



# Income Tax (Trading and Other Income) Act 2005

## 2005 CHAPTER 5

### PART 1

#### OVERVIEW

#### 1 Overview of Act

- (1) This Act imposes charges to income tax under—
  - (a) Part 2 (trading income),
  - (b) Part 3 (property income),
  - (c) Part 4 (savings and investment income), and
  - (d) Part 5 (certain miscellaneous income).
- (2) <sup>F1</sup> .....
- (3) Exemptions from those charges are dealt with in Part 6 (exempt income) but any Part 6 exemptions which are most obviously relevant to particular types of income are also mentioned in the provisions about those types of income.
- (4) What is or is not mentioned in those provisions does not limit the effect of Part 6.
- (5) This Act also contains—
  - (a) provision about rent-a-room relief and [<sup>F2</sup>qualifying care] relief (see Part 7),
  - (b) special rules for foreign income (see Part 8),
  - (c) special rules for partnerships (see Part 9), and
  - (d) certain calculation rules and general provisions (see Part 10).
- (6) For abbreviations and defined expressions used in this Act, see section 885 and Schedule 4.

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

### Textual Amendments

- F1** S. 1(2) repealed (6.4.2007 with effect as noted in s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), ss. 1027, 1031, 1034, Sch. 1 para. 493, **Sch. 3 Pt. 1** (with transitional provisions and savings in Sch. 2)
- F2** Words in s. 1(5) substituted (16.12.2010) (with effect in accordance with Sch. 1 para. 36 of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), **Sch. 1 para. 31** (with Sch. 1 para. 37)

## 2 Overview of priority rules

- (1) This Act contains some rules establishing an order of priority in respect of certain amounts which would otherwise—
- fall within a charge to income tax under two or more Chapters or Parts of this Act, or
  - fall within a charge to income tax under a Chapter or Part of this Act and ITEPA 2003.
- (2) See, in particular—
- section 4 (provisions which must be given priority over Part 2),
  - section 261 (provisions which must be given priority over Part 3),
  - section 262 (priority between Chapters within Part 3),
  - section 366 (provisions which must be given priority over Part 4),
  - section 367 (priority between Chapters within Part 4),
  - section 575 (provisions which must be given priority over Part 5), and
  - section 576 (priority between Chapters within Part 5).
- (3) But the rules in those sections need to be read with other rules of law (whether in this Act or otherwise) about the scope of particular provisions or the order of priority to be given to them.
- (4) Section 171(2) of FA 1993 (profits of Lloyd's underwriters charged only under Chapter 2 of Part 2 of this Act) is one example of another rule of law.

## PART 2

### TRADING INCOME

## CHAPTER 1

### INTRODUCTION

## 3 Overview of Part 2

- (1) This Part imposes charges to income tax under—
- Chapter 2 (the profits of a trade, profession or vocation which meet the territorial conditions mentioned in section 6),
  - Chapter 17 (amounts treated as adjustment income under section 228), and
  - Chapter 18 (post-cessation receipts that are chargeable under this Part).

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

- (2) Part 6 deals with exemptions from the charges under this Part.
- (3) See, in particular, the exemptions under sections 777 (VAT repayment supplements) and 778 (incentives to use electronic communications).
- (4) The charges under this Part apply to non-UK residents as well as UK residents but this is subject to sections 6(2) and (3) and 243(3) and (4) (charges on non-UK residents only on UK income).
- (5) The rest of this Part contains rules relevant to the charges to tax under this Part.
- (6) This section needs to be read with the relevant priority rules (see sections 2 and 4).

#### **4 Provisions which must be given priority over Part 2**

- (1) Any receipt or other credit item, so far as it falls within—
  - (a) Chapter 2 of this Part (receipts of trade, profession or vocation), and
  - (b) Chapter 3 of Part 3 so far as it relates to a UK property business, is dealt with under Part 3.
- (2) Any receipt or other credit item, so far as it falls within—
  - (a) this Part, and
  - (b) Part 2, 9 or 10 of ITEPA 2003 (employment income, pension income or social security income),
 is dealt with under the relevant Part of ITEPA 2003.

## **CHAPTER 2**

### INCOME TAXED AS TRADE PROFITS

#### *Charge to tax on trade profits*

#### **5 Charge to tax on trade profits**

Income tax is charged on the profits of a trade, profession or vocation.

#### **6 Territorial scope of charge to tax**

- (1) Profits of a trade arising to a UK resident are chargeable to tax under this Chapter wherever the trade is carried on.
- (2) Profits of a trade arising to a non-UK resident are chargeable to tax under this Chapter only if they arise—
  - (a) from a trade carried on wholly in the United Kingdom, or
  - (b) in the case of a trade carried on partly in the United Kingdom and partly elsewhere, from the part of the trade carried on in the United Kingdom.

[<sup>F3</sup>(2A) If the tax year is a split year as respects a UK resident individual, this section has effect as if, for the overseas part of that year, the individual were non-UK resident.]

- (3) This section applies to professions and vocations as it applies to trades.

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

### Textual Amendments

- F3** S. 6(2A) inserted (with effect in accordance with Sch. 45 para. 153(2) of the amending Act) by Finance Act 2013 (c. 29), **Sch. 45 para. 75**

## 7 Income charged

- (1) Tax is charged under this Chapter on the full amount of the profits of the tax year.
- (2) For this purpose the profits of a tax year are the profits of the basis period for the tax year.
- (3) For the rules identifying the basis period for a tax year, see Chapter 15.
- (4) This section is subject to Part 8 (foreign income: special rules).
- (5) And, for the purposes of section 830 (meaning of “relevant foreign income”), the profits of a trade, profession or vocation arise from a source outside the United Kingdom only if the trade, profession or vocation is carried on wholly outside the United Kingdom.

## 8 Person liable

The person liable for any tax charged under this Chapter is the person receiving or entitled to the 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.
- (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).

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

## 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>4</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.

### Textual Amendments

- F4** 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

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

- (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>F5</sup> .....
- “prescribed” means prescribed by regulations,
- “regulations” means regulations made by the Treasury,
- “relevant activity” means an activity of a prescribed description, and
- <sup>F5</sup> .....
- and a payment or transfer is connected with a relevant activity if it has a connection of the prescribed kind with that activity.
- [<sup>F6</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.]

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

### Textual Amendments

- F5** 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](#))
- F6** 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—
- 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,
  - 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—
- for the apportionment of profits between different trades, professions or vocations of the performer,
  - for the apportionment between different tax years of the profits arising from relevant activities of the performer,
  - 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,
  - 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—
- make provision generally for giving effect to section 13, and
  - make different provision for different cases or descriptions of cases.

## 15 Divers and diving supervisors

- (1) This section applies if—
- 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),
  - the duties consist wholly or mainly of seabed diving activities, and
  - 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.

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (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 [F7 sections 225A and 225B].

### Textual Amendments

- F7** 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)

## *Starting and ceasing to trade*

## 17 Effect of becoming or ceasing to be a UK resident

- [F8(1) This section applies if—
- (a) an individual carries on a trade otherwise than in partnership, and
  - (b) there is a change of residence.
- (1A) For the purposes of this section there is a “change of residence” if—
- (a) the individual becomes or ceases to be UK resident, or
  - (b) a tax year is, as respects the individual, a split year.
- (1B) The change of residence occurs—
- (a) in a case falling within subsection (1A)(a), at the start of the tax year for which the individual becomes or ceases to be UK resident, and
  - (b) in a case falling within subsection (1A)(b), at the start of whichever of the UK part or the overseas part of the tax year is the later part.]
- (2) [F9If this section applies and the individual does not actually cease permanently to carry on the trade immediately before the change of residence occurs,] the individual is treated for income tax purposes—



*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (a) as permanently ceasing to carry on the trade at the time of the change of residence, and
  - (b) so far as the individual continues to carry on the trade, as starting to carry on a new trade immediately afterwards.
- (3) But subsection (2) does not prevent a loss made before the change of residence from being [<sup>F10</sup>deducted under section 83 of ITA 2007 from] profits arising after the change.
- (4) This section applies to professions and vocations as it applies to trades.
- (5) In the case of a trade carried on by a firm, see sections 852(6) and (7) and 854(5).

#### Textual Amendments

- F8** S. 17(1)-(1B) substituted for s. 17(1) (with effect in accordance with Sch. 45 para. 153(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 76\(2\)](#)
- F9** Words in s. 17(2) inserted (with effect in accordance with Sch. 45 para. 153(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 76\(3\)](#)
- F10** Words in s. 17(3) substituted (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. 496](#) (with transitional provisions and savings in [Sch. 2](#))

## 18 Effect of company starting or ceasing to be within charge to income tax

- (1) This section applies if a company starts or ceases to be within the charge to income tax under this Chapter in respect of a trade.
- (2) The company is treated for the purposes of this Part—
- (a) as starting to carry on the trade when it starts to be within the charge, or
  - (b) as permanently ceasing to carry on the trade when it ceases to be within the charge.

*Trading income and property income*

## 19 Tied premises

- (1) This section applies if—
- (a) in the course of carrying on a trade a person (“the trader”) supplies, or is concerned in the supply of, goods sold or used on premises occupied by another person,
  - (b) the trader has an estate or interest in the premises,
  - (c) the estate or interest is dealt with as property employed for the purposes of the trade, and
  - (d) receipts and expenses in connection with the premises would otherwise be brought into account in calculating the profits of a property business of the trader.
- (2) Both the receipts and expenses are instead brought into account in calculating the profits of the trade.
- (3) Any apportionment of receipts or expenses that is necessary because—
- (a) the receipts or expenses do not relate only to the premises, or

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

(b) the above conditions are met only in relation to part of the premises, is to be made on a just and reasonable basis.

## 20 Caravan sites where trade carried on

- (1) This section applies if—
- (a) a person (“the trader”) carries on material activities connected with the operation of a caravan site,
  - (b) the activities are, or are part of, a trade, and
  - (c) receipts from, and expenses of, lettings of caravans or pitches for caravans on the site would otherwise be brought into account in calculating the profits of a property business of the trader.
- (2) The trader may instead bring both the receipts and expenses into account in calculating the profits of the trade.
- (3) But if the conditions in subsection (1)(a) and (b) are met for only part of a tax year, subsection (2) applies only to the receipts and expenses that would otherwise be brought into account in calculating the profits of the property business for that part of the tax year.
- (4) In this section—
- “caravan site” means—
- (a) land on which a caravan is stationed for the purposes of human habitation, and
  - (b) land which is used in conjunction with land on which a caravan is so stationed, and
- “letting” includes a licence to occupy.

## 21 Surplus business accommodation

- (1) This section applies if—
- (a) a person (“the trader”) carrying on a trade obtains receipts from a letting of business accommodation that is temporarily surplus to requirements (see subsections (3) and (4)),
  - (b) the accommodation is not held as trading stock,
  - (c) the receipts are in respect of part of a building of which another part is used to carry on the trade,
  - (d) the receipts are relatively small, and
  - (e) the receipts, and the expenses of the letting, would otherwise be brought into account in calculating the profits of a property business of the trader.
- (2) The trader may instead bring both the receipts and expenses into account in calculating the profits of the trade.
- (3) Accommodation is temporarily surplus to requirements only if—
- (a) it has been used within the last 3 years to carry on the trade or acquired within the last 3 years,
  - (b) the trader intends to use it to carry on the trade at a later date, and
  - (c) the letting is for a term of not more than 3 years.

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

- (4) If accommodation is temporarily surplus to requirements at the beginning of a period of account, it continues to be temporarily surplus to requirements until the end of that period.
- (5) If under this section any of the receipts from and expenses of a letting are brought into account in calculating the profits of the trade, all subsequent receipts from and expenses of the letting must be dealt with in the same way (but only so long as this section continues to apply).
- (6) In this section “letting” includes a licence to occupy.
- (7) This section applies to professions and vocations as it applies to trades.

## 22 Payments for wayleaves

- (1) This section applies if—
  - (a) a person (“the trader”) carries on a trade on some or all of the land to which a wayleave relates,
  - (b) rent is receivable, or expenses are incurred, by the trader in respect of the wayleave, and
  - (c) apart from any rent or expenses in respect of a wayleave, no other receipts or expenses in respect of any of the land are brought into account in calculating the profits of any property business of the trader.
- (2) If—
  - (a) the trader would otherwise be liable to tax under Chapter 9 of Part 3 in respect of the rent for the wayleave (rent receivable for UK electric-line wayleaves), or
  - (b) expenses [<sup>F11</sup>incurred by the trader in respect of the wayleave would otherwise be brought into account in calculating profits] charged under that Chapter,
 the trader may instead bring both the rent and expenses into account in calculating the profits of the trade.
- (3) If—
  - (a) rent for the wayleave would otherwise be brought into account in calculating the profits of a property business of the trader, or
  - (b) expenses incurred by the trader in respect of the wayleave would otherwise be so brought into account,
 the trader may instead bring both the rent and expenses into account in calculating the profits of the trade.
- (4) In this section “rent” includes—
  - (a) a receipt mentioned in section 266(3), and
  - (b) any other receipt in the nature of rent.
- (5) In this section “wayleave” means an easement, servitude or right in or over land which is enjoyed in connection with—
  - (a) an electric, telegraph or telephone wire or cable,
  - (b) a pipe for the conveyance of any thing, or
  - (c) any apparatus used in connection with such a pipe.

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (6) The reference to the enjoyment of an easement, servitude or right in connection with an electric, telegraph or telephone wire or cable includes (in particular) its enjoyment in connection with—
- (a) a pole or pylon supporting such a wire or cable, or
  - (b) apparatus used in connection with such a wire or cable.
- (7) This section applies to professions and vocations as it applies to trades.

#### Textual Amendments

- F11** Words in s. 22(2)(b) substituted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 588** (with Sch. 2 Pts. 1, 2)

#### *Rent-a-room and [<sup>F12</sup>qualifying care] relief*

#### Textual Amendments

- F12** Words in s. 23 cross-heading substituted (16.12.2010) (with effect in accordance with Sch. 1 para. 36 of the amending Act) by Finance (No. 3) Act 2010 (c. 33), **Sch. 1 para. 32(2)(b)** (with Sch. 1 para. 37)

### 23 Rent-a-room and [<sup>F13</sup>qualifying care] relief

- (1) The rules for calculating the profits of a trade carried on by an individual are subject to Chapter 1 of Part 7 (rent-a-room relief).
- (2) That Chapter provides relief on income from the use of furnished accommodation in the individual's only or main residence (see, in particular, sections 792 and 796).
- (3) The rules for calculating the profits of a trade, profession or vocation carried on by an individual are subject to Chapter 2 of Part 7 ([<sup>F14</sup>qualifying care] relief).
- (4) That Chapter provides relief on income from the provision by the individual of [<sup>F15</sup>qualifying care] (see, in particular, sections 813, 816, 822 and 823).

#### Textual Amendments

- F13** Words in s. 23 heading substituted (16.12.2010) (with effect in accordance with Sch. 1 para. 36 of the amending Act) by Finance (No. 3) Act 2010 (c. 33), **Sch. 1 para. 32(2)(a)** (with Sch. 1 para. 37)
- F14** Words in s. 23(3) substituted (16.12.2010) (with effect in accordance with Sch. 1 para. 36 of the amending Act) by Finance (No. 3) Act 2010 (c. 33), **Sch. 1 para. 32(1)(a)** (with Sch. 1 para. 37)
- F15** Words in s. 23(4) substituted (16.12.2010) (with effect in accordance with Sch. 1 para. 36 of the amending Act) by Finance (No. 3) Act 2010 (c. 33), **Sch. 1 para. 32(1)(b)** (with Sch. 1 para. 37)

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

## CHAPTER 3

### TRADE PROFITS: BASIC RULES

#### 24 Professions and vocations

Apart from section 30 (animals kept for trade purposes), the provisions of this Chapter apply to professions and vocations as they apply to trades.

#### 25 Generally accepted accounting practice

- (1) The profits of a trade must be calculated in accordance with generally accepted accounting practice, subject to any adjustment required or authorised by law in calculating profits for income tax purposes.
- (2) This does not—
  - (a) require a person to comply with the requirements of [<sup>F16</sup>the Companies Act 2006 or subordinate legislation made under that Act] except as to the basis of calculation, or
  - (b) impose any requirements as to audit or disclosure.
- (3) This section is subject to [<sup>F17</sup>section 25A (cash basis for small businesses)] .
- (4) This section does not affect provisions of the Income Tax Acts relating to the calculation of the profits of Lloyd's underwriters.

#### Textual Amendments

**F16** Words in s. 25(2)(a) substituted (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments\) \(Taxes and National Insurance\) Order 2008 \(S.I. 2008/954\)](#), arts. 1(1), **36** (with art. 4)

**F17** Words in s. 25(3) substituted (with effect in accordance with Sch. 4 paras. 56, 57 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 4 para. 3](#)

#### [<sup>F18</sup>25A Cash basis for small businesses

- (1) A person who is or has been carrying on a trade may elect for the profits of the trade to be calculated on the cash basis (instead of in accordance with generally accepted accounting practice).
- (2) References in this Part to calculating the profits of a trade on the cash basis are references to doing so in accordance with this section.
- (3) Chapter 3A contains provision about—
  - (a) when a person may make an election under this section, and
  - (b) the effect of such an election.
- (4) Where an election under this section has effect in relation to a trade, sections 27, 28 and 30 do not apply in relation to the calculation of the profits of the trade.]

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

### Textual Amendments

**F18** S. 25A inserted (with effect in accordance with Sch. 4 paras. 56, 57 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 4 para. 4](#)

## 26 Losses calculated on same basis as profits

- (1) The same rules apply for income tax purposes in calculating losses of a trade as apply in calculating profits.
- (2) This is subject to any express provision to the contrary.

## 27 Receipts and expenses

- (1) In the Income Tax Acts, in the context of the calculation of the profits of a trade, references to receipts and expenses are to any items brought into account as credits or debits in calculating the profits.
- (2) There is no implication that an amount has been actually received or paid.
- (3) This section is subject to any express provision to the contrary.

## 28 Items treated under CAA 2001 as receipts and expenses

The rules for calculating the profits of a trade need to be read with—

- (a) the provisions of CAA 2001 which treat charges as receipts of a trade, and
- (b) the provisions of CAA 2001 which treat allowances as expenses of a trade.

## 29 Interest

For the purpose of calculating the profits of a trade, interest is an item of a revenue nature, whatever the nature of the loan.

## 30 Animals kept for trade purposes

- (1) Animals or other living creatures kept for the purposes of a trade are treated as trading stock if they are not kept wholly or mainly—
  - (a) for the work they do in connection with the carrying on of the trade,
  - (b) for public exhibition, or
  - (c) for racing or other competitive purposes.
- (2) But they are not treated as trading stock if they are part of a herd in relation to which a herd basis election has effect (see Chapter 8).
- (3) This section applies to shares in animals or other living creatures as it applies to the creatures themselves.
- (4) This section does not apply to professions or vocations.

## 31 Relationship between rules prohibiting and allowing deductions

- (1) Any relevant permissive rule in this Part—

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (a) has priority over any relevant prohibitive rule in this Part, but
- (b) is subject to <sup>F19</sup>section 36 (unpaid remuneration), section 38 (employee benefit contributions), section 48 (car <sup>F20</sup>... hire) and section] 55 (crime-related payments).

<sup>F21</sup>(1A) But, if the relevant permissive rule would allow a deduction in calculating the profits of a trade in respect of an amount which arises directly or indirectly in consequence of, or otherwise in connection with, relevant tax avoidance arrangements, that rule—

- (a) does not have priority under subsection (1)(a), and
- (b) is subject to any relevant prohibitive rule in this Part (and to the provisions mentioned in subsection (1)(b)).]

(2) In this section “any relevant permissive rule in this Part” means any provision of—

- (a) Chapter 5 (apart from sections 60 to 67),
- <sup>F22</sup>(aa) Chapter 5A,]
- (b) Chapter 11, <sup>F23</sup>...
- (c) Chapter 13, <sup>F24</sup>or
- (d) Chapter 17A,]

which allows a deduction in calculating the profits of a trade.

(3) In this section “any relevant prohibitive rule in this Part”, in relation to any deduction, means any provision of this Part (apart from sections <sup>F25</sup>36, 38,] 48 and 55) which might otherwise be read as—

- (a) prohibiting the deduction, or
- (b) restricting the amount of the deduction.

<sup>F26</sup>(4) In this section “relevant tax avoidance arrangements” means arrangements—

- (a) to which the person carrying on the trade is a party, and
- (b) the main purpose, or one of the main purposes, of which is the obtaining of a tax advantage (within the meaning of section 1139 of CTA 2010).

“Arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable).]

#### Textual Amendments

- F19** Words in s. 31(1)(b) substituted (with effect as stated in s. 67(7) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [s. 67\(2\)](#)
- F20** Words in s. 31(1)(b) omitted (with effect in accordance with Sch. 11 paras. 65-67 of the amending Act) by virtue of [Finance Act 2009 \(c. 10\)](#), [Sch. 11 para. 35](#)
- F21** S. 31(1A) inserted (with effect in accordance with s. 78(5)-(7) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [s. 78\(1\)\(a\)](#)
- F22** S. 31(2)(aa) inserted (with effect in accordance with Sch. 5 para. 6 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 5 para. 3](#)
- F23** Word in s. 31(2)(b) omitted (with effect in accordance with Sch. 4 paras. 56, 57 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 4 para. 49](#)
- F24** S. 31(2)(d) and word inserted (with effect in accordance with Sch. 4 paras. 56, 57 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 4 para. 49](#)
- F25** Words in s. 31(3) inserted (with effect as stated in s. 67(7) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [s. 67\(3\)](#)
- F26** S. 31(4) inserted (with effect in accordance with s. 78(5)-(7) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [s. 78\(1\)\(b\)](#)

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

## [<sup>F27</sup>CHAPTER 3A

### TRADE PROFITS: CASH BASIS

#### Textual Amendments

**F27** Pt. 2 Ch. 3A inserted (with effect in accordance with Sch. 4 paras. 56, 57 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 4 para. 5](#)

#### *Eligibility*

#### **31A Conditions to be met for profits to be calculated on cash basis**

- (1) A person may make an election under section 25A for a tax year if conditions A to C are met.
- (2) Condition A is that the aggregate of the cash basis receipts of each trade, profession or vocation carried on by the person during that tax year does not exceed any relevant maximum applicable for that tax year (see section 31B).
- (3) Condition B is that, in a case where the person is either an individual who controls a firm or a firm controlled by an individual—
  - (a) the aggregate of the cash basis receipts of each trade, profession or vocation carried on by the individual or the firm during that tax year does not exceed any relevant maximum applicable for that tax year, and
  - (b) the firm or the individual (as the case may be) has also made an election under section 25A for that tax year.
- (4) Condition C is that the person is not an excluded person in relation to the tax year (see section 31C).
- (5) For the purposes of this section, the “cash basis receipts” of a trade, profession or vocation, in relation to a tax year, are any receipts that—
  - (a) are received during the basis period for the tax year, and
  - (b) would be brought into account in calculating the profits of the trade, profession or vocation for that tax year on the cash basis.

