



# Income Tax (Trading and Other Income) Act 2005

## 2005 CHAPTER 5

### PART 2

#### TRADING INCOME

#### CHAPTER 2

#### INCOME TAXED AS TRADE PROFITS

#### *Trades and trade profits*

#### **[<sup>F1</sup>16B. Payments to company directors**

- (1) This section applies where—
  - (a) a company (“the paying company”) makes a payment to, or for the benefit of, a director of the paying company in respect of the director’s employment as a director of the paying company,
  - (b) the payment would otherwise be employment income of the director chargeable to tax under Part 2 of ITEPA 2003,
  - (c) the director was or is a member of a firm, or was appointed by a company (“the appointing company”) other than the paying company, and
  - (d) condition A or B is met.
- (2) The payment is to be treated for income tax purposes as a receipt of—
  - (a) a trade carried on by the firm, or
  - (b) a trade carried on by the appointing company.
- (3) Condition A applies where the director is a member of a firm, and is that—
  - (a) the director carries on a profession,

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*Changes to legislation:* There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Section 16B. (See end of Document for details)

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- (b) being a director of a company is a normal incident of that profession and of membership of the firm,
  - (c) the director is required by the terms of the partnership agreement to account to the firm for the payment, and
  - (d) the amount of the payment is insubstantial, compared with the total amount brought into account as receipts when calculating the firm's profits.
- (4) Condition B applies where the director is appointed by a company, and is that—
- (a) the profits of the appointing company are within the charge to income tax,
  - (b) by virtue of an agreement with the appointing company, the director is required to account for the payment to that company, and
  - (c) either subsection (5) or subsection (6) applies to the appointing company.
- (5) This subsection applies if the appointing company had the right to appoint the director by virtue of its shareholding in, or an agreement with, the paying company.
- (6) This subsection applies if the appointing company is not one over which—
- (a) the director has control, or
  - (b) any person connected with the director has control, or
  - (c) the director and any persons connected with him together have control.
- (7) For the purposes of subsection (6), the following persons are connected with the director: the spouse, civil partner, parent, child, son-in-law or daughter-in-law of the director.]

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**Textual Amendments**

**F1** Ss. 16B, 16C inserted (6.4.2018) by [The Enactment of Extra-Statutory Concessions Order 2018 \(S.I. 2018/282\)](#), arts. 1, [5\(2\)](#)

**Changes to legislation:**

There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Section 16B.