

*These notes refer to the Corporation Tax Act 2009
(c.4) which received Royal Assent on 26 March 2009*

CORPORATION TAX ACT 2009

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3: Trading income

Overview

Chapter 5: Trade profits: rules allowing deductions

Overview

Sections 76 to 81: Redundancy payments etc

Overview

298. These six sections are based on the trading income rules relating to redundancy payments in sections 90, 579 and 580 of ICTA. The rules that deal with the employee's liability are in section 309 of ITEPA. The corresponding rules for income tax are in sections 76 to 80 of ITTOIA.
299. The trading income rules were introduced to reverse the decisions in *CIR v Anglo Brewing Co Ltd* (1925), 12 TC 803 and *Godden v A Wilson's Stores (Holdings) Ltd* (1962), 40 TC 161. In those cases the courts held that certain payments to employees on the closing down of a trade were not deductible in arriving at trading profits. In neither case was the payment made in accordance with a pre-existing obligation.
300. In 1999 HMRC announced (Tax Bulletin 39G, February 1999) that they would be guided by the decision in *Commissioner of Inland Revenue v Cosmotron Manufacturing Co Ltd* (1997), 70 TC 292¹.
301. In that Hong Kong case the Privy Council decided that redundancy payments made under a pre-existing obligation are deductible. Although that decision is merely persuasive in the United Kingdom, HMRC do not argue that payments made under a pre-existing obligation (including a statutory obligation) are covered by the *Anglo Brewing* and *Wilson's Stores* decisions. The announcement in Tax Bulletin means that it may not be necessary to give the employer a statutory right to a deduction in calculating trading profits. But these sections put the matter beyond doubt.

¹ STC [1997] 1134