#### **31B Relevant maximum**

- (1) For the purposes of section 31A there is a “relevant maximum” applicable for a tax year in relation to a trade, profession or vocation carried on by a person if any of conditions A to C is met.
- (2) Condition A is that an election under section 25A did not have effect in relation to the trade, profession or vocation for the previous tax year.
- (3) Condition B is that the aggregate of the cash basis receipts of each trade, profession or vocation carried on by the person during the previous tax year is greater than an amount equal to twice the VAT threshold for that previous tax year.
- (4) Condition C is that, in a case where the person is either an individual who controls a firm or a firm controlled by an individual, the aggregate of the cash basis receipts of each trade, profession or vocation carried on by the individual or the firm during



---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

the previous tax year is greater than an amount equal to twice the VAT threshold for that previous tax year.

- (5) If there is a relevant maximum applicable for a tax year, the amount of the relevant maximum is—
- (a) the VAT threshold, or
  - (b) in the case where the person is an individual who is a universal credit claimant in the tax year, an amount equal to twice the VAT threshold.
- (6) For the purposes of this section, where the basis period for a tax year is less than 12 months, the VAT threshold is proportionately reduced.
- (7) In this section—
- “universal credit claimant”, in relation to a tax year, means a person who is entitled to universal credit under the relevant legislation for an assessment period (within the meaning of the relevant legislation) that falls within the basis period for the tax year,
- “the relevant legislation” means—
- (a) Part 1 of the Welfare Reform Act 2012, or
  - (b) any provision made for Northern Ireland which corresponds to that Part of that Act, and
- “the VAT threshold”, in relation to a tax year, means the amount specified at the end of that tax year in paragraph 1(1)(a) of Schedule 1 to VATA 1994.
- (8) The Treasury may by order amend this section.
- (9) A statutory instrument containing an order under subsection (8) that restricts the circumstances in which an election may be made under section 25A may not be made unless a draft of the instrument containing the order has been laid before, and approved by a resolution of, the House of Commons.

### **31C Excluded persons**

- (1) A person is an excluded person in relation to a tax year if the person meets any of conditions A to H.
- (2) Condition A is that—
- (a) the person is a firm, and
  - (b) one or more of the persons who have been partners in the firm at any time during the basis period for the tax year was not an individual at that time.
- (3) Condition B is that the person was a limited liability partnership at any time during the basis period for the tax year.
- (4) Condition C is that the person is an individual who has been a Lloyd's underwriter at any time during the basis period for the tax year.
- (5) Condition D is that the person has made an election under Chapter 8 (trade profits: herd basis rules) that has effect in relation to the tax year.
- (6) Condition E is that the person has made a claim under section 221 (claim for averaging of fluctuating profits) in relation to the tax year.

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

- (7) Condition F is that, at any time within the period of 7 years ending immediately before the basis period for the tax year, the person obtained an allowance under Part 3A of CAA 2001 (business premises renovation allowances).
- (8) Condition G is that the person has carried on a mineral extraction trade at any time during the basis period for the tax year.

In this subsection “mineral extraction trade” has the same meaning as in Part 5 of CAA 2001 (see section 394(2) of that Act).

- (9) Condition H is that—
- (a) at any time before the beginning of the basis period for the tax year the person obtained an allowance under Part 6 of CAA 2001 (research and development allowances) in respect of qualifying expenditure incurred by the person, and
  - (b) the person owns an asset representing the expenditure.

In this subsection “qualifying expenditure” has the same meaning as in Part 6 of CAA 2001.

- (10) The Treasury may by order amend this section.
- (11) A statutory instrument containing an order under subsection (10) that restricts the circumstances in which an election may be made under section 25A may not be made unless a draft of the instrument containing the order has been laid before, and approved by a resolution of, the House of Commons.

#### *Elections under section 25A*

### **31D Effect of election under section 25A**

- (1) An election made by a person under section 25A has effect—
- (a) for the tax year for which it is made, and
  - (b) for every subsequent tax year.
- This is subject to subsections (2) and (3).
- (2) An election made by a person under section 25A ceases to have effect if any of conditions A to C in section 31A is not met for a subsequent tax year.
- (3) An election made by a person under section 25A ceases to have effect if—
- (a) there is a change of circumstances relating to any trade, profession or vocation carried on by the person which makes it more appropriate for its profits for a subsequent tax year to be calculated in accordance with generally accepted accounting practice, and
  - (b) the person elects to calculate those profits in that way.
- (4) Neither subsection (2) nor subsection (3) prevents the person making an election under section 25A for any subsequent tax year.
- (5) An election that—
- (a) is made by a person under section 25A, and
  - (b) has effect for a tax year,
- has effect in relation to every trade, profession or vocation carried on by the person during the tax year.

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

- (6) For provision prohibiting a person who has made an election under section 25A from claiming any capital allowances (other than in respect of expenditure incurred on the provision of a car), see section 1(4) of CAA 2001.

### *Calculation of profits on cash basis*

#### **31E Calculation of profits on cash basis**

- (1) This section applies to professions and vocations as it applies to trades.
- (2) To determine the profits of a trade for a tax year on the cash basis—
- Step 1* Calculate the total amount of receipts of the trade received during the basis period for the tax year.
- Step 2* Deduct from that amount the total amount of expenses of the trade paid during the basis period for the tax year.
- (3) Subsection (2) is subject to any adjustment required or authorised by law in calculating profits for income tax purposes.

### *Overview of rest of Part 2*

#### **31F Overview of rest of Part 2 as it applies to cash basis**

- (1) For provision about the application of Chapters 4 to 6 (rules about deductions and receipts) in relation to the cash basis, see sections 32A, 56A and 95A.
- (2) For provision about the application of Chapter 11 (trade profits: other specific trades) in relation to the cash basis, see section 148K.
- (3) The following Chapters apply only where profits are calculated on the cash basis—
- Chapter 6A (trade profits: amounts not reflecting commercial transactions),
- Chapter 17A (cash basis: adjustments for capital allowances).
- (4) The following Chapters do not apply in relation to the cash basis—
- Chapter 8 (trade profits: herd basis rules),
- Chapter 9 (trade profits: sound recordings),
- Chapter 10 (trade profits: certain telecommunication rights),
- Chapter 10A (leases of plant or machinery: special rules for long funding leases),
- Chapter 11A (trade profits: changes in trading stock),
- Chapter 13 (deductions from profits: unremittable amounts),
- Chapter 14 (disposal and acquisition of know-how),
- Chapter 16 (averaging profits of farmers and creative artists),
- Chapter 16ZA (compensation for compulsory slaughter of animal),
- Chapter 16A (oil activities).]

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

## CHAPTER 4

### TRADE PROFITS: RULES RESTRICTING DEDUCTIONS

#### *Introduction*

### 32 Professions and vocations

The provisions of this Chapter apply to professions and vocations as they apply to trades.

#### *[<sup>F28</sup>Cash basis accounting*

#### **Textual Amendments**

**F28** S. 32A and cross-heading inserted (with effect in accordance with Sch. 4 paras. 56, 57 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 4 para. 7](#)

### 32A Application of Chapter to the cash basis

- (1) The following sections do not apply in calculating the profits of a trade on the cash basis—
- section 33 (capital expenditure),
  - section 35 (bad and doubtful debts),
  - sections 36 and 37 (unpaid remuneration),
  - section 43 (employee benefit contributions: profits calculated before end of 9 month period),
  - sections 48 to 50B (car hire).
- (2) For rules restricting deductions that apply only where profits are calculated on the cash basis, see the following—
- section 33A (cash basis: capital expenditure),
  - section 51A (cash basis: interest payments on loans).]

#### *Capital expenditure*

### 33 Capital expenditure

In calculating the profits of a trade, no deduction is allowed for items of a capital nature.

#### **[<sup>F29</sup>33A Cash basis: capital expenditure**

- (1) In calculating the profits of a trade on the cash basis, no deduction is allowed for items of a capital nature, other than expenditure that—
- (a) if it were not allowable as a deduction in calculating the profits of the trade, would be qualifying expenditure within the meaning of Part 2 of CAA 2001 (plant and machinery allowances), and
  - (b) is not expenditure incurred on the provision of a car.

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (2) In this section “car” has the same meaning as in Part 2 of CAA 2001 (see section 268A of that Act).]

#### Textual Amendments

**F29** S. 33A inserted (17.7.2013) (with effect in accordance with Sch. 4 para. 56 57 of the amending Act) by Finance Act 2013 (c. 29), **Sch. 4 para. 8**

#### *Wholly and exclusively and losses rules*

### **34 Expenses not wholly and exclusively for trade and unconnected losses**

- (1) In calculating the profits of a trade, no deduction is allowed for—
- (a) expenses not incurred wholly and exclusively for the purposes of the trade, or
  - (b) losses not connected with or arising out of the trade.
- (2) If an expense is incurred for more than one purpose, this section does not prohibit a deduction for any identifiable part or identifiable proportion of the expense which is incurred wholly and exclusively for the purposes of the trade.

#### *Bad and doubtful debts*

### **35 Bad and doubtful debts**

- (1) In calculating the profits of a trade, no deduction is allowed for a debt owed to the person carrying on the trade, except so far as—
- (a) the debt is bad,
  - (b) the debt is estimated to be bad, or
  - (c) the debt is released wholly and exclusively for the purposes of the trade as part of a statutory insolvency arrangement.
- (2) If the debtor is bankrupt or insolvent, the whole of the debt is estimated to be bad for the purposes of subsection (1)(b), except so far as any amount may reasonably be expected to be received on the debt.

#### *Unpaid remuneration*

### **36 Unpaid remuneration**

- (1) This section applies if, in calculating the profits of a trade of a period of account—
- (a) an amount is charged in the accounts for the period in respect of employees' remuneration, and
  - (b) a deduction for the remuneration would otherwise be allowable for the period.
- (2) No deduction is allowed for the remuneration for the period of account unless it is paid before the end of the period of 9 months immediately following the end of the period of account.

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

- (3) If the remuneration is paid after the end of that 9 month period, a deduction for it is allowed for the period of account in which it is paid.

### 37 Unpaid remuneration: supplementary

- (1) For the purposes of section 36 an amount charged in the accounts in respect of employees' remuneration includes an amount for which provision is made in the accounts with a view to its becoming employees' remuneration.
- (2) For the purposes of section 36 it does not matter whether an amount is charged for—
- particular employments, or
  - employments generally.
- (3) If the profits of the trade are calculated before the end of the 9 month period mentioned in section 36(2)—
- it must be assumed, in making the calculation, that any remuneration which is unpaid when the calculation is made will not be paid before the end of that period, but
  - if the remuneration is subsequently paid before the end of that period, nothing in this subsection prevents the calculation being revised and any tax return being amended accordingly.
- (4) For the purposes of this section and section 36 remuneration is paid when it—
- is treated as received by an employee for the purposes of ITEPA 2003 by section 18, 19, 31 or 32 of that Act (receipt of money and non-money earnings), or
  - would be so treated if it were not exempt income.
- (5) In this section and section 36—
- “employee” includes an office-holder and “employment” therefore includes an office, and
- “remuneration” means an amount which is or is treated as earnings for the purposes of ITEPA 2003.

### *Employee benefit contributions*

### 38 Restriction of deductions

[<sup>F30</sup>(1) This section applies if, in calculating for income tax purposes the profits of a trade of a person (“the employer”) for a period, a deduction would otherwise be allowable for the period in respect of employee benefit contributions made or to be made (but see subsection (4)).]

- (2) No deduction is allowed for the contributions for the period except so far as—
- qualifying benefits are provided, or qualifying expenses are paid, out of the contributions during the period or within 9 months from the end of it, or
  - if the making of the contributions is itself the provision of qualifying benefits, the contributions are made during the period or within 9 months from the end of it.

[<sup>F31</sup>(2A) In calculating for income tax purposes the profits of a trade on the cash basis, this section has effect as if—

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (a) in subsection (1), the words “or to be made” were omitted, and
  - (b) in subsection (2), the words “or within 9 months from the end of it” were omitted (in both places).]
- (3) An amount disallowed under subsection (2) is allowed as a deduction for a subsequent period so far as—
- (a) qualifying benefits are provided out of the contributions before the end of the subsequent period, or
  - (b) if the making of the contributions is itself the provision of qualifying benefits, the contributions are made before the end of the subsequent period.
- (4) This section does not apply to any deduction that is allowable for—
- (a) anything given as consideration for goods or services provided in the course of a trade or profession,
  - (b) contributions under a registered pension scheme or under a superannuation fund to which section 615(3) of ICTA applies,
  - (c) contributions under a qualifying overseas pension scheme in respect of an individual who is a relevant migrant member of the pension scheme in relation to the contributions, or
  - (d) contributions under an accident benefit scheme.

For the purposes of paragraph (c) “qualifying overseas pension scheme” and “relevant migrant member” have the same meaning as in Schedule 33 to FA 2004 (see paragraphs 4 to 6 of that Schedule).

- (5) See also—
- section 39 (making of “employee benefit contributions”),
  - section 40 (provision of qualifying benefits),
  - section 41 (timing and amount of certain qualifying benefits),
  - section 42 (provision or payment out of employee benefit contributions),
  - section 43 (profits calculated before end of 9 month period), and
  - section 44 (interpretation of sections 38 to 44).

#### Textual Amendments

**F30** S. 38(1) substituted (with effect as stated in s. 34(13) of the amending Act) by [Finance Act 2007 \(c. 11\), s. 34\(8\)](#)

**F31** S. 38(2A) inserted (with effect in accordance with Sch. 4 paras. 56, 57 of the amending Act) by [Finance Act 2013 \(c. 29\), Sch. 4 para. 9](#)

### 39 Making of “employee benefit contributions”

[<sup>F32</sup>(1) For the purposes of section 38, an “employee benefit contribution” is made if, as a result of any act or omission—

- (a) property is held, or may be used, under an employee benefit scheme, or
- (b) there is an increase in the total value of property that is so held or may be so used (or a reduction in any liabilities under an employee benefit scheme).]

(2) For this purpose “employee benefit scheme” means a trust, scheme or other arrangement for the benefit of persons who are, or include, present or former

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

employees of the employer [<sup>F33</sup> or persons linked with present or former employees of the employer ] .

[<sup>F34</sup>(3) Section 554Z1 of ITEPA 2003 applies for the purposes of subsection (2) but as if references to A were to a present or former employee of the employer.

- (4) So far as it is not covered by subsection (2), “employee benefit scheme” also means—
- (a) an arrangement (“the relevant arrangement”) within subsection (1)(b) of section 554A of ITEPA 2003 to which subsection (1)(c) of that section applies, or
  - (b) any other arrangement connected (directly or indirectly) with the relevant arrangement.]

#### Textual Amendments

- F32** S. 39(1) substituted (19.7.2007 with effect as stated in s. 34(13) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [s. 34\(9\)](#)
- F33** Words in s. 39(2) inserted (with effect in accordance with Sch . 2 para. 52-59 61 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 2 para. 36\(2\)](#)
- F34** S. 39(3)(4) inserted (with effect in accordance with Sch . 2 para. 52-59 61 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 2 para. 36\(3\)](#)

## 40 Provision of qualifying benefits

- (1) For the purposes of section 38 qualifying benefits are provided if there is—
- (a) a payment of money, or
  - (b) a transfer of assets,
- which meets condition A, B, C or D.
- (2) Condition A is that the payment or transfer gives rise both to an employment income tax charge and to an NIC charge.
- (3) Condition B is that the payment or transfer would give rise to both charges if—
- (a) the duties of the employment in respect of which the payment or transfer was made were performed in the United Kingdom, and
  - (b) the person in respect of whose employment the payment or transfer was made met at all relevant times the conditions as to residence or presence in Great Britain or Northern Ireland prescribed under section 1(6) of the Contributions and Benefits Act.
- (4) Condition C is that the payment or transfer is made in connection with the termination of the recipient's employment with the employer.
- (5) Condition D is that the payment or transfer is made under an employer-financed retirement benefits scheme [<sup>F35</sup> and the payment or transfer—
- (a) gives rise to an employment income tax charge under Chapter 2 of Part 6 of ITEPA 2003 or under Part 9 of that Act, or
  - (b) is an excluded benefit as defined in section 393B(3) of that Act.]
- (6) None of the conditions is met if the payment or transfer is by way of loan.

[<sup>F36</sup>(6A) For the purposes of section 38 qualifying benefits are also provided if—

- (a) a relevant step within the meaning of Part 7A of ITEPA 2003 is taken, and



*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

(b) Chapter 2 of that Part applies by reason of the step.]

(7) In this section—

“the Contributions and Benefits Act” means—

- (a) the Social Security Contributions and Benefits Act 1992 (c. 4), or
- (b) the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7),

“employment income tax charge” means a charge to tax under ITEPA 2003 (whether on the recipient or on someone else), and

“NIC charge” means a liability to pay national insurance contributions under section 6 (Class 1 contributions), section 10 (Class 1A contributions) or section 10A (Class 1B contributions) of the Contributions and Benefits Act.

#### Textual Amendments

**F35** Words in s. 40(5) inserted (with effect in accordance with Sch . 2 para. 52-59 62 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 2 para. 37\(2\)](#)

**F36** S. 40(6A) inserted (with effect in accordance with Sch . 2 para. 52-59 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 2 para. 37\(3\)](#)

## 41 Timing and amount of certain qualifying benefits

[<sup>F37</sup>(1) If the provision of a qualifying benefit takes the form of a payment of money, the benefit, so far as Chapter 4 of Part 2 of ITEPA 2003 applies to the money, is provided for the purposes of section 38 when the money is treated as received for the purposes of that Chapter (applying the rules in section 18 of that Act (receipt of money earnings)).]

[<sup>F38</sup>(1A) Except so far as subsection (1) applies to the provision of the qualifying benefit, if the provision of a qualifying benefit is a chargeable relevant step, for the purposes of section 38—

- (a) the benefit is provided when A's employment with B starts if the chargeable relevant step is taken before then, or
- (b) otherwise, the benefit is provided when the chargeable relevant step is taken.]

(2) If the provision of a qualifying benefit takes the form of a transfer of an asset [<sup>F39</sup> which meets condition A, B, C or D in section 40 ], the amount provided for the purposes of section 38 is the total of—

- (a) the amount (if any) spent on the asset by [<sup>F40</sup>a scheme manager] , <sup>F41</sup>...
- (b) in a case where the asset was transferred to [<sup>F40</sup>a scheme manager] by the employer, the amount of the deduction that would be allowable as mentioned in subsection (1) of that section in respect of the transfer<sup>F42</sup>, and
- (c) if the transfer is a chargeable relevant step, the cost of the relevant step so far as not covered by paragraph (a) or (b).]

(3) But if the amount given by subsection (2) is more than the amount that—

- (a) is charged to tax under ITEPA 2003 in respect of the transfer, or
- (b) would be so charged if condition B in section 40 were met,

the deduction allowable under section 38(2) or (3) is limited to that lower amount.

[<sup>F43</sup>(4) If the provision of a qualifying benefit is a chargeable relevant step which does not involve a sum of money (see section 554Z(10) of ITEPA 2003) and is not covered by

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

subsection (2), the amount provided for the purposes of section 38 is the cost of the relevant step (subject to subsection (5)).

- (5) If the provision of a qualifying benefit is a chargeable relevant step which is not covered by subsection (2) (whether or not it involves a sum of money), the amount provided for the purposes of section 38 is not to exceed the amount that—
- (a) is charged to tax under ITEPA 2003 in relation to the relevant step (whether under Part 7A of that Act or otherwise), or
  - (b) would be charged had not A been non-UK resident in any tax year.
- (6) In this section—
- (a) “chargeable relevant step” means a relevant step within the meaning of Part 7A of ITEPA 2003 by reason of which Chapter 2 of that Part applies (and references to A and B are to be read accordingly), and
  - (b) references to the cost of a chargeable relevant step are to be read in accordance with section 554Z3(6) of that Act.]

#### Textual Amendments

- F37** S. 41(1) substituted (with effect in accordance with Sch. 2 paras. 52-59, 63 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 2 para. 38\(2\)](#)
- F38** S. 41(1A) inserted (with effect in accordance with Sch. 2 paras. 52-59 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 2 para. 38\(3\)](#)
- F39** Words in s. 41(2) inserted (with effect in accordance with Sch. 2 paras. 52-59 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 2 para. 38\(4\)\(a\)](#)
- F40** Words in s. 41 substituted (19.7.2007 with effect as stated in [s. 34\(13\)](#) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [s. 34\(10\)](#)
- F41** Word in s. 41(2) omitted (with effect in accordance with Sch. 2 paras. 52-59 of the amending Act) by virtue of [Finance Act 2011 \(c. 11\)](#), [Sch. 2 para. 38\(4\)\(b\)](#)
- F42** S. 41(2)(c) and word inserted (with effect in accordance with Sch. 2 paras. 52-59 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 2 para. 38\(4\)\(c\)](#)
- F43** S. 41(4)-(6) inserted (with effect in accordance with Sch. 2 paras. 52-59 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 2 para. 38\(5\)](#)

## 42 Provision or payment out of employee benefit contributions

- (1) For the purposes of section 38(2)(a)—
- (a) any qualifying benefits provided, or
  - (b) any qualifying expenses paid,
- by [<sup>F44</sup>a scheme manager] after the receipt by [<sup>F45</sup>the scheme manager] of employee benefit contributions are treated as being provided or paid out of the contributions.
- (2) This operates up to the total amount of the contributions reduced by the amount of any benefits or expenses previously provided or paid as mentioned in section 38(2)(a).
- (3) For the purposes of section 38(3)(a) any qualifying benefits provided by [<sup>F46</sup>a scheme manager] after the receipt by [<sup>F47</sup>the scheme manager] of employee benefit contributions are treated as being provided out of the contributions.
- (4) This operates up to the total amount of the contributions reduced by the amount of any benefits or expenses previously provided or paid as mentioned in section 38(2)(a) or (3)(a).

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (5) For the purposes of this section no account is taken of any other amount received or paid by the [F48 scheme manager] .

