

INCOME TAX (TRADING AND OTHER INCOME) ACT 2005

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 10: General provisions

Chapter 2: General calculation rules etc.

Overview

3258. **Chapter 2** contains a number of generally applicable rules modelled on similar rules in Parts 2 and 3 of this Act. They apply to income charged to income tax other than income within those Parts.
3259. These rules are included here to save repetition at numerous points in the Act. Some of the rules apply provisions from the Parts 2 and 3 equivalent rules, rather than repeat them here. Section 1 signposts at the beginning of the Act that there are general calculation rules in this Part.

Section 865: Unpaid remuneration: non-trades and non-property businesses

3260. This section is based on section 43 of FA 1989. That section applies where profits or gains are to be “charged under Schedule D for a period of account...”. Profits or gains may be calculated for a period of account in respect of a business which is neither a trade, profession or vocation nor a property business (for example, a business whose income is charged under Chapter 3 of Part 5 of this Act (films and sound recordings: non-trade businesses)).
3261. This section uses “profits or other income”, as do other sections in this Chapter, rather than “profits or gains”, to define the scope of the rule. See the commentary on the omission of “gains” in the overview to Chapter 2 of Part 2 of this Act.
3262. The section alters the claim procedure. See *Change 8* in Annex 1.
3263. See the related commentary on sections 36 and 37 of this Act.
3264. See also paragraph 154 of Schedule 2 to this Act which preserves the commencement rule for the amendment of the source legislation by Schedule 24 to FA 2003.

Section 866: Employee benefit contributions: non-trades and non-property businesses

3265. This section is based on Schedule 24 to FA 2003. The provisions in that Schedule apply where “a calculation is required to be made for tax purposes of a person’s profits for any period...”. Profits may be calculated for a period in respect of a business which is neither a trade nor a property business.

*These notes refer to the Income Tax (Trading and Other Income)
Act 2005 (c.5) which received Royal Assent on 24 March 2005*

3266. This section applies sections 39 to 44 in Part 2 of this Act in calculating the profits of a business for the purpose of any income tax charge which is not in Parts 2 or 3 of this Act. For further detail, see the commentary for those sections.
3267. See also paragraph 155 of Schedule 2 to this Act which preserves the commencement rule for the amendment of the source legislation by Schedule 24 to FA 2003. And see paragraph 156 of Schedule 2 to this Act which preserves source legislation as it applies before the FA 2004 rules about pension schemes take effect from 6 April 2006.

Section 867: Business entertainment and gifts: non-trades and non-property businesses

3268. This section is based on section 577 of ICTA. That section denies a deduction for certain expenses “in computing profits chargeable to tax under Schedule D”. Profits chargeable to tax under Schedule D include profits of a business which is neither a trade, profession or vocation nor a property business. And section 577(7)(b) of ICTA indicates that references to a trade, for the purposes of the section, include references to a business.
3269. Although in theory the section is applicable to all profits or other income charged to income tax, other than profits charged in Parts 2 and 3 of this Act, some of which are not charged under Schedule D in the source legislation, the application of the section is qualified. *Subsection (1)* restricts its scope to profits or other income “which arise from the carrying on of a business”. In effect, this puts the scope of the rule in line with that of the source legislation.
3270. This section applies the same rules regarding business entertainment and gifts as are in sections 45 to 47 in Part 2 of this Act. For further detail, see the commentary for those sections.
3271. *Subsection (5)* contains a number of exceptions, using sections 46 to 47 for this purpose. Section 47(5) makes an exception for gifts to charities and named bodies. The source legislation, section 577(9) of ICTA, limits this exception to the computation of profits under Schedule D Cases I and II, that is, to income calculated under rules rewritten in Part 2 of this Act. It was not intended that the exception be applied narrowly to the disadvantage of a business other than a trade or property business. This subsection extends the exception to such businesses. See *Change 146* in Annex 1.

Section 868: Social security contributions: non-trades etc.

