



# Income Tax (Trading and Other Income) Act 2005

## 2005 CHAPTER 5

### PART 2

#### TRADING INCOME

#### CHAPTER 2

#### INCOME TAXED AS TRADE PROFITS

#### *Trades and trade profits*

### **9 Farming and market gardening**

- (1) Farming or market gardening in the United Kingdom is treated for income tax purposes as the carrying on of a trade or part of a trade (whether or not the land is managed on a commercial basis and with a view to the realisation of profits).
- (2) All farming in the United Kingdom carried on by a person, other than farming carried on as part of another trade, is treated for income tax purposes as one trade.
- (3) In the case of farming carried on by a firm, this rule is explained by section 859(1).

### **10 Commercial occupation of land other than woodlands**

- (1) The commercial occupation of land in the United Kingdom is treated for income tax purposes as the carrying on of a trade or part of a trade.
- (2) For this purpose the occupation of land is commercial if the land is managed—
  - (a) on a commercial basis, and
  - (b) with a view to the realisation of profits.

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- (3) This section does not apply—
- (a) to farming or market gardening (which is dealt with by section 9),
  - (b) if the land is being prepared for forestry purposes, or
  - (c) if the land comprises woodlands (which is dealt with by section 11).

## 11 Commercial occupation of woodlands

- (1) The commercial occupation of woodlands in the United Kingdom is not a trade or part of a trade for any income tax purpose.
- (2) For this purpose the occupation of woodlands is commercial if the woodlands are managed—
- (a) on a commercial basis, and
  - (b) with a view to the realisation of profits.
- (3) See also sections 267 and 768 (which, when read with this section, secure that profits or losses from the commercial occupation of woodlands in the United Kingdom are ignored for income tax purposes).

## 12 Profits of mines, quarries and other concerns

- (1) Profits or losses arising out of land in the case of a concern to which this section applies are calculated as if the concern were a trade.
- (2) Any profits arising out of the land are charged to income tax as if the concern were a trade carried on in the United Kingdom.

But this does not impose a charge to tax on a non-UK resident in the case of a concern outside the United Kingdom.

- (3) Any losses arising out of the land are treated for the purposes of [F<sup>1</sup>Part 4 of ITA 2007](loss relief) as losses of a trade carried on in the United Kingdom.
- (4) The concerns to which this section applies are—
- (a) mines and quarries (including gravel pits, sand pits and brickfields),
  - (b) ironworks, gasworks, salt springs or works, alum mines or works, waterworks and streams of water,
  - (c) canals, inland navigation, docks and drains or levels,
  - (d) rights of fishing,
  - (e) rights of markets and fairs, tolls, bridges and ferries,
  - (f) railways and other kinds of way, and
  - (g) a concern of the same kind as one specified in paragraph (b), (c), (d) or (e).
- (5) This section does not apply to a concern if section 10 (commercial occupation of land other than woodlands) applies to the occupation of the land out of which the profits or losses arise.

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### Textual Amendments

- F1** Words in s. 12(3) substituted (6.4.2007 with effect as noted in s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), ss. 1027, 1034, [Sch. 1 para. 494](#) (with transitional provisions and savings in [Sch. 2](#))

## 13 Visiting performers

- (1) This section applies if an entertainer, sportsman or sportswoman of a prescribed description (a “performer”)—
- (a) is non-UK resident in a tax year, and
  - (b) performs a relevant activity in the United Kingdom in the tax year.
- (2) If a payment or transfer connected with the relevant activity is made, the performer is treated for income tax purposes as performing the relevant activity in the course of a trade, profession or vocation carried on in the United Kingdom.
- (3) It does not matter whether the payment or transfer is made to the performer or anyone else.
- (4) Subsection (2) does not apply—
- (a) so far as the performer would otherwise be performing the relevant activity in the course of a trade, profession or vocation carried on in the United Kingdom, or
  - (b) if the relevant activity is performed in the course of an employment or office.
- (5) If a payment or transfer connected with the relevant activity is made to —
- (a) a person other than the performer, and
  - (b) that person is of a prescribed description,
- the payment or transfer is treated for income tax purposes as made instead to the performer in the course of a trade, profession or vocation carried on in the United Kingdom.
- (6) Subsection (5) does not apply in such circumstances as may be prescribed.
- (7) If—
- (a) income tax is chargeable on profits arising from payments or transfers (made to any person), and
  - (b) the payments or transfers are connected with the relevant activity,
- the tax is charged as if the payments or transfers were received in the course of a separate trade, profession or vocation (distinct from any other trade, profession or vocation carried on by the performer).
- (8) In this section and section 14—
- <sup>F2</sup> .....  
“prescribed” means prescribed by regulations,  
“regulations” means regulations made by the Treasury,  
“relevant activity” means an activity of a prescribed description, and  
<sup>F2</sup> .....  
and a payment or transfer is connected with a relevant activity if it has a connection of the prescribed kind with that activity.

