



Income Tax (Trading and Other Income) Act 2005

2005 CHAPTER 5

PART 9

PARTNERSHIPS

Miscellaneous

[^{F1}863B Condition A

- (1) The question of whether condition A is met is to be determined at the following times—
 - (a) if relevant arrangements are in place—
 - (i) at the beginning of the tax year 2014-15, or
 - (ii) if later, when M becomes a member of the limited liability partnership,
at the time mentioned in sub-paragraph (i) or (ii) (as the case may be);
 - (b) at any subsequent time when relevant arrangements are put in place or modified;
 - (c) where—
 - (i) the question has previously been determined, and
 - (ii) the relevant arrangements which were in place at the time of the previous determination do not end, and are not modified, by the end of the period which was the relevant period for the purposes of the previous determination (see step 1 in subsection (3)),
immediately after the end of that period.
- (2) “Relevant arrangements” means arrangements under which amounts are to be, or may be, payable by the limited liability partnership in respect of M's performance of services for the partnership in M's capacity as a member of the partnership.

Changes to legislation: There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Section 863B. (See end of Document for details)

- (3) Take the following steps to determine whether condition A is met at a time (“the relevant time”).

Step 1 Identify the relevant period by reference to the relevant arrangements which are in place at the relevant time. “The relevant period” means the period—

- (a) beginning with the relevant time, and
- (b) ending at the time when, as at the relevant time, it is reasonable to expect that the relevant arrangements will end or be modified.

Step 2 Condition A is met if, at the relevant time, it is reasonable to expect that at least 80% of the total amount payable by the limited liability partnership in respect of M's performance during the relevant period of services for the partnership in M's capacity as a member of the partnership will be disguised salary. An amount within the total amount is “disguised salary” if it—

- (a) is fixed,
- (b) is variable, but is varied without reference to the overall amount of the profits or losses of the limited liability partnership, or
- (c) is not, in practice, affected by the overall amount of those profits or losses.

- (4) If condition A is determined to be met, or not to be met, at a time, the condition is to be treated as met, or as not met, at all subsequent times until the question is required to be re-determined under subsection (1)(b) or (c).

- (5) In this section “arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable).]

Textual Amendments

- F1** Ss. 863A-863G inserted (6.4.2014 for specified purposes, 18.7.2014 in so far as not already in force) by [Finance Act 2014 \(c. 26\)](#), [Sch. 17 paras. 1, 6](#)

Changes to legislation:

There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Section 863B.