



Income Tax (Trading and Other Income) Act 2005

2005 CHAPTER 5

PART 2

TRADING INCOME

CHAPTER 11

TRADE PROFITS: OTHER SPECIFIC TRADES

F¹ Cash basis accounting

Textual Amendments

- F1** S. 148K and cross-heading inserted (with effect in accordance with Sch. 4 paras. 56, 57 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 4 para. 28](#)

148K Application of Chapter to the cash basis

The following sections do not apply in calculating the profits of a trade, profession or vocation on the cash basis—

- sections 149 to 154A (dealers in securities etc),
- section 157 (relief in respect of mineral royalties),
- section 158 (lease premiums etc: reduction of receipts),
- section 159 (ministers of religion),
- section 161 (mineral exploration and access),
- section 162 (payments by persons liable to pool betting duty),
- sections 163 and 164 (intermediaries treated as making employment payments),
- section 164A (managed service companies),

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sections 165 to 168 (waste disposal),
sections 169 to 172ZE (cemeteries and crematoria).]

Dealers in securities etc.

149 Taxation of amounts taken to reserves

- (1) This section applies for the purpose of calculating the profits of a person's trade if a profit on the sale of securities would be brought into account in calculating the profits of the trade.
- (2) Profits and losses from the securities that in accordance with generally accepted accounting practice are—
 - (a) calculated by reference to the fair value of the securities, and
 - (b) recognised in the person's statement of recognised gains and losses or statement of changes in equity,
 are brought into account in calculating the profits of the trade.
- (3) But subsection (2) does not apply—
 - (a) to an amount so far as deriving from or otherwise relating to an amount brought into account under that subsection in an earlier period of account, or
 - (b) to an amount recognised for accounting purposes by way of correction of a fundamental error.
- (4) In this section “securities” includes—
 - (a) shares,
 - (b) rights of unit holders in unit trust schemes to which TCGA 1992 applies as a result of section 99 of TCGA 1992,
 - [^{F2}(ba) rights of participants in certain offshore funds to which TCGA 1992 applies as a result of section 103A of TCGA 1992,] and
 - (c) in the case of a company with no share capital, interests in the company possessed by members of the company,
 but does not include a loan relationship (within the meaning of Chapter 2 of Part 4 of FA 1996).

Textual Amendments

- F2** S. 149(4)(ba) inserted (1.12.2009 for specified purposes, 1.4.2010 for specified purposes) (with effect in accordance with Sch. 22 para. 12 to the amending Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 22 para. 11\(3\)\(a\)](#); [S.I. 2010/670](#), art. 2

150 Conversion etc. of securities held as circulating capital

- (1) This section applies for the purpose of calculating the profits of a trade if—
 - (a) a transaction falling within subsection (2) occurs in relation to securities (“the original holding”), and
 - (b) a profit on the sale of the securities would be brought into account in calculating the profits of the trade.
- (2) A transaction falls within this subsection if—

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- (a) it results in a new holding being treated as the same as the original holding as a result of sections 126 to 136 of TCGA 1992 (CGT roll-over relief in cases of conversion etc.), or
 - (b) it is treated, as a result of section 134 of TCGA 1992 (compensation stock), as an exchange for a new holding which does not involve a disposal of the original holding,
- and it does not fall within section 151(1) or 152(1) below (exchanges of gilts for gilt strips and consolidation of gilt strips).
- (3) This section does not apply to securities in respect of which unrealised profits or losses, calculated by reference to the fair value of the securities at the end of the period of account, are taken into account in the period of account in which the transaction occurs.
 - (4) The transaction is treated as not involving a disposal of the original holding and the new holding is treated as the same asset as the original holding.
 - (5) But if, under the transaction, the person carrying on the trade—
 - (a) receives consideration in addition to the new holding, or
 - (b) becomes entitled to receive such consideration,
 subsection (4) applies as if the references to the original holding were to the proportion of the original holding given by the following fraction.
 - (6) The fraction is—

$$\frac{\text{NH}}{\text{NH} + \text{C}}$$

where—

NH is the market value of the new holding at the time of the transaction, and

C is the market value of the consideration at the time of the transaction or (if the consideration is cash) the amount of the consideration.

- (7) In determining whether subsection (2)(a) applies as a result of section 135 or 136 of TCGA 1992, the reference to capital gains tax in section 137(1) of TCGA 1992 is to be read as a reference to income tax.
- (8) In this section “securities” includes—
 - (a) shares,
 - (b) loan stocks or similar securities (whether secured or unsecured) of a government, a local or other public authority (in the United Kingdom or elsewhere) or a company,
 - (c) rights of unit holders in unit trust schemes to which TCGA 1992 applies as a result of section 99 of TCGA 1992,
 - [^{F3}(ca) rights of participants in certain offshore funds to which TCGA 1992 applies as a result of section 103A of TCGA 1992,]
 - (d) in the case of a company with no share capital, interests in the company possessed by members of the company,
 - (e) quoted options to subscribe for shares which are treated as shares as a result of section 147 of TCGA 1992, and

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- (f) earn-out rights which are assumed to be securities as a result of section 138A(3) of TCGA 1992.

