

INCOME TAX (TRADING AND OTHER INCOME) ACT 2005

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2: Trading income

Chapter 18: Post-cessation receipts

Overview

976. This Chapter charges receipts which are derived from a trade but are not received until after the trade has ceased and have not been brought into the calculation of profits.

Section 241: Professions and vocations

977. This section makes it unnecessary to specify repeatedly that the rules in this Chapter apply to a profession or vocation as well as a trade. It is new.

Section 242: Charge to tax on post-cessation receipts

978. This section charges post-cessation receipts to tax. It is based on sections 103 and 104 of ICTA. Post-cessation receipts are charged separately from the profits of a trade (see section 5 of this Act).

Section 243: Extent of charge to tax

979. This section sets out the charge to tax. It is based on sections 103 and 104 of ICTA, which create a charge under Schedule D Case VI on post-cessation receipts. This Act deals with the income where it logically belongs. In this case the income is trading income.

980. The charge in the source legislation under Schedule D Case VI has consequences for loss relief and the charge to Class 4 national insurance contributions. This Chapter preserves the position for loss relief in section 254. This Act preserves the position for Class 4 national insurance contributions because the consequential amendments to the social security legislation ensure that those contributions are charged only on profits chargeable under Chapter 2 of Part 2 of this Act.

981. *Subsection (3)* deals with a trader who has become non-resident after the trade has ceased. A trade carried on at least partly in the United Kingdom (see section 6) may include income that arises abroad. When the trader was resident in the United Kingdom all the profits of the trade would have been within the charge under Part 2 of this Act. This subsection removes the charge on a non-resident if the receipt arises abroad.

982. There is a transitional rule in paragraph 61 of Schedule 2 to this Act. A post-cessation receipt arising from a cessation before 6 April 2000 is not charged to tax if the recipient was born before 6 April 1917.

Section 244: Income charged

983. This section sets out the amount charged to tax. It is based on section 69 of ICTA, which applies because the charge in ICTA is under Schedule D Case VI.

Section 245: Person liable

984. This section states who is liable for any tax charged. It is based on section 59(1) of ICTA, which applies because the charge in ICTA is under Schedule D Case VI.

Section 246: Basic meaning of “post-cessation receipt”

985. This section sets out the basic meaning of “post-cessation receipt”. It is based on sections 103 and 104 of ICTA.

986. *Subsection (1)* is the general rule that a post-cessation is a sum received after a person has ceased to carry on trade.

987. *Subsection (2)* deals with the case of a non-resident company liable to income tax. If a company ceases to be liable to corporation tax it is treated as ceasing to carry on the corporation tax trade. A post-cessation from that trade may be charged to income tax.

988. *Subsections (3) and (4)* explain how the idea of a person ceasing to carry on a trade is applied if the trade is carried on in partnership. If a partner leaves a firm and receives a sum, that sum may be a post-cessation receipt. In ICTA this is because the end of the partner’s “deemed trade or profession” is treated as a permanent discontinuance of a trade for the purposes of the post-cessation receipts rules.

Section 247: Other rules about what counts as post-cessation receipts

989. This section is new. It contains signposts to:

- the nine sections in this Act that treat other sums as post-cessation receipts; and
- the two sections in this Act that exclude certain sums from the charge on post-cessation receipts.

Section 248: Debts paid after cessation

990. This section sets out what happens when a trader is allowed a deduction for a bad or doubtful debt owed to the trade but then recovers the debt after the trade has ceased. It is based on sections 103(5) and 109A of ICTA.

991. In the straightforward case where a deduction for the debt has been given during the course of the trade section 103(5) of ICTA makes it clear that the recovery has not been “taken into account” in calculating the trade profits. The result is that the recovery is within the charge in section 103 of ICTA.

992. In the less common case where the entitlement to relief has arisen under section 109A of ICTA after the cessation, the recovery is dealt with in section 109A of ICTA itself.

993. This section deals with both these cases.

994. *Subsections (1) and (2)* deal with the straightforward case and treat the recovery of the debt as a post-cessation receipt. The references to corporation tax and section 74(1)(j) of ICTA cater for the possibility that a deduction for a bad debt is allowed to a company liable to corporation tax but the debt is paid to a person liable to income tax.

995. *Subsections (3) and (4)* deal with the less common case and treat the recovery of the debt as a post-cessation receipt.

Section 249: Debts released after cessation

996. This section sets out the rules that apply when a debt owed by the trader is released after the trade has ceased. It is based on section 103(4) of ICTA.
997. *Subsection (1)* sets out the four conditions to be met if the section is to apply. It is the equivalent of section 97 of this Act which applies in the case of a continuing trade. The references to corporation tax caters for the possibility that a deduction for an expense is allowed to a company liable to corporation tax but a person liable to income tax takes over the related trade debt and is released from it.
998. *Subsection (3)* deals with the case of a non-resident company liable to income tax. If the company becomes liable to corporation tax it is treated as ceasing to carry on the income tax trade.

