

CORPORATION TAX ACT 2009

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3: Trading income

Overview

Chapter 2: Income taxed as trade profits

Overview

153. This Chapter explains what is taxed as profits of a trade. It identifies a number of activities and receipts and sets out how they are treated.

Section 35: Charge to tax on trade profits

154. This section applies the corporation tax charge on income to the profits of a trade. It is based on section 18 of ICTA. The corresponding rule for income tax is in section 5 of ITTOIA.
155. The section does not rewrite the reference to “profession or vocation” in Schedule D Case II. See *Change 2* in Annex 1.
156. Section 832(1) of ICTA provides that “trade” includes “every trade, manufacture, adventure or concern in the nature of trade”. This brings within the meaning of trade an isolated transaction (or a small number of transactions) which, while in the nature of trade, is not sufficiently extensive to amount to a trade.

Section 36: Farming and market gardening

157. This section has two functions. First, it treats all farming or market gardening carried on in the United Kingdom as a trade. Second, it treats all farming carried on in the United Kingdom by a particular person as a single trade. It is based on section 53 of ICTA. The rules for income tax are rewritten in section 9 of ITTOIA.
158. *Subsection (1)* deals with the first function. In most cases there will be no doubt that farming is a trade on first principles. Like section 38 of this Act this section can trace its origins back to the time when there was a charge to income tax under Schedule B on the occupation of land. Farming was originally charged under Schedule B. The purpose of section 53 of ICTA and its predecessor provisions was to take the charge on farming out of Schedule B and into Schedule D. With the abolition of Schedule B that function is now spent.
159. But section 53 of ICTA does make clear that even uncommercial farming is treated as a trade. This section preserves that effect.
160. *Subsection (2)* deals with the second function of the section. It provides that all farming carried on by a company in the United Kingdom is treated as a single trade. It makes

clear that farming carried on as part of another trade is not included in the single trade of farming.

161. The restriction of subsection (2) to farming in the United Kingdom is derived from the definition of “farming” in section 832(1) of ICTA.
162. Section 53(2) of ICTA uses the expression “particular company or partnership” to make clear that the single trade rule applies also to a firm. It follows that farming carried on by a company as a member of a firm is separate from any farming carried on by that company alone. This rule is dealt with in section 1270 in Part 17 (Partnerships). The corresponding provision for income tax is section 859 of ITTOIA.
163. The definition of “farming” and “market gardening” is given in section 1317 in Part 21 (Other general provisions). The corresponding provision for income tax is section 996 of ITA.

Section 37: Commercial occupation of woodlands

164. This section provides that the commercial occupation of woodlands is not treated as a trade for any corporation tax purpose. It is based on section 53 of ICTA and paragraph 3 of Schedule 6 to FA 1988. The corresponding rule for income tax is in section 11 of ITTOIA.
165. *Subsection (3)* makes clear that when this section is read together with related sections any profits and losses arising from the commercial occupation of woodlands are wholly outside the corporation tax code.
166. This section prevents any charge to tax as trading income and denies any claim for relief for a trade loss. Section 208(b) of this Act performs a similar function in relation to property income. Section 980 prevents there being any charge to tax under Chapter 8 of Part 10 (income not otherwise charged). The corresponding rule for income tax is in section 768 of ITTOIA.

Section 38: Commercial occupation of land other than woodlands

167. This section deals with the commercial occupation of land for purposes other than farming or woodlands. It is based on section 53 of ICTA. The corresponding rule for income tax is in section 10 of ITTOIA.
168. The section treats the commercial occupation of land in the United Kingdom as the carrying on of a trade. It provides certainty of treatment if land is occupied on a commercial basis in circumstances that do not amount to the carrying on of a trade on first principles.
169. The origins of section 53 of ICTA go back to the time when there was a charge to income tax under Schedule B on the occupation of land. The purpose of the Schedule B charge was to tax the profit that an occupier of the land could earn from the land itself, for example, by farming it. The tax was charged whether or not the occupier actually exploited the land.
170. The Schedule B charge was calculated by reference to the annual value of the land. This amount could be considerably less than the amount of profit an occupier could in fact derive from the land. For this reason the basis of charge was switched from Schedule B to Schedule D Case I if the land was farmed or otherwise managed on a commercial basis.
171. The last remnant of Schedule B was repealed by FA 1988. Schedule 6 to FA 1988 exempted any profits and losses from the occupation of commercial woodlands from corporation tax.

