: Point in time view as at 15/02/1999.

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- (b) that trade or profession (“the deemed trade or profession”) had been set up and commenced by him at the time when he became a partner or, where the actual trade or profession was previously carried on by him alone, the time when the actual trade or profession was set up and commenced;
 - (c) as regards each year of assessment, any accounting date or accounting change of the actual trade or profession were also an accounting date or accounting change of the deemed trade or profession;
 - (d) subsection (2) of section 62 applied in relation to any accounting change of the deemed trade or profession if, and only if, on the assumption that the partnership were an individual, that subsection would apply in relation to the corresponding accounting change of the actual trade or profession; and
 - (e) the deemed trade or profession were permanently discontinued by him at the time when he ceases to be a partner or, where the actual trade or profession is subsequently carried on by him alone, the time when the actual trade or profession is permanently discontinued.
- (5) Where section 62(2) does not apply in relation to any accounting change of the deemed trade or profession which is made or treated as made in the year of assessment next following or next but one following the commencement year, sections 60(3)(a) and 61(2)(a) shall apply as if the old date in that year were the accounting date.
- (6) For the purpose of determining whether, on the assumption that the partnership were an individual, section 62(2) would apply in relation to an accounting change of the actual trade or profession—
- (a) a notice may be given under subsection (3) of section 62A; and
 - (b) an appeal may be brought under subsection (6) of that section,
- by such one of the partners as may be nominated by them for the purposes of this subsection.
- (7) Where—
- (a) subsections (2) and (3) above apply in relation to the [^{F2}profits] or losses of a trade or profession carried on by persons in partnership; and
 - (b) other income or other relievable losses accrue to those persons by virtue of their being partners,
- those subsections shall apply as if references to the [^{F2}profits] or losses arising from the trade or profession included references to that other income or those other relievable losses.
- (8) Where a person’s share in any untaxed income from one or more sources, or in any relievable losses, is determined in accordance with subsection (3) as applied by subsection (7) above, sections 60 to 63A shall apply as if—
- (a) that share of that income or of those losses were [^{F2}profits] or losses of a trade or profession carried on by that person alone;
 - (b) that trade or profession (“the second deemed trade or profession”) had been set up and commenced by him at the time when he became a partner;
 - (c) paragraphs (c) and (d) of subsection (4) and subsection (5) above applied in relation to the second deemed trade or profession as they apply in relation to the other deemed trade or profession;
 - (d) the second deemed trade or profession were permanently discontinued by him at the time when he ceases to be a partner; and

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- (e) each source of the income were treated as continuing until the second deemed trade or profession is treated as permanently discontinued.
- (9) Where—
- (a) the basis period for any year of assessment is given by section 62(2)(b) in the case of a person's second deemed trade or profession, or such a trade or profession is treated as permanently discontinued in any year of assessment; and
- (b) the amount falling to be deducted under subsection (1) or (3) of section 63A exceeds that person's share, as determined in accordance with subsection (3) as applied by subsection (7) above, in any untaxed income,
- the amount of the excess shall be deducted in computing that person's income for that year.
- (10) Subsections (1) to (3) above apply in relation to persons in partnership by whom a business which is not a trade or profession is carried on as they apply in relation to persons in partnership by whom a trade or profession is carried on.
- (11) In subsections (2) and (3) above as applied by subsection (10) above, references to the [F²profits] or losses arising from the trade or profession shall have effect as references to any income or relievable losses arising from the business.
- (12) In this section—
- “accounting change” and “the old date” have the meanings given by section 62(1);
- “accounting date” has the meaning given by section 60(5);
- “the commencement year”, in relation to the deemed trade or profession or the second deemed trade or profession, means the year of assessment in which that trade or profession is deemed to have been set up and commenced;
- “income” means any income (whether or not chargeable under Schedule D);
- “untaxed income” means income which is not—
- (a) income from which income tax has been deducted;
- (b) income from or on which income tax is treated as having been deducted or paid; or
- (c) income chargeable under Schedule F.
- (13) In this section—
- (a) any reference to sections 60 to 63A includes a reference to those sections as applied in relation to losses by section 382(3) and (4) and section 385(1); and
- (b) any reference to a person becoming or ceasing to be a partner is a reference to his beginning or, as the case may be, ceasing to carry on the actual trade or profession in partnership with other persons.]

Textual Amendments

- F1** S. 111 substituted (with effect in accordance with s. 215(4)(5) of the 1994 amending Act) by [Finance Act 1994 \(c. 9\), s. 215\(1\)](#) (as amended (retrospectively) by [Finance Act 1995 c. 4, s. 117\(1\)\(a\)\(2\)\(4\)](#)) (with Sch. 20)
- F2** Words in [s. 111\(2\)\(3\)\(4\)\(7\)\(8\)\(a\)\(11\)](#) substituted (31.7.1998) by [Finance Act 1998 \(c. 36\), s. 46\(3\)\(a\)\(b\)](#), Sch. 7 para. 1

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Modifications etc. (not altering text)

- C1** S. 111 modified (1.5.1995) by Finance Act 1995 c. 4, s. 125(1)
- C2** S. 111 excluded (subsection (1) excepted) (with application in accordance with s. 44 of the excluding act) by Finance Act 1998 (c. 36), s. 46(1)(2), Sch. 6 para. 6(6)
- C3** S. 111 excluded (subsection (1) excepted) (with effect in accordance with s. 64 and Sch. 22 paras. 16-18 of the excluding Act) by Finance Act 2002 (c. 23), Sch. 22 para. 13(6)

112 Partnerships controlled abroad.

[^{F3M1}(1) So long as a trade, profession or business is carried on by persons in partnership and any of those persons is not resident in the United Kingdom, section 111 shall have effect for the purposes of income tax in relation to the partner who is not so resident as if—

- (a) the reference in subsection (2)(b) to an individual resident in the United Kingdom were a reference to an individual who is not so resident; and
- (b) in subsection (4)(a), after “carried on” there were inserted “in the United Kingdom”.

