



Corporation Tax Act 2009

2009 CHAPTER 4

PART 3

TRADING INCOME

CHAPTER 2

INCOME TAXED AS TRADE PROFITS

Trades and trade profits

36 Farming and market gardening

- (1) Farming or market gardening in the United Kingdom is treated for corporation tax purposes as the carrying on of a trade or part of a trade (whether or not the land is managed on a commercial basis and with a view to the realisation of profits).
- (2) All farming in the United Kingdom carried on by a company, other than farming carried on as part of another trade, is treated for corporation tax purposes as one trade.
- (3) This section does not apply to farming or market gardening by an insurance company on land which is an asset [^{F1}held by the company for the purposes of its long-term business].
- (4) In the case of farming carried on by a company as a member of a firm, this rule is explained by section 1270(1).

Textual Amendments

F1 Words in s. 36(3) substituted (17.7.2012) by [Finance Act 2012 \(c. 14\)](#), [Sch. 16 para. 139](#)

Status: Point in time view as at 01/04/2022.

Changes to legislation: Corporation Tax Act 2009, Cross Heading: Trades and trade profits is up to date with all changes known to be in force on or before 05 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

37 Commercial occupation of woodlands

- (1) The commercial occupation of woodlands in the United Kingdom is not a trade or part of a trade for any corporation tax purpose.
- (2) For this purpose the occupation of woodlands is commercial if the woodlands are managed—
 - (a) on a commercial basis, and
 - (b) with a view to the realisation of profits.
- (3) See also sections 208 and 980 (which, when read with this section, secure that profits or losses from the commercial occupation of woodlands in the United Kingdom are ignored for corporation tax purposes).

38 Commercial occupation of land other than woodlands

- (1) The commercial occupation of land in the United Kingdom is treated for corporation tax purposes as the carrying on of a trade or part of a trade.
- (2) For this purpose the occupation of land is commercial if the land is managed—
 - (a) on a commercial basis, and
 - (b) with a view to the realisation of profits.
- (3) This section does not apply—
 - (a) to farming or market gardening (which is dealt with by section 36),
 - (b) if the land is being prepared for forestry purposes,
 - (c) if the land comprises woodlands (which is dealt with by section 37), or
 - (d) to the occupation by an insurance company of land which is an asset [^{F2}held by the company for the purposes of its long-term business].

Textual Amendments

F2 Words in s. 38(3)(d) substituted (17.7.2012) by [Finance Act 2012 \(c. 14\), Sch. 16 para. 140](#)

39 Profits of mines, quarries and other concerns

- (1) Profits or losses arising out of land in the case of a concern to which this section applies are calculated as if the concern were a trade.
- (2) Any profits arising out of the land are treated for the purposes of [^{F3}section] 35 as profits of a trade.
- (3) Any losses arising out of the land are treated for the purposes of [^{F4}Chapter 2 of Part 4 of CTA 2010 (trade loss relief), ^{F5}... Part 5 of that Act (group relief) [^{F6}and Part 5A of that Act (group relief for carried forward losses)],] as losses of a trade carried on in the United Kingdom.
- (4) The concerns to which this section applies are—
 - (a) mines and quarries (including gravel pits, sand pits and brickfields),
 - (b) ironworks, gasworks, salt springs or works, alum mines or works, waterworks and streams of water,
 - (c) canals, inland navigation, docks and drains or levels,

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- (d) rights of fishing,
 - (e) rights of markets and fairs, tolls, bridges and ferries,
 - (f) railways and other kinds of way, and
 - (g) a concern of the same kind as one specified in paragraph (b), (c), (d) or (e).
- (5) But this section does not apply to a concern—
- (a) if it is carried on by an insurance company on land which is an asset [^{F7}held by the company for the purposes of its long-term business], or
 - (b) if section 38 (commercial occupation of land other than woodlands) applies to the occupation of the land out of which the profits or losses arise.

Textual Amendments

- F3** Word in s. 39(2) substituted (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. 8 para. 310](#) (with [Sch. 9 paras. 1-9, 22](#))
- F4** Words in s. 39(3) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), s. 1184\(1\), Sch. 1 para. 592](#) (with [Sch. 2](#))
- F5** Word in s. 39(3) omitted (with effect in accordance with Sch. 4 para. 190 of the amending Act) by virtue of [Finance \(No. 2\) Act 2017 \(c. 32\), Sch. 4 para. 129\(a\)](#)
- F6** Words in s. 39(3) inserted (with effect in accordance with Sch. 4 para. 190 of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\), Sch. 4 para. 129\(b\)](#)
- F7** Words in s. 39(5)(a) substituted (17.7.2012) by [Finance Act 2012 \(c. 14\), Sch. 16 para. 141](#)

40 Credit unions

- (1) If a credit union—
- (a) makes loans to its members, or
 - (b) invests its surplus funds (by placing them on deposit or otherwise),
- that is not treated, in calculating the credit union's income, as the carrying on of a trade or part of a trade.
- (2) In this section “surplus funds” means funds not immediately required for the credit union's purposes.

[^{F8}40A. 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 corporation tax purposes as a receipt of—
- (a) a trade carried on by the firm, or
 - (b) a trade carried on by the appointing company.

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- (3) Condition A applies where the director is a member of a firm, and is that—
- (a) the director carries on a profession,
 - (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 corporation 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.

Textual Amendments

F8 Ss. 40A, 40B inserted (6.4.2018) by [The Enactment of Extra-Statutory Concessions Order 2018 \(S.I. 2018/282\)](#), arts. 1, **6(2)**

40B. Professionals in practice: incidental income from an office or employment

- (1) This section applies where—
- (a) a payment is received by an individual who carries on a profession in partnership,
 - (b) the payment is made to the individual in his or her capacity as an employee or office-holder, but is not made in respect of employment as a director of a company,
 - (c) the payment would otherwise be employment income of the individual chargeable to tax under Part 2 of ITEPA 2003, and
 - (d) the conditions in subsection (3) are met.
- (2) The payment is to be treated for corporation tax purposes as a receipt of a trade carried on by the firm.
- (3) The conditions referred to in subsection (1)(d) are that—
- (a) the time spent by the individual in performing the duties of the office or employment is insubstantial compared with the time spent by the individual in carrying on the profession,

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- (b) the office or employment is related to the profession carried on by the individual,
- (c) the amount of the payment is insubstantial compared with so much of the total amount brought into account as receipts when calculating the firm's profits as is attributable to the individual, and
- (d) the individual is required by the terms of the partnership agreement to account to the firm for the payment and does so.]

Textual Amendments

F8 Ss. 40A, 40B inserted (6.4.2018) by [The Enactment of Extra-Statutory Concessions Order 2018 \(S.I. 2018/282\)](#), arts. 1, **6(2)**

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