

INCOME TAX (TRADING AND OTHER INCOME) ACT 2005

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2: Trading income

Chapter 11: Trade Profits: Other specific trades

Section 150: Conversion etc. of securities held as circulating capital

614. This section provides for relief on the conversion or exchange of securities held as part of the circulating capital of a trade of dealing in securities. The relief corresponds to the relief on the conversion or exchange of securities held as capital assets in sections 126 to 136 of TCGA. This section is based on sections 473 and 730C of ICTA.
615. Section 473(1) of ICTA applies to securities to which a person carrying on a banking or insurance business, or a business of dealing in securities, is beneficially entitled - the profits from the sale of which would “form part of the trading profits of that business”. This section does not stipulate that the person must be beneficially entitled to the securities in question. See *Change 42* in Annex 1.
616. The Inland Revenue does not believe that there are currently any individuals or non-resident companies liable to income tax in respect of a banking business. Similarly, the Inland Revenue does not believe that there are, or will be in the future as the law stands at present, any individuals (other than Lloyd’s underwriters) or non-resident companies liable to income tax in respect of an insurance business.
617. So this section does not refer specifically to banking and insurance businesses. But such businesses (except for Lloyd’s underwriters who come instead within the special rules in sections 171 and 176 and Schedule 20 to FA 1993) are covered by the reference to a trade in which a profit on the sale of securities would be brought into account in calculating the profits.
618. *Subsection (3)* excludes securities brought into account at “fair value” in calculating the profits for the period in which the relevant transaction takes place. These are instead dealt with in section 149 of this Act.
619. *Subsection (7)* adapts the anti-avoidance rule in section 137(1) of TCGA to income tax in determining whether subsection (2)(a) of this section applies to treat a transaction as resulting in the original holding being equated with a new holding under sections 126 to 136 of TCGA. Section 137(1) of TCGA provides that sections 135 and 136 of TCGA do not apply to an exchange of shares unless the exchange is “effected for bona fide commercial reasons and does not form part of a scheme or arrangements of which the main purpose, or one of the main purposes, is avoidance of liability to capital gains tax or corporation tax”.
620. The definition of “securities” in *subsection (8)* is based on section 473(6) of ICTA:

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

- section 473(6) of ICTA defines “securities” to include rights, interests or options treated as shares for the purposes of sections 126 to 136 of TCGA by virtue of sections 135(5) or 136(5) of TCGA. Sections 135(5) and 136(5) of TCGA define “shares” in the case of a company with no share capital as “any interests in the company possessed by members of the company.” So subsection (8)(d) defines “securities” to include such interests;
- section 473(6) of ICTA defines “securities” by reference to the definition of “security” in section 132 of TCGA. Section 138A(3) of TCGA assumes that in certain circumstances earn-out rights are a security within section 132 of TCGA. So subsection (8)(f) includes such earn-out rights in the definition of “securities”.