



# Income Tax (Trading and Other Income) Act 2005

## 2005 CHAPTER 5

### PART 10

#### GENERAL PROVISIONS

#### CHAPTER 2

#### GENERAL CALCULATION RULES ETC.

#### *Unpaid remuneration*

#### **865 Unpaid remuneration: non-trades and non-property businesses**

- (1) This section applies if, in calculating profits or other income of a period of account for income tax purposes—
  - (a) an amount is charged in the accounts for the period in respect of employees' remuneration, and
  - (b) a deduction for the remuneration would otherwise be allowable for the period.
- (2) For this purpose “profits or other income” does not include the profits of—
  - (a) a trade, profession or vocation, or
  - (b) a property business,but see subsection (6).
- (3) No deduction is allowed for the remuneration for the period of account unless it is paid before the end of the period of 9 months immediately following the end of the period of account.
- (4) If the remuneration is paid after the end of that 9 month period, a deduction for it is allowed for the period of account in which it is paid.

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*Status: Point in time view as at 06/04/2005.*

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- (5) Section 37 (supplementary provision) applies for the purposes of this section as it applies for the purposes of section 36 (unpaid remuneration: trades, professions and vocations).
- (6) Provision corresponding to that made by this section is made by—
- (a) sections 36 and 37 (in relation to trades, professions and vocations), and
  - (b) section 272 (in relation to property businesses).

### *Employee benefit contributions*

## **866 Employee benefit contributions: non-trades and non-property businesses**

- (1) This section applies if, in calculating a person's profits or other income of a period for income tax purposes—
- (a) the profits or other income of the period are required to be calculated for those purposes, and
  - (b) a deduction would otherwise be allowable for the period for any employee benefit contributions made or to be made by the person (“the employer”) (but see subsection (5)).
- (2) For this purpose “profits or other income” does not include the profits of—
- (a) a trade, profession or vocation, or
  - (b) a property business,
- but see subsection (7).
- (3) No deduction is allowed for the contributions for the period except so far as—
- (a) qualifying benefits are provided, or qualifying expenses are paid, out of the contributions during the period or within 9 months from the end of it, or
  - (b) if the making of the contributions is itself the provision of qualifying benefits, the contributions are made during the period or within 9 months from the end of it.
- (4) An amount disallowed under subsection (3) is allowed as a deduction for a subsequent period so far as—
- (a) qualifying benefits are provided out of the contributions before the end of the subsequent period, or
  - (b) if the making of the contributions is itself the provision of qualifying benefits, the contributions are made before the end of the subsequent period.
- (5) This section does not apply to any deduction that is allowable for—
- (a) anything given as consideration for goods or services provided in the course of a trade or profession,
  - (b) contributions under a registered pension scheme or under a superannuation fund to which section 615(3) of ICTA applies,
  - (c) contributions under a qualifying overseas pension scheme in respect of an individual who is a relevant migrant member of the pension scheme in relation to the contributions, or
  - (d) contributions under an accident benefit scheme.

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

- (6) Sections 39 to 44 (supplementary provisions) apply for the purposes of this section as they apply for the purposes of section 38 (employee benefit contributions: trades, professions and vocations).
- (7) Provision corresponding to that made by this section is made by—
- (a) sections 38 to 44 (in relation to trades, professions and vocations), and
  - (b) section 272 (in relation to property businesses).

### *Business entertainment and gifts*

#### **867 Business entertainment and gifts: non-trades and non-property businesses**

- (1) This section applies for the purpose of calculating profits or other income charged to income tax which arise from the carrying on of a business.
- (2) For this purpose “business” does not include—
- (a) a trade, profession or vocation, or
  - (b) a property business,
- but see subsection (7).
- (3) The general rule is that no deduction is allowed in calculating the profits or other income for expenses incurred in providing entertainment or gifts in connection with the business.
- (4) A deduction for expenses which are incurred—
- (a) in paying sums to or on behalf of an employee of the person carrying on the business, or
  - (b) in putting sums at the disposal of an employee of that person,
- is prohibited by the general rule if (and only if) the sums are paid, or put at the employee's disposal, exclusively for meeting expenses incurred or to be incurred by the employee in providing the entertainment or gift.
- (5) The general rule is subject to—
- section 46 (business entertainment: exceptions), and
  - section 47 (business gifts: exceptions),
- which apply in relation to a business as they apply in relation to a trade (but as if the reference to a basis period were to a tax year).
- (6) For the purposes of this section and those two sections as so applied—
- (a) “employee”, in relation to a company, includes a director of the company and a person engaged in the management of the company,
  - (b) “entertainment” includes hospitality of any kind, and
  - (c) the expenses incurred in providing entertainment or a gift include expenses incurred in providing anything incidental to the provision of entertainment or a gift.
- (7) Provision corresponding to that made by this section is made by—

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- (a) sections 45 to 47 (in relation to trades, professions and vocations), and
- (b) section 272 (in relation to property businesses).

*Social security contributions*

**868 Social security contributions: non-trades etc.**

- (1) This section applies for the purpose of calculating profits or other income charged to income tax.
- (2) For this purpose “profits or other income” does not include—
  - (a) the profits of a trade, profession, or vocation,
  - (b) the profits of a property business, or
  - (c) employment income,
 but see subsection (6).
- (3) No deduction is allowed for any contribution paid by any person under—
  - (a) Part 1 of the Social Security Contributions and Benefits Act 1992 (c. 4), or
  - (b) Part 1 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7).
- (4) But this prohibition does not apply to an employer's contribution.
- (5) For this purpose “an employer's contribution” means—
  - (a) a secondary Class 1 contribution,
  - (b) a Class 1A contribution, or
  - (c) a Class 1B contribution,
 within the meaning of Part 1 of the Social Security Contributions and Benefits Act 1992 (c. 4) or of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7).
- (6) Provision corresponding to that made by this section is made by—
  - (a) section 53 (in relation to trades, professions and vocations),
  - (b) section 272 (in relation to property businesses), and
  - (c) section 360A of ITEPA 2003 (in relation to employment income).