172. The provisions of section 53 of ICTA relating to farming are rewritten as section 36 of this Act. The provisions relating to the occupation of commercial woodlands are rewritten as section 37 of this Act.

Section 39: Profits of mines, quarries and other concerns

173. This section treats the profits and losses of certain concerns as if they were the profits and losses of a trade. It is based on section 55 of ICTA. The corresponding rule for income tax is in section 12 of ITTOIA.
174. The feature that most of these concerns have in common is that they exploit land for its natural resources. The section applies only if the activity carried on by the concern does not amount to a trade on first principles. If the activity is a trade on first principles the profits and losses will be taxed in accordance with section 35 of this Act.
175. The section does not deem the concern to be carrying on a trade. The company will not qualify for roll-over relief under section 152 of TCGA on any chargeable gain. That section requires the taxpayer to be carrying on a trade as defined in section 158(2) of TCGA. If the concern is operated by a company not resident in the United Kingdom that company does not become liable to corporation tax through the application of section 5(2). Section 5(2) requires a trade to be carried on in the United Kingdom.
176. *Subsections (1) and (2)* provide that the profits and losses of the concern are calculated and charged to tax as if the concern were a trade. The source legislation was not explicit in this regard. See Part A of *Change 3* in Annex 1. This change reproduces Change 2 in ITTOIA and so brings the income tax and corporation tax codes back into line.
177. *Subsection (3)* provides that the normal loss rules apply. See Part B of *Change 3* in Annex 1.
178. *Subsection (4)* lists the concerns to which the section applies. It updates the reference to “fishings” to “rights of fishing”.
179. *Subsection (5)* makes clear that section 38 of this Act has priority over section 39. This is because section 38 treats the activity as if it were a trade. This contrasts with the approach of this section, which is to treat the profits and losses as trade profits and losses. Section 38 may be more beneficial for the company. For example, the activity would qualify as a trade for chargeable gains purposes. See section 158(2) of TCGA.

Section 40: Credit unions

180. This section ensures that most credit unions are not treated as carrying on a trade for tax purposes. It is based on section 487 of ICTA.
181. Credit unions are profit-sharing financial co-operatives, owned and managed by their own members, which offer a convenient way of saving and loans to their members.
182. The members make regular savings, as little or as much as they wish. These savings then form a common pool of money from which loans are made to members. When members have been saving for a certain period of time (usually about 12 weeks) they can apply for a loan from the pool. Interest on the loan is charged at about 1% per month on the monthly reducing balance.
183. There are other rules about credit unions:
- in Part 5 (loan relationships);
 - in section 133; and
 - in section 1218.
184. *Subsection (1)* is the rule that the usual activities of a credit union are not to be treated as a trade. The rule applies only in the calculation of the credit union’s income. So, if

the carrying on of a trade is relevant for some other purpose (for instance, the taxation of chargeable gains), and the credit union is in fact carrying on a trade, the position is not disturbed by this rule.

Section 41: Effect of company starting or ceasing to be within charge to corporation tax