Section 250: Receipts relating to post-cessation expenditure

999. This section sets out what happens if relief has been claimed for post-cessation expenditure and there is a recovery. It is based on section 109A(3) of ICTA.
1000. *Subsection (2)* sets out the sorts of expenditure for which relief may have been claimed and which sums are treated as post-cessation receipts.

Section 251: Transfer of rights if transferee does not carry on trade

1001. This section deals with the position of the transferor if the right to a post-cessation receipt is transferred for value to a non-trading transferee. It is based on section 106 of ICTA.
1002. The transferor is charged to tax on the amount received for the transfer if the transfer is at arm's length. Otherwise the transferor is charged to tax on the arm's length value of the transfer. There is no later charge to tax on the transferee when the post-cessation receipt is received.
1003. [Section 98](#) of this Act sets out the position if the transfer is to a trading transferee.

Section 252: Transfer of trading stock or work in progress

1004. This section excludes from the charge on post-cessation receipts sums arising from the transfer of stock and work in progress. It is based on sections 103(3)(c), 104(6) and 110(6) of ICTA.
1005. *Subsection (1)* makes explicit the general rule that there is no tax charge on a post-cessation receipt arising from trading stock or work in progress.
1006. The policy is that stock and work in progress should be valued at cessation in accordance with the rules in Chapter 12 of this Part. Once that has been done there is no need to charge tax on any sums arising from the disposal or realisation of stock and work in progress.
1007. In the case of stock, section 173 of this Act requires a valuation on cessation in all cases. It follows that its value is taken into account in calculating the profits before the cessation. But the valuation rules apply to work in progress only "if ... the work in progress is valued" (section 182 of this Act). Such a valuation is made only by businesses whose accounts are drawn up on the earnings basis.
1008. When the charge on post-cessation receipts was extended to non-earnings basis cases in 1968 the exclusion for work in progress often did not apply because in many of those cases closing work in progress was not valued. The policy was to tax post-cessation receipts arising from work in progress (under section 104 of ICTA). Nowadays non-earnings basis cases are much rarer.

1009. A valuation of work in progress is not required for barristers and advocates within section 160 of this Act. So, in these non-earnings basis cases, receipts from work in progress after the cessation are charged to tax.
1010. *Subsection (2)* is a signpost to the rule that allows a taxpayer to value work in progress at cost and to have the profit element of a sum received later for work in progress taxed as a post-cessation receipt.

Section 253: Lump sums paid to personal representatives for copyright etc.

1011. This section exempts certain lump sums from the charge on post-cessation receipts. It is based on section 103(3)(b) and (bb) of ICTA.
1012. A professional author or designer may receive lump sums from the sale of rights in artistic works in the course of the carrying on a profession. Such sums are brought into account in calculating the profits of the profession. But this section makes it clear that, in the case of sales after the death of the author or designer, the sums are not charged to tax.
1013. The section ensures that a lump sum received for the assignment of design right is not treated as a post-cessation receipt. See *Change 63* in Annex 1.
1014. The definition of “assignment” in section 879 of this Act applies so that the word means “assignation” in Scotland.

Section 254: Allowable deductions

1015. This section is the first of two that set out the rules for allowing deductions from sums charged as post-cessation receipts. It is based on section 105 of ICTA.
1016. *Subsection (3)* ensures that a deduction is not allowed for any expenses for which relief has already been allowed under section 109A of ICTA (relief for post-cessation expenditure). The reference to section 90(4) of FA 1995 (not part of the Tax Acts because it relates to capital gains tax) is retained because relief may be given under that section following a claim under section 109A of ICTA.

Section 255: Further rules about allowable deductions

1017. This section is the second of two that set out the rules for allowing deductions from sums charged as post-cessation receipts. It is based on section 105 of ICTA.
1018. *Subsection (2)* ensures that any loss unused at the date of cessation is set off against post-cessation receipts in the same order as it would have been set off against profits under section 385 of ICTA, that is, against an earlier year before a later year.
1019. *Subsection (4)* ensures that no expense or loss can be set against amounts treated as post-cessation receipts by section 248 (debts paid after cessation) or section 250 (receipts relating to post-cessation expenditure).
1020. The references to capital allowances in section 105(1)(b) and (3) of ICTA are no longer needed because any capital allowance is allowed as a trading expense.

Section 256: Treatment of post-cessation receipts

1021. This section treats most post-cessation receipts as earned income and relevant UK earnings. It is based on section 107 of ICTA. See *Change 64* in Annex 1.
1022. FA 2004 made significant changes to the taxation of pension schemes. The changes take effect from 6 April 2006.

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

1023. This Act deals with this by including the new rules in section 256 of this Act. The commencement issue is then dealt with as a transitional measure in paragraph 60 of Schedule 2 to this Act. The old rules apply until 5 April 2006.

Section 257: Election to carry back

1024. It may be beneficial for a taxpayer to have a post-cessation receipt assessed for the year of cessation instead of the year of receipt. This section, based on section 108 of ICTA, allows the taxpayer to elect for that treatment.