
STATUTORY INSTRUMENTS

2018 No. 282

The Enactment of Extra-Statutory Concessions Order 2018

Income of company directors and professionals in practice: income tax

5.—(1) The Income Tax (Trading and Other Income) Act 2005(1) is amended as follows.

(2) In Chapter 2 of Part 2, after section 16A (voluntary office-holders: compensation for lost profits)(2) insert—

“Payments to company directors

16B.—(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,
 - (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.

(1) 2005 c. 5.

(2) Section 16A is inserted by article 3(3) of this Order.

(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.

Professionals in practice: incidental income from an office or employment

16C.—(1) This section applies where—

- (a) a payment is received by an individual who carries on a profession (alone or 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,
- (d) the conditions in subsection (3) are met, and
- (e) where the individual carries on the profession in partnership, the condition in subsection (4) is also met.

(2) The payment is to be treated for income tax purposes as a receipt of a trade carried on by the individual or, where the individual carries on the profession in partnership, 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,
- (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—
 - (i) the total amount brought into account as receipts when calculating the individual's trade profits; or
 - (ii) where the individual carries on a profession in partnership, so much of the total amount brought into account as receipts when calculating the firm's profits as is attributable to the individual.

(4) The condition referred to in subsection (1)(e) is that the individual is required by the terms of the partnership agreement to account to the firm for the payment and does so.”