#### Textual Amendments

- F44** Words in s. 42(1) substituted (19.7.2007 with effect as stated in s. 34(13) of the amending Act) by [Finance Act 2007 \(c. 11\), s. 34\(11\)\(a\)](#)
- F45** Words in s. 42(1) substituted (19.7.2007 with effect as stated in s. 34(13) of the amending Act) by [Finance Act 2007 \(c. 11\), s. 34\(11\)\(a\)](#)
- F46** Words in s. 42(3) substituted (19.7.2007 with effect as stated in s. 34(13) of the amending Act) by [Finance Act 2007 \(c. 11\), s. 34\(11\)\(b\)](#)
- F47** Words in s. 42(3) substituted (19.7.2007 with effect as stated in s. 34(13) of the amending Act) by [Finance Act 2007 \(c. 11\), s. 34\(11\)\(b\)](#)
- F48** Words in s. 42(5) substituted (19.7.2007 with effect as stated in s. 34(13) of the amending Act) by [Finance Act 2007 \(c. 11\), s. 34\(11\)\(c\)](#)

### 43 Profits calculated before end of 9 month period

- (1) This section applies if the profits of the trade are calculated before the end of the 9 month period mentioned in section 38(2).
- (2) It must be assumed, in making the calculation, that any benefits, expenses or contributions which are not provided, paid or made when the calculation is made will not be provided, paid or made before the end of that period.
- (3) But if the benefits, expenses or contributions are subsequently provided, paid or made before the end of that period, nothing in this section prevents the calculation being revised and any tax return being amended accordingly.

### 44 Interpretation of sections 38 to 44

- (1) In this section and sections 38 to 43—
- “accident benefit scheme” means an employee benefit scheme under which benefits may be provided only by reason of a person's disablement, or death, caused by an accident occurring during the person's service as an employee of the employer,
- “employee benefit contribution” is to be read in accordance with section 39(1),
- “employee benefit scheme” has the meaning given by section [F49 39(2) to (4) ] ,
- “the employer” is to be read in accordance with section 38(1),
- “employer-financed retirement benefits scheme” has the same meaning as in Chapter 2 of Part 6 of ITEPA 2003 (see section 393A of that Act), [F50 but ignoring section 393B(2)(a) and (c) of that Act ]
- “qualifying benefits” is to be read in accordance with section 40,
- “qualifying expenses” includes any expenses of the third party (other than the provision of benefits to employees of the employer)—
- (a) which are incurred in operating the employee benefit scheme, and
- (b) which, if incurred by the employer, would be deductible in calculating for income tax purposes the employer's profits for any period, and

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

[<sup>F51</sup>“scheme manager” means a person who administers an employee benefit scheme (acting in that capacity).]

- (2) A reference in this section and sections 38 to 43 to a person's employee includes the holder of an office under that person, and “employment” is to be read accordingly.

#### Textual Amendments

- F49** Words in s. 44(1) substituted (with effect in accordance with Sch. 2 paras. 52-59 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 2 para. 39\(a\)](#)
- F50** Words in s. 44(1) inserted (with effect in accordance with Sch. 2 paras. 52-59, 62 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 2 para. 39\(b\)](#)
- F51** S. 44(1): definition of "third party" substituted (19.7.2007 with effect as stated in [s. 34\(13\)](#) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [s. 34\(12\)](#)

### *Business entertainment and gifts*

#### **45 Business entertainment and gifts: general rule**

- (1) The general rule is that no deduction is allowed in calculating the profits of a trade for expenses incurred in providing entertainment or gifts in connection with the trade.
- (2) A deduction for expenses which are incurred—
- (a) in paying sums to or on behalf of an employee of the person carrying on the trade (“the trader”), or
  - (b) in putting sums at the disposal of an employee of the trader,
- is prohibited by the general rule if (and only if) the sums are paid, or put at the employee's disposal, exclusively for meeting expenses incurred or to be incurred by the employee in providing the entertainment or gift.
- (3) The general rule is subject to exceptions—
- for entertainment (see section 46), and
  - for gifts (see section 47).
- (4) For the purposes of this section and those two sections—
- (a) “employee”, in relation to a company, includes a director of the company and a person engaged in the management of the company,
  - (b) “entertainment” includes hospitality of any kind, and
  - (c) the expenses incurred in providing entertainment or a gift include expenses incurred in providing anything incidental to the provision of entertainment or a gift.

#### **46 Business entertainment: exceptions**

- (1) The prohibition in section 45 on deducting expenses incurred in providing entertainment does not apply in either of cases A and B.
- (2) Case A is where—
- (a) the entertainment is of a kind which it is the trader's trade to provide, and
  - (b) the entertainment is provided in the ordinary course of the trade either for payment or free of charge in order to advertise to the public generally.

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

- (3) Case B is where the entertainment is provided for employees of the trader unless—
- (a) the entertainment is also provided for others, and
  - (b) the provision of the entertainment for the employees is incidental to its provision for the others.

#### **47 Business gifts: exceptions**

- (1) The prohibition in section 45 on deducting expenses incurred in providing gifts does not apply in any of cases A, B, C and D.
- (2) Case A is where—
- (a) the gift is of an item which it is the trader's trade to provide, and
  - (b) the item is given away in the ordinary course of the trade in order to advertise to the public generally.
- (3) Case B is where the gift incorporates a conspicuous advertisement for the trader unless—
- (a) the gift is food, drink, tobacco or a token or voucher exchangeable for goods, or
  - (b) the cost of the gift to the trader, together with any other gifts (except food, drink, tobacco or a token or voucher exchangeable for goods) given to the same person in the same basis period, exceeds £50.

The Treasury may by order amend the sum for the time being specified in paragraph (b) so as to increase it.

- (4) Case C is where gifts are provided for employees of the trader unless—
- (a) gifts are also provided for others, and
  - (b) the provision of the gifts for the employees is incidental to the provision of gifts for the others.
- (5) Case D is where the gift is given to—
- (a) a charity,
  - (b) the Historic Buildings and Monuments Commission for England, or
  - (c) the Trustees of the National Heritage Memorial Fund.

#### *Car or motor cycle hire*

#### **48 Car<sup>F52</sup> ... hire**

- (1) This section applies if, in calculating the profits of a trade, a deduction is allowed for expenses incurred on the hiring of a car<sup>F53</sup> which is not—
- (a) a car that is first registered before 1 March 2001,
  - (b) a car that has low CO<sub>2</sub> emissions,
  - (c) a car that is electrically propelled, or
  - (d) a qualifying hire car.]
- (2) The amount of the deduction which would otherwise be allowable is reduced by<sup>F54</sup> 15%].

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (3) Subsection (4) applies if [<sup>F55</sup>a deduction is reduced as a result of subsection (2), or a corresponding provision,] and subsequently—
- (a) there is a rebate (however described) of the hire charges, or
  - (b) a debt in respect of any of the hire charges is released otherwise than as part of a statutory insolvency arrangement.
- (4) The amount that, as a result of the rebate or release—
- (a) is brought into account as a receipt of the trade <sup>F56</sup>..., or
  - (b) is treated as a post-cessation receipt under section 249 (debts released after cessation),
- is reduced by [<sup>F57</sup>15%] .
- [<sup>F58</sup>(4A) In this section “corresponding provision” means—
- (a) section 56(2) of CTA 2009 (car <sup>F59</sup>... hire: trade profits and property income), [<sup>F60</sup> or ]
  - (b) section 1251(2) of CTA 2009 (car <sup>F59</sup>... hire: expenses of management), [<sup>F61</sup> including as applied by section 82(4) of FA 2012. ]<sup>F62</sup>...
  - <sup>F62</sup>(c)] .....
  - <sup>F63</sup>(5) .....

#### Textual Amendments

- F52** Words in s. 48 heading omitted (with effect in accordance with Sch. 11 paras. 65-67 of the amending Act) by virtue of [Finance Act 2009 \(c. 10\)](#), **Sch. 11 para. 36(7)**
- F53** Words in s. 48(1) substituted (with effect in accordance with Sch. 11 paras. 65-67 of the amending Act) by [Finance Act 2009 \(c. 10\)](#), **Sch. 11 para. 36(2)**
- F54** Word in s. 48(2) substituted (with effect in accordance with Sch. 11 paras. 65-67 of the amending Act) by [Finance Act 2009 \(c. 10\)](#), **Sch. 11 para. 36(3)**
- F55** Words in s. 48(3) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), **Sch. 1 para. 589(2)** (with Sch. 2 Pts. 1, 2)
- F56** Words in s. 48(4)(a) repealed (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), **Sch. 1 para. 589(3)**, **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)
- F57** Word in s. 48(4) substituted (with effect in accordance with Sch. 11 paras. 65-67 of the amending Act) by [Finance Act 2009 \(c. 10\)](#), **Sch. 11 para. 36(4)**
- F58** S. 48(4A) inserted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), **Sch. 1 para. 589(4)** (with Sch. 2 Pts. 1, 2)
- F59** Words in s. 48(4A)(a)(b)(c) omitted (with effect in accordance with Sch. 11 paras. 65-67 of the amending Act) by virtue of [Finance Act 2009 \(c. 10\)](#), **Sch. 11 para. 36(5)**
- F60** Word in s. 48(4A)(a) inserted (17.7.2012) by [Finance Act 2012 \(c. 14\)](#), **Sch. 16 para. 126(a)**
- F61** Words in s. 48(4A)(b) inserted (17.7.2012) by [Finance Act 2012 \(c. 14\)](#), **Sch. 16 para. 126(b)**
- F62** S. 48(4A)(c) and word omitted (17.7.2012) by virtue of [Finance Act 2012 \(c. 14\)](#), **Sch. 16 para. 126(c)**
- F63** S. 48(5) omitted (with effect in accordance with Sch. 11 paras. 65-67 of the amending Act) by virtue of [Finance Act 2009 \(c. 10\)](#), **Sch. 11 para. 36(6)**

#### 49 Car <sup>F64</sup>... hire: supplementary

- (1) In section 48 “car <sup>F65</sup>...” means a mechanically propelled road vehicle other than <sup>F66</sup>...—
- [<sup>F67</sup>(za) a motor cycle (within the meaning of section 185(1) of the Road Traffic Act 1988),]

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (a) [<sup>F68</sup>a vehicle] of a construction primarily suited for the conveyance of goods or burden of any description, or
- (b) [<sup>F69</sup>a vehicle] of a type not commonly used as a private vehicle and unsuitable for such use.

[<sup>F70</sup>(1A) In section 48—

“a car that has low CO2 emissions” has the same meaning as in section 104AA of CAA 2001 (special rate expenditure: main rate car);  
“electrically propelled” has the meaning given in section 268B of that Act.]

(2) In section 48 “a qualifying hire car <sup>F71</sup>...” means a car <sup>F71</sup>... which—

- (a) is hired under a hire-purchase agreement <sup>F72</sup>... under which there is no option to purchase,
- (b) is hired under a hire-purchase agreement under which there is an option to purchase exercisable on the payment of a sum equal to not more than 1% of the retail price of the car <sup>F71</sup>... when new, or

<sup>F73</sup>(c) .....

[<sup>F74</sup>(d) is leased under a long-funding lease (within the meaning of section 70G of CAA 2001).]

[<sup>F75</sup>(3) For this purpose “hire-purchase agreement” has the meaning given by section 998A of ITA 2007.]

(6) In this section <sup>F76</sup>... “new” means unused and not second-hand.

#### Textual Amendments

- F64** Words in s. 49 heading omitted (with effect in accordance with Sch. 11 paras. 65-67 of the amending Act) by virtue of [Finance Act 2009 \(c. 10\)](#), [Sch. 11 para. 37\(6\)](#)
- F65** Words in s. 49(1) omitted (with effect in accordance with Sch. 11 paras. 65-67 of the amending Act) by virtue of [Finance Act 2009 \(c. 10\)](#), [Sch. 11 para. 37\(2\)\(a\)](#)
- F66** Word in s. 49(1) omitted (with effect in accordance with Sch. 11 paras. 65-67 of the amending Act) by virtue of [Finance Act 2009 \(c. 10\)](#), [Sch. 11 para. 37\(2\)\(b\)](#)
- F67** S. 49(1)(za) inserted (with effect in accordance with Sch. 11 paras. 65-67 of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 11 para. 37\(2\)\(c\)](#)
- F68** Words in s. 49(1)(a) inserted (with effect in accordance with Sch. 11 paras. 65-67 of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 11 para. 37\(2\)\(d\)](#)
- F69** Words in s. 49(1)(b) inserted (with effect in accordance with Sch. 11 paras. 65-67 of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 11 para. 37\(2\)\(d\)](#)
- F70** S. 49(1A) inserted (with effect in accordance with Sch. 11 paras. 65-67 of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 11 para. 37\(3\)](#)
- F71** Words in s. 49(2) omitted (with effect in accordance with Sch. 11 paras. 65-67 of the amending Act) by virtue of [Finance Act 2009 \(c. 10\)](#), [Sch. 11 para. 37\(4\)\(a\)](#)
- F72** Words in s. 49(2)(a) repealed (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. 254\(2\)](#), [Sch. 10 Pt. 9](#) (with [Sch. 9 paras. 1-9, 22](#))
- F73** S. 49(2)(c) omitted (with effect in accordance with Sch. 11 paras. 65-67 of the amending Act) by virtue of [Finance Act 2009 \(c. 10\)](#), [Sch. 11 para. 37\(4\)\(b\)](#)
- F74** S. 49(2)(d) inserted (with effect in accordance with Sch. 11 paras. 65-67 of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 11 para. 37\(4\)\(c\)](#)
- F75** S. 49(3) substituted (1.4.2010) for s. 49(3)-(5) (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. 254\(3\)](#) (with [Sch. 9 paras. 1-9, 22](#))

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

**F76** Words in s. 49(6) omitted (with effect in accordance with Sch. 11 paras. 65-67 of the amending Act) by virtue of [Finance Act 2009 \(c. 10\)](#), [Sch. 11 para. 37\(5\)](#)

**<sup>F77</sup>50 Hiring cars (but not motor cycles) with low carbon dioxide emissions**

.....

**Textual Amendments**

**F77** S. 50 omitted (with effect in accordance with Sch. 11 paras. 65-67 of the amending Act) by virtue of [Finance Act 2009 \(c. 10\)](#), [Sch. 11 para. 38](#)

**[<sup>F78</sup>50A Short-term hiring in and long-term hiring out**

- (1) Section 48 does not apply to expenses incurred by a person (“the taxpayer”) on the hiring of a car if condition A or B is met.
- (2) Condition A is that—
  - (a) the expenses are incurred in respect of the making available of the car to the taxpayer for a period (“the hire period”) of not more than 45 consecutive days, and
  - (b) if the car is made available to the taxpayer (whether by the same person or different persons) for one or more periods linked to the hire period, the hire period and the linked period or periods, taken together, consist of not more than 45 days.
- (3) Condition B is that the expenses are incurred in respect of a period (“the sub-hire period”) throughout which the taxpayer makes the car available to another person (“the customer”) and—
  - (a) the sub-hire period consists of more than 45 consecutive days, or
  - (b) if the taxpayer makes the car available to the customer throughout one or more periods linked to the sub-hire period, the sub-hire period and the linked period or periods, taken together, consist of more than 45 days,
 but see subsection (4).
- (4) Condition B is not met if—
  - (a) the customer is an employee of the taxpayer or of a person connected with the taxpayer, or
  - (b) during all or part of the sub-hire period (or any period linked to the sub-hire period), the customer makes any car available to an employee of the taxpayer under arrangements with the taxpayer or with a person connected with the taxpayer.
- (5) Neither condition A nor condition B is met if the car is hired under arrangements the purpose, or one of the main purposes, of which is—
  - (a) to disapply or reduce the effect of section 48, or
  - (b) other avoidance of tax.
- (6) For the purposes of condition B the expenses incurred by the taxpayer on the hiring of the car must be apportioned between—
  - (a) the sub-hire period, and



*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (b) the remainder of the period during which the car is made available to the taxpayer,  
according to the respective lengths of those periods.
- (7) A period of consecutive days (“the main period”) is linked to—
- (a) a period of consecutive days that ends not more than 14 days before the main period begins,
  - (b) a period of consecutive days that begins not more than 14 days after the main period ends, and
  - (c) a period of consecutive days linked to a period in paragraph (a) or (b).
- (8) For the purposes of this section, where arrangements for the hiring of a car include arrangements for the provision of a replacement car in the event that the first car is not available, the first car and any replacement car are to be treated as if they were the same car.
- (9) In this section (and section 50B) “arrangements” includes any arrangements, scheme or understanding of any kind, whether or not legally enforceable and whether involving a single transaction or two or more transactions.

#### **Textual Amendments**

**F78** Ss. 50A, 50B inserted (with effect in accordance with Sch. 11 paras. 65-67 of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 11 para. 39](#)

### **50B Connected persons: application of section 48**

- (1) This section applies where connected persons incur expenses on the hiring of the same car for the same period and—
- (a) section 48 would (but for this section) apply to the expenses of two or more of those persons, or
  - (b) section 48 and section 56 of CTA 2009 would (but for this section and section 58B of that Act) each apply to the expenses of at least one of those persons.
- (2) This section only applies where one or more of the persons mentioned in subsection (1) (a) or (b) incurs the expenses under commercial arrangements (and such a person is referred to below as a “commercial lessee”).
- (3) In relation to the expenses mentioned in subsection (1) to which section 48 would (but for this section) apply, section 48 only applies to the following—
- (a) where there is one commercial lessee, any such expenses incurred by that lessee, and
  - (b) where there is more than one, any such expenses incurred by the first commercial lessee in the chain of arrangements for the hiring of the car for the period.
- (4) In this section—
- (a) references to expenses incurred by a commercial lessee include expenses incurred in that or any other capacity, and

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (b) “commercial arrangements” means arrangements the terms of which are such as would reasonably have been expected if the parties to the arrangements had been dealing at arm’s length.]

#### Textual Amendments

**F78** Ss. 50A, 50B inserted (with effect in accordance with Sch. 11 paras. 65-67 of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 11 para. 39](#)

#### Modifications etc. (not altering text)

**C2** S. 50B modified by 1988 c. 1, s. 578A(5) (as inserted (with effect in accordance with Sch. 11 paras. 65-67 of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 11 para. 62\(7\)](#))

### *Patent royalties*

## 51 Patent royalties

F79

#### Textual Amendments

**F79** S. 51 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. 497](#), [Sch. 3 Pt. 1](#) (with transitional provisions and savings in [Sch. 2](#))

### *Interest payments*

## [<sup>F80</sup>51A Cash basis: interest payments on loans

- (1) In calculating the profits of a trade on the cash basis, no deduction is allowed for the interest paid on a loan.
- (2) This is subject to section 57B.]

#### Textual Amendments

**F80** S. 51A inserted (with effect in accordance with Sch. 4 paras. 56, 57 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 4 para. 10](#)

## 52 Exclusion of double relief for interest

- (1) In calculating the profits of a trade, no deduction is allowed—
  - (a) for any tax year for the interest paid on a debt or liability in respect of which relief is given under [<sup>F81</sup>section 383 of ITA 2007](see subsection (5) below), or
  - (b) for any relevant tax year for other interest on the same debt or liability.
- (2) A tax year is a relevant one if the interest in respect of which the relief is given could, but for the relief, have been brought into account in calculating the profits of a trade of the tax year.

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (3) For the purposes of subsection (1)(b) all interest which—
  - (a) is capable of being brought into account in calculating the profits of a trade, and
  - (b) is payable by any person on money advanced to the person on current account, is treated as interest on the same debt.
- (4) It does not matter if the money is advanced—
  - (a) on one or more accounts, or
  - (b) by the same or separate banks or other persons.
- (5) For the purposes of this section relief under [<sup>F81</sup>section 383 of ITA 2007] is to be treated as given only when the claim for the relief can no longer be varied (whether on appeal or otherwise).
- (6) For a rule excluding relief under [<sup>F81</sup>section 383 of ITA 2007] if interest on a debt or liability is brought into account in calculating the profits of a trade, see [<sup>F82</sup>section 387(2) and (3) of that Act] .

#### Textual Amendments

- F81** Words in s. 52(1)(5)(6) 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. 498\(2\)](#) (with transitional provisions and savings in [Sch. 2](#))
- F82** Words in s. 52(6) 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. 498\(3\)](#) (with transitional provisions and savings in [Sch. 2](#))

### *Social security contributions*

#### **53 Social security contributions**

- (1) In calculating the profits of a trade, no deduction is allowed for any contribution paid by any person under—
  - (a) Part 1 of the Social Security Contributions and Benefits Act 1992 (c. 4), or
  - (b) Part 1 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7).
- (2) But this prohibition does not apply to an employer's contribution.
- (3) For this purpose “an employer's contribution” means—
  - (a) a secondary Class 1 contribution,
  - (b) a Class 1A contribution, or
  - (c) a Class 1B contribution,within the meaning of Part 1 of the Social Security Contributions and Benefits Act 1992 or of the Social Security Contributions and Benefits (Northern Ireland) Act 1992.

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

*Penalties, interest and VAT surcharges*

**54 Penalties, interest and VAT surcharges**

- (1) In calculating the profits of a trade, no deduction is allowed for any penalty or interest mentioned in the first column of the following table.
- (2) This is the table—

<i>Penalty or interest</i>	<i>Description of tax, levy or duty</i>
Interest under any provision of Part 9 of TMA 1970	Income tax, capital gains tax and corporation tax
Interest required to be paid by regulations made under section 71 of FA 2004 (construction industry)	
Penalty under any of sections 60 to 70 of VATA 1994	Value added tax
Interest under section 74 [ <sup>F83</sup> or 85A] of VATA 1994	
Penalty under any of sections 8 to 11 of FA 1994	Excise duties
Penalty under any of paragraphs 12 to 19 of Schedule 7 to FA 1994	Insurance premium tax
[ <sup>F84</sup> Interest under section 60(8) of FA 1994 or paragraph 21 of Schedule 7 to FA 1994]	
Penalty under any provision of Part 5 of Schedule 5 to FA 1996	Landfill tax
[ <sup>F85</sup> Interest under section 56(5) of, or paragraph 26 or 27 of Schedule 5 to, FA 1996]	
Penalty under any provision of Schedule 6 to FA 2000	Climate change levy
Interest under any of paragraphs 70, 81 to 85 [ <sup>F86</sup> , 109 and 123(6)] of that Schedule	
Penalty under any provision of Part 2 of FA 2001	Aggregates levy
Interest under [ <sup>F87</sup> section 42(6) of, or] any of paragraphs 5 to 9 of Schedule 5 to, paragraph 6 of Schedule 8 to and paragraph 5 of Schedule 10 [ <sup>F88</sup> to, FA 2001]	
Penalty under section 25 or 26 of FA 2003	Customs, export and import duties

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

Penalty under any provision of Part 4 of Stamp duty land tax  
FA 2003

Interest under any provision of that Part

[<sup>F89</sup>Penalty under Schedule 24 to FA Various taxes and excise duties]  
2007

[<sup>F90</sup>Penalty under Schedule 41 to FA Various taxes and excise duties]  
2008

- (3) In calculating the profits of a trade, no deduction is allowed for any surcharge under section 59 of VATA 1994.