185. This section treats a company as starting or ceasing to carry on a trade in particular circumstances. It is based on section 337 of ICTA. The corresponding rule for income tax is in section 18 of ITTOIA.
186. Section 337 of ICTA requires the company's trade or property business income to be calculated as though it had started or ceased to carry on a trade or a property business in two cases. Section 41 deals with trades and section 289 with property businesses.
187. The first trade case is when the company begins or ceases to carry on the trade (section 337(1)(a) of ICTA). Then its profits from that trade are calculated as though the trade had, at that time, begun or ceased. It is not necessary to rewrite this case. It is dealt with automatically in the rewritten rules because they are "person-based" and do not assume that a particular trade can continue independently of the person actually carrying it on.
188. The second case involves movement by the company into or out of the corporation tax regime (section 337(1)(b) of ICTA). Non-UK resident companies are within the charge to corporation tax only if they are trading, are trading in the United Kingdom, and through a permanent establishment in the United Kingdom. Then they are chargeable to corporation tax on all the profits attributable to that permanent establishment. First meeting or ceasing to meet those conditions can result in a change of taxing regime from income tax to corporation tax or vice versa.
189. **Section 41** says what happens when a company enters or leaves the corporation tax regime in respect of the trade: then its trade profits are calculated as though it had started or ceased to carry on the trade. The corresponding income tax rule in section 18 of ITTOIA is a complementary, mirror-image rule which applies when the company enters or leaves the income tax regime in respect of the trade.

Section 42: Tied premises

190. This section treats rent received by a company carrying on a trade, for premises let to persons to whom the company supplies goods sold or used on those premises, as a receipt of the trade rather than a receipt of a property business. It is based on section 98 of ICTA. The corresponding rule for income tax is in section 19 of ITTOIA.
191. Section 98 of ICTA is expressed in general terms. But it most commonly applies to rent received by a brewing company which lets premises to tied tenants.

Section 43: Caravan sites where trade carried on

192. This section allows a company which carries on a trade associated with the operation of a caravan site to include in the receipts of that trade income from letting pitches or caravans where the letting does not itself constitute a trade. It is based on ESC C36. The corresponding rule for income tax is in section 20 of ITTOIA. See *Change 4* in Annex 1.
193. See section 1314 and *Change 96* in Annex 1 for the definition of "caravan".

Section 44: Surplus business accommodation

194. This section allows income from letting surplus business accommodation to be treated as a trade receipt instead of as rent. It is based on the practice known as "Revenue Decision 9" set out in the HMRC publication *Tax Bulletin* of 15 February 1994. The corresponding rule for income tax is in section 21 of ITTOIA. See *Change 5* in Annex 1.

Section 45: Payments for wayleaves

195. This section applies if a trader receives rent from a wayleave granted in respect of land on which a trade is carried on. It is based on section 120 of ICTA. The corresponding rule for income tax is in section 22 of ITTOIA.
196. Rent received in respect of a wayleave is normally taxed as property income either by Chapter 2 of Part 4 of this Act (property businesses) or by section 277 (charge to tax on rent receivable for a UK electric-line wayleave). But if the rent is received in respect of land on which a trader carries on a trade and the trader receives no other rent in respect of the same land the rent, and any associated expenses, can be included in the calculation of the trade profits. See *Change 6* in Annex 1. This change enacts a non-statutory practice, and also makes changes to both practice and the law. It reproduces Change 5 in ITTOIA and so brings the income and corporation tax codes back into line.
197. *Subsection (4)* defines “rent”. Section 120 of ICTA uses the definition of “rent” in section 119(3) of ICTA (rent etc. payable in connection with mines, quarries and similar concerns). Section 119 of ICTA is rewritten in Chapter 7 of Part 4 of this Act. The definition of rent in that Chapter and in this section must be the same. See the commentary on section 271 of this Act for a fuller description of the rewrite of the word “rent” in Chapter 7 of Part 4 of this Act.
198. *Subsection (5)* defines “wayleave”. Section 120 of ICTA uses the word “easement” as defined in section 119(3) of ICTA to describe the nature of the right for which the rent is paid. This section uses “wayleave” as that is how most of the payments covered by this section are usually described in practice. The definition of “easement” in section 119(3) of ICTA gives that word a meaning that is much wider than its usual legal meaning. See the comments of Uthwatt J at pages 329 and 330 of *Mosley v George Wimpey & Co Ltd* (1945), 27 TC 314 CA.
199. The definition of “wayleave” preserves the generality of the words in section 119(3) of ICTA and includes a reference to the Scottish equivalent, “servitude”.
200. The definition has no territorial limitation. So the section covers services other than UK electric-line wayleaves.
201. The section does not rewrite the reference to “profession or vocation” in Schedule D Case II. See *Change 2* in Annex 1.