Textual Amendments

- F3** S. 150(8)(ca) inserted ((1.12.2009 for specified purposes, 1.4.2010 for specified purposes) (with effect in accordance with Sch. 22 para. 12 of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 22 para. 11\(3\)\(b\)](#); S.I. 2010/670, art. 2

151 Exchanges of gilts for gilt strips

- (1) This section applies for the purpose of calculating the profits of a trade if—
- (a) the person carrying it on (“the trader”) exchanges a gilt-edged security for strips of the security, and
 - (b) a profit on the sale of the security would be brought into account in calculating the profits of the trade.
- (2) The security is treated as having been redeemed at the time of the exchange by the payment to the trader of its market value.
- (3) The trader is treated as having acquired each strip for the proportion of the market value of the security given by the following fraction.
- (4) The fraction is—

$$\frac{SV}{TV}$$

where—

SV is the market value of one strip, and

TV is the total of the market values of all the strips received in exchange for the security.

- (5) In this section references to market value are to market value at the time of the exchange.
- (6) This section applies to professions and vocations as it applies to trades.
- (7) See also—
- section 153 (meaning of “gilt-edged security” and “strip”), and
 - section 154 (regulations for determining market value of securities or strips).

152 Consolidation of gilt strips

- (1) This section applies for the purpose of calculating the profits of a trade if—
- (a) strips of a gilt-edged security are consolidated into a single security by being exchanged by the person carrying on the trade (“the trader”) for the single security, and

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- (b) a profit on the sale of any of the strips would be brought into account in calculating the profits of the trade.
- (2) Each strip is treated as having been redeemed at the time of the exchange by payment to the trader of its market value.
- (3) The trader is treated as having acquired the gilt-edged security for an amount equal to the total of the market values of the strips given in exchange.
- (4) In this section references to market value are to market value at the time of the exchange.
- (5) This section applies to professions and vocations as it applies to trades.
- (6) See also—
 - section 153 (meaning of “gilt-edged security” and “strip”), and
 - section 154 (regulations for determining market value of securities or strips).

153 Meaning of “gilt-edged security” and “strip”

- (1) In this Act “gilt-edged security” means a security which—
 - (a) is a gilt-edged security for the purposes of TCGA 1992 (see Schedule 9 to that Act), or
 - (b) will be such a security on the making of an order under paragraph 1 of Schedule 9 to TCGA 1992, if the making of the order is anticipated in the prospectus under which the security is issued.
- (2) For the purposes of sections 151 and 152 “strip”, in relation to a gilt-edged security, means a security issued under the National Loans Act 1968 (c. 13) which meets conditions A to C.
- (3) Condition A is that the security is issued for the purpose of representing the right to or of securing—
 - (a) a payment corresponding to a payment of interest or principal remaining to be made under the gilt-edged security, or
 - (b) two or more payments each corresponding to a payment to be so made.
- (4) Condition B is that the security is issued in conjunction with the issue of one or more other securities which, together with that security—
 - (a) represent the right to, or
 - (b) secure,payments corresponding to every payment remaining to be made under the gilt-edged security.
- (5) Condition C is that the security is not itself a security which—
 - (a) represents the right to, or
 - (b) secures,payments corresponding to a part of every payment remaining to be made under the gilt-edged security.

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154 Regulations for determining market value of securities or strips

- (1) The Treasury may by regulations make provision for the purposes of sections 151 and 152 as to the manner of determining the market value at any time of a gilt-edged security (including any strip).
- (2) The regulations may—
 - (a) make different provision for different cases, and
 - (b) contain such incidental, supplemental, consequential and transitional provision as the Treasury consider appropriate.
- (3) The power in this section does not affect the power under section 202(5) of FA 1996 (gilt stripping).

[^{F4}154A Certain non-UK residents with interest on 3½% War Loan 1952 Or After

- (1) This section applies if—
 - (a) in any tax year a person who is not ^{F5}... resident in the United Kingdom carries on a trade there—
 - (i) consisting of banking or insurance, or
 - (ii) consisting wholly or partly of dealing in securities, and
 - (b) in calculating the profits of the trade for the tax year any amount is disregarded as a result of section 714 (exemption of profits from FOTRA securities) because of a condition subject to which any 3½% War Loan 1952 Or After was issued.

- (2) Interest on money borrowed for the purposes of the trade is to be deducted in calculating the profits of the trade of that tax year only so far as it exceeds the ineligible amount.

- (3) The ineligible amount is found as follows—

Step 1 Add together all sums borrowed for the purposes of the trade and still owing in the basis period for the tax year.

Step 2 If the person carrying on the trade is a company, deduct any sums carrying interest which is not deducted in calculating the profits of the trade (otherwise than because of subsection (2)).

Step 3 If the amount found at Step 2 exceeds the total cost of the 3½% War Loan 1952 Or After held for the purposes of the trade in the basis period, deduct the excess from that amount.

Step 4 Calculate the average rate of interest in the basis period on money borrowed for the purposes of the trade.

Step 5 Calculate the amount of interest payable on the amount found at Step 3 at the rate found at Step 4 for the basis period.

The result is the ineligible amount.