#### Textual Amendments

- F83** Words in s. 54(2) table inserted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 438(2)**
- F84** Words in s. 54(2) table substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 438(3)**
- F85** Words in s. 54(2) table substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 438(4)**
- F86** Words in s. 54(2) table substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 438(5)**
- F87** Words in s. 54(2) table inserted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 438(6)(a)**
- F88** Words in s. 54(2) table substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 438(6)(b)**
- F89** Words in s. 54(2) table added (1.4.2009) by [The Finance Act 2008, Schedule 40 \(Appointed Day, Transitional Provisions and Consequential Amendments\) Order 2009 \(S.I. 2009/571\)](#), art. 1(1), **Sch. 1 para. 28**
- F90** Words in s. 54(2) table added (1.4.2010) by [The Finance Act 2008 \(Penalties for Errors and Failure to Notify etc\) \(Consequential Amendments\) Order 2010 \(S.I. 2010/530\)](#), art. 1, **Sch. para. 8**

#### *Crime-related payments*

### 55 Crime-related payments

- (1) In calculating the profits of a trade, no deduction is allowed for expenses incurred—
- in making a payment if the making of the payment constitutes a criminal offence, or
  - in making a payment outside the United Kingdom if the making of a corresponding payment in any part of the United Kingdom would constitute a criminal offence in that part.
- (2) In calculating the profits of a trade, no deduction is allowed for expenses incurred in making a payment induced by a demand which constitutes—
- the offence of blackmail under section 21 of the Theft Act 1968 (c. 60) (England and Wales),
  - the offence of extortion (Scotland), or
  - the offence of blackmail under section 20 of the Theft Act (Northern Ireland) 1969 (c. 16 (N.I.)) (Northern Ireland).

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

### *[<sup>F91</sup>Integral features*

#### **Textual Amendments**

- F91** S. 55A and cross-heading inserted (with effect in accordance with s. 73(6) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [s. 73\(4\)](#)

### **55A Expenditure on integral features**

[ Section 33A(3) of CAA 2001 provides that no deduction is allowed in respect of <sup>F92</sup>(1)] certain expenditure on an integral feature of a building or structure (within the meaning of that section).]

[<sup>F93</sup>(2) But section 33A(3) of CAA 2001 does not apply in calculating the profits of a trade on the cash basis.]

#### **Textual Amendments**

- F92** S. 55A(1): s. 55A renumbered as s. 55A(1) (with effect in accordance with Sch. 4 paras. 56, 57 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 4 para. 11\(2\)](#)
- F93** S. 55A(2) inserted (with effect in accordance with Sch. 4 paras. 56, 57 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 4 para. 11\(3\)](#)

### *[<sup>F94</sup>Rental rebates*

#### **Textual Amendments**

- F94** S. 55B and cross-heading inserted (8.4.2010) (with effect in accordance with Sch. 5 para. 2(3) of the amending Act) by [Finance Act 2010 \(c. 13\)](#), [Sch. 5 para. 2\(1\)](#)

### **55B Rental rebates**

- (1) Where plant or machinery (“the asset”) is leased and a rental rebate is payable by the lessor, the amount of the deduction allowable in respect of the rebate is limited to—
  - (a) the amount of the lessor's income from the lease, or
  - (b) in the case of a finance lease, that amount excluding the finance charge.
- (2) “Rental rebate” means any sum payable to the lessee that is calculated by reference to the termination value of the asset.
- (3) For this purpose—
  - (a) the termination value of an asset is the value of the asset at or about the time when the lease terminates,
  - (b) calculation by reference to the termination value includes calculation by reference to any one or more of—
    - (i) the proceeds of sale, if the asset is sold,
    - (ii) any insurance proceeds, compensation or similar sums in respect of the asset,
    - (iii) an estimate of the market value of the asset, and

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

- (c) calculation by reference to the termination value also includes—
  - (i) determination in a way which, or by reference to factors or criteria which, might reasonably be expected to produce a broadly similar result to calculation by reference to the termination value, or
  - (ii) any other form of calculation indirectly by reference to the termination value.
- (4) For the purposes of this section—
  - (a) the income of the lessor from the lease is the total of all the amounts receivable in connection with the lease that have been brought into account in calculating the lessor's income for income tax purposes, excluding—
    - (i) disposal receipts brought into account under Part 2 of CAA 2001 (see section 60(1) of that Act), and
    - (ii) so much of any amount as represents charges for services or qualifying UK or foreign tax (within the meaning of section 70YE of that Act) to be paid by the lessor, and
  - (b) the finance charge, in relation to a finance lease, is—
    - (i) if the lease is one that, under generally accepted accounting practice, falls (or would fall) to be treated as a loan, so much of the rentals under the lease as fall (or would fall) to be treated as interest, or
    - (ii) in any other case, the amount that, in accordance with generally accepted accounting practice, falls (or would fall) to be treated as the gross return on investment.
- (5) Where the asset is acquired by the lessor in a transaction in relation to which an election is made under section 266 of CAA 2001 (election where predecessor and successor are connected persons), this section applies as if the successor had been the lessor at all material times and everything done to or by the predecessor had been done to or by the successor.
- (6) Where the whole or part of a rental rebate is disallowed under this section as a deduction in computing profits—
  - (a) the amount disallowed, or
  - (b) if less, the amount by which the rental rebate exceeds the amount of capital expenditure incurred by the lessor,may be treated for the purposes of capital gains tax as an allowable loss accruing to the lessor on the termination of the lease.

That allowable loss is deductible only from chargeable gains accruing to the lessor on the disposal of the asset.
- (7) This section does not apply to a long funding finance lease (see section 148C).]

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

## CHAPTER 5

### TRADE PROFITS: RULES ALLOWING DEDUCTIONS

#### Introduction

#### 56 Professions and vocations

Apart from sections 87 to 90 (scientific research and expenses connected with patents, designs and trade marks) [<sup>F95</sup>and section 97A (cash basis: value of trading stock on cessation of trade)], the provisions of this Chapter apply to professions and vocations as they apply to trades.

##### Textual Amendments

**F95** Words in s. 56 inserted (with effect in accordance with Sch. 4 paras. 56, 57 of the amending Act) by Finance Act 2013 (c. 29), **Sch. 4 para. 50**

#### <sup>F96</sup>Cash basis accounting

##### Textual Amendments

**F96** S. 56A and cross-heading inserted (with effect in accordance with Sch. 4 paras. 56, 57 of the amending Act) by Finance Act 2013 (c. 29), **Sch. 4 para. 13**

#### 56A Application of Chapter to the cash basis

- (1) The following sections do not apply in calculating the profits of a trade on the cash basis—
  - sections 60 to 67 (tenants under taxed leases),
  - section 68 (replacement and alteration of trade tools).
- (2) For rules allowing deductions that apply only where profits are calculated on the cash basis, see the following—
  - section 57B (cash basis: interest payments on loans).
- (3) In calculating the profits of a trade on the cash basis, any reference in this Chapter to the incurring of expenses is to be read as a reference to the paying of expenses.]

#### Pre-trading expenses

#### 57 Pre-trading expenses

- (1) This section applies if a person incurs expenses for the purposes of a trade before (but not more than 7 years before) the date on which the person starts to carry on the trade (“the start date”).
- (2) If, in calculating the profits of the trade—
  - (a) no deduction would otherwise be allowed for the expenses, but



*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

(b) a deduction would be allowed for them if they were incurred on the start date, the expenses are treated as if they were incurred on the start date (and therefore a deduction is allowed for them).

### *F<sup>97</sup> Subsistence expenses*

#### **Textual Amendments**

**F97** S. 57A and cross-heading inserted (with effect in accordance with art. 3(2) of the amending S.I.) by [The Enactment of Extra-Statutory Concessions Order 2009 \(S.I. 2009/730\)](#), arts. 1(1), 3

#### **57A Expenses incurred by traders on food and drink**

- (1) In calculating the profits of a trade, a deduction is allowed for any reasonable expenses incurred on food or drink for consumption by the trader at a place to which the trader travels in the course of carrying on the trade, or while travelling to a place in the course of carrying on the trade, if conditions A and B are met.
- (2) Condition A is met if—
  - (a) a deduction is allowed for the expenses incurred by the trader in travelling to the place, or
  - (b) where the expenses of travelling to the place are not incurred by the trader, a deduction would be allowed for them if they were.
- (3) Condition B is met if—
  - (a) at the time the expenses are incurred on the food or drink, the trade is by its nature itinerant, or
  - (b) the trader does not travel to the place more than occasionally in the course of carrying on the trade and either—
    - (i) the travel in connection with which the expenses are incurred on the food or drink is undertaken otherwise than as part of the trader's normal pattern of travel in the course of carrying on the trade, or
    - (ii) the trader does not have such a normal pattern of travel.]

### *F<sup>98</sup> Cash basis: interest payments*

#### **Textual Amendments**

**F98** S. 57B and cross-heading inserted (with effect in accordance with Sch. 4 paras. 56, 57 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 4 para. 14](#)

#### **57B Cash basis: interest payments on loans**

- (1) This section applies if a person carrying on a trade in a period pays any interest on a loan during the period and—
  - (a) a deduction for the interest would not otherwise be allowable in calculating the profits of the trade because of section 51A, or
  - (b) in the absence of section 51A, a deduction for the interest would not otherwise be allowable in calculating the profits of the trade because (and only because)

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

it was not an expense incurred wholly and exclusively for the purposes of the trade.

- (2) In calculating the profits of the trade on the cash basis, a deduction is allowed for the interest.
- (3) But the maximum amount that may be deducted by virtue of this section or section 58 (incidental costs of obtaining finance) in calculating the profits of a trade for any period is £500.
- (4) The Treasury may by order amend the figure for the time being specified in subsection (3).
- (5) A statutory instrument containing an order under this section that amends that figure so as to substitute a lower figure may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the House of Commons.]

### *Incidental costs of obtaining finance*

## **58 Incidental costs of obtaining finance**

- (1) In calculating the profits of a trade, a deduction is allowed for incidental costs of obtaining finance by means of—
  - (a) a loan, or
  - (b) the issue of loan stock,
 if the interest on the loan or stock is deductible in calculating the profits of the trade.
- (2) “Incidental costs of obtaining finance” means expenses—
  - (a) which are incurred on fees, commissions, advertising, printing and other incidental matters, and
  - (b) which are incurred wholly and exclusively for the purpose of obtaining the finance, providing security for it or repaying it.
- (3) Expenses incurred wholly and exclusively for the purpose of—
  - (a) obtaining finance, or
  - (b) providing security for it,
 are incidental costs of obtaining the finance even if it is not in fact obtained.
- (4) But the following are not incidental costs of obtaining finance—
  - (a) sums paid because of losses resulting from movements in the rate of exchange between different currencies,
  - (b) sums paid for the purpose of protecting against such losses,
  - (c) the cost of repaying a loan or loan stock so far as attributable to its being repayable at a premium or having been obtained or issued at a discount, and
  - (d) stamp duty.
- (5) This section needs to be read with <sup>F99</sup>—
  - (a) section 57B(3) (which imposes a limit on the total amount that may be deducted by virtue of this section or section 57B), and
  - (b)] section 59 (which provides for restrictions in relation to convertible loans and loan stock etc.).

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

### Textual Amendments

- F99** Words in s. 58(5)(a) inserted (with effect in accordance with Sch. 4 paras. 56, 57 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), **Sch. 4 para. 15**

### Modifications etc. (not altering text)

- C3** S. 58 modified (with effect as mentioned in s. 56 of the amending Act) by [Finance Act 2005 \(c. 7\)](#), **s. 51(3)(5)**
- C4** S. 58 modified (1.4.2010) by [Income Tax Act 2007 \(c. 3\)](#), **s. 564N(3)** (as inserted (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. 2 para. 15(3)** (with Sch. 9 paras. 1-9, 22))

## 59 Convertible loans and loan stock etc.

- (1) No deduction is allowed under section 58 in respect of a loan or loan stock if—
  - (a) it carries the right of conversion into, or to the acquisition of, shares or other securities, and
  - (b) the right is exercisable before the end of the period of 3 years from the date when the loan was obtained or the stock issued (“the 3 year period”).
- (2) “Other securities” does not include a loan or loan stock—
  - (a) the interest on which is deductible in calculating the profits of the person's trade, and
  - (b) which does not carry such a right as is mentioned in subsection (1).
- (3) But the restriction imposed by subsection (1) does not apply if the right is not, or is not wholly, exercised before the end of the 3 year period.
- (4) In such a case any incidental costs of obtaining finance incurred before the end of the 3 year period are treated as incurred immediately after the end of it.
- (5) If the right is exercised within the 3 year period as to part of the loan or loan stock, only the following incidental costs of obtaining finance are treated as incurred.
- (6) The costs are those corresponding to the proportion of the loan or loan stock in respect of which the right is not exercised within that period.

### *Tenants under taxed leases*

## 60 Tenants under taxed leases: introduction

- (1) Sections 61 to 67 apply if land used in connection with a trade is subject to a taxed lease.
- (2) Section 61 (tenants occupying land for purposes of trade treated as incurring expenses) applies in calculating the profits of a trade carried on by the tenant under the taxed lease for the purpose of making deductions for the expenses of the trade.
- (3) But any deduction for an expense under section 61 is subject to the application of any provision of Chapter 4 of this Part.
- (4) In this section and sections 61 to 67 the following expressions have the same meaning as in Chapter 4 of Part 3 (profits of property businesses: lease premiums etc.)—

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

“receipt period” (see section 288(6)),  
 “taxed lease” (see section 287(4)),  
 “taxed receipt” (see section 287(4)), and  
 “unreduced amount” (see section 290(2)).

- (5) Section 290(3) and (4) (unreduced amount of taxed receipt under section 277 as a result of section 278) applies for the purposes of sections 61 to 65.
- (6) In sections 64 to 67 references to a reduction under section 288 [F100 below or section 228 of CTA 2009] by reference to a taxed receipt have the same meaning as in Chapter 4 of Part 3 (see section 290(6)).
- (7) In the application of sections 64 to 67 to Scotland—
- references to a lease being granted out of a taxed lease are to the grant of a sublease of land subject to the taxed lease, and
  - references to the lease so granted are to be read as references to the sublease.

#### Textual Amendments

**F100** Words in s. 60(6) inserted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 591** (with Sch. 2 Pts. 1, 2)

### 61 Tenants occupying land for purposes of trade treated as incurring expenses

- The tenant under the taxed lease is treated as incurring an expense of a revenue nature in respect of the land subject to the taxed lease for each qualifying day.
- If there is more than one taxed receipt, this section applies separately in relation to each of them.
- A day is a “qualifying day”, in relation to a taxed receipt, if it is a day—
  - that falls within the receipt period of the taxed receipt, and
  - on which the tenant occupies the whole or part of the land subject to the taxed lease for the purposes of carrying on a trade.
- If on the qualifying day the tenant occupies the whole of the land subject to the taxed lease for the purposes of the trade, the amount of the expense for the qualifying day by reference to the taxed receipt is given by the formula—

$$\frac{A}{\text{TRP}}$$

A is the unreduced amount of the taxed receipt, and TRP is the number of days in the receipt period of the taxed receipt.

- If on the qualifying day the tenant occupies part of the land subject to the taxed lease for the purposes of the trade, the amount of the expense for the qualifying day by reference to the taxed receipt is given by the formula—

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

$$\frac{F \times A}{TRP}$$

where—

F is the fraction of the land that is so occupied calculated on a just and reasonable basis, and

A and TRP have the same meaning as in subsection (4).

[<sup>F101</sup>(5A) No expense is to be determined under this section by reference to the taxed receipt if section 292(4B) or (4C) applies.]

(6) This section is subject to section 62 (limit on deductions if tenant entitled to mineral extraction allowance).

#### Textual Amendments

**F101** S. 61(5A) inserted (with effect in accordance with Sch. 28 para. 4 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 28 para. 2](#)

## 62 Limit on deductions if tenant entitled to mineral extraction allowance

- (1) This section applies if the tenant under the taxed lease has become entitled, in respect of expenditure on the acquisition of an interest in the land subject to the taxed lease, to an allowance for a tax year under Part 5 of CAA 2001 (mineral extraction allowances) in respect of expenditure falling within section 403 of that Act (qualifying expenditure on acquiring a mineral asset).
- (2) If the allowance is in respect of the whole of the expenditure, no deduction is allowed for expenses under section 61 for a qualifying day falling within that or a later tax year.
- (3) If the allowance is in respect of only part of the expenditure (“the allowable part”) the amount of the deduction for expenses under section 61 for a qualifying day falling within that or a later tax year is calculated by multiplying the amount that, apart from this section, would be the amount of the deduction for the qualifying day by—

$$\frac{WE - AP}{WE}$$

where—

WE is the whole of the expenditure, and

AP is the allowable part of the expenditure.

## 63 Tenants dealing with land as property employed for purposes of trade

- (1) This section applies if the tenant under the taxed lease—
  - (a) does not occupy the land subject to the taxed lease, or a part of it, but

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (b) deals with the tenant's interest in the land, or the part of it, as property employed for the purposes of carrying on a trade.
- (2) Section 61 applies as if the land or the part of it were occupied by the tenant for the purposes of the trade.
- (3) But the tenant is not treated as incurring an expense in respect of the land for a qualifying day as a result of this section so far as the tenant is treated as incurring an expense under section 292 (tenants under taxed leases treated as incurring expenses) in respect of the land for the day in calculating the profits of the tenant's property business.
- (4) This section is subject to sections 64 and 65 (restrictions on section 61 expenses where the additional calculation rule is relevant).

#### 64 Restrictions on section 61 expenses: lease premium receipts

- [<sup>F102</sup>(1) This section applies if a lease has been granted out of the taxed lease and—
- (a) in calculating the amount of a receipt of a property business under Chapter 4 of Part 3 (profits of property businesses: lease premiums etc) in respect of the lease, there is a reduction under section 288 (the additional calculation rule) by reference to the taxed receipt, or
  - (b) in calculating the amount of a receipt of a property business under Chapter 4 of Part 4 of CTA 2009 (profits of a property business: lease premiums etc) in respect of the lease, there is a reduction under section 228 of that Act (the additional calculation rule) by reference to the taxed receipt.

In this section and sections 65 and 67 the receipt that is so reduced is referred to as a “lease premium receipt”.]

- (2) Subsections (3) to (5) provide for the application of section 61 as a result of section 63 for a qualifying day that falls within the receipt period of the lease premium receipt.
- (3) The tenant under the taxed lease is treated as incurring an expense under section 61 as a result of section 63 for the qualifying day by reference to the taxed receipt only if the daily amount of the taxed receipt exceeds the daily reduction of the lease premium receipt.
- (4) If the condition in subsection (3) is met, the amount of that expense for the qualifying day by reference to the taxed receipt is equal to that excess.
- (5) If the qualifying day falls within the receipt period of more than one lease premium receipt, the reference in subsection (3) to the daily reduction of the lease premium receipt is to be read as a reference to the total of the daily reductions of each of the lease premium receipts whose receipt period includes the qualifying day.
- (6) In this section—
  - the “daily amount” of the taxed receipt is given by the formula—

$$\frac{A}{\text{TRP}}$$

where—

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

A is the unreduced amount of the taxed receipt, and

TRP is the number of days in the receipt period of the taxed receipt, and  
the “daily reduction” of a lease premium receipt is given by the formula—

$$\frac{AR}{RRP}$$

where—

AR is the reduction under section 288 [F103]below or section 228 of CTA 2009] by reference to the taxed receipt, and

RRP is the number of days in the receipt period of the lease premium receipt.

- (7) Section 65 explains how this section operates if the lease does not extend to the whole of the premises subject to the taxed lease.

#### Textual Amendments

**F102** S. 64(1) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 592\(2\)](#) (with [Sch. 2 Pts. 1, 2](#))

**F103** Words in s. 64(6) inserted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 592\(3\)](#) (with [Sch. 2 Pts. 1, 2](#))

### 65 Restrictions on section 61 expenses: lease of part of premises

- (1) This section applies if—
- [F104]section 64 applies], and
  - the lease granted out of the taxed lease does not extend to the whole of the premises subject to the taxed lease.
- (2) Subsections (3) to (5) apply for a qualifying day that falls within the receipt period of the lease premium receipt.
- (3) Sections 61, 63 and 64 apply separately in relation to the part of the premises subject to the lease and to the remainder of the premises.
- (4) If—
- more than one lease that does not extend to the whole of the premises subject to the taxed lease has been granted out of the taxed lease, and
  - the qualifying day falls within the receipt period of two or more lease premium receipts that relate to different leases,
- sections 61, 63 and 64 apply separately in relation to each part of the premises subject to a lease to which such a lease premium receipt relates and to the remainder of the premises.
- (5) Where sections 61, 63 and 64 apply in relation to a part of the premises, A becomes the amount calculated by multiplying the unreduced amount of the taxed receipt by the fraction of the premises constituted by the part.
- (6) This fraction is calculated on a just and reasonable basis.

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

#### Textual Amendments

**F104** Words in s. 65(1)(a) substituted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 593** (with Sch. 2 Pts. 1, 2)

### 66 Corporation tax receipts [<sup>F105</sup> under ICTA] treated as taxed receipts

Section 296 (corporation tax receipts treated as taxed receipts applies for the purposes of sections 60 to 67.

#### Textual Amendments

**F105** Words in s. 66 title inserted (1.4.2009) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 594** (with Sch. 2 Pts. 1, 2)

### 67 Restrictions on section 61 expenses: corporation tax receipts [<sup>F106</sup> under ICTA]

- (1) This section provides for the application of section 61 as a result of section 63 if—
  - (a) a lease has been granted out of the taxed lease,
  - (b) in calculating the amount of a corporation tax receipt in respect of the lease, there is a reduction under section 37(2) or (3) of ICTA by reference to the amount chargeable on the superior interest for the purposes of that section, and
  - (c) the amount chargeable on the superior interest is the taxed receipt for the purposes of section 61.
- (2) Sections 61 and 63 to 65 apply as follows—
  - (a) the corporation tax receipt is treated as if it were a lease premium receipt for the purposes of sections 64 and 65,
  - (b) references in those sections to the reduction under section 288 by reference to the taxed receipt are, in relation to the corporation tax receipt, to the reduction under section 37(2) or (3) of ICTA by reference to the amount chargeable on the superior interest, and
  - (c) for the purposes of those sections the receipt period of the corporation tax receipt is—
    - (i) in the case of a corporation tax receipt as a result of section 34 of ICTA, the period treated in calculating the amount of the receipt as being the duration of the lease, and
    - (ii) in the case of a corporation tax receipt as a result of section 35 of ICTA, the period treated in calculating the amount of the receipt as being the duration of the lease remaining at the date of the assignment.
- (3) There is a corporation tax receipt in respect of a lease if—
  - (a) there is a receipt of a Schedule A business or an overseas property business (within the meaning of section 70A(4) of ICTA) as a result of section 34 or 35 of ICTA (treatment of premiums etc. as rent and assignments for profit of lease granted at an undervalue) in respect of the lease for an accounting period ending after 5th April 2005 [<sup>F107</sup>but before 1st April 2009], or
  - (b) there would be such a receipt, but for the operation of section 37(2) or (3) of ICTA (reductions in certain receipts under section 34 or 35 of ICTA).



