



Income Tax (Trading and Other Income) Act 2005

2005 CHAPTER 5

PART 2

TRADING INCOME

CHAPTER 4

TRADE PROFITS: RULES RESTRICTING DEDUCTIONS

Employee benefit contributions

38 Restriction of deductions

[^{F1}(1) This section applies if, in calculating for income tax purposes the profits of a trade of a person (“the employer”) for a period, a deduction would otherwise be allowable for the period in respect of employee benefit contributions made or to be made (but see subsection (4)).]

[^{F2}(1A) No deduction is allowed under this section in respect of employee benefit contributions for a period of account which starts more than 5 years after the end of the period of account in which the contributions are made.]

- (2) No deduction is allowed for the contributions for the period except so far as—
- 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
 - 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.

[^{F3}(2AA) Subsection (2) is subject to subsections (1A) and (2AB).

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- (2AB) Where subsection (3C) applies, no deduction is allowed for an amount in respect of the contributions for the period except so far as the amount is a qualifying amount (see subsection (3D)).]
- [^{F4}(2A) In calculating for income tax purposes the profits of a trade on the cash basis, this section has effect as if—
- (a) in subsection (1), the words “or to be made” were omitted, and
 - (b) in subsection (2), the words “or within 9 months from the end of it” were omitted (in both places).]
- (3) An amount disallowed under subsection (2) 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.
- [^{F5}(3A) Subsection (3) is subject to subsections (1A) and (3B).
- (3B) Where subsection (3C) applies, an amount disallowed under subsection (2) is allowed as a deduction for a subsequent period only so far as it is a qualifying amount.
- (3C) This subsection applies where the provision of qualifying benefits out of, or by way of, the contributions gives rise both to an employment income tax charge and to an NIC charge.
- (3D) An amount in respect of employee benefit contributions is a “qualifying amount” if the relevant tax charges are paid before the end of the relevant period (and are not repaid).
- (3E) For the purposes of subsection (3D)—
- (a) the “relevant tax charges”, in relation to an amount, are the employment income tax charge and the NIC charge arising in respect of benefits which are provided out of, or by way of, that amount, and
 - (b) the “relevant period” is the period of 12 months immediately following the end of the period of account for which the deduction for the employee benefit contributions would (apart from this section) be allowable.
- (3F) For the purposes of subsections (3C) and (3E), “employment income tax charge” and “NIC charge” have the meaning given by section 40(7).]
- [^{F6}(3G) Subsection (3H) applies where—
- (a) a deduction would, apart from this section, be allowable for an amount (the “remuneration amount”) in respect of employees' remuneration, and
 - (b) in consequence of the payment of the employees' remuneration, employee benefit contributions are made, or are to be made, in respect of the remuneration amount.
- (3H) In calculating for income tax purposes the profits of a trade, the deduction referred to in subsection (3G)(a) is to be treated as a deduction in respect of employee benefit contributions made or to be made (and is to be treated as not being a deduction in respect of employees' remuneration).]
- (4) This section does not apply to any deduction that is allowable for—

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- (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.

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).

(5) See also—

- section 39 (making of “employee benefit contributions”),
- section 40 (provision of qualifying benefits),
- section 41 (timing and amount of certain qualifying benefits),
- section 42 (provision or payment out of employee benefit contributions),
- section 43 (profits calculated before end of 9 month period), and
- section 44 (interpretation of sections 38 to 44).

Textual Amendments

- F1** S. 38(1) substituted (with effect as stated in s. 34(13) of the amending Act) by [Finance Act 2007 \(c. 11\), s. 34\(8\)](#)
- F2** S. 38(1A) inserted (16.11.2017) (with effect in accordance with s. 36(11) of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\), s. 36\(2\)](#)
- F3** S. 38(2AA)(2AB) inserted (16.11.2017) (with effect in accordance with s. 36(11) of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\), s. 36\(3\)](#)
- F4** S. 38(2A) inserted (with effect in accordance with Sch. 4 paras. 56, 57 of the amending Act) by [Finance Act 2013 \(c. 29\), Sch. 4 para. 9](#)
- F5** S. 38(3A)-(3F) inserted (16.11.2017) (with effect in accordance with s. 36(11) of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\), s. 36\(4\)](#)
- F6** S. 38(3G)(3H) inserted (16.11.2017) (with effect in accordance with s. 36(12) of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\), s. 36\(5\)](#)

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 7A-7D inserted by [2022 c. 3 Sch. 1 para. 3](#)
- s. 24A and cross-heading inserted by [2024 c. 3 Sch. 10 para. 2](#)
- s. 25B inserted by [2024 c. 3 Sch. 10 para. 11](#)
- s. 25C inserted by [2024 c. 3 Sch. 10 para. 5](#)
- s. 31E(4) inserted by [2022 c. 3 Sch. 1 para. 7\(3\)](#)
- s. 649(1A)(1B) inserted by [2023 c. 30 Sch. 2 para. 11\(2\)](#)
- s. 679(3A) inserted by [2023 c. 30 Sch. 2 para. 11\(5\)\(b\)](#)
- s. 679A(3A) inserted by [2023 c. 30 Sch. 2 para. 11\(6\)\(b\)](#)
- s. 680(1A) inserted by [2023 c. 30 Sch. 2 para. 11\(7\)\(a\)](#)