- (4) If the person's holding of 3½% War Loan 1952 Or After has fluctuated during the basis period, the total cost for the purposes of Step 3 is taken to be—

$$C \times AHTH$$

where—

C is the cost of acquisition of the initial holding (if any) and any holdings acquired during the basis period,

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AH is the average holding in that period, and
TH is the total of the initial holding (if any) and any holdings acquired during the basis period.

(5) In subsection (4) “initial holding” means the holding held by the person at the beginning of the basis period.]

Textual Amendments

- F4** S. 154A inserted (1.4.2010) (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), s. 381(1), [Sch. 7 para. 43](#) (with [Sch. 9 paras. 1-9, 22](#))
- F5** Word in s. 154A(1)(a) omitted (with effect in accordance with Sch. 46 para. 72 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 44](#)

Persons authorised for purposes of FISMA 2000

155 Levies and repayments under FISMA 2000

(1) This section applies for the purpose of calculating the profits of a trade ^{F6}...

[^{F7}(2) A deduction is allowed for any sum—

- (a) spent by the person carrying on the trade in paying a levy, or
- (b) paid by that person as a result of an award of costs under costs rules, so far as it is not otherwise allowable.]

(3) A payment made to the person [^{F8}carrying on the trade] as a result of a repayment provision is brought into account as a receipt.

[^{F9}(3A) For the purposes of this section “costs rules” means—

- (a) rules made under section 230 of FISMA 2000, or
- (b) provision relating to costs contained in standard terms fixed under paragraph 18 of Schedule 17 to FISMA 2000.]

(4) For the purposes of this section “levy” means—

- (a) a payment required under rules made under section 136(2) of FISMA 2000,
- (b) a levy imposed under the Financial Services Compensation Scheme,
- (c) a payment required under rules made under section 234 of FISMA 2000,
- (d) a payment required under the rules referred to in paragraph 14(1) of Schedule 17 to FISMA 2000 (“scheme rules”) in accordance with paragraph 15(1) of that Schedule, or
- (e) a payment required in accordance with the standard terms fixed under paragraph 18 of that Schedule [^{F10}(other than a sum paid as a result of an award of costs under costs rules)].

(5) For the purposes of this section “repayment provision” means—

- (a) any provision made by virtue of section 136(7) or 214(1)(e) of FISMA 2000, or
- (b) any provision made by scheme rules for fees to be refunded in specified circumstances.

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Textual Amendments

- F6** Words in s. 155(1) repealed (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 601\(2\), Sch. 3 Pt. 1](#) (with [Sch. 2 Pts. 1, 2](#))
- F7** S. 155(2) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 601\(3\)](#) (with [Sch. 2 Pts. 1, 2](#))
- F8** Words in s. 155(3) inserted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 601\(4\)](#) (with [Sch. 2 Pts. 1, 2](#))
- F9** S. 155(3A) inserted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 601\(5\)](#) (with [Sch. 2 Pts. 1, 2](#))
- F10** Words in s. 155(4)(e) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 601\(6\)](#) (with [Sch. 2 Pts. 1, 2](#))

Dealers in land etc.

156 Purchase or sale of woodlands

- (1) This section applies for the purpose of calculating the profits of a trade of dealing in land.
- (2) If the person carrying on the trade buys woodlands in the United Kingdom in the course of the trade, the part of the cost of the woodlands which is attributable to trees or saleable underwood growing on the land is ignored.
- (3) If—
- the woodlands are subsequently sold in the course of the trade, and
 - any of the trees or underwood are still growing on the land at the time of the sale,
- the part of the price that is equal to the amount ignored under subsection (2) for the trees or underwood is ignored.

^{F11}157 Relief in respect of mineral royalties

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Textual Amendments

- F11** S. 157 repealed (with effect in accordance with Sch. 39 para. 43(3) of the amending Act) by [Finance Act 2012 \(c. 14\), Sch. 39 para. 43\(1\)\(a\)](#)

158 Lease premiums etc: reduction of receipts

- (1) This section applies for the purpose of calculating the profits of a trade of dealing in land if a receipt of the trade falls within one of the following categories—
- lease premiums within section 277,
 - sums within section 279 (sums payable instead of rent),
 - sums within section 280 (sums payable for surrender of a lease),
 - sums within section 281 (sums payable for variation or waiver of [^{F12}terms] of lease),

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- (e) consideration for the assignment of a lease within section 282 (lease granted at an undervalue), and
 - (f) amounts received on the sale of an estate or interest in land within section 284 (sales with right to re-conveyance) or section 285 (sale and leaseback transactions).
- (2) The receipt is reduced by the relevant amount.
- (3) The relevant amount is the amount which is treated as a receipt of a property business as a result of any of sections 277 to 285.
- (4) But if—
- (a) the person carrying on the trade makes a claim under section 301 or 302, and
 - (b) as a result of the claim a repayment of tax is made to that person,
- the relevant amount is the amount which, for the purpose of determining the amount of the repayment of tax, is treated as brought into account as a receipt in calculating the profits of the property business.
- (5) If subsection (4) applies, any adjustment of liability to tax may be made—
- (a) by assessment or otherwise, and
 - (b) at any time at which it could be made if it related only to tax for the tax year in which the claim under section 301 or 302 is made.