*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (4) References to a reduction under section 37(2) or (3) of ICTA in a corporation tax receipt by reference to the amount chargeable on the superior interest are to the difference between—
- (a) the amount of the corporation tax receipt before the operation of section 37(2) or (3) of ICTA, and
  - (b) the amount of the corporation tax receipt after the operation of that subsection, so far as attributable to the amount chargeable on the superior interest for the purposes of section 37 of ICTA.

#### Textual Amendments

**F106** Words in s. 67 title inserted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 595\(3\)](#) (with [Sch. 2 Pts. 1, 2](#))

**F107** Words in s. 67(3)(a) inserted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 595\(2\)](#) (with [Sch. 2 Pts. 1, 2](#))

#### *Renewals*

### **68 Replacement and alteration of trade tools**

- (1) This section applies if—
- (a) expenses are incurred on replacing or altering any tool used for the purposes of a trade, and
  - (b) a deduction for the expenses would not otherwise be allowable in calculating the profits of the trade because (and only because) they are items of a capital nature.
- (2) In calculating the profits of the trade, a deduction is allowed for the expenses.
- (3) In this section “tool” means any implement, utensil or article.

#### *Payments for restrictive undertakings*

### **69 Payments for restrictive undertakings**

- (1) In calculating the profits of a trade, a deduction is allowed for a payment—
- (a) which is treated as earnings of an employee by virtue of section 225 of ITEPA 2003 (payments for restrictive undertakings), and
  - (b) which is made, or treated as made for the purposes of section 226 of that Act (valuable consideration given for restrictive undertakings), by the person carrying on the trade.
- (2) The deduction is allowed for the period of account in which the payment—
- (a) is made, or
  - (b) is treated as made for the purposes of section 226 of ITEPA 2003.

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

## *Seconded employees*

### **70 Employees seconded to charities and educational establishments**

- (1) This section applies if a person carrying on a trade (“the employer”) makes the services of a person employed for the purposes of the trade available to—
- (a) a charity, or
  - (b) an educational establishment,
- on a basis that is stated and intended to be temporary.
- (2) In calculating the profits of the trade, a deduction is allowed for expenses of the employer that are attributable to the employee's employment during the period of the secondment.
- (3) In this section—
- “educational establishment” means—
- (a) in England and Wales, any of the bodies mentioned in section 71(1),
  - (b) in Scotland, any of the bodies mentioned in section 71(2),
  - (c) in Northern Ireland, any of the bodies mentioned in section 71(3), and
  - (d) any other educational body which is for the time being approved for the purposes of this section by the Secretary of State or, in Northern Ireland, the Department of Education, and
- “the period of the secondment” means the period for which the employee's services are made available to the charity or educational establishment.

### **71 Educational establishments**

- (1) A body in England and Wales is an educational establishment for the purposes of section 70 if it is—
- [<sup>F108</sup>(a) a local authority (but only to the extent that the services of the employee are made available to the authority for the purposes of, or in connection with, the education functions of the authority),]
  - (b) an educational institution maintained or otherwise supported[<sup>F109</sup>, in the exercise of their education functions, by a local authority],
  - (c) an independent school within the meaning of the Education Act 1996 (c. 56) registered under section 161 of the Education Act 2002 (c. 32), <sup>F110</sup> ...
  - [<sup>F111</sup>(ca) an alternative provision Academy that is not an independent school within the meaning of the Education Act 1996,]
  - (d) an institution within the further education sector, or the higher education sector, within the meaning of the Further and Higher Education Act 1992 (c. 13)[<sup>F112</sup>, or
  - (e) a 16 to 19 Academy.]
- (2) A body in Scotland is an educational establishment for the purposes of section 70 if it is—
- (a) an education authority within the meaning of the Education (Scotland) Act 1980 (c. 44),
  - (b) an educational establishment within the meaning of the Education (Scotland) Act 1980 managed by an education authority within the meaning of that Act,

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (c) a public or grant-aided school within the meaning of the Education (Scotland) Act 1980,
  - (d) an independent school within the meaning of the Education (Scotland) Act 1980,
  - (e) a central institution within the meaning of the Education (Scotland) Act 1980,
  - (f) an institution within the higher education sector within the meaning of section 56(2) of the Further and Higher Education (Scotland) Act 1992 (c. 37), or
  - (g) a college of further education within the meaning of section 36(1) of the Further and Higher Education (Scotland) Act 1992.
- (3) A body in Northern Ireland is an educational establishment for the purposes of section 70 if it is—
- (a) an <sup>F113</sup>education and library board] within the meaning of the Education and Libraries (Northern Ireland) Order 1986 (S.I. 1986/594 (N.I. 3)),
  - (b) a college of education<sup>F114</sup>, a grant-aided school or an] independent school within the meaning of the Education and Libraries (Northern Ireland) Order 1986, or
  - (c) an institution of further education within the meaning of the Further Education (Northern Ireland) Order 1997 (S.I. 1997/1772 (N.I. 15)).

<sup>F115</sup>(4) In subsection (1) “local authority” and “education functions” have the same meaning as in the Education Act 1996 (see section 579(1) of that Act.)]

#### Textual Amendments

- F108** S. 71(1)(a) substituted (5.5.2010) by [The Local Education Authorities and Children’s Services Authorities \(Integration of Functions\) Order 2010](#) (S.I. 2010/1158), art. 1, **Sch. 2 para. 56(2)**
- F109** Words in s. 71(1)(b) substituted (5.5.2010) by [The Local Education Authorities and Children’s Services Authorities \(Integration of Functions\) Order 2010](#) (S.I. 2010/1158), art. 1, **Sch. 2 para. 56(3)**
- F110** Word in s. 71(1) omitted (1.4.2012) by virtue of [Education Act 2011](#) (c. 21), s. 82(3), **Sch. 13 para. 14**; S.I. 2012/924, art. 2
- F111** S. 71(1)(ca) inserted (E.W.) (1.4.2012) by [The Alternative Provision Academies \(Consequential Amendments to Acts\) \(England\) Order 2012](#) (S.I. 2012/976), art. 1, **Sch. para. 15** (with art. 3)
- F112** S. 71(1)(e) and word inserted (1.4.2012) by [Education Act 2011](#) (c. 21), s. 82(3), **Sch. 13 para. 14**; S.I. 2012/924, art. 2
- F113** Words in s. 71(3)(a) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009](#) (c. 4), s. 1329(1), **Sch. 1 para. 596(2)(a)** (with Sch. 2 Pts. 1, 2)
- F114** Words in s. 71(3)(b) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009](#) (c. 4), s. 1329(1), **Sch. 1 para. 596(2)(b)** (with Sch. 2 Pts. 1, 2)
- F115** S. 71(4) added (5.5.2010) by [The Local Education Authorities and Children’s Services Authorities \(Integration of Functions\) Order 2010](#) (S.I. 2010/1158), art. 1, **Sch. 2 para. 56(4)**

#### *Contributions to agents' expenses*

## 72 Payroll deduction schemes: contributions to agents' expenses

- (1) This section applies if—
- (a) a person carrying on a trade (“the employer”) is liable to make payments to an individual,

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (b) income tax falls to be deducted from those payments as a result of PAYE regulations, and
  - (c) the employer withholds sums from those payments in accordance with an approved scheme and pays the sums to an approved agent.
- (2) In calculating the profits of the employer's trade, a deduction is allowed for expenses incurred by the employer in making a payment to the agent for expenses which—
- (a) have been incurred, or
  - (b) are to be incurred,
- by the agent in connection with the agent's functions under the scheme.
- [<sup>F116</sup>(2A) In calculating the profits of the employer's trade on the cash basis, subsection (2) has effect as if paragraph (b) were omitted.]
- (3) In this section “approved agent” and “approved scheme” have the same meaning as in section 714 of ITEPA 2003.

#### Textual Amendments

**F116** S. 72(2A) inserted (with effect in accordance with Sch. 4 paras. 56, 57 of the amending Act) by Finance Act 2013 (c. 29), [Sch. 4 para. 16](#)

### *Counselling and retraining expenses*

#### **73 Counselling and other outplacement services**

- (1) In calculating the profits of a trade, a deduction is allowed for counselling expenses if—
- (a) the person carrying on the trade (“the employer”) incurs the expenses,
  - (b) the expenses are incurred in relation to a person (“the employee”) who holds or has held an office or employment under the employer for the purposes of the trade, and
  - (c) the relevant conditions are met.
- (2) In this section “counselling expenses” means expenses incurred—
- (a) in the provision of services to the employee in connection with the cessation of the office or employment,
  - (b) in the payment or reimbursement of fees for such provision, or
  - (c) in the payment or reimbursement of travelling expenses in connection with such provision.
- (3) In this section “the relevant conditions” means—
- (a) conditions A to D for the purposes of section 310 of ITEPA 2003 (employment income exemptions: counselling and other outplacement services), and
  - (b) in the case of travel expenses, condition E for those purposes.

#### **74 Retraining courses**

- (1) In calculating the profits of a trade, a deduction is allowed for retraining course expenses if—

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (a) the person carrying on the trade (“the employer”) incurs the expenses,
- (b) they are incurred in relation to a person (“the employee”) who holds or has held an office or employment under the employer for the purposes of the trade, and
- (c) the relevant conditions are met.

(2) In this section—

“retraining course expenses” means expenses incurred in the payment or reimbursement of retraining course expenses within the meaning given by section 311(2) of ITEPA 2003, and

“the relevant conditions” means—

- (a) the conditions in subsections (3) and (4) of section 311 of ITEPA 2003 (employment income exemptions: retraining courses), and
- (b) in the case of travel expenses, the conditions in subsection (5) of that section.

## 75 Retraining courses: recovery of tax

(1) This section applies if—

- (a) an employer's liability to tax for a tax year is determined on the assumption that a deduction for expenditure is allowed under section 74, and
- (b) the deduction would not otherwise have been allowed.

(2) If, subsequently—

- (a) the condition in section 311(4)(a) of ITEPA 2003 is not met because of the employee's failure to begin the course within the period of one year after ceasing to be employed, or
- (b) the condition in section 311(4)(b) of ITEPA 2003 is not met because of the employee's continued employment or re-employment,

an assessment of an amount or further amount of tax due as a result of the condition not being met may be made under section 29(1) of TMA 1970.

(3) Such an assessment must be made before the end of the period of 6 years immediately following the end of the tax year in which the failure to meet the condition occurred.

(4) If subsection (2) applies, the employer must give [<sup>F117</sup>an officer of Revenue and Customs] a notice containing particulars of—

- (a) the employee's failure to begin the course,
- (b) the employee's continued employment, or
- (c) the employee's re-employment,

within 60 days of coming to know of it.

<sup>F118</sup>(5) .....

(6) A notice under subsection (5) may specify a time (not less than 60 days) within which the required information must be provided.

### Textual Amendments

**F117** Words in s. 75(4)(5) substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), ss. 50, 53(1), [Sch. 4 para. 132\(1\)](#); S.I. 2005/1126, [art. 2\(h\)](#)

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

**F118** S. 75(5) omitted (13.8.2009) by virtue of [The Finance Act 2009, Schedule 47 \(Consequential Amendments\) Order 2009 \(S.I. 2009/2035\)](#), art. 1, [Sch. para. 42](#)

*Redundancy payments etc.*

**76 Redundancy payments and approved contractual payments**

- (1) Sections 77 to 79 apply if—
  - (a) a person (“the employer”) makes a redundancy payment or an approved contractual payment to another person (“the employee”), and
  - (b) the payment is in respect of the employee's employment wholly in the employer's trade or partly in the employer's trade and partly in one or more other capacities.
- (2) For the purposes of this section and sections 77 to 80 “redundancy payment” means a redundancy payment payable under—
  - (a) Part 11 of the Employment Rights Act 1996 (c. 18), or
  - (b) Part 12 of the Employment Rights (Northern Ireland) Order 1996 (S.I. 1996/1919 (N.I. 16)).
- (3) For the purposes of this section and those sections—
 

“contractual payment” means a payment which, under an agreement, an employer is liable to make to an employee on the termination of the employee's contract of employment, and

a contractual payment is “approved” if, in respect of that agreement, an order is in force under—

  - (a) section 157 of the Employment Rights Act 1996, or
  - (b) Article 192 of the Employment Rights (Northern Ireland) Order 1996.

**77 Payments in respect of employment wholly in employer's trade**

- (1) This section applies if—
  - (a) the payment is in respect of the employee's employment wholly in the employer's trade, and
  - (b) no deduction would otherwise be allowable for the payment.
- (2) In calculating the profits of the trade, a deduction is allowed under this section for the payment.
- (3) The deduction under this section for an approved contractual payment must not exceed the amount which would have been due to the employee if a redundancy payment had been payable.
- (4) If the payment is made after the employer has permanently ceased to carry on the trade, it is treated as made on the last day on which the employer carried on the trade.
- (5) If there is a change in the persons carrying on the trade, subsection (4) does not apply so long as a person carrying on the trade immediately before the change continues to carry it on after the change.
- (6) The deduction under this section is allowed for the period of account in which the payment is made (or treated under subsection (4) as made).

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

## 78 Payments in respect of employment in more than one capacity

- (1) This section applies if the payment is in respect of the employee's employment with the employer—
  - (a) partly in the employer's trade, and
  - (b) partly in one or more other capacities.
- (2) The amount of the redundancy payment, or the amount which would have been due if a redundancy payment had been payable, is to be apportioned on a just and reasonable basis between—
  - (a) the employment in the trade, and
  - (b) the employment in the other capacities.
- (3) The part of the payment apportioned to the employment in the trade is treated as a payment in respect of the employee's employment wholly in the trade for the purposes of section 77.

## 79 Additional payments

- (1) This section applies if the employer permanently ceases to carry on a trade or part of a trade and makes a payment to the employee in addition to—
  - (a) the redundancy payment, or
  - (b) if an approved contractual payment is made, the amount that would have been due if a redundancy payment had been payable.

<sup>F119</sup>(2) . . . . .

- (3) If, in calculating the profits of the trade—
  - (a) no deduction would otherwise be allowable for the additional payment, but
  - (b) a deduction would be allowable for it if the employer had not permanently ceased to carry on the trade or the part of the trade,a deduction is allowed under this section for the additional payment.
- (4) The deduction under this section is limited to 3 times the amount of—
  - (a) the redundancy payment, or
  - (b) if an approved contractual payment is made, the amount that would have been due if a redundancy payment had been payable.
- (5) If the payment is made after the employer has permanently ceased to carry on the trade or the part of the trade, it is treated as made on the last day on which the employer carried on the trade or the part of the trade.
- (6) The deduction under this section is allowed for the period of account in which the payment is made (or treated under subsection (5) as made).

### Textual Amendments

**F119** S. 79(2) repealed (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), Sch. 1 para. 597, **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

## [<sup>F120</sup>79A Additional payments: change in the persons carrying on the trade

- (1) This section deals with the application of section 79 in circumstances where there is a change in the persons carrying on the trade.
- (2) The employer is treated for the purposes of section 79 as permanently ceasing to carry on the trade unless a person carrying on the trade immediately before the change continues to carry it on after the change.]

### Textual Amendments

**F120** S. 79A inserted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 598](#) (with [Sch. 2 Pts. 1, 2](#))

## 80 Payments made by the Government

- (1) This section applies if, in respect of a redundancy payment or an approved contractual payment payable by an employer—
  - (a) the Secretary of State makes a payment under section 167 of the Employment Rights Act 1996 (c. 18), or
  - (b) the Department for Employment and Learning makes a payment under Article 202 of the Employment Rights (Northern Ireland) Order 1996 (S.I. 1996/1919 (N.I. 16)).
- (2) So far as the employer reimburses the Secretary of State or Department for the payment, sections 77 to [<sup>F121</sup>79A] apply as if the payment were—
  - (a) a redundancy payment, or
  - (b) an approved contractual payment, made by the employer.

### Textual Amendments

**F121** Word in s. 80(2) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 599](#) (with [Sch. 2 Pts. 1, 2](#))

### *Personal security expenses*

## 81 Personal security expenses

- (1) This section applies if—
  - (a) an individual (“the trader”) carries on a trade (alone or in a partnership of individuals),
  - (b) there is a special threat to the personal physical security of the trader which arises wholly or mainly because of the particular trade,
  - (c) a service or asset which improves personal security is used by or provided for the trader to meet the threat,
  - (d) the person incurring expenses in connection with that use or provision does so with the sole object of meeting the threat, and



---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

- (e) a deduction for the expenses would not otherwise be allowable in calculating the profits of the trade because (and only because) they were not incurred wholly and exclusively for the purposes of the trade.
- (2) In calculating the profits of the trade, a deduction is allowed for the expenses—
  - (a) in the case of a service, if the benefit resulting to the trader consists wholly or mainly of an improvement of the trader's personal physical security, and
  - (b) in the case of an asset, if the person incurring the expenses intends the asset to be used to improve personal physical security (whether solely or partly).
- (3) If the person incurring the expenses intends the asset to be used solely to improve personal physical security, any use of the asset which is incidental to improving personal physical security is ignored.
- (4) If the person incurring the expenses intends the asset to be used partly to improve personal physical security, a deduction is allowed only for the proportion of the expenses which is attributable to the intended use to improve personal physical security.
- (5) The fact that a service or asset improves the personal physical security of a member of the trader's family or household (as well as that of the trader) does not prevent a deduction from being allowed.
- (6) In determining whether or not this section applies in relation to an asset, it does not matter if—
  - (a) the asset becomes fixed to land, or
  - (b) the trader is or becomes entitled to the property in the asset or (if the asset is a fixture) to any estate or interest in the land concerned.
- (7) In this section—
  - “asset” includes equipment and a structure (such as a wall), but does not include a car, ship or aircraft or a dwelling or grounds appurtenant to a dwelling, and
  - “service” does not include a dwelling or grounds appurtenant to a dwelling.

#### *Contributions to local enterprise organisations or urban regeneration companies*

### **82 Contributions to local enterprise organisations or urban regeneration companies**

- (1) This section applies if a person carrying on a trade (“the contributor”) incurs expenses in making a contribution (whether in cash or in kind)—
  - (a) to a local enterprise organisation (see section 83), or
  - (b) to an urban regeneration company (see section 86),and a deduction would not otherwise be allowable for the expenses in calculating the profits of the trade.
- (2) In calculating the profits of the trade, a deduction is allowed under this section for the expenses.
- (3) But if, in connection with the making of the contribution, the contributor or a connected person—
  - (a) receives a disqualifying benefit of any kind, or
  - (b) is entitled to receive such a benefit,

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

the amount of the deduction is restricted to the amount of the expenses less the value of the benefit.

- (4) For this purpose it does not matter whether a person receives, or is entitled to receive, the benefit —
  - (a) from the organisation or company concerned, or
  - (b) from anyone else.
- (5) Subsection (6) applies if—
  - (a) a deduction has been made under this section, and
  - (b) the contributor or a connected person receives a disqualifying benefit that is in any way attributable to the contribution.
- (6) An amount equal to the value of the benefit (so far as not brought into account in determining the amount of the deduction)—
  - (a) is brought into account in calculating the profits of the trade, as a receipt arising on the date on which the benefit is received, or
  - (b) if the contributor has permanently ceased to carry on the trade before that date, is treated as a post-cessation receipt (see Chapter 18).
- (7) In this section “disqualifying benefit” means a benefit the expenses of obtaining which, if incurred by the contributor directly in a transaction at arm's length, would not be allowable as a deduction in calculating the profits of the trade.

### **83 Meaning of “local enterprise organisation”**

- (1) For the purposes of section 82 “local enterprise organisation” means—
  - (a) a local enterprise agency,
  - (b) a training and enterprise council,
  - (c) a Scottish local enterprise company, or
  - (d) a business link organisation.
- (2) “Local enterprise agency” means a body for the time being approved as a local enterprise agency for the purposes of section 82 by the relevant national authority, that is to say by—
  - (a) the Secretary of State (in relation to England or Northern Ireland),
  - (b) the Scottish Ministers (in relation to Scotland), or
  - (c) the National Assembly for Wales (in relation to Wales).

For further provision about approvals by the relevant national authority, see sections 84 and 85.

- (3) “Training and enterprise council” means a body with which the Secretary of State has an agreement under which the body is to carry out the functions of a training and enterprise council.
- (4) “Scottish local enterprise company” means a company with which—
  - (a) Scottish Enterprise, or
  - (b) Highlands and Islands Enterprise,
 has an agreement under which the company is to carry out the functions of a local enterprise company.

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

- (5) “Business link organisation” means a person authorised by or on behalf of the Secretary of State to use a trade mark designated by the Secretary of State for the purposes of this subsection.

#### **84 Approval of local enterprise agencies**

- (1) The relevant national authority may approve a body as a local enterprise agency for the purposes of section 82 only if conditions A and B are met.
- (2) But if those conditions are met, the body may be approved—
- (a) whatever its status or structure, and
  - (b) even if it is not described as a local enterprise agency.
- (3) Condition A is that the relevant national authority is satisfied—
- (a) that the body's sole aim is the promotion or encouragement of local enterprise, or
  - (b) that one of the body's main aims is the promotion or encouragement of local enterprise and that it has or is about to have a separate fund for the sole purpose of pursuing that aim.
- (4) For this purpose “local enterprise” means industrial and commercial activity or enterprise in a particular area in the United Kingdom, with particular reference to encouraging the formation and development of small businesses.
- (5) Condition B is that the body is precluded from paying or transferring any of its income or profit directly or indirectly—
- (a) to any of its members, or
  - (b) to any person charged with the control and direction of its affairs.
- (6) The payment of—
- (a) reasonable remuneration for goods, labour or power supplied or for services provided,
  - (b) reasonable interest on money lent, or
  - (c) reasonable rent for premises,
- does not count as a payment or transfer of income or profit for the purposes of subsection (5).