(1A) Where—

- (a) any persons are carrying on a trade, profession or business in partnership,
- (b) the trade, profession or business is carried on wholly or partly outside the United Kingdom,
- (c) the control and management of the trade, profession or business is situated outside the United Kingdom, and
- (d) any of the partners who is an individual resident in the United Kingdom 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,

section 111 shall have effect in accordance with subsection (1) above as if that partner were not resident in the United Kingdom and, in addition (as respects that partner as an individual who is in fact resident in the United Kingdom), his interest as a partner, so far as it entitles him to a share of any [^{F4}profits] arising from the carrying on of the trade, profession or business otherwise than within the United Kingdom, shall be treated for the purposes of Case V of Schedule D as if it were a possession outside the United Kingdom.

(1B) Where any persons are carrying on a trade or profession in partnership, the trade or profession is carried on wholly or partly outside the United Kingdom and an individual who is one of the partners changes his residence (within the meaning of section 110A), it shall be assumed for income tax purposes—

- (a) that that individual ceased to be a partner at the time of the change and became one again immediately afterwards; and
- (b) in relation to matters arising after the change, that the time when he became a partner is the time immediately after the change;

but nothing in this subsection shall, in relation to that individual, prevent any portion of a loss sustained before the change from being carried forward under section 385 and set against [^{F4}profits] arising or accruing after the change.]

(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

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which resides [^{F5}outside the United Kingdom or which carries on any trade, profession or business the control and management of which is situated 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 [^{F6}subsections (4) and (5) above] where the partners in a partnership include a company.

Textual Amendments

F3 S. 112(1)-(1B) substituted for s. 112(1)-(3) (with effect in accordance with s. 125(1) of the amending Act) by Finance Act 1995 (c. 4), s. 125(2)

F4 Words in s. 112(1A)(1B) substituted (31.7.1998) by Finance Act 1998 (c. 36), s. 46(3)(a)(b), Sch. 7 para. 1

F5 Words in s. 112(4)(a) substituted (with effect in accordance with s. 125(1) of the amending Act) by Finance Act 1995 (c. 4), s. 125(3)(a)

F6 Words in s. 112(6) substituted (with effect in accordance with s. 125(1) of the amending Act) by Finance Act 1995 (c. 4), s. 125(3)(b)

Modifications etc. (not altering text)

C4 S. 112(4)-(6) modified (with retrospective effect) by Finance Act 2008 (c. 9), s. 58(5)(6)(b)

Marginal Citations

M1 1970 s.153; 1987 (No.2) s.62

113 Effect, for income tax, of change in ownership of trade, profession or vocation.

^{M2}(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 ^{F7}. . . , the amount of the [^{F8}profits] 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.

[^{F9}(2) Where—

- (a) there is such a change as is mentioned in subsection (1) above, and
- (b) a person engaged in carrying on the trade, profession or vocation immediately before the change continues to be so engaged immediately after it,

subsection (1) above shall not apply to treat the trade, profession or vocation as discontinued or a new one as set up and commenced.]

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- (3) ^{F10}
- (4) ^{F10}
- (5) ^{F10}
- (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 ^{F10}
- (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.

Textual Amendments

- F7** Words in s. 113(1) repealed (with effect in accordance with s. 215(4)(5) of the repealing Act) by Finance Act 1994 (c. 9), **Sch. 26 Pt. 5(24)**, Note 4(a) (as s. 215(5) of that Act is modified (1.5.1995) by 1995 c. 4, s. 125(1)) (with Sch. 20)
- F8** Words in s. 113(1) substituted (31.7.1998) by Finance Act 1998 (c. 6), **s. 46(3)(a)(b)**, Sch. 7 para. 1
- F9** S. 113(2) substituted (with effect in accordance with s. 215(4)(5) of the amending Act) by Finance Act 1994 (c. 9), **s. 216(1)** (with Sch. 20) (as s. 215(5) of that Act is modified (1.5.1995) by 1995 c. 4, s. 125(1)) (with Sch. 20)
- F10** S. 113(3)-(5) and words in s. 113(6) repealed (with effect in accordance with ss. 215(4)(5) of the repealing Act) by Finance Act 1994 (c. 9), s. 216(2), **Sch. 26 Pt. 5(24)**, Note 4(a) (as s. 215(5) of that Act is modified (1.5.1995) by 1995 c. 4, s. 125(1)) (with Sch. 20)

Modifications etc. (not altering text)

- C5** See 1990(C) s.134(4)—*treatment of succession for purposes of capital allowances for dredging.*

Marginal Citations

- M2** Source—1970 s.154; 1971 s.17(1)

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