Textual Amendments

F12 Word in s. 158(1)(d) substituted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 602** (with Sch. 2 Pts. 1, 2)

Ministers of religion

159 Ministers of religion

- (1) This section applies for the purpose of calculating the profits of the profession or vocation of a minister of a religious denomination.
- (2) If the minister pays rent in respect of a dwelling-house and any part of the dwelling-house is used mainly and substantially for the purposes of the minister's duty, a deduction is allowed for—
- (a) one-quarter of the rent, or
 - (b) if less, the part of the rent that, on a just and reasonable apportionment, is attributable to that part of the dwelling-house.
- (3) If—
- (a) an interest in premises belongs to a charity or an ecclesiastical corporation,
 - (b) because of that interest, the minister has a residence in the premises from which to perform the minister's duty, and
 - (c) the minister incurs expenses on the maintenance, repair, insurance or management of the premises,
- a deduction is allowed under this subsection for part of those expenses.
- (4) The amount of the deduction under subsection (3) is—

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$$\frac{A}{4} - B$$

where—

A is the amount of the expenses, and

B is the amount of the expenses for which a deduction is otherwise allowable.

Barristers and advocates

F13 160 Alternative basis of calculation in early years of practice

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Textual Amendments

- F13** S. 160 omitted (with effect in accordance with Sch. 4 paras. 56, 57 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 4 para. 51](#)

Mineral exploration and access

161 Mineral exploration and access

- (1) This section applies for the purpose of calculating the profits of a trade if—
- (a) the person carrying on the trade incurs expenditure on mineral exploration and access in an area or group of sands, and
 - (b) the presence of mineral deposits in commercial quantities has already been established in that area or group of sands.
- (2) A deduction is allowed for the expenditure only if a deduction would have been allowed for it if the presence of mineral deposits in commercial quantities had not already been established in that area or group of sands.
- (3) In this section “mineral exploration and access” has the same meaning as in Part 5 of CAA 2001 (see section 396(1) of that Act).

Persons liable to pool betting duty

F14 162 Payments by persons liable to pool betting duty

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Textual Amendments

- F14** S. 162 repealed (with effect in accordance with Sch. 39 para. 21(3) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 39 para. 21\(1\)\(a\)](#)

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Intermediaries treated as making employment payments

163 Deduction for deemed employment payment

- (1) This section applies for the purpose of calculating the profits of a trade, profession or vocation carried on by an intermediary who is treated as making a deemed employment payment in connection with the trade, profession or vocation.
- (2) A deduction is allowed for—
 - (a) the amount of the deemed employment payment, and
 - (b) the amount of any employer's national insurance contributions paid by the intermediary in respect of it.
- (3) The deduction is allowed for the period of account in which the deemed employment payment is treated as made.
- (4) No deduction in respect of—
 - (a) the deemed employment payment, or
 - (b) any employer's national insurance contributions paid by the intermediary in respect of it,may be made except in accordance with this section.
- (5) In this section “deemed employment payment” and “intermediary” have the same meaning as in Chapter 8 of Part 2 of ITEPA 2003.

164 Special rules for partnerships

- (1) This section applies for the purpose of calculating the profits of a trade, profession or vocation carried on by a firm that is treated as making a deemed employment payment in connection with the trade, profession or vocation.
- (2) The amount of the deduction allowed under section 163 is limited to the amount that reduces the profits of the firm for the tax year to nil.
- (3) The expenses of the firm in connection with the relevant engagements for any period of account are limited to the total of—
 - (a) 5% of the amount taken into account in step 1 of the calculation in section 54(1) of ITEPA 2003 (calculation of deemed employment payment), and
 - (b) the amount deductible in step 3 of that calculation.
- (4) In this section “deemed employment payment” and “the relevant engagements” have the same meaning as in Chapter 8 of Part 2 of ITEPA 2003.

[^{F15}Managed service companies

Textual Amendments

- F15** S. 164A and cross-heading inserted (retrospective to 6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), s. 25, [Sch. 3 para. 9](#)

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164A Deduction for deemed employment payments

- (1) This section applies for the purpose of calculating the profits of a trade, profession or vocation carried on by a managed service company (“the MSC”) which is treated as making a deemed employment payment in connection with the trade, profession or vocation.
- (2) A deduction is allowed for—
 - (a) the amount of the deemed employment payment, and
 - (b) the amount of any employer's national insurance contributions paid by the MSC in respect of it.
- (3) The deduction is allowed for the period of account in which the deemed employment payment is treated as made.
- (4) The amount of the deduction allowed under subsection (2) is limited to the amount that reduces the profits of the firm for the tax year to nil.
- (5) No deduction in respect of—
 - (a) the deemed employment payment, or
 - (b) any employer's national insurance contributions paid by the MSC in respect of it,
 may be made except in accordance with this section.
- (6) In this section “deemed employment payment”, “employer's national insurance contributions” and “managed service company” have the same meaning as in Chapter 9 of Part 2 of ITEPA 2003.]