#### **85 Supplementary provisions with respect to approvals**

- (1) This section applies for the purposes of section 84.
- (2) The relevant national authority may give a body approval that is conditional on its compliance with such requirements as to—
- (a) accounts,
  - (b) provision of information, and
  - (c) other matters,
- as the relevant national authority considers appropriate
- (3) If the relevant national authority approves a body on the basis that it has or is about to have a separate fund (see section 84(3)(b))—
- (a) the approval must specify the fund, and

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

- (b) section 82 applies only to a contribution to the body made wholly to or for the purposes of the fund.
- (4) The relevant national authority must withdraw the approval of a body as a local enterprise agency if—
  - (a) condition A or B in section 84 is no longer met, or
  - (b) the body is failing to comply with a requirement imposed as a condition of its approval.
- (5) The relevant national authority must give notice of withdrawal to the body concerned, specifying the date from which the withdrawal takes effect (which may be earlier than the date on which the notice is given).

## **86 Meaning of “urban regeneration company”**

- (1) For the purposes of section 82 “urban regeneration company” means any body of persons which the Treasury by order designates as an urban regeneration company for the purposes of that section.
- (2) A body may be so designated only if—
  - (a) its sole or main function is to co-ordinate the regeneration of a specific urban area in the United Kingdom,
  - (b) it is expected to seek to perform that function by creating a plan for the development of that area and trying to secure that the plan is carried into effect, and
  - (c) in co-ordinating the regeneration of that area, it is expected to work together with some or all local or other public authorities which exercise functions in relation to the whole or part of that area.
- (3) An order under this section may be framed so as to take effect on a date earlier than the making of the order, but not earlier than three months before the date on which the order is made.

### *Scientific research*

## **87 Expenses of research and development**

- (1) If a person carrying on a trade incurs expenses of a revenue nature on research and development—
  - (a) related to the trade, and
  - (b) directly undertaken by or on behalf of the person,
 a deduction is allowed for the expenses in calculating the profits of the trade.
- (2) For this purpose expenses incurred on research and development—
  - (a) do not include expenses incurred in the acquisition of rights in, or arising out of, research and development, but
  - (b) subject to that, include all expenses incurred in carrying out, or providing facilities for carrying out, research and development.
- (3) The reference in this section to research and development related to a trade includes—
  - (a) research and development which may lead to or facilitate an extension of the trade, and

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (b) research and development of a medical nature which has a special relation to the welfare of workers employed in the trade.
- (4) The same expenses may not be brought into account under this section in relation to more than one trade.
- (5) In this section “research and development” has the meaning given by [<sup>F122</sup>section 1006 of ITA 2007] and includes oil and gas exploration and appraisal.
- (6) This section does not apply to professions or vocations.

#### Textual Amendments

**F122** Words in s. 87(5) 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. 499](#) (with transitional provisions and savings in [Sch. 2](#))

### 88 Payments to research associations, universities etc.

- (1) If a person carrying on a trade—
  - [<sup>F123</sup>(a) pays any sum to an Association in the case of which exemption may be claimed under section 508 of ICTA and which has as its object the undertaking of research and development which may lead to or facilitate an extension of the class of trade to which the trade carried on by the person belongs, or
  - (b) pays any sum to be used for scientific research related to that class of trade to an approved university, college research institute or other similar institution,]a deduction is allowed for the sum in calculating the profits of the trade.
- (2) The deduction is allowed for the period of account in which the payment is made.
- (3) “Scientific research” means any activities in the fields of natural or applied science for the extension of knowledge.
- (4) For the purposes of this section—
  - (a) <sup>F124</sup>.....
  - (b) a university, college research institute or other similar institution,is approved if it is for the time being approved for the purposes of this section by the Secretary of State.
- (5) The [<sup>F125</sup>reference in subsection (1)(b)] to scientific research related to a class of trade include—
  - (a) scientific research which may lead to or facilitate an extension of trades of the class, and
  - (b) scientific research of a medical nature which has a special relation to the welfare of workers employed in trades of the class.
- (6) If a question arises as to—
  - (a) whether, or
  - (b) [<sup>F126</sup>to] what extent,any activities constitute or constituted scientific research, the Inland Revenue must refer the question for decision to the Secretary of State, whose decision is final.

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (7) The same expenses may not be brought into account under this section in relation to more than one trade.
- (8) This section does not apply to professions or vocations.

#### Textual Amendments

- F123** Words in s. 88(1)(a)(b) substituted (with effect as mentioned in s. 14(5) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), s. 14(2)
- F124** S. 88(4)(a) repealed (with effect as mentioned in s. 14(5) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), ss. 14(2), 70, Sch. 11 Pt. 2(2)
- F125** Words in s. 88(5) substituted (with effect as mentioned in s. 14(5) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), s. 14(4)
- F126** Word in s. 88(6)(b) inserted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 1 para. 600 (with Sch. 2 Pts. 1, 2)

#### *Expenses connected with patents, designs and trade marks*

### 89 Expenses connected with patents

- (1) In calculating the profits of a trade, a deduction is allowed for expenses incurred—
- (a) in obtaining for the purposes of the trade the grant of a patent or the extension of a patent's term, or
  - (b) in connection with a rejected or abandoned application for a patent made for the purposes of the trade.
- (2) This section does not apply to professions or vocations.

### 90 Expenses connected with designs or trade marks

- (1) In calculating the profits of a trade, a deduction is allowed for expenses incurred in obtaining for the purposes of the trade—
- (a) the registration of a design or trade mark,
  - (b) the extension of a period for which the right in a registered design subsists, or
  - (c) the renewal of registration of a trade mark.
- (2) This section does not apply to professions or vocations.

#### *Export Credits Guarantee Department*

### 91 Payments to Export Credits Guarantee Department

- In calculating the profits of a trade, a deduction is allowed for a sum payable by the person carrying on the trade to the Export Credits Guarantee Department—
- (a) under an agreement entered into as a result of arrangements made under section 2 of the Export and Investment Guarantees Act 1991 (c. 67) (insurance in connection with overseas investment), or
  - (b) with a view to entering into such an agreement.

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

### *Expenses connected with foreign trades*

## **92 Expenses connected with foreign trades**

- (1) This section applies if—
  - (a) an individual (“the trader”) carries on a foreign trade (alone or in partnership),
  - (b) the trader is absent from the United Kingdom wholly and exclusively for the purpose of carrying on the foreign trade or the foreign trade and one or more other trades (whether or not foreign trades),
  - (c) qualifying expenses are incurred in connection with the foreign trade, and
  - (d) a deduction for the expenses would not otherwise be allowable in calculating the profits of the foreign trade because (and only because) they were not incurred wholly and exclusively for the purposes of the foreign trade.
- (2) In calculating any profits of the foreign trade which are not charged in accordance with section 832 (relevant foreign income charged on the remittance basis), a deduction is allowed for the expenses.
- (3) Any of the following expenses are qualifying expenses incurred in connection with the foreign trade—
  - (a) expenses incurred by the trader in travelling between a place in the United Kingdom and a place where the foreign trade is carried on,
  - (b) expenses incurred by the trader on board and lodging at a place where the foreign trade is carried on,
  - (c) if the trader's absence from the United Kingdom is for a continuous period of 60 days or more, family expenses (as defined in section 94), and
  - (d) if the trader also carries on another trade outside the United Kingdom (whether or not a foreign trade), expenses incurred by the trader in travelling between a place where the foreign trade is carried on and a place outside the United Kingdom where the other trade is carried on.
- (4) In this section and section 93 “foreign trade” means a trade carried on wholly outside the United Kingdom.

## **93 Allocation of expenses**

- (1) Expenses within section 92(3)(a), (b) or (c) are allocated to the foreign trade.
- (2) If—
  - (a) the expenses are within section 92(3)(a) or (b), and
  - (b) the trader carries on more than one foreign trade at the place in question outside the United Kingdom,those expenses are allocated between the foreign trades on a just and reasonable basis.
- (3) If—
  - (a) the expenses are within section 92(3)(c), and
  - (b) the trader's absence is for the purpose of carrying on more than one foreign trade,those expenses are allocated between the foreign trades on a just and reasonable basis.
- (4) Expenses within section 92(3)(d) are allocated—

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (a) to the trade carried on at the trader's place of destination, if that trade is a foreign trade, and
  - (b) in any other case, to the foreign trade carried on at the trader's place of departure.
- (5) If the trader carries on more than one foreign trade at—
- (a) the place of destination (in a case falling within subsection (4)(a)), or
  - (b) the place of departure (in a case falling within subsection (4)(b)),
- the expenses are allocated between the foreign trades on a just and reasonable basis.

## 94 Family expenses

- (1) In section 92(3)(c) “family expenses” means expenses of a journey made by the trader's spouse [<sup>F127</sup>or civil partner] or child if the journey—
- (a) is between a place in the United Kingdom and a place outside the United Kingdom where any of the trades is carried on, and
  - (b) is made in order to accompany the trader at the beginning of the period of absence or to visit the trader during that period or to return after a journey made for either purpose.
- (2) But no more than two outward and two return journeys made by the same person in a tax year fall within subsection (1).
- (3) In this section “child” includes a stepchild but does not include a person who is aged 18 or over at the start of the outward journey.

### Textual Amendments

**F127** Words in s. 94(1) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), **reg. 184**

<sup>F128</sup>*SAYE option schemes, CSOP schemes*

### Textual Amendments

**F128** S. 94A and cross-heading inserted (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. 7 para. 28** (with [Sch. 9 paras. 1-9, 22](#))

## 94A Costs of setting up SAYE option scheme or CSOP scheme

- (1) This section applies if—
- (a) a company incurs expenses in setting up a scheme within subsection (2) <sup>F129</sup>... and
  - <sup>F130</sup>(b) .....
- (2) The schemes within this subsection are—
- (a) [<sup>F131</sup>Schedule 3]SAYE option schemes within the meaning of the SAYE code (see section 516(4) of ITEPA 2003), and



*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (b) [<sup>F132</sup>Schedule 4]CSOP schemes within the meaning of the CSOP code (see section 521(4) of ITEPA 2003).

<sup>F133</sup>  
...

- (3) A deduction for the expenses is to be made in calculating the profits of a trade carried on by the company.

- (4) If the [<sup>F134</sup>relevant date falls] more than 9 months after the end of the period of account in which the expenses are incurred, for the purposes of subsection (3) the deduction is to be made for the period of account in which the [<sup>F134</sup>relevant date falls] .

[ In subsection (4) “the relevant date”—

- <sup>F135</sup>(4A) (a) in relation to a Schedule 3 SAYE option scheme, has the meaning given in paragraph 40A(6) of Schedule 3 to ITEPA 2003, and  
(b) in relation to a Schedule 4 CSOP scheme, has the meaning given in paragraph 28A(6) of Schedule 4 to ITEPA 2003.]

[ But subsection (4) does not apply in calculating the profits of a trade on the cash <sup>F136</sup>(5) basis.]]

#### Textual Amendments

**F129** Words in s. 94A(1)(a) omitted (6.4.2014) by virtue of [Finance Act 2014 \(c. 26\)](#), **Sch. 8 paras. 140(2)(a)**, 146 (with [Sch. 8 paras. 147-157](#))

**F130** S. 94A(1)(b) and word omitted (6.4.2014) by virtue of [Finance Act 2014 \(c. 26\)](#), **Sch. 8 paras. 140(2)(b)**, 146 (with [Sch. 8 paras. 147-157](#))

**F131** Words in s. 94A(2)(a) inserted (6.4.2014) by [Finance Act 2014 \(c. 26\)](#), **Sch. 8 paras. 140(3)(a)**, 146 (with [Sch. 8 paras. 147-157](#))

**F132** Words in s. 94A(2)(b) inserted (6.4.2014) by [Finance Act 2014 \(c. 26\)](#), **Sch. 8 paras. 140(3)(b)**, 146 (with [Sch. 8 paras. 147-157](#))

**F133** Words in s. 94A(2) omitted (6.4.2014) by virtue of [Finance Act 2014 \(c. 26\)](#), **Sch. 8 paras. 140(3)(c)**, 146 (with [Sch. 8 paras. 147-157](#))

**F134** Words in s. 94A(4) substituted (6.4.2014) by [Finance Act 2014 \(c. 26\)](#), **Sch. 8 paras. 140(4)**, 146 (with [Sch. 8 paras. 147-157](#))

**F135** S. 94A(4A) inserted (6.4.2014) by [Finance Act 2014 \(c. 26\)](#), **Sch. 8 paras. 140(5)**, 146 (with [Sch. 8 paras. 147-157](#))

**F136** S. 94A(5) inserted (with effect in accordance with [Sch. 4 paras. 56, 57](#) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), **Sch. 4 para. 17**

*[<sup>F137</sup>Limited liability partnerships: salaried members*

#### Textual Amendments

**F137** [S. 94AA](#) and cross-heading inserted (6.4.2014) by [Finance Act 2014 \(c. 26\)](#), **Sch. 17 paras. 3(2)**, 6

### 94AA Deductions in relation to salaried members

- (1) This section applies in relation to a limited liability partnership if section 863A(2) (limited liability partnerships: salaried members) applies in the case of a member of the partnership (“M”).

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (2) In calculating for a period of account under section 849 (calculation of firm's profits and losses) the profits of a trade carried on by the limited liability partnership, a deduction is allowed for expenses paid by the partnership in respect of M's employment under section 863A(2) if no deduction would otherwise be allowed for the payment.
- (3) This section is subject to section 33 (capital expenditure), section 34 (expenses not wholly and exclusively for trade etc), section 45 (business entertainment and gifts) and section 53 (social security contributions).]

## [<sup>F138</sup>CHAPTER 5A

### TRADE PROFITS: DEDUCTIONS ALLOWABLE AT A FIXED RATE

#### Textual Amendments

**F138** Pt. 2 Ch. 5A inserted (with effect in accordance with Sch. 5 para. 6 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 5 para. 2](#)

#### *Introduction*

#### **94B Professions and vocations**

The provisions of this Chapter apply to professions and vocations as they apply to trades.

#### **94C Provisions not applicable to certain firms**

The provisions of this Chapter do not apply in calculating the profits of a trade carried on by a firm for a period if one or more of the persons who have been partners in the firm at any time during the period was not an individual at that time.

#### *Expenditure on vehicles*

#### **94D Expenditure on vehicles**

- (1) This section applies if, in calculating the profits of a trade of a person for a period—
- (a) a deduction would otherwise be allowable for the period in respect of qualifying expenditure incurred in relation to a relevant vehicle (see subsection (2)), or
  - (b) a deduction would be so allowable in respect of such expenditure but for the fact it is capital expenditure.
- (2) In this section “relevant vehicle” means a car, motor cycle or goods vehicle that—
- (a) is used for the purposes of the trade, and
  - (b) is not an excluded vehicle (see section 94E).
- (3) The person may make a deduction under this section for the period in respect of the qualifying expenditure.

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (4) If a deduction for a period is made under this section—
  - (a) no other deduction is allowed (for that or any other period) in respect of the qualifying expenditure, and
  - (b) this section applies in relation to the relevant vehicle for every subsequent period for which the vehicle is used for the purposes of the trade.
- (5) The amount of the deduction is the appropriate mileage amount in relation to the relevant vehicle for the period (see section 94F).
- (6) In this section “qualifying expenditure”, in relation to a vehicle, means any expenditure incurred in respect of the acquisition, ownership, hire, leasing or use of the vehicle, other than incidental expenses incurred in connection with a particular journey.
- (7) For provision preventing capital allowances from being claimed in respect of qualifying expenditure incurred in relation to a relevant vehicle, see section 38ZA of CAA 2001.

#### **94E Excluded vehicles**

- (1) A car, motor cycle or goods vehicle that is used for the purposes of a trade is an “excluded vehicle” for the purposes of section 94D if condition A or B is met in relation to the vehicle.
- (2) Condition A is that the person who is or has been carrying on the trade has at any time claimed any capital allowances under Part 2 of CAA 2001 in respect of any expenditure incurred on the provision of the vehicle.
- (3) Condition B is that—
  - (a) the vehicle is a goods vehicle or a motor cycle, and
  - (b) any of the expenditure incurred on acquiring the vehicle has been deducted in calculating the profits of the trade for a period on the cash basis (see section 25A).

#### **94F The appropriate mileage amount**

- (1) In calculating the profits of a trade for a period, the appropriate mileage amount in relation to a relevant vehicle for the period is—

$$M \times R$$

where—

M is the number of miles of business journeys made by a person (other than as a passenger) using that vehicle in the period, and

R is the rate applicable to that kind of vehicle.

- (2) The rates applicable are as follows—

TABLE

<i>Kind of vehicle</i>	<i>Rate per mile</i>
Car or goods vehicle	45p for the first 10,000 miles

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

	25p after that
Motor cycle	24p

- (3) In a case where the total number of miles of relevant business journeys made in the period is greater than 10,000, the rate of 45p per mile is available only in relation to 10,000 of those miles.
- (4) “Relevant business journey” means any business journey made in the period by a car or goods vehicle—
- (a) that is used for the purposes of the trade, and
  - (b) in relation to which section 94D applies for the period.
- (5) In this section—
- “business journey”, in relation to a vehicle used for the purposes of a trade, means any journey, or any identifiable part or proportion of a journey, that is made wholly and exclusively for the purposes of the trade, and
- “relevant vehicle” has the same meaning as in section 94D.
- (6) The Treasury may by regulations amend subsection (2) so as to alter the rates or rate bands.
- Regulations under this subsection may also make consequential amendments to subsection (3).

#### **94G Definitions of types of vehicle**

- (1) This section applies for the purposes of sections 94D to 94F (and this section).
- (2) “Car” means a mechanically propelled road vehicle which is not—
- (a) a goods vehicle,
  - (b) a motor cycle,
  - (c) an invalid carriage, or
  - (d) a vehicle of a type not commonly used as a private vehicle and unsuitable to be so used.
- (3) “Goods vehicle” means a mechanically propelled road vehicle which—
- (a) is of a construction primarily suited for the conveyance of goods or burden of any description, and
  - (b) is not a motor cycle.
- (4) “Motor cycle” has the meaning given by section 185(1) of the Road Traffic Act 1988.
- (5) For the purposes of this section “invalid carriage” has the meaning given by section 185(1) of the Road Traffic Act 1988.

#### *Use of home for business purposes*

#### **94H Use of home for business purposes**

- (1) This section applies if, in calculating the profits of a trade of a person for a period, a deduction (“the standard deduction”) would otherwise be allowable for the period in respect of the use of the person's home for the purposes of the trade.

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (2) The person may, instead of making the standard deduction, make a deduction for the period under this section.
- (3) The amount of the deduction allowable for the period is the sum of the applicable amounts for each month, or part of a month, falling within the period.
- (4) The applicable amount for a month, or part of a month, is given by the following Table—

TABLE

<i>Number of hours worked</i>	<i>Applicable amount</i>
25 or more	£10.00
51 or more	£18.00
101 or more	£26.00

where the “number of hours worked” in a month (or part of a month) is the number of hours spent wholly and exclusively on work done by the person, or any employee of the person, in the person's home wholly and exclusively for the purposes of the trade.

- (5) If the person has more than one home, this section has effect as if those homes were a single home.
- (6) The Treasury may by regulations amend subsection (4) so as to alter the rates or rate bands.

*Premises used both as home and business premises*

**94I Premises used both as a home and as business premises**

- (1) This section applies if—
  - (a) a person carries on a trade at any premises,
  - (b) the premises are used mainly for the purposes of carrying on the trade, but are also used by the person as a home,
  - (c) the person incurs expenses in relation to the premises,
  - (d) the expenses are incurred mainly (but not wholly and exclusively) for the purposes of the trade, and
  - (e) in calculating the profits of the trade for a period, a deduction (“the standard deduction”) would otherwise be allowable for the period in respect of a part or proportion of the expenses in accordance with section 34(2).
- (2) The person may, instead of making the standard deduction, make a deduction for the period under this section.
- (3) The amount of the deduction allowable for the period is the amount of the expenses less the non-business use amount.
- (4) The non-business use amount is the sum of the applicable amounts for each month, or part of a month, falling within the period.

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (5) The applicable amount for a month, or part of a month, is given by the following Table—

TABLE

<i>Number of relevant occupants</i>	<i>Applicable amount</i>
1	£350
2	£500
3 or more	£650

- (6) For the purposes of subsection (5) “relevant occupant”, in relation to a month (or part of a month), means an individual who, at any time during that month (or that part of a month)—
- (a) occupies the premises as a home, or
  - (b) stays at the premises otherwise than in the course of the trade.
- (7) The Treasury may by regulations amend subsection (5) so as to alter the rates or rate bands.]

## CHAPTER 6

### TRADE PROFITS: RECEIPTS

#### *Introduction*

#### **95 Professions and vocations**

Apart from section 105 (industrial development grants), the provisions of this Chapter apply to professions and vocations as they apply to trades.

#### *[<sup>F139</sup>Cash basis accounting*

#### **Textual Amendments**

**F139** S. 95A and cross-heading inserted (with effect in accordance with Sch. 4 paras. 56, 57 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 4 para. 19](#)

#### **95A Application of Chapter to the cash basis**

For rules about receipts that apply only for the purpose of calculating profits on the cash basis, see the following—

- section 96A (cash basis: capital receipts),
- section 97A (cash basis: value of trading stock on cessation of trade),
- section 97B (cash basis: value of work in progress on cessation of profession or vocation).]

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

### Capital receipts

#### 96 Capital receipts

- (1) Items of a capital nature must not be brought into account as receipts in calculating the profits of a trade.
- (2) But this does not apply to items which, as a result of any provision of this Part, are brought into account as receipts in calculating the profits of the trade.

#### [<sup>F140</sup>96A Cash basis: capital receipts

- (1) This section applies if—
  - (a) the whole or part of any expenditure incurred in acquiring, creating or improving an asset has been brought into account in calculating the profits of a trade of a person on the cash basis, or
  - (b) the whole or part of any such expenditure would have been so brought into account if an election under section 25A had had effect in relation to the trade at the time the expenditure was paid.
- (2) The following amounts are to be brought into account as a receipt in calculating the profits of the trade on the cash basis—
  - (a) any proceeds arising from the disposal of the asset or any part of it;
  - (b) any proceeds arising from the grant of any right in respect of, or any interest in, the asset;
  - (c) any amount of damages, proceeds of insurance or other compensation received in respect of the asset.
- (3) In a case where only part of the expenditure incurred in acquiring, creating or improving an asset has been, or would have been, brought into account as mentioned in subsection (1), the amount brought into account under subsection (2) is proportionately reduced.
- (4) If—
  - (a) at any time the person ceases to use the asset or any part of it for the purposes of the trade, but
  - (b) the person does not dispose of the asset (or that part) at that time,
 the person is to be regarded for the purposes of this section as disposing of the asset (or that part) at that time for an amount equal to the market value amount.
- (5) If at any time there is a material increase in the person's non-business use of the asset or any part of it, the person is to be regarded for the purposes of this section as disposing of the asset (or that part) at that time for an amount equal to the relevant proportion of the market value amount.
- (6) For the purposes of subsection (5)—
  - (a) there is an increase in a person's non-business use of an asset (or part of an asset) if—
    - (i) the proportion of the person's use of the asset (or that part) that is for the purposes of the trade decreases, and
    - (ii) the proportion of the person's use of the asset (or that part) that is for other purposes (the “non-business use”) increases;

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (b) “the relevant proportion” is the difference between—
- (i) the proportion of the person's use of the asset (or part of the asset) that is non-business use, and
  - (ii) the proportion of the person's use of the asset (or that part) that was non-business use before the increase mentioned in subsection (5).
- (7) In this section “the market value amount” means the amount that would be regarded as normal and reasonable—
- (a) in the market conditions then prevailing, and
  - (b) between persons dealing with each other at arm's length in the open market.]

