



Income and Corporation Taxes Act 1970

1970 CHAPTER 10

PART VI

SCHEDULE D

CHAPTER VI

PARTNERSHIPS AND SUCCESSIONS

152 Partnership assessments to income tax

Where a trade or profession is carried on by two or more persons jointly, income tax in respect thereof shall be computed and stated jointly, and in one sum, and shall be separate and distinct from any other tax chargeable on those persons or any of them, and a joint assessment shall be made in the partnership name.

153 Partnerships controlled abroad

- (1) Where any trade or business is carried on by two or more persons in partnership, and the control and management of the trade or business is situated abroad, the trade or business shall be deemed to be carried on by persons resident outside the United Kingdom, and the partnership shall be deemed to reside outside the United Kingdom, notwithstanding the fact that some of the members of the partnership are resident in the United Kingdom and that some of its trading operations are conducted within the United Kingdom.
- (2) Where any part of the trade or business of a partnership firm whose management and control is situated abroad consists of trading operations within the United Kingdom, the firm shall be chargeable in respect of the profits of those trading operations within the United Kingdom to the same extent as, and no further than, a person resident abroad is chargeable in respect of trading operations by him within the United Kingdom, notwithstanding the fact that one or more members of the firm are resident in the United Kingdom:

Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format.

Provided that, for the purpose of charging any such firm in respect of the profits of the said trading operations within the United Kingdom, an assessment may be made on the firm in respect of those profits in the name of any partner resident in the United Kingdom.

- (3) Section 155(7) below has effect as respects the application of this section where the partners in a partnership include a company.

154 Effect, for income tax, of change in ownership of trade, profession or vocation

- (1) Where there is a change in the persons engaged in carrying on any trade, profession or vocation chargeable under Case I or Case II of Schedule D, then, subject to the provisions of this section and of section 155(3)(6) below, the amount of the profits or gains thereof on which income tax is chargeable for any year of assessment, and the persons on whom it is chargeable, shall be determined as if the trade, profession or vocation had been permanently discontinued at the date of the change, and a new trade, profession or vocation had been then set up and commenced.
- (2) Subject to the said section 155(3)(6), where there is such a change as is mentioned in subsection (1) above, and a person engaged in carrying on the trade, profession or vocation immediately before the change continues to be so engaged immediately after it, the persons so engaged immediately before and the persons so engaged immediately after the change may, by notice signed by them and sent to the inspector at any time within twelve months after the date of the change, elect that that subsection shall not apply to treat the trade, profession or vocation as discontinued or a new trade, profession or vocation as set up and commenced.
- (3) Where there is in any year of assessment a change in the persons engaged in carrying on a trade, profession or vocation, and subsection (1) above does not apply by reason of a notice under subsection (2) above, then—
- (a) income tax in respect of the trade, profession or vocation for that year shall be assessed and charged separately on those so engaged before the change and on those so engaged after it, but the amount on which tax is chargeable shall be computed as if there had been no such change in that year, and shall be apportioned as may be just, and
 - (b) if, after the change but before the end of the second year of assessment following that in which the change occurred, there is a permanent discontinuance of the trade, profession or vocation (including a change treated as such), then, on that discontinuance, section 118 of this Act shall apply, as respects any period before the first-mentioned change, to the persons charged or chargeable for that period as it would apply if no such change had taken place and they had been charged to tax accordingly for the subsequent period up to the discontinuance.
- (4) There shall be made any such assessment, reduction of an assessment or, on the making of a claim therefor, repayment of income tax as may in any case be necessary for giving effect to this section.
- (5) Any question which arises as to the manner in which any sum is to be apportioned under subsection (3)(a) above shall be determined, for the purposes of the tax of all of the persons as respects whose liability to tax the apportionment is material—

Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format.

- (a) in a case where the same body of General Commissioners have jurisdiction with respect to all those persons, by those Commissioners, unless all those persons agree that it shall be determined by the Special Commissioners,
- (b) in a case where different bodies of Commissioners have jurisdiction with respect to those persons, by such of those bodies as the Board may direct, unless all those persons agree that it shall be determined by the , Special Commissioners, and
- (c) in any other case, by the Special Commissioners,

and any such Commissioners shall determine the question in like manner as an appeal :

Provided that all the said persons shall be entitled to appear and be heard by the Commissioners who are to make the determination, or to make representations to them in writing.

- (6) In the case of the death of a person who, if he had not died, would under the provisions of this section have become chargeable to tax for any year, the tax which would have been so chargeable shall be assessed and charged upon his executors or administrators, and shall be a debt due from and payable out of his estate ; and where under those provisions an election may be made by any person, it may in the case of his death be made by his executors or administrators instead of him.
- (7) For the purposes of this section, a change in the personal representatives of any person, or in the trustees of any trust, shall not be treated as a change in the persons engaged in carrying on any trade, profession or vocation carried on by those personal representatives or trustees as such.