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[<sup>F3</sup>(9) In this section and section 14—

- (a) references to a payment include references to a payment by way of loan of money, and
- (b) references to a transfer do not include references to a transfer of money but, subject to that, include references to—
  - (i) a temporary transfer (as by way of loan), and
  - (ii) a transfer of a right (whether or not a right to receive money).

(10) This section does not apply to payments or transfers of a kind prescribed in regulations under section 966(6) of ITA 2007.]

#### Textual Amendments

- F2** S. 13(8) definitions of "payment" and "transfer" repealed (6.4.2007 with effect as noted in s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), ss. 1027, 1031, 1034, [Sch. 1 para. 495\(2\)](#), [Sch. 3 Pt. 1](#) (with transitional provisions and savings in [Sch. 2](#))
- F3** S. 13(9)(10) inserted (6.4.2007 with effect as noted in s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), ss. 1027, 1034, [Sch. 1 para. 495\(3\)](#) (with transitional provisions and savings in [Sch. 2](#))

## 14 Visiting performers: supplementary

(1) Regulations may provide—

- (a) for the deduction, in calculating any profits of the performer arising from the payment or transfer, of expenses incurred by other persons in relation to the payment or transfer,
- (b) that any liability to income tax (whether of the performer or anyone else) which would, apart from section 13(5), arise in relation to the payment or transfer is not to arise (or is to arise so far as prescribed).

(2) Regulations may provide—

- (a) for the apportionment of profits between different trades, professions or vocations of the performer,
- (b) for the apportionment between different tax years of the profits arising from relevant activities of the performer,
- (c) for losses made in any trade, profession or vocation of the performer to be deducted from or set off against the profits of another trade, profession or vocation of the performer,
- (d) that prescribed provisions of the Income Tax Acts about losses, or about expenses, are not to apply (or are to apply with prescribed modifications) in prescribed circumstances relating to the performer.

(3) References in this section to a trade, profession or vocation of the performer include references to the separate one referred to in section 13(7) as well as to any other carried on by the performer.

(4) Regulations may—

- (a) make provision generally for giving effect to section 13, and
- (b) make different provision for different cases or descriptions of cases.

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## 15 Divers and diving supervisors

- (1) This section applies if—
- (a) a person performs the duties of employment as a diver or diving supervisor in the United Kingdom or in any area designated by Order in Council under section 1(7) of the Continental Shelf Act 1964 (c. 29),
  - (b) the duties consist wholly or mainly of seabed diving activities, and
  - (c) any employment income from the employment would otherwise be chargeable to tax under Part 2 of ITEPA 2003.
- (2) The performance of the duties of employment is instead treated for income tax purposes as the carrying on of a trade in the United Kingdom.
- (3) For the purposes of this section the following are seabed diving activities—
- (a) taking part as a diver in diving operations concerned with the exploration or exploitation of the seabed, its subsoil and their natural resources, and
  - (b) acting as a diving supervisor in relation to any such diving operations.

## 16 Oil extraction and related activities

- (1) If a person carries on any oil-related activities as part of a trade, those activities are treated for income tax purposes as a separate trade, distinct from all other activities carried on by the person as part of the trade.
- (2) For this purpose the following are oil-related activities—
- (a) oil extraction activities, and
  - (b) any activities consisting of the acquisition, enjoyment or exploitation of oil rights.
- (3) “Oil extraction activities” and “oil rights” have the meaning given by [<sup>F4</sup>sections 225A and 225B].

### Textual Amendments

- F4** Words in s. 16(3) substituted (1.4.2010) (with effect in accordance with s. 381(1) of the amending Act) by Taxation (International and Other Provisions) Act 2010 (c. 8), s. 381(1), **Sch. 8 para. 190** (with Sch. 9 paras. 1-9, 22)

### Modifications etc. (not altering text)

- C1** S. 16 excluded (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by Income Tax Act 2007 (c. 3), **ss. 87, 1034**, (with transitional provisions and savings in Sch. 2)

## [<sup>F5</sup>16A Voluntary office-holders: compensation for lost profits

- (1) This section applies if a payment is made by a relevant authority to a person where—
- (a) the person holds a voluntary office with the authority,
  - (b) the person carries out the duties of the office in a period in which he or she also carries on a trade, profession or vocation,
  - (c) the payment is made solely to compensate the person for lost profits for the period (and accordingly does not exceed the amount of those profits), and

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- (d) the payment would otherwise be dealt with under Part 2 of ITEPA 2003 by virtue of section 4(2)(b).
- (2) The payment is dealt with under this Part.
- (3) In subsection (1)(c) “lost profits” means the difference between—
  - (a) the amount of profits that the person would have received from the trade, profession or vocation for the period if he or she had not carried out the duties of the office, and
  - (b) the amount of profits that the person did receive from the trade, profession or vocation for the period.
- (4) For the purposes of subsection (1)—
  - “relevant authority” has the meaning given by section 299A of ITEPA 2003;
  - references to a person holding a voluntary office are to be construed in accordance with section 299A(2) and (3) of that Act.]