#### Textual Amendments

**F140** S. 96A inserted (with effect in accordance with Sch. 4 paras. 56, 57 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 4 para. 20](#)

### *Debts released*

#### **97 Debts incurred and later released**

- (1) This section applies if—
- (a) in calculating the profits of a trade, a deduction is allowed for the expense giving rise to a debt owed by the person carrying on the trade,
  - (b) all or part of the debt is released, and
  - (c) the release is not part of a statutory insolvency arrangement.
- (2) The amount released—
- (a) is brought into account as a receipt in calculating the profits of the trade, and
  - (b) is treated as arising on the date of the release.

*<sup>F141</sup>Cash basis: value of stock and work in progress on cessation*

#### Textual Amendments

**F141** Ss. 97A, 97B and cross-heading inserted (with effect in accordance with Sch. 4 paras. 56, 57 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 4 para. 21](#)

#### **97A Cash basis: value of trading stock on cessation of trade**

- (1) This section applies if—
- (a) a person permanently ceases to carry on a trade in a tax year, and
  - (b) an election under section 25A (cash basis for small businesses) has effect in relation to the trade for the tax year.
- (2) The value of any trading stock belonging to the trade at the time of the cessation is brought into account as a receipt in calculating the profits of the trade for the tax year.
- (3) The value is to be determined on a basis that is just and reasonable in all the circumstances.



---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

- (4) If there is a change in the persons carrying on a trade, subsection (2) does not apply in relation to the trade so long as a person carrying on the trade immediately before the change continues to carry it on after the change.
- (5) In this section “trading stock” has the same meaning as in Chapter 12 (see section 174).
- (6) This section does not apply to professions or vocations.

### **97B Cash basis: value of work in progress on cessation of profession or vocation**

- (1) This section applies if—
  - (a) a person permanently ceases to carry on a profession or vocation in a tax year, and
  - (b) an election under section 25A (cash basis for small businesses) has effect in relation to the profession or vocation for the tax year.
- (2) The value of any work in progress at the time of the cessation is brought into account as a receipt in calculating the profits of the profession or vocation for the tax year.
- (3) The value is to be determined on a basis that is just and reasonable in all the circumstances.
- (4) If there is a change in the persons carrying on a profession, subsection (2) does not apply in relation to the profession so long as a person carrying on the profession immediately before the change continues to carry it on after the change.
- (5) In this section “work in progress” has the same meaning as in Chapter 12 (see section 183).]

*Amounts received following earlier cessation*

### **98 Acquisition of trade: receipts from transferor's trade**

- (1) This section applies if —
  - (a) a person (“the transferor”) permanently ceased to carry on a trade at any time,
  - (b) at that time the transferor transferred to another person (“the transferee”) the right to receive sums arising from the carrying on of the trade, and
  - (c) the transferee subsequently carries on the transferor's trade.
- (2) Sums—
  - (a) which the transferee receives as a result of the transfer, and
  - (b) which are not brought into account in calculating the profits of the transferor's trade for income or corporation tax purposes for any period before the cessation,

are brought into account in calculating the profits of the transferee's trade in the period of account in which they are received.
- (3) Any sums mentioned in subsection (1)(b) which are received after the transferor has permanently ceased to carry on the trade are not post-cessation receipts (see Chapter 18).

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

## Reverse premiums

### 99 Reverse premiums

- (1) For the purposes of sections 101 and 102 a payment or other benefit is a reverse premium—
  - (a) if conditions A to C are met, and
  - (b) it is not excluded by section 100.
- (2) Condition A is that a person (“the recipient”) receives the payment or other benefit by way of inducement in connection with a transaction being entered into by—
  - (a) the recipient, or
  - (b) a person connected with the recipient.
- (3) Condition B is that the transaction (the “property transaction”) is one under which—
  - (a) the recipient, or
  - (b) the person connected with the recipient,
 becomes entitled to an estate, interest or right in or over land.
- (4) Condition C is that the payment or other benefit is paid or provided by—
  - (a) the person (“the grantor”) by whom the estate, interest or right is granted or was granted at an earlier time,
  - (b) a person connected with the grantor, or
  - (c) a nominee of, or a person acting on the directions of, the grantor or a person connected with the grantor.

### 100 Excluded cases

- (1) A payment or other benefit is not a reverse premium so far as it is brought into account under section 532 of CAA 2001 (the general rule excluding contributions) to reduce the recipient's expenditure qualifying for capital allowances.
- (2) A payment or other benefit received in connection with a property transaction is not a reverse premium if—
  - (a) the person entering into the transaction is an individual, and
  - (b) the transaction relates to premises occupied or to be occupied by the individual as the individual's only or main residence.
- (3) A payment or other benefit is not a reverse premium so far as it is consideration for the transfer of an estate or interest in land which constitutes the sale in a sale and lease-back arrangement.
- (4) A “sale and lease-back arrangement” means any such arrangement as is described in <sup>F142</sup>section 681AA(1) or (2), 681AB(1) or (2) or 681BA of ITA 2007 or <sup>F143</sup>section 835(1) or (2) or 836(1) or (2) of CTA 2010].

#### Textual Amendments

**F142** Words in s. 100(4) inserted (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. 255](#) (with [Sch. 9 paras. 1-9, 22](#))

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

**F143** Words in s. 100(4) substituted (1.4.2010) (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), [Sch. 1 para. 445](#) (with Sch. 2)

**Modifications etc. (not altering text)**

**C5** S. 100(1) excluded (26.3.2007) by [The Income Tax \(Construction Industry Scheme\) Regulations 2005 \(S.I. 2005/2045\)](#), reg. 20(2) (as amended by [The Income Tax \(Construction Industry Scheme\) \(Amendment\) Regulations 2007 \(S.I. 2007/672\)](#), [reg. 5\(3\)](#))

## 101 Tax treatment of reverse premiums

- (1) A reverse premium is treated for income tax purposes as a receipt of a revenue nature.
- (2) If the recipient enters into the property transaction for the purposes of a trade carried on (or to be carried on) by the recipient, the reverse premium is brought into account in calculating the profits of the trade.
- (3) If subsection (2) does not apply, the reverse premium is charged to income tax in accordance with section 311 (reverse premium taxed as property business receipt).

## 102 Arrangements not at arm's length

- (1) This section applies if—
  - (a) two or more of the parties to the property arrangements are connected persons, and
  - (b) the terms of those arrangements are not such as would reasonably have been expected if those persons had been dealing at arm's length.
- (2) The terms of the property arrangements meet the condition in subsection (1)(b) if they differ to a significant extent from the terms which, at the time the arrangements were entered into, would be regarded as normal and reasonable—
  - (a) in the market conditions then prevailing, and
  - (b) between persons dealing with each other at arm's length in the open market.
- (3) The whole amount or value of the reverse premium brought into account under section 101 is brought into account in the first relevant period of account.
- (4) “The first relevant period of account” means the period of account in which the property transaction is entered into.
- (5) But if the recipient enters into the property transaction for the purposes of a trade—
  - (a) which is not then carried on by the recipient, but
  - (b) which the recipient subsequently starts to carry on,
 “the first relevant period of account” means the first period of account in which the recipient carries on the trade.

## 103 Connected persons and property arrangements

For the purposes of this section and sections 99 to 102—

- (a) persons are treated as connected with each other if they are connected (for which see section 878(5)) at any time during the period when the property arrangements are entered into, and

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

- (b) “the property arrangements” means the property transaction and any arrangements entered into in connection with it (whether before it, at the same time as it or after it).

### *Assets of mutual concerns*

## **104 Distribution of assets of mutual concerns**

- (1) This section applies if—
- (a) a deduction has been allowed in calculating the profits of a trade for a payment to a mutual concern for the purposes of its mutual business,
  - (b) the concern is being or has been wound up or dissolved,
  - (c) a person (“the recipient”) who is carrying on the trade, or was doing so at the time of the payment, receives money or money's worth representing the concern's assets, and
  - (d) the assets in question represent profits of the mutual business conducted by the concern.
- (2) If the recipient is carrying on the trade at the time the money or money's worth is received, the amount or value of the money or money's worth is brought into account as a receipt in calculating the profits of the trade.
- (3) If the recipient—
- (a) is not carrying on the trade at the time the money or money's worth is received, but
  - (b) was doing so at the time of the payment to the mutual concern,
- the amount or value of the money or money's worth is treated as a post-cessation receipt (see Chapter 18).
- (4) For the purposes of this section money or money's worth represents assets of a mutual concern if it—
- (a) forms part of the assets of the concern,
  - (b) forms part of the consideration for the transfer of the assets of the concern as part of a scheme of amalgamation or reconstruction which involves its winding up, or
  - (c) consists of the consideration for a transfer or surrender of a right to receive anything falling within paragraph (a) or (b) and does not give rise to a charge to income tax on the person receiving it otherwise than as a result of this section.
- (5) If a transfer or surrender of a right to receive anything which—
- (a) forms part of the assets of a mutual concern, or
  - (b) forms part of the consideration for the transfer of the assets of a mutual concern,
- is not at arm's length, the person making the transfer or surrender is treated as receiving consideration equal to the value of the right.
- (6) In this section references to a mutual concern are to a body corporate which has at any time carried on a trade which consists of or includes the conduct of mutual business (whether or not confined to the members of the body corporate).

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (7) For the purposes of this section a trade does not consist of or include the conduct of mutual business if all the profits of the trade are chargeable to income or corporation tax.

### *Industrial development grants*

## **105 Industrial development grants**

- (1) This section applies if a person carrying on a trade receives a payment by way of a grant under—
- (a) section 7 or 8 of the Industrial Development Act 1982 (c. 52), or
  - (b) Article 7, 9 or 30 of the Industrial Development (Northern Ireland) Order 1982 (S.I. 1982/1083 (N.I. 15)).
- (2) The payment is brought into account as a receipt in calculating the profits of the trade unless—
- (a) the grant is designated as made towards the cost of specified capital expenditure, [<sup>F144</sup>(but see subsection (2A))]
  - (b) the grant is designated as compensation for the loss of capital assets, or
  - (c) the grant is for all or part of a corporation tax liability (including one that has already been met).

[<sup>F145</sup>(2A) Subsection (2)(a) is to be disregarded in calculating the profits of a trade on the cash basis.]

- (3) This section does not apply to professions or vocations.

#### **Textual Amendments**

**F144** Words in s. 105(2)(a) inserted (with effect in accordance with Sch. 4 paras. 56, 57 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 4 para. 22\(2\)](#)

**F145** S. 105(2A) inserted (with effect in accordance with Sch. 4 paras. 56, 57 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 4 para. 22\(3\)](#)

### *Proceeds of insurance etc.*

## **106 Sums recovered under insurance policies etc.**

- (1) This section applies if—
- (a) a deduction is allowed for a loss or expense in calculating the profits of a trade,
  - (b) a person carrying on the trade recovers a sum under an insurance policy or a contract of indemnity in respect of the loss or expense, and
  - (c) the sum is not of a revenue nature.
- (2) The sum is brought into account as a receipt in calculating the profits of the trade (but only up to the amount of the deduction).

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

## [<sup>F146</sup>CHAPTER 6A

### TRADE PROFITS: AMOUNTS NOT REFLECTING COMMERCIAL TRANSACTIONS

#### Textual Amendments

**F146** Pt. 2 Ch. 6A inserted (with effect in accordance with Sch. 4 paras. 56, 57 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 4 para. 23](#)

#### 106A Professions and vocations

The provisions of this Chapter apply to professions and vocations as they apply to trades.

#### 106B Application of Chapter

This Chapter applies in calculating the profits of a person's trade for a period on the cash basis.

#### 106C Amounts not reflecting commercial transactions

- (1) This section applies if—
  - (a) the person does anything in relation to the trade (“the relevant act”),
  - (b) there is a difference between—
    - (i) the amount (if any) that, as a result of the relevant act, would (apart from this section) be brought into account in calculating the profits of the trade for the period, and
    - (ii) the amount (if any) that would have been so brought into account had the relevant act consisted of a transaction between the person and another person dealing with each other at arm's length in the open market (“the arm's length amount”), and
  - (c) the profits of the trade for the period are less than they would have been if the arm's length amount had been so brought into account.
- (2) The amount to be brought into account in calculating the profits of the trade for the period is an amount that is just and reasonable in all the circumstances.

#### 106D Capital receipts

Section 106C does not apply in relation to the relevant act if subsection (4) or (5) of section 96A (cash basis: capital receipts) applies in relation to that act.

#### 106E Gifts to charities etc

Section 106C does not apply in relation to the relevant act if any of the provisions of Chapter 7 (trade profits: gifts to charities etc) applies in relation to that act.]

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

## CHAPTER 7

### TRADE PROFITS: GIFTS TO CHARITIES ETC.

#### 107 Professions and vocations

The provisions of this Chapter apply to professions and vocations as they apply to trades.

#### 108 Gifts of trading stock to charities etc.

- (1) This section applies if a person carrying on a trade (“the donor”) gives an article for the purposes of—
  - (a) a charity, a registered club or a body listed in subsection (4), or
  - (b) a designated educational establishment (see section 110),and the article is one manufactured, or of a class or description sold, by the donor in the course of the trade.
- (2) In calculating the profits of the trade, no amount is required to be brought into account as a receipt in consequence of the disposal of the article.
- (3) In this section “registered club” has the meaning given by <sup>F147</sup>section 658 of CTA 2010 (community] amateur sports clubs).
- (4) The bodies referred to in subsection (1)(a) are—
  - (a) the Trustees of the National Heritage Memorial Fund,
  - (b) the Historic Buildings and Monuments Commission for England,
  - (c) <sup>F148</sup>.....
  - (d) <sup>F148</sup>.....
  - <sup>F149</sup>(e) .....
- (5) This section <sup>F150</sup>—
  - (a)] needs to be read with section 109 (receipt by donor or connected person of benefit attributable to certain gifts)<sup>F151</sup>, and
  - (b) is subject to section 809ZM of ITA 2007 (removal of income tax relief in respect of tainted charity donations etc).]

#### Textual Amendments

**F147** Words in s. 108(3) substituted (1.4.2010) (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), [Sch. 1 para. 446](#) (with [Sch. 2](#))

**F148** S. 108(4)(c)(d) 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. 500](#), [Sch. 3 Pt. 1](#) (with transitional provisions and savings in [Sch. 2](#))

**F149** S. 108(4)(e) omitted (1.4.2012) by virtue of [The Public Bodies \(Abolition of the National Endowment for Science, Technology and the Arts\) Order 2012 \(S.I. 2012/964\)](#), arts. 1(2), 3(1), [Sch.](#)

**F150** S. 108(5)(a): words in s. 108(5) renumbered as s. 108(5)(a) (with effect in accordance with [Sch. 3 para. 27](#) of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 3 para. 6\(a\)](#)

**F151** S. 108(5)(b) and word inserted (with effect in accordance with [Sch. 3 para. 27](#) of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 3 para. 6\(b\)](#)

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

#### **Modifications etc. (not altering text)**

- C6 S. 108 excluded (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\), ss. 445\(1\), 1034](#) (with transitional provisions and savings in [Sch. 2](#))

### **109 Receipt by donor or connected person of benefit attributable to certain gifts**

- (1) This section applies if a person carrying on a trade (“the donor”) makes a gift in relation to which—
- (a) section 108 applies, or
  - (b) section 63(2) of CAA 2001 applies (gifts to charities etc. of plant or machinery used in the trade),
- and the donor, or a person connected with the donor, receives a benefit which is in any way attributable to the making of the gift.
- (2) An amount equal to the value of the benefit—
- (a) is brought into account in calculating the profits of the trade, as a receipt of the trade arising on the date on which the benefit is received, or
  - (b) if the donor has permanently ceased to carry on the trade before that date, is treated as a post-cessation receipt (see Chapter 18).

### **110 Meaning of “designated educational establishment”**

- (1) For the purposes of section 108 “designated educational establishment” means an educational establishment designated, or within a category designated, in regulations made—
- (a) for England and Scotland, by the Secretary of State,
  - (b) for Wales, by the National Assembly for Wales, and
  - (c) for Northern Ireland, by the Department of Education.
- (2) The regulations may make different provision for different areas.
- (3) If any question arises as to whether an educational establishment is within a category designated in the regulations, [<sup>F152</sup>an officer of Revenue and Customs] must refer the question for decision—
- (a) in the case of an establishment in England or Scotland, to the Secretary of State,
  - (b) in the case of an establishment in Wales, to the National Assembly for Wales, and
  - (c) in the case of an establishment in Northern Ireland, to the Department of Education.
- (4) The power of the Secretary of State or the National Assembly for Wales to make regulations under this section is exercisable by statutory instrument.
- (5) A statutory instrument containing any regulations made by the Secretary of State under this section is subject to annulment in pursuance of a resolution of the House of Commons.
- (6) Regulations made under this section by the Department of Education—
- (a) are a statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I. 12)), and



*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (b) are subject to negative resolution within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954 (c. 33 (N.I.)).

#### Textual Amendments

**F152** Words in s. 110(3) substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\), ss. 50, 53\(1\), Sch. 4 para. 132\(1\)](#); S.I. 2005/1126, [art. 2\(h\)](#)

## CHAPTER 8

### TRADE PROFITS: HERD BASIS RULES

#### *Introduction*

#### **111 Election for application of herd basis rules**

- (1) A person who keeps or has kept a production herd for the purposes of a trade may make an election under this Chapter (a “herd basis election”).
- (2) In calculating the profits of the trade, animals which are part of a production herd in relation to which a herd basis election has effect—
  - (a) are not treated as trading stock (see section 30), but
  - (b) are treated instead in accordance with sections 114 to 123 (“the herd basis rules”).
- (3) This Chapter is expressed in terms of farmers but applies to any person who keeps or has kept a production herd for the purposes of a trade, whether or not the trade is farming.
- (4) References in this Chapter to keeping a production herd are to keeping it for the purposes of the trade.

#### **[<sup>F153</sup>111A Herd basis rules not to apply where cash basis used**

Nothing in this Chapter applies in calculating the profits of a trade on the cash basis.]

#### Textual Amendments

**F153** S. 111A inserted (with effect in accordance with Sch. 4 paras. 56, 57 of the amending Act) by [Finance Act 2013 \(c. 29\), Sch. 4 para. 24](#)

#### **112 Meaning of “animal”, “herd”, “production herd” etc.**

- (1) In this Chapter—
  - (a) “animal” means any animal or other living creature,
  - (b) “herd” includes a flock and any other collection of animals (however named), and
  - (c) “production herd” means, in relation to a farmer, a herd of animals of the same species (irrespective of breed) kept by the farmer wholly or mainly for the

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

products obtainable from the living animal which the animals produce for the farmer to sell.

- (2) For this purpose “the products obtainable from the living animal” means—
  - (a) the young of the animal, or
  - (b) any other product obtainable from the animal without slaughtering it.
- (3) For the purposes of this Chapter the general rule is that immature animals kept in a production herd are not part of the herd.
- (4) There is an exception to this rule if—
  - (a) the nature of the land on which the herd is kept means that animals which die or cease to be part of the herd can be replaced only by animals bred and reared on the land,
  - (b) the immature animals in question are bred in the herd and are maintained in the herd for the purpose of replacing other animals, and
  - (c) it is necessary to maintain the immature animals for that purpose.
- (5) In that case the immature animals are part of the herd for the purposes of this Chapter, but only so far as they are required to prevent a fall in the numbers of the herd.
- (6) References in this Chapter to an animal being added to a herd include references to an immature animal that is not part of the herd reaching maturity.
- (7) This Chapter applies—
  - (a) in relation to animals kept singly as it applies in relation to herds, and
  - (b) in relation to shares in animals as it applies in relation to animals themselves.

### **113 Other interpretative provisions**

- (1) This section applies for the purposes of this Chapter.
- (2) A production herd kept by a farmer is of the same class as another production herd only if—
  - (a) the animals kept in both herds are of the same species (irrespective of breed), and
  - (b) the products produced for the farmer to sell (for which the herds are wholly or mainly kept) are of the same kinds in both herds.
- (3) References to the sale of an animal include references to its death or destruction.
- (4) References to the sale proceeds of an animal include references to—
  - (a) money received from an insurer because of the animal's death or destruction,
  - (b) compensation money received because of the animal's death or destruction, and
  - (c) the sale proceeds of the animal's carcass or any part of its carcass.
- (5) Female animals become mature—
  - (a) in the case of laying birds, when they first lay, and
  - (b) in any other case, when they produce their first young.
- (6) 20% or more of a herd is a substantial part of the herd, but a lesser percentage than 20% is capable of being a substantial part of the herd depending on the circumstances of the case concerned.

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

### *The herd basis rules*

#### **114 Initial cost of herd and value of herd**

- (1) In calculating the profits of the trade, no deduction is allowed for the initial cost of the herd.
- (2) In calculating the profits of the trade, the value of the herd is not brought into account.

#### **115 Addition of animals to herd**

- (1) This section applies for the purpose of calculating the profits of the trade if an animal is added to the herd, unless it replaces another animal in the herd.
- (2) No deduction is allowed for the cost of the animal.
- (3) If, immediately before it was added to the herd, the animal was part of the farmer's trading stock, the balancing amount is brought into account as a receipt.
- (4) “The balancing amount” means—
  - (a) in the case of an animal bred by the farmer, the cost of breeding the animal and rearing it to maturity, and
  - (b) in any other case, the sum of the initial cost of acquiring the animal and the cost (if any) incurred by the farmer in rearing the animal to maturity.