*Penalties, interest and VAT surcharges*

**869 Penalties, interest and VAT surcharges: non-trades etc.**

- (1) This section applies for the purpose of calculating profits or other income charged to income tax.
- (2) For this purpose “profits or other income” does not include the profits of—
  - (a) a trade, profession, or vocation, or
  - (b) a property business,
 but see subsection (6).
- (3) No deduction is allowed for any penalty or interest mentioned in the first column of the following table.

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(4) This is the table—

<i>Penalty or interest</i>	<i>Description of tax, levy or duty</i>
Interest under any provision of Part 9 of TMA 1970	Income tax, capital gains tax and corporation tax
Interest required to be paid by regulations made under section 71 of FA 2004 (construction industry)	
Penalty under any of sections 60 to 70 of VATA 1994	Value added tax
Interest under section 74 of VATA 1994	
Penalty under any of sections 8 to 11 of FA 1994	Excise duties
Penalty under any of paragraphs 12 to 19 of Schedule 7 to FA 1994	Insurance premium tax
Interest under paragraph 21 of that Schedule	
Penalty under any provision of Part 5 of Schedule 5 to FA 1996	Landfill tax
Interest under paragraph 26 or 27 of that Schedule	
Penalty under any provision of Schedule 6 to FA 2000	Climate change levy
Interest under any of paragraphs 70, 81 to 85 and 109 of that Schedule	
Penalty under any provision of Part 2 of FA 2001	Aggregates levy
Interest under any of paragraphs 5 to 9 of Schedule 5 to, paragraph 6 of Schedule 8 to and paragraph 5 of Schedule 10 to FA 2001	
Penalty under section 25 or 26 of FA 2003	Customs, export and import duties
Penalty under any provision of Part 4 of FA 2003	Stamp duty land tax
Interest under any provision of that Part	

(5) No deduction is allowed for any surcharge under section 59 of VATA 1994.

(6) Provision corresponding to that made by this section is made by—

- (a) section 54 (in relation to trades, professions and vocations), and
- (b) section 272 (in relation to property businesses).

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### *Crime-related payments*

#### **870 Crime-related payments: non-trades and non-property businesses**

- (1) This section—
  - (a) applies for the purpose of calculating profits or other income charged to income tax, but
  - (b) does not apply for the purpose of calculating the profits of a trade, profession or vocation or of a property business (but see subsection (4)).
- (2) No deduction is allowed for expenses incurred—
  - (a) in making a payment if the making of the payment constitutes a criminal offence, or
  - (b) in making a payment outside the United Kingdom if the making of a corresponding payment in any part of the United Kingdom would constitute a criminal offence in that part.
- (3) No deduction is allowed for expenses incurred in making a payment induced by a demand which constitutes—
  - (a) the offence of blackmail under section 21 of the Theft Act 1968 (c. 60) (England and Wales),
  - (b) the offence of extortion (Scotland), or
  - (c) the offence of blackmail under section 20 of the Theft Act (Northern Ireland) 1969 (c. 16 (N.I.)) (Northern Ireland).
- (4) Provision corresponding to that made by this section is made by—
  - (a) section 55 (in relation to trades, professions and vocations), and
  - (b) section 272 (in relation to property businesses).

### *Apportionment of profits*

#### **871 Apportionment etc. of miscellaneous profits to tax year**

- (1) This section applies if—
  - (a) income is chargeable to income tax under or by virtue of any provision to which section 836B of ICTA applies, and
  - (b) any period for which the accounts are drawn up (a “period of account”) does not coincide with a tax year.
- (2) For this purpose the reference to any provision to which section 836B of ICTA applies is to be read as if subsection (4)(a) of that section were omitted (exclusion for relevant foreign income charged under this Act).
- (3) Any of the following steps may be taken if they are necessary in order to arrive at the profits or losses of the tax year—
  - (a) apportioning the profits or losses of a period of account to the parts of that period falling in different tax years, and
  - (b) adding the profits or losses of a period of account (or part of a period) to profits or losses of other periods of account (or parts).
- (4) The steps must be taken by reference to the number of days in the periods concerned.

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- (5) But the person to whom the profits or losses arise may use a different way of measuring the length of the periods concerned if—
- (a) it is reasonable to do so, and
  - (b) the way of measuring the length of periods is used consistently for the purpose of charging to income tax the income in question.

#### *Calculation of losses*

### **872 Losses calculated on same basis as miscellaneous income**

- (1) The same rules apply for income tax purposes in calculating miscellaneous losses as apply in calculating corresponding miscellaneous income.
- (2) This is subject to any express provision to the contrary.
- (3) In this section—
- (a) “miscellaneous income” means profits or other income charged to income tax under or by virtue of a provision to which section 836B of ICTA applies, and
  - (b) “miscellaneous losses” means losses arising from a transaction which is of such a nature that, if profits or other income had arisen from it, the income would have been charged to income tax under or by virtue of such a provision.
- (4) Provision corresponding to that made by this section is made by—
- (a) section 26 (in relation to trades, professions and vocations), and
  - (b) section 272 (in relation to property businesses).

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