#### Textual Amendments

**F5** S. 16A inserted (6.4.2018) by [The Enactment of Extra-Statutory Concessions Order 2018 \(S.I. 2018/282\)](#), arts. 1, **3(3)**

#### [<sup>F6</sup>16B. Payments to company directors

- (1) This section applies where—
  - (a) a company (“the paying company”) makes a payment to, or for the benefit of, a director of the paying company in respect of the director’s employment as a director of the paying company,
  - (b) the payment would otherwise be employment income of the director chargeable to tax under Part 2 of ITEPA 2003,
  - (c) the director was or is a member of a firm, or was appointed by a company (“the appointing company”) other than the paying company, and
  - (d) condition A or B is met.
- (2) The payment is to be treated for income tax purposes as a receipt of—
  - (a) a trade carried on by the firm, or
  - (b) a trade carried on by the appointing company.
- (3) Condition A applies where the director is a member of a firm, and is that—
  - (a) the director carries on a profession,
  - (b) being a director of a company is a normal incident of that profession and of membership of the firm,
  - (c) the director is required by the terms of the partnership agreement to account to the firm for the payment, and
  - (d) the amount of the payment is insubstantial, compared with the total amount brought into account as receipts when calculating the firm’s profits.
- (4) Condition B applies where the director is appointed by a company, and is that—
  - (a) the profits of the appointing company are within the charge to income tax,

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- (b) by virtue of an agreement with the appointing company, the director is required to account for the payment to that company, and
  - (c) either subsection (5) or subsection (6) applies to the appointing company.
- (5) This subsection applies if the appointing company had the right to appoint the director by virtue of its shareholding in, or an agreement with, the paying company.
- (6) This subsection applies if the appointing company is not one over which—
- (a) the director has control, or
  - (b) any person connected with the director has control, or
  - (c) the director and any persons connected with him together have control.
- (7) For the purposes of subsection (6), the following persons are connected with the director: the spouse, civil partner, parent, child, son-in-law or daughter-in-law of the director.

#### Textual Amendments

- F6** Ss. 16B, 16C inserted (6.4.2018) by [The Enactment of Extra-Statutory Concessions Order 2018 \(S.I. 2018/282\)](#), arts. 1, **5(2)**

### 16C. Professionals in practice: incidental income from an office or employment

- (1) This section applies where—
- (a) a payment is received by an individual who carries on a profession (alone or in partnership),
  - (b) the payment is made to the individual in his or her capacity as an employee or office-holder, but is not made in respect of employment as a director of a company,
  - (c) the payment would otherwise be employment income of the individual chargeable to tax under Part 2 of ITEPA 2003,
  - (d) the conditions in subsection (3) are met, and
  - (e) where the individual carries on the profession in partnership, the condition in subsection (4) is also met.
- (2) The payment is to be treated for income tax purposes as a receipt of a trade carried on by the individual or, where the individual carries on the profession in partnership, by the firm.
- (3) The conditions referred to in subsection (1)(d) are that—
- (a) the time spent by the individual in performing the duties of the office or employment is insubstantial compared with the time spent by the individual in carrying on the profession,
  - (b) the office or employment is related to the profession carried on by the individual,
  - (c) the amount of the payment is insubstantial compared with—
    - (i) the total amount brought into account as receipts when calculating the individual's trade profits; or
    - (ii) where the individual carries on a profession in partnership, so much of the total amount brought into account as receipts when calculating the firm's profits as is attributable to the individual.

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- (4) The condition referred to in subsection (1)(e) is that the individual is required by the terms of the partnership agreement to account to the firm for the payment and does so.]

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**Textual Amendments**

- F6** Ss. 16B, 16C inserted (6.4.2018) by [The Enactment of Extra-Statutory Concessions Order 2018 \(S.I. 2018/282\)](#), arts. 1, **5(2)**



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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 7A-7D inserted by [2022 c. 3 Sch. 1 para. 3](#)
- s. 31E(4) inserted by [2022 c. 3 Sch. 1 para. 7\(3\)](#)
- s. 649(1A)(1B) inserted by [2023 c. 30 Sch. 2 para. 11\(2\)](#)
- s. 679(3A) inserted by [2023 c. 30 Sch. 2 para. 11\(5\)\(b\)](#)
- s. 679A(3A) inserted by [2023 c. 30 Sch. 2 para. 11\(6\)\(b\)](#)
- s. 680(1A) inserted by [2023 c. 30 Sch. 2 para. 11\(7\)\(a\)](#)