

INCOME TAX (TRADING AND OTHER INCOME) ACT 2005

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 9: Partnerships

Section 862: Sale of patent rights: effect of later cessation of trade

3243. This section sets out what happens when there has been a sale of patent rights to which the previous section applied and there is a complete change in the persons carrying on the trade. It is based on section 525 of ICTA.
3244. *Subsection (1)* sets out the conditions for the section to apply.
3245. *Subsection (1)(b)* is the condition that the current charge on the proceeds from a sale of patent rights is made on a firm. It is possible for an individual to “inherit” such a charge from a firm as a result of section 861. In that case when the individual ceases to carry on the trade the assessment of the remaining instalments of the charge is not disturbed.
3246. *Subsection (1)(d)* is the condition that there is a complete change in the persons carrying on the trade. If there is a partial change, section 861 applies.
3247. *Subsection (2)* is the main rule that when the firm ceases to carry on the trade the remaining tax charges are “rolled up” in the last year of the trade.
3248. *Subsection (3)* sets out how the “rolled-up” charge is split between the current partners on cessation of the trade.
3249. *Subsections (4) to (6)* allow an election to have the remaining tax charge spread evenly over the years since the original sale of patent rights.
3250. The time limit for the election is the same as that in section 593 and is brought into line with the time limit for other elections in this Act. See *Change 104* in Annex 1.
3251. This section does not specify that the election is to be made to “the inspector”. Section 878(4) of this Act draws attention to the rules in TMA, which apply for the purposes of this Act. Those rules require elections to be made to “an officer of the Board”.