Waste disposal

165 Deduction for site preparation expenditure

- (1) This section applies for the purpose of calculating the profits of a trade of a period of account in which waste materials are deposited on a waste disposal site if—
 - (a) the person carrying on the trade (“the trader”), or a predecessor, has incurred site preparation expenditure in relation to the site in the course of carrying on the trade, and
 - (b) at the time the trader first deposits waste materials on the site, the trader holds a waste disposal licence which is then in force.
- (2) A deduction is allowed for the amount of the site preparation expenditure allocated to the period of account under section 166.
- (3) For the purposes of this section “predecessor”, in relation to the trader, means a person who—
 - (a) has ceased to carry on the trade carried on by the trader or ceased to carry on a trade so far as relating to the site, and
 - (b) has transferred the whole of the site to the trader,
 and it does not matter for this purpose whether or not the estate or interest in the site transferred to the trader is the same as that held by that person.
- (4) For the purposes of this section and section 166, if site preparation expenditure has been incurred by a predecessor—

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- (a) the trade carried on by the trader is treated as the same as the trade carried on by the predecessor, and
 - (b) deductions are to be allowed to the trader (and not to the predecessor) as if everything done to or by the predecessor were done to or by the trader.
- (5) For—
- (a) the meaning of “site preparation expenditure”, “waste disposal licence” and “waste disposal site”, and
 - (b) a rule about pre-trading expenditure, see section 167.

166 Allocation of site preparation expenditure

- (1) The amount of site preparation expenditure allocated to a period of account for the purposes of section 165(2) is the amount given by the formula—

$$RE \times \frac{WD}{SV + WD}$$

where—

RE means residual expenditure (see subsection (2)),

WD means the volume of waste materials deposited on the waste disposal site during the period, and

SV means the volume of the waste disposal site not used up for the deposit of waste materials at the end of the period.

- (2) “Residual expenditure” means the total of all site preparation expenditure incurred by the trader in relation to the waste disposal site at any time before the end of the period, less—
- (a) any of that expenditure for which an allowance has been, or may be, made for income or corporation tax purposes under the enactments relating to capital allowances,
 - (b) any of that expenditure for which a deduction has been allowed in calculating for income or corporation tax purposes the profits of an earlier period of account, and
 - (c) if the trader started to carry on the trade before 6th April 1989, the excluded amount of any unrelieved old expenditure (see subsections (3) and (4)).
- (3) The excluded amount of unrelieved old expenditure is calculated by multiplying the unrelieved old expenditure (see subsection (4)) by the fraction—

$$\frac{WD}{SV + WD}$$

where—

WD means the volume of waste materials deposited on the site before 6th April 1989, and

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SV means the volume of the site not used up for the deposit of waste materials immediately before that date.

- (4) “Unrelieved old expenditure” means site preparation expenditure which—
- (a) was incurred by the trader in relation to the waste disposal site before 6th April 1989, and
 - (b) does not fall within subsection (2)(a) or (b).

167 Site preparation expenditure: supplementary

- (1) For the purposes of this section and sections 165 and 166—
- “site preparation expenditure”, in relation to a waste disposal site, means expenditure incurred on preparing the site for the deposit of waste materials,
- “waste disposal licence” means—
- (a) a disposal licence under Part 1 of the Control of Pollution Act 1974 (c. 40) or Part 2 of the Pollution Control and Local Government (Northern Ireland) Order 1978 (S.I. 1978/1049 (N.I. 19)),
 - (b) a waste management licence under Part 2 of the Environmental Protection Act 1990 (c. 43) or any corresponding provision for the time being in force in Northern Ireland,
 - (c) a permit under regulations under section 2 of the Pollution Prevention and Control Act 1999 (c. 24) or ^{F16}a permit or authorisation under any corresponding provision for the time being in force in Northern Ireland or Scotland] ,
 - (d) ^{F17}an authorisation under the Radioactive Substances Act 1960 (c. 34) or the Radioactive Substances Act 1993 (c. 12) for the disposal of radioactive waste, or]
 - (e) a nuclear site licence under the Nuclear Installations Act 1965 (c. 57), and
- “waste disposal site” means a site used, or to be used, for the disposal of waste materials by their deposit on the site.
- (2) For the purposes of sections 165 and 166, expenditure incurred for the purposes of a trade by a person about to carry on the trade is treated as if it were incurred—
- (a) on the date on which the person starts to carry on the trade, and
 - (b) in the course of carrying it on.

Textual Amendments

- F16** Words in s. 167(1) substituted (26.2.2015) by [The Regulatory Reform \(Scotland\) Act 2014 \(Consequential Modifications\) Order 2015 \(S.I. 2015/374\)](#), arts. 1(1), **7(2)**
- F17** Words in s. 167(1) repealed (E.W.) (6.4.2010) by [The Environmental Permitting \(England and Wales\) Regulations 2010 \(S.I. 2010/675\)](#), reg. 1(1)(b), Sch. 26 para. 18, **Sch. 28** (with reg. 1(2), Sch. 4)

168 Site restoration payments

- (1) This section applies for the purpose of calculating the profits of a trade if the person carrying on the trade makes a site restoration payment in the course of carrying it on.