3272. This section prevents a deduction for most social security contributions in calculating profits or income. It is based on section 617 of ICTA.
3273. The rule is that there can be no deduction for a taxpayer’s own social security contributions. The section achieves this by prohibiting a deduction for any contributions and making an exception for contributions that an employer makes for employees.
3274. The rule in section 617 of ICTA applies generally for tax purposes. This Act splits the rule:
- This section sets out the income tax rule for non-trading income charged to tax by this Act (including rents from “concerns” charged to tax by Chapter 8 of Part 3 of the Act);
 - Section 53 sets out the income tax trading income rule (applied also to property income by section 272);
 - A new section 360A of ITEPA is introduced by this Act (see paragraph 594 of Schedule 1 to this Act) to set out the rule for employment income; and
 - Section 617 of ICTA as consequentially amended (see paragraph 262 of Schedule 1 to this Act) continues to apply for corporation tax.

Section 869: Penalties, interest and VAT surcharges: non-trades etc.

3275. This section contains the general rule that tax penalties and interest are not to be deducted for tax purposes. It is based on section 90 of TMA and section 827 of ICTA.
3276. The section brings together all the rules prohibiting a deduction for penalties, interest and surcharges imposed by statute. So it deals with interest on unpaid income tax (imposed by TMA) in the same section as the penalties, interest and surcharges relating to the indirect taxes that are dealt with in section 827 of ICTA.
3277. The table in subsection (4) sets out the specific statutory references because a general description of the penalties etc would not be precise enough. But the second column of the table is a description of the tax to indicate what is involved.

Section 870: Crime-related payments: non-trades and non-property businesses

3278. This section is based on section 577A of ICTA. That section denies a deduction for certain crime-related expenses “in computing profits chargeable to tax under Schedule D...” Profits chargeable to tax under Schedule D include profits of a business which is neither a trade, profession or vocation nor a property business.
3279. The section applies to profits or other income charged to income tax other than in Parts 2 and 3 of this Act. Some of those profits or other income are not charged under Schedule D in the source legislation. But the prohibition of a deduction is not thought to have any practical effect on profits or other income which are not charged under Schedule D in the source legislation. The scope of the prohibition is therefore unchanged.
3280. See the related commentary for section 55 of this Act. See also paragraph 157 of Schedule 2 to this Act which preserves the commencement rule for the amendment of the source legislation by section 68 of FA 2002.

Section 871: Apportionment etc. of miscellaneous profits to tax year

3281. This section is based on section 72 of ICTA. That section applies where it is necessary to apportion profits or losses for a period of account between tax years “in the case of any profits or gains chargeable under Case I, II or VI of Schedule D...” The application of section 72 of ICTA is therefore not limited to profits or losses of a trade, profession or vocation.
3282. The section applies where income is chargeable under a provision to which section 836B of ICTA applies (that section is inserted by paragraph 340 of Schedule 1 to this Act). Although section 836B of ICTA does not apply to relevant foreign income, *subsection (2)* of this section qualifies the reference to that section so that the benefit of the apportionment rules extends to such income (that is, to income charged under Schedule D Case IV or V in the source legislation). See *Change 147* in Annex 1.
3283. The section uses “profits” rather than “profits or gains” to define the scope of the rule. See the commentary on the omission of “gains” in the overview to Chapter 2 of Part 2 of this Act.
3284. *Subsection (5)* reflects the practice of making the apportionment by reference to a factor other than a strict count of days, if it is reasonable to do so and the alternative basis of apportionment is applied consistently. The subsection makes clear that the option to choose an alternative basis of apportionment is exercisable only by the taxpayer (not the Inland Revenue). See *Change 52* in Annex 1.
3285. See the related commentary for section 203 of this Act. See also paragraph 158 of Schedule 2 to the Act which provides for the situation where a period of account straddles end of the tax year 2004-05 and the beginning of 2005-06.

Section 872: Losses calculated on same basis as miscellaneous income

3286. This section is based on numerous provisions, including section 827 of ICTA.
3287. The application of the section is limited to “miscellaneous income”, defined in *subsection (3)* by reference to section 836B of ICTA (that section is inserted by paragraph 340 of Schedule 1 to this Act). The source legislation does not generally limit the scope of the rule. For example, section 827(1) of ICTA says “the payment shall not be allowed as a deduction in computing any income, profits or losses for any tax purposes”. But in practice these provisions affect only the calculation for income tax purposes of amounts, other than profits within Parts 2 or 3 of this Act, chargeable under a provision listed in the table in section 836B of ICTA.
3288. *Subsection (2)* ensures that this rule does not overturn any rules already provided for the computation of losses. For example, see section 398 of ICTA (which supplements the calculation of losses for the purposes of a claim under section 392 of ICTA).
3289. See the related commentary for section 26 of this Act.