155 Special rules for partnerships involving companies

- (1) So long as a trade is carried on by persons in partnership, and any of those persons is a company, the profits of the trade and any loss (including a terminal loss) incurred therein shall be computed for the purposes of corporation tax in like manner, and by reference to the like accounting periods, as if the partnership were a company, and without regard to any change in the persons carrying on the trade:

Provided that—

- (a) references to distributions shall not apply, and
- (b) no deduction or addition shall be made for charges on income, or for capital allowances and charges, nor in any accounting period for losses incurred in any other period, and
- (c) a change in the persons engaged in carrying on the trade shall be treated as the transfer of the trade to a different company if there continues to be a company so engaged after the change, but not a company that was so engaged before the change.

- (2) A company's share in the profits or loss of any accounting period, or in any matter excluded from the computation by proviso (b) to subsection (1) above, shall be determined according to the interests of the partners during that period, and corporation tax shall be chargeable as if that share derived from a trade carried on by it alone ; and the company shall be assessed and charged to tax accordingly:

Provided that, for the purposes of any relief from tax which may be given against total profits, a company may claim that any profits in respect of which it is chargeable in accordance with this section, and, so far as it cannot be relieved against those

Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format.

profits, any matter for which relief may be given against them in accordance with this section, shall be dealt with as if they derived from a separate trade carried on by it otherwise than in partnership (any necessary apportionments being made where accounting periods of the company do not coincide with those of the partnership).

- (3) Where any of the persons engaged in carrying on the trade is an individual, income tax shall be chargeable in respect of his share of the profits, and he shall be entitled to relief for his share of any loss, as if all the partners had been individuals, except that—
- (a) income tax shall be chargeable, and any relief from income tax shall be given, by reference to the computations made for corporation tax, but so that the amounts so computed for an accounting period of the capital allowances and charges falling to be made in taxing the trade shall (as regards the individual's share of them) be given or made for the year or years of assessment comprising that period and, where necessary, apportioned accordingly, and
 - (b) section 154 above shall not apply by reason of any change in the persons engaged in carrying on the trade unless an individual begins or ceases to be so engaged, and, where it does apply, an election under subsection (2) thereof shall be made only by the individuals so engaged, and only if an individual so engaged before the change continues to be so engaged after it, and
 - (c) section 174 below (terminal loss: income tax) shall not apply except where section 178 below (terminal loss: corporation tax) applies to the partnership as a whole.
- (4) Section 152 above shall apply to income tax chargeable in accordance with this section, matters relevant only to corporation tax being omitted from the assessment.
- (5) The following provisions also have effect as respects income tax chargeable in accordance with this section for any year of assessment throughout all or any part of which one or more of the persons engaged in carrying on the trade is an individual—
- (a) notwithstanding any difference between the partners' interests during the basis period and their interests during the year of assessment, the amount of the individual's income from the partnership for the year of assessment, or the total of the amounts of the individuals' incomes from the partnership for that year, shall be deemed to be not less than the profits of the basis period, reduced, where any share was apportioned to a company under subsection (2) above, by the amount of that company's share, and
 - (b) where there are two or more individuals, and, but for paragraph (a) above, the total of the amounts of the individuals' incomes from the partnership for the year would fall short of the profits of the basis period reduced as aforesaid, that that amount shall be apportioned—
 - (i) according to the individuals' interests during the year of assessment, disregarding any company's interest, and
 - (ii) in so far as that does not determine, or fully determine, the apportionment, between the individuals in equal shares.
- (6) Where a trade or business is carried on by two or more persons in partnership, and the control and management of the trade or business is situated abroad but those persons include a company resident in the United Kingdom, then, as regards that company, this section shall have effect as if the partnership were resident in the United Kingdom, and an assessment may be made on the company accordingly.

Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format.

- (7) Subject to subsection (6) above, where the partners in a partnership include a company, section 153 above shall apply whether for corporation tax or for income tax, and this section shall have effect accordingly.
- (8) In this section—
- " basis period ", in relation to a year of assessment, means any accounting period or part of an accounting period which is, or forms part of, the period on the profits or gains of which income tax for the year of assessment in question falls to be computed under Schedule D in respect of the trade, and
- " capital allowances and charges " means any allowances or charges under the Capital Allowances Act 1968 (including the enactments which under this Act are to be treated as contained in Part I of that Act), not being allowances or charges which, for income tax, are given or made by deduction or addition in the computation of profits or gains ;
- and references in subsection (5) of this section to an individual's income from the partnership are references to that income before deduction of capital allowances or charges on income.
- (9) This section shall be construed as one with Part XI of this Act, but " profits " in this section shall not be taken as including chargeable gains.