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

Changes to legislation: There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Chapter 11. (See end of Document for details)

(2) ^{F18} Subject to subsection (3A),] A deduction is allowed for the unrelieved amount of the payment.

^{F19}(3) The deduction is allowed—

- (a) (if the payment is made, whether directly or indirectly, to a connected person) for the period of account in which that part of the restoration work to which the payment relates is completed, or
- (b) (in any other case) for the period of account in which the payment is made.]

^{F19}(3A) But no deduction is allowed if the payment arises from arrangements—

- (a) to which the person carrying on the trade is a party, and
- (b) the main purpose, or one of the main purposes, of which is to obtain a deduction under this section.]

(4) The unrelieved amount of a site restoration payment is the amount of the payment, less—

- (a) any amount of the payment that represents expenditure for which an allowance has been, or may be, made under the enactments relating to capital allowances, and
- (b) any amount of the payment that represents expenditure for which a deduction has been allowed in calculating the profits of the trade of an earlier period of account.

(5) A “site restoration payment” means a payment made in connection with the restoration of a site (or part of a site) in order to comply with—

- (a) a condition of a waste disposal licence (as defined in section 167(1)),
- (b) a condition imposed on the grant of planning permission to use the site for the collection, treatment, conversion and final depositing of waste materials or for the carrying out of any of those activities, or
- (c) a relevant planning obligation.

(6) For this purpose “a relevant planning obligation” means—

- (a) an obligation arising under an agreement made under section 106 of the Town and Country Planning Act 1990 (c. 8) (as originally enacted) or any corresponding provision for the time being in force in Northern Ireland,
- (b) an obligation arising under an agreement made under section 75 of the Town and Country Planning (Scotland) Act 1997 (c. 8),
- (c) a planning obligation entered into under section 106 of the Town and Country Planning Act 1990 (as substituted by section 12 of the Planning and Compensation Act 1991 (c. 34)) or any corresponding provision for the time being in force in Northern Ireland, or
- (d) a planning obligation entered into under section 299A of the Town and Country Planning Act 1990 or any corresponding provision for the time being in force in Northern Ireland.

^{F20}(7) Arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable).]

Textual Amendments

F18 Words in s. 168(2) inserted (with effect in accordance with s. 53(7)(8) of the amending Act) by Finance Act 2012 (c. 14), s. 53(1)

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

Changes to legislation: There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Chapter 11. (See end of Document for details)

- F19** S. 168(3)(3A) substituted for s. 168(3) (with effect in accordance with s. 53(7)(8) of the amending Act) by [Finance Act 2012 \(c. 14\), s. 53\(2\)](#)
- F20** S. 168(7) inserted (with effect in accordance with s. 53(7)(8) of the amending Act) by [Finance Act 2012 \(c. 14\), s. 53\(3\)](#)

Cemeteries and crematoria

169 [^{F21}*Cemeteries and crematoria: interests in land*]

- (1) This section and sections 170 to 172 apply for the purpose of calculating the profits of a period of account (“the relevant period”) of a trade which consists of or includes—
- (a) the carrying on of a cemetery, or
 - (b) the carrying on of a crematorium and, in connection with doing so, the maintenance of memorial garden plots,
- and the following provisions of this section apply for the interpretation of this section and those sections.
- (2) References to the sale of land in a cemetery include the sale of a right of interment in land in a cemetery.
- (3) References to the sale of land in a memorial garden include the appropriation of part of a memorial garden in return for a dedication fee or similar payment.
- (4) “Ancillary capital expenditure” means capital expenditure incurred for the purposes of the trade by the person carrying on the trade (“the trader”), or a predecessor, on—
- (a) any building or structure (other than a dwelling-house) which is in the cemetery or memorial garden and is likely to have little or no value when the cemetery or memorial garden is full,
 - (b) the purchase of an interest in, or the preparation of, any land taken up by such a building or structure, or
 - (c) the purchase of an interest in, or the preparation of, any other land in the cemetery or memorial garden which is not suitable or adaptable for use for interments or memorial garden plots and which is likely to have little or no value when the cemetery or memorial garden is full.
- (5) “Predecessor”, in relation to the trader, means a person who carried on the trade at any time before the trader started to do so.
- (6) “Preparation”, in relation to land, means levelling or draining the land or making it suitable in some other way for use as a cemetery or memorial garden.

Textual Amendments

- F21** S. 169 cross-heading substituted (1.3.2012) by [The Enactment of Extra-Statutory Concessions Order 2012 \(S.I. 2012/266\), arts. 1, 4\(2\)](#) (with art. 4(5))

170 Deduction for capital expenditure

- (1) This section applies if, in the relevant period, an interest in land in the cemetery or memorial garden is sold with a view to the land being used—
- (a) for the purpose of interments, or

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

Changes to legislation: There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Chapter 11. (See end of Document for details)

- (b) for memorial garden plots.
- (2) A deduction is allowed for—
- (a) capital expenditure incurred by the trader, or a predecessor, on the purchase of an interest in the land or on the preparation of the land, and
 - (b) ancillary capital expenditure allocated to the relevant period under section 171 (allocation of ancillary capital expenditure).
- (3) But no expenditure is to be brought into account—
- (a) under both paragraphs (a) and (b) of subsection (2),^{F22}...
 - (b) under both subsection (2)(a) above and [^{F23}section 147(2)(b) of CTA 2009] (relief for corporation tax purposes) or under both subsection (2)(b) above and [^{F23}section 147(2)(a) of CTA 2009],^{F24} or
 - (c) under both subsection (2)(b) above and section 172ZB(4), 172ZC(4) or 172ZD(3).]
- whether for the same or different periods of account.
- (4) Any purchase price paid on a sale in connection with a change in the persons carrying on the trade is ignored in calculating the amount of the deduction.
- (5) No deduction is allowed for any expenditure which is excluded by section 172 (exclusion of expenditure met by subsidies).

Textual Amendments

F22 Word in s. 170(3)(a) omitted (1.3.2012) by virtue of [The Enactment of Extra-Statutory Concessions Order 2012 \(S.I. 2012/266\)](#), arts. 1, [4\(3\)\(a\)](#) (with art. 4(5))

F23 Words in s. 170(3)(b) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), [Sch. 1 para. 603](#) (with [Sch. 2 Pts. 1, 2](#))

F24 S. 170(3)(c) and word inserted (1.3.2012) by [The Enactment of Extra-Statutory Concessions Order 2012 \(S.I. 2012/266\)](#), arts. 1, [4\(3\)\(b\)](#) (with art. 4(5))

171 Allocation of ancillary capital expenditure

- (1) The amount of ancillary capital expenditure allocated to the relevant period for the purposes of section 170(2)(b) is the amount given by the formula—

$$RE \times \frac{PSR}{PAR + PSR}$$

where—

RE means residual expenditure (see subsection (2)),

PSR means the number of grave-spaces or memorial garden plots in the cemetery or memorial garden sold in the relevant period, and

PAR means the number of grave-spaces or memorial garden plots in the cemetery or memorial garden which are or could be made available for sale at the end of the relevant period.

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

Changes to legislation: There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Chapter 11. (See end of Document for details)

- (2) “Residual expenditure” means the total of all ancillary capital expenditure incurred at any time before the end of the relevant period, less—
- (a) ancillary capital expenditure incurred on buildings or structures which were destroyed before the beginning of the first sale period,
 - (b) the excluded amount of any remaining old expenditure (see subsection (3)),
 - (c) if, after the beginning of the first sale period and before the end of the relevant period, an asset representing ancillary capital expenditure was sold or destroyed, the net sale proceeds or the compensation, and
 - (d) any amount deducted under section 170(2)(b) above, or under [F25 section 147(2)(b) of CTA 2009], for a period of account ending before the relevant period.
- (3) The excluded amount of remaining old expenditure is calculated by multiplying the remaining old expenditure by the fraction—

$$\frac{\text{PSB}}{\text{PAB} + \text{PSB}}$$

where—

PSB means the number of grave-spaces or memorial garden plots in the cemetery or memorial garden sold before the beginning of the basis period for the tax year 1954-55, and

PAB means the number of grave-spaces or memorial garden plots in the cemetery or memorial garden which were or could have been made available for sale immediately before the beginning of the basis period for that tax year.

- (4) In this section—
- “compensation”, in relation to the destruction of an asset, means—
- (a) insurance money or other compensation received by the trader, or a predecessor, in respect of the destruction, and
 - (b) money received for the remains of the asset by the trader or predecessor,
- “the first sale period” means—
- (a) the period of account in which an interest in land in the cemetery or memorial garden was first sold for the purposes of the trade with a view to the land being used for the purpose of interments or for memorial garden plots, or
 - (b) if later, the basis period for the tax year 1954-55, and
- “remaining old expenditure” means ancillary capital expenditure which—
- (a) was incurred before the beginning of the basis period for the tax year 1954-55, and
 - (b) does not fall within subsection (2)(a).

Textual Amendments

F25 Words in s. 171(2)(d) substituted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 604** (with **Sch. 2 Pts. 1, 2**)

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

Changes to legislation: There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Chapter 11. (See end of Document for details)

172 Exclusion of expenditure met by subsidies

- (1) Expenditure is excluded for the purposes of section 170 so far as it has been, or is to be, met (directly or indirectly) by—
 - (a) the Crown,
 - (b) a government or local or other public authority (whether in the United Kingdom or elsewhere), or
 - (c) any person other than the person incurring the expenditure.
- (2) This is subject to the following exceptions.
- (3) Expenditure is not excluded for the purposes of section 170 if it is met (directly or indirectly) by a grant—
 - (a) made under Northern Ireland legislation, and
 - (b) declared by the Treasury by an order under section 534 of CAA 2001 to correspond to a grant under Part 2 of the Industrial Development Act 1982 (c. 52).
- (4) Expenditure is not excluded for the purposes of section 170 if it is met (directly or indirectly) by—
 - (a) insurance money, or
 - (b) other compensation money,
 payable in respect of an asset which has been destroyed, demolished or put out of use.
- (5) Expenditure is not excluded for the purposes of section 170 if—
 - (a) it has been, or is to be, met (directly or indirectly) by a person other than the Crown or a government or local or other public authority, and
 - (b) no deduction is allowed for the expenditure in calculating for income or corporation tax purposes the profits of a trade carried on by that person.

^{F26}Crematoria: niches, memorials and inscriptions

Textual Amendments

- F26** Ss. 172ZA-172ZE and cross-heading inserted (1.3.2012) by [The Enactment of Extra-Statutory Concessions Order 2012 \(S.I. 2012/266\)](#), arts. 1, **4(4)** (with art. 4(5))

172ZA Niches, memorials and inscriptions: introduction

- (1) Sections 172ZB to 172ZE apply in calculating the profits of a trade which consists of or includes—
 - (a) the carrying on of a crematorium, and
 - (b) in connection with carrying on the crematorium—
 - (i) the sale of niches or memorials, or
 - (ii) the making of inscriptions.
- (2) In those sections—
 - (a) “the trade” is the trade mentioned in subsection (1),
 - (b) “the trader” is the person carrying on the trade, and

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

Changes to legislation: There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Chapter 11. (See end of Document for details)

- (c) a “predecessor” is a person who carried on the trade at any time before the trader started doing so.

172ZB Allowable deductions: niches

- (1) This section sets out the deductions that are allowed in respect of a niche if proceeds from the sale of the niche are brought into account as a receipt in calculating the profits of the trade.
- (2) A deduction is allowed for two-thirds of the costs incurred (by the trader or a predecessor) in the formation of the niche.
- (3) Formation of the lining and of any tablet associated with the niche is taken to be part of the formation of the niche.
- (4) If the niche is in a building that is used wholly or mainly for the purpose of providing niches, a further deduction is allowed for two-thirds of the associated building costs.
- (5) In relation to a niche in a building—
 - (a) “the associated building costs” is the relevant proportion of the costs of the building, and
 - (b) “the relevant proportion” is the proportion that the area occupied by the niche bears to the area of the building as a whole or, if the proportion cannot reasonably be calculated on that basis, such proportion as may be calculated on a just and reasonable basis.

172ZC Allowable deductions: memorials

- (1) This section sets out the deductions that are allowed in respect of a memorial if proceeds from the sale of the memorial are brought into account as a receipt in calculating the profits of the trade.
- (2) A deduction is allowed for the costs incurred (by the trader or a predecessor) in producing the memorial.
- (3) If the memorial includes an inscription, making that inscription is taken to be part of producing the memorial.
- (4) If the memorial is attached to a building that is used wholly or mainly for the purpose of accommodating memorials or the memorial comprises an entire building, a further deduction is allowed for two-thirds of the associated building costs.
- (5) In relation to a memorial attached to or comprising a building, “the associated building costs” means—
 - (a) the amount found by dividing the costs of the building by the total number of memorials that the building is capable of accommodating, or
 - (b) if the memorial comprises an entire building, the costs of that building.

172ZD Allowable deductions: inscriptions

- (1) This section sets out the deductions that are allowed in respect of an inscription if proceeds from making the inscription are brought into account in calculating the profits of the trade.

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

Changes to legislation: There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Chapter 11. (See end of Document for details)

- (2) A deduction is allowed for the costs incurred (by the trader or a predecessor) in making the inscription.
- (3) If the inscription is made on an existing framework designed to hold more than one inscription, a further deduction is allowed for two-thirds of the associated framework costs.
- (4) In relation to an inscription made on an existing framework, “the associated framework costs” —
 - (a) is the amount found by dividing the costs of the framework by the total number of inscriptions that the framework is designed to hold, and
 - (b) includes, if the framework is attached to a building that is used wholly or mainly for the purpose of accommodating memorials, the amount found by dividing the costs of the building by the total number of memorials that the building is capable of accommodating.
- (5) This section does not apply to an inscription if it is made as part of producing a memorial (see section 172ZC).

172ZE Costs of the building

- (1) For the purposes of sections 172ZB to 172ZD, the costs of a building are to be determined in accordance with this section.
- (2) If the building was acquired for the purposes of the trade, the costs of the building are the lower of—
 - (a) the market value of the building when it was acquired, and
 - (b) the costs incurred in acquiring the building.
- (3) If the building was constructed for the purposes of the trade, the costs of the building are the costs incurred in constructing the building.
- (4) In either case—
 - (a) the acquisition cost (or market value) of the land on which the building is situated is to be ignored, and
 - (b) for these purposes, costs (or values) are to be apportioned between the land and the building on a just and reasonable basis.
- (5) Any construction costs incurred with respect to the building after it was acquired or constructed for the purposes of the trade must be brought into account as costs of the building.
- (6) But costs incurred in maintaining the building must not be brought into account.
- (7) Costs must not be included as costs of the building if a deduction is or is to be brought into account for them under section 170(2) (deduction for capital expenditure).
- (8) A reference in this section to costs incurred is to costs incurred either by the trader or a predecessor.
- (9) In sections 172ZB to 172ZD and this section, “building” includes any other type of structure.]

Status:

Point in time view as at 15/09/2016.

Changes to legislation:

There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Chapter 11.