#### **116 Replacement of animals in herd**

- (1) This section applies for the purpose of calculating the profits of the trade if—
  - (a) an animal (“the old animal”) is sold from the herd or otherwise ceases to be part of the herd, and
  - (b) it is replaced in the herd by another animal (“the new animal”).
- (2) The sale proceeds (if any) of the old animal are brought into account as a receipt.
- (3) But this needs to be read with—
  - (a) section 117 (amount of receipt if old animal slaughtered under disease control order),
  - (b) section 120 (acquisition of new herd begun within 5 years of sale), and
  - (c) section 122 (replacement of part sold begun within 5 years of sale).
- (4) Except so far as otherwise allowable, a deduction is allowed under this section for the cost of the new animal.
- (5) But if the new animal is of better quality than the old animal, the amount of the deduction must not exceed the amount that it would have been necessary to spend to replace the old animal with an animal of the same quality.

#### **117 Amount of receipt if old animal slaughtered under disease control order**

- (1) This section applies for the purposes of section 116.
- (2) If—
  - (a) the old animal was slaughtered under a disease control order, and
  - (b) the new animal is of worse quality than the old animal,

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

the amount brought into account as a receipt under section 116 must not exceed the equivalent amount for the new animal.

- (3) For this purpose “a disease control order” means an order made under the law relating to the diseases of animals by—
  - (a) central government,
  - (b) a devolved authority,
  - (c) a local authority, or
  - (d) another public authority.
- (4) If, immediately before it was added to the herd, the new animal was part of the farmer's trading stock, “the equivalent amount for the new animal” means—
  - (a) in the case of an animal bred by the farmer, the cost of breeding the animal and rearing it to maturity, and
  - (b) in any other case, the sum of the initial cost of acquiring the animal and the cost (if any) incurred by the farmer in rearing the animal to maturity.
- (5) Otherwise “the equivalent amount for the new animal” means the cost of the new animal.

#### **118 Sale of animals from herd**

- (1) This section applies for the purpose of calculating the profits of the trade if an animal is sold from the herd unless—
  - (a) it is replaced in the herd by another animal (see section 116), or
  - (b) it is sold as part of the sale of the whole or a substantial part of the herd that takes place all at once or over a period not longer than 12 months (see section 119).
- (2) A profit arising from the sale is brought into account as a receipt.
- (3) A deduction is allowed for a loss arising from the sale.
- (4) The amount of the profit or loss is the difference between the sale proceeds of the animal and the deductible amount for the animal.
- (5) “The deductible amount for the animal” means—
  - (a) in the case of an animal bred by the farmer, the cost of breeding the animal and rearing it to maturity,
  - (b) in the case of an animal acquired by the farmer for valuable consideration, the sum of the initial cost to the farmer of acquiring the animal and the cost (if any) incurred by the farmer in rearing the animal to maturity, and
  - (c) in the case of an animal acquired by the farmer but not for valuable consideration, the sum of the market value of the animal when acquired and the cost (if any) incurred by the farmer in rearing the animal to maturity.

#### **119 Sale of whole or substantial part of herd**

- (1) This section applies for the purpose of calculating the profits of the trade if, either all at once or over a period not longer than 12 months, the herd or a substantial part of the herd is sold unless—
  - (a) section 120 applies (acquisition of new herd begun within 5 years of sale), or

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

(b) section 122 applies (replacement of part sold begun within 5 years of sale), but paragraph (a) is subject to subsection (5) of section 120 (so far as that section provides for a case in which this section is to apply).

(2) A profit arising from the sale is not brought into account as a receipt.

(3) No deduction is allowed for a loss arising from the sale.

## **120 Acquisition of new herd begun within 5 years of sale**

(1) This section applies for the purpose of calculating the profits of the trade if—

(a) either all at once or over a period not longer than 12 months, the herd (“the old herd”) is sold, and

(b) the farmer acquires or starts to acquire another production herd of the same class (“the new herd”) within 5 years of the sale.

(2) Section 116 (replacement of animals in herd) applies as if a number of animals equal to—

(a) the number of animals in the old herd, or

(b) if smaller, the number of animals in the new herd,

had been sold from the old herd and replaced in that herd (but see section 121 (sale for reasons outside farmer's control)).

(3) For the purposes of section 116, the sale proceeds of an animal that is treated as a result of subsection (2) above as if it had been—

(a) sold from the old herd, and

(b) replaced in that herd by another animal (“the new animal”),

are not brought into account as a receipt until the new animal is acquired.

(4) If—

(a) the number of animals in the new herd is smaller than the number of animals in the old herd, and

(b) the difference is not substantial,

section 118 (sale of animals from herd) applies as if a number of animals equal to the difference had been sold from the old herd.

(5) If the number of animals in the new herd is smaller than the number of animals in the old herd and the difference is substantial—

(a) section 119 (sale of whole or substantial part of herd where replacement not begun within 5 years), or

(b) section 122 (sale of substantial part of herd where replacement begun within 5 years),

applies as if a number of animals equal to the difference had been sold from the old herd.

(6) If the number of animals in the new herd is larger than the number of animals in the old herd, section 115 (addition of animals to herd) applies as if a number of animals equal to the difference had been added to the old herd.

(7) For the purposes of this section—

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

- (a) if the difference between the number of animals in the new herd and the number of animals in the old herd is equal to 20% or more of the number of animals in the old herd, the difference is substantial, but
- (b) a lesser percentage than 20% is capable of being a substantial difference depending on the circumstances of the case concerned.

### **121 Section 120: sale for reasons outside farmer's control**

- (1) This section applies for the purposes of section 116, as applied by section 120(2).
- (2) If—
  - (a) the farmer was compelled to sell the old herd for reasons wholly outside the farmer's control, and
  - (b) an animal (“the new animal”) that is treated as a result of section 120(2) as if it replaced an animal sold (“the old animal”) is of worse quality than the old animal,
 the amount brought into account as a receipt under section 116 must not exceed the equivalent amount for the new animal.
- (3) If, immediately before it was added to the herd, the new animal was part of the farmer's trading stock, “the equivalent amount for the new animal” means—
  - (a) in the case of an animal bred by the farmer, the cost of breeding the animal and rearing it to maturity, and
  - (b) in any other case, the sum of the initial cost of acquiring the animal and the cost (if any) incurred by the farmer in rearing the animal to maturity.
- (4) Otherwise “the equivalent amount for the new animal” means the cost of the new animal.

### **122 Replacement of part sold begun within 5 years of sale**

- (1) This section applies for the purpose of calculating the profits of the trade if—
  - (a) either all at once or over a period not longer than 12 months, a substantial part of the herd is sold, and
  - (b) the farmer acquires or starts to acquire animals to replace the part sold within 5 years of the sale.
- (2) Section 116 (replacement of animals in herd) applies so far as the animals included in the part sold are replaced (but see section 123 (sale for reasons outside farmer's control)).
- (3) The sale proceeds of an animal included in the part sold are not brought into account as a receipt until the animal that replaces it in the herd is acquired.
- (4) If some of the animals included in the part sold are not replaced—
  - (a) a profit arising from their sale is not brought into account as a receipt, and
  - (b) no deduction is allowed for a loss arising from their sale.

### **123 Section 122: sale for reasons outside farmer's control**

- (1) This section applies for the purposes of section 116, as applied by section 122(2).
- (2) If—

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

- (a) the farmer was compelled to sell the part of the herd for reasons wholly outside the farmer's control, and
  - (b) an animal (“the new animal”) that replaces an animal sold (“the old animal”) is of worse quality than the old animal,
- the amount brought into account as a receipt under section 116 must not exceed the equivalent amount for the new animal.
- (3) If, immediately before it was added to the herd, the new animal was part of the farmer's trading stock, “the equivalent amount for the new animal” means—
- (a) in the case of an animal bred by the farmer, the cost of breeding the animal and rearing it to maturity, and
  - (b) in any other case, the sum of the initial cost of acquiring the animal and the cost (if any) incurred by the farmer in rearing the animal to maturity.
- (4) Otherwise “the equivalent amount for the new animal” means the cost of the new animal.

### *Elections*

#### **124 Herd basis elections**

- (1) A herd basis election must specify the class of production herd to which it relates.
- (2) A herd basis election must be made—
  - (a) on or before the first anniversary of the normal self-assessment filing date for the tax year in which the first relevant period of account ends, or
  - (b) if that is the tax year in which the farmer starts to carry on the trade and the farmer is not a firm, on or before the second anniversary of the normal self-assessment filing date for that tax year.
- (3) “The first relevant period of account” means the first period of account in which the farmer making the election keeps a production herd of the class to which the election relates (but see subsection (8)).
- (4) A herd basis election cannot relate to more than one class of production herd, but separate elections may be made for different classes.
- (5) A herd basis election is irrevocable.
- (6) A herd basis election has effect in relation to all production herds of the class to which it relates, including any which the farmer—
  - (a) has ceased to keep before making the election, or
  - (b) first keeps after making the election.
- (7) A herd basis election has effect for every period of account in which the farmer—
  - (a) carries on the trade, and
  - (b) keeps a production herd of the class to which the election relates.
- (8) If the farmer is a firm and there is a change in the persons who are partners in the firm—
  - (a) any herd basis election made by the old firm ceases to have effect, and

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

- (b) in relation to the new firm, “the first relevant period of account” means the first period of account in which the new firm keeps a production herd of the class to which the election relates.

### **125 Five year gap in which no production herd kept**

- (1) This section applies if a farmer—
- (a) keeps a production herd of a particular class, and
  - (b) ceases altogether to keep herds of that class for a period of at least 5 years.
- (2) If the farmer keeps a production herd of that class after the end of that period—
- (a) the period of account in which the farmer starts to keep the herd is treated as the first period of account in which the farmer keeps a production herd of that class, and
  - (b) any herd basis election previously made by the farmer in relation to production herds of that class ceases to have effect.

### **126 Slaughter under disease control order**

- (1) This section applies if—
- (a) the whole or a substantial part of a production herd kept by a farmer is slaughtered under a disease control order, and
  - (b) the circumstances of the slaughter are such that compensation is payable in respect of the animals slaughtered.
- (2) The farmer may make a herd basis election in respect of the class of production herd involved in the slaughter as if the period of account —
- (a) in which the compensation falls to be brought into account in calculating the profits of the trade, or
  - (b) in which it would (but for the election) fall to be so brought into account, were the first period of account in which the farmer keeps a production herd of that class.
- (3) An election made as a result of this section has effect for that period of account and every subsequent period of account in which the farmer—
- (a) carries on the trade, and
  - (b) keeps a production herd of the class to which the election relates.
- (4) In this section “disease control order” means an order made under the law relating to the diseases of animals by—
- (a) central government,
  - (b) a devolved authority,
  - (c) a local authority, or
  - (d) another public authority.

*Preventing abuse of the herd basis rules*

### **127 Preventing abuse of the herd basis rules**

- (1) This section applies if—



*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (a) a person carrying on a trade (the “transferor”) transfers the whole or part of a production herd to another person (the “transferee”),
  - (b) the transfer is not by way of sale or is by way of sale but for a price other than that which the animals sold would have fetched if sold in the open market, and
  - (c) the control condition or herd basis benefit condition is met.
- (2) The control condition is met if—
- (a) the transferor is a body of persons over which the transferee has control,
  - (b) the transferee is a body of persons over which the transferor has control, or
  - (c) both the transferor and transferee are bodies of persons and another person has control over both of them.
- (3) For this purpose “body of persons” includes a firm.
- (4) The herd basis benefit condition is met if—
- (a) the transferor or transferee (or both) might (but for this section) have been expected to obtain a herd basis benefit as a result of the transfer or the transactions of which the transfer is one, and
  - (b) the herd basis benefit is the sole or main benefit, or one of the main benefits, that the person in question might have been expected to obtain.
- (5) For this purpose a “herd basis benefit” is a benefit resulting from—
- (a) the obtaining of a right to make a herd basis election,
  - (b) the herd basis rules applying or not applying, or
  - (c) the herd basis rules having a greater or lesser effect.
- (6) For the purpose of calculating the profits of—
- (a) the trade carried on by the transferor, and
  - (b) any trade carried on by the transferee,
- the animals transferred are treated as having been sold at the price which they would have fetched if sold in the open market.

### *Supplementary*

#### <sup>F154</sup> **128 Information if election made**

.....

#### **Textual Amendments**

**F154** S. 128 omitted (13.8.2009) by virtue of [The Finance Act 2009, Schedule 47 \(Consequential Amendments\) Order 2009 \(S.I. 2009/2035\)](#), art. 1, [Sch. para. 43](#)

#### **129 Further assessment etc. if herd basis rules apply**

- (1) If the herd basis rules apply in calculating the profits of a tax year after an assessment for that tax year has become final and conclusive, any assessment or repayment of tax that is necessary to give effect to the rules must be made.
- (2) But repayment of tax is due only if a claim for it is made.

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

## CHAPTER 9

### TRADE PROFITS: <sup>F155</sup> . . . SOUND RECORDINGS

#### Textual Amendments

**F155** Pt. 2 Ch. 9: words in heading repealed (with effect as mentioned in ss. 46, 47 of the repealing Act) by [Finance Act 2006 \(c. 25\), s. 178](#), {Sch. 26 Pt. 3(4) Note 1}

#### Introduction

### 130 Expenditure to which this Chapter applies

- (1) This Chapter makes provision about—
  - (a) expenditure incurred on the production or acquisition of the original master version of a <sup>F156</sup> . . . sound recording, <sup>F157</sup> . . .
  - (b) <sup>F157</sup> . . .
- (2) In this Chapter references to production expenditure are to expenditure incurred on the production of the original master version of a <sup>F158</sup> . . . sound recording.
- (3) In this Chapter references to acquisition expenditure are to expenditure incurred on the acquisition of the original master version of a <sup>F159</sup> . . . sound recording.
- (4) In this Chapter references to the original master version of a film or sound recording include any rights in the original master version of a <sup>F160</sup> . . . sound recording that are held or acquired with it.
- (5) In this Chapter references to production or acquisition expenditure do not include—
  - (a) interest (as to which, see section 29), or
  - (b) the incidental costs of obtaining finance (as to which, see sections 58 and 59).
- (6) <sup>F161</sup> . . .
- (7) In this Chapter “any prohibitive rule” means any provision of the Income Tax Acts which—
  - (a) prohibits a deduction from being made, or
  - (b) restricts the extent to which it is allowed,
 in calculating the profits of a trade.

#### Textual Amendments

**F156** Words in s. 130(1)(a) repealed (with effect as mentioned in ss. 46, 47 of the repealing Act) by [Finance Act 2006 \(c. 25\), s. 178](#), {Sch. 26 Pt. 3(4) Note 1}

**F157** S. 130(1)(b) and word repealed (with effect as mentioned in ss. 46, 47 of the repealing Act) by [Finance Act 2006 \(c. 25\), s. 178](#), {Sch. 26 Pt. 3(4) Note 1}

**F158** Words in s. 130(2) repealed (with effect as mentioned in ss. 46, 47 of the repealing Act) by [Finance Act 2006 \(c. 25\), s. 178](#), {Sch. 26 Pt. 3(4) Note 1}

**F159** Words in s. 130(3) repealed (with effect as mentioned in ss. 46, 47 of the repealing Act) by [Finance Act 2006 \(c. 25\), s. 178](#), {Sch. 26 Pt. 3(4) Note 1}

**F160** Words in s. 130(4) repealed (with effect as mentioned in ss. 46, 47 of the repealing Act) by [Finance Act 2006 \(c. 25\), s. 178](#), {Sch. 26 Pt. 3(4) Note 1}

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

**F161** 130(6) repealed (with effect as mentioned in ss. 46, 47 of the repealing Act) by [Finance Act 2006 \(c. 25\), s. 178](#), {Sch. 26 Pt. 3(4) Note 1}

## [<sup>F162</sup>130A] Chapter not to apply where cash basis used

Nothing in this Chapter applies in calculating the profits of a trade on the cash basis.]

### Textual Amendments

**F162** S. 130A inserted (with effect in accordance with Sch. 4 paras. 56, 57 of the amending Act) by [Finance Act 2013 \(c. 29\), Sch. 4 para. 25](#)

## 131 Meaning of “film” and related expressions

<sup>F163</sup> . . . . .

### Textual Amendments

**F163** S. 131 repealed (with effect as mentioned in ss. 46, 47 of the repealing Act) by [Finance Act 2006 \(c. 25\), s. 178](#), {Sch. 26 Pt. 3(4) Note 1}

## 132 Meaning of “original master version” and “certified master version”

- (1) In this Chapter “original master version” means—
- (a) <sup>F164</sup> . . . . .
  - (b) in relation to a sound recording, the original master audio tape or disc.
- (2) <sup>F165</sup> . . . . .
- (3) <sup>F165</sup> . . . . .

### Textual Amendments

**F164** S. 132(1)(a) and following word repealed (with effect as mentioned in ss. 46, 47 of the repealing Act) by [Finance Act 2006 \(c. 25\), s. 178](#), {Sch. 26 Pt. 3(4) Note 1}

**F165** S. 132(2)(3) repealed (with effect as mentioned in ss. 46, 47 of the repealing Act) by [Finance Act 2006 \(c. 25\), s. 178](#), {Sch. 26 Pt. 3(4) Note 1}

## 133 Meaning of “relevant period”

In this Chapter “relevant period”, in relation to a trade, means—

- (a) a period of account of the trade, or
- (b) if no accounts of the trade are drawn up for a period, the basis period for a tax year.

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

### *Expenditure treated as revenue in nature*

#### **134 Expenditure treated as revenue in nature**

- (1) If a person carrying on a trade incurs production or acquisition expenditure, the expenditure is treated for income tax purposes as expenditure of a revenue nature.
- (2) If expenditure is treated under this section as revenue in nature, sums received by the person carrying on the trade from the disposal of the original master version—
  - (a) are treated for income tax purposes as receipts of a revenue nature, and
  - (b) are brought into account in calculating the profits of the trade of the relevant period in which they are received.
- (3) For this purpose sums received from the disposal of the original master version include—
  - (a) sums received from the disposal of any interest or right in or over the original master version (including an interest or right created by the disposal), and
  - (b) insurance, compensation or similar money derived from the original master version.
- (4) <sup>F166</sup> . . . . .

#### **Textual Amendments**

**F166** S. 134(4) repealed (with effect as mentioned in ss. 46, 47 of the repealing Act) by [Finance Act 2006 \(c. 25\), s. 178](#), {Sch. 26 Pt. 3(4) Note 1}

### *[<sup>F167</sup>Rules for allocating expenditure]*

#### **Textual Amendments**

**F167** S. 135 cross-heading substituted (with effect as mentioned in s. 46, 47 of the amending Act) by virtue of [Finance Act 2006 \(c. 25\), s. 178](#), {Sch. 26 Pt. 3(4) Note 2(a)}

#### **135 [<sup>F168</sup>Allocation of production or acquisition expenditure to relevant periods]**

- (1) This section applies for the purpose of calculating the profits of a trade of a relevant period if—
  - (a) the trade consists of or includes the exploitation of the original master versions of <sup>F169</sup> . . . sound recordings,
  - (b) the original master versions do not constitute trading stock of the trade (within the meaning of section 174),
  - (c) the person carrying on the trade incurs production or acquisition expenditure in, or before, the relevant period, and
  - (d) <sup>F170</sup> . . . . .
- (2) A deduction is allowed for the amount of the production or acquisition expenditure allocated to the relevant period, but this is subject to the application of any prohibitive rule.

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (3) The person carrying on the trade must allocate to the relevant period so much of the expenditure as is just and reasonable (but see subsection (5)).
- (4) In making this allocation regard must be had to the following—
  - (a) the amount of the expenditure which remains unallocated at the beginning of the period,
  - (b) the amount of the expenditure incurred in the period,
  - (c) the proportion which the estimated value of the original master version realised in the period (by way of income or otherwise) bears to the sum of the value so realised and the estimated remaining value at the end of the period, and
  - (d) the need to bring the whole of the expenditure into account over the time during which the value of the original master version is expected to be realised.
- (5) The person carrying on the trade may also allocate to the relevant period a further amount, so long as the total amount allocated to the period does not exceed the value of the original master version realised in the period (by way of income or otherwise).
- (6) Expenditure may not be allocated to the relevant period under this section if it is allocated—
  - (a) under this section to any other relevant period,
  - (b) <sup>F171</sup> .....
  - (c) <sup>F171</sup> .....
  - (d) <sup>F171</sup> .....
- (7) <sup>F172</sup> .....

**Textual Amendments**

- F168** S. 135 heading substituted (with effect as mentioned in s. 46, 47 of the amending Act) by virtue of [Finance Act 2006 \(c. 25\), s. 178](#), {Sch. 26 Pt. 3(4) Notes 1, 2(b)}
- F169** Words in s. 135(1)(a) repealed (with effect as mentioned in ss. 46, 47 of the repealing Act) by [Finance Act 2006 \(c. 25\), s. 178](#), {Sch. 26 Pt. 3(4) Note 1}
- F170** S. 135(1)(d) repealed (with effect as mentioned in ss. 46, 47 of the repealing Act) by [Finance Act 2006 \(c. 25\), s. 178](#), {Sch. 26 Pt. 3(4) Note 1}
- F171** S. 135(6)(b)-(d) repealed (with effect as mentioned in ss. 46, 47 of the repealing Act) by [Finance Act 2006 \(c. 25\), s. 178](#), {Sch. 26 Pt. 3(4) Note 1}
- F172** S. 135(7) repealed (with effect as mentioned in ss. 46, 47 of the repealing Act) by [Finance Act 2006 \(c. 25\), s. 178](#), {Sch. 26 Pt. 3(4) Note 1}

*Certified master versions: special rules for allocating expenditure*

**136 Application of provisions about certified master versions**

<sup>F173</sup> .....

**Textual Amendments**

- F173** Ss. 136-144 repealed (with effect as mentioned in ss. 46, 47 of the repealing Act) by [Finance Act 2006 \(c. 25\), s. 178](#), {Sch. 26 Pt. 3(4) Note 1}

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

### 137 Certified master versions: preliminary expenditure

F174 . . . . .

#### Textual Amendments

**F174** Ss. 136-144 repealed (with effect as mentioned in ss. 46, 47 of the repealing Act) by [Finance Act 2006 \(c. 25\)](#), [s. 178](#), {Sch. 26 Pt. 3(4) Note 1}

### 138 Certified master versions: production expenditure

F175 . . . . .

#### Textual Amendments

**F175** Ss. 136-144 repealed (with effect as mentioned in ss. 46, 47 of the repealing Act) by [Finance Act 2006 \(c. 25\)](#), [s. 178](#), {Sch. 26 Pt. 3(4) Note 1}

### [<sup>F176</sup>138A Certified master versions: acquisition expenditure

F177 . . . . .]

#### Textual Amendments

**F176** Ss.138, 138A substituted for s. 138 (with effect as mentioned in [Sch. 3 para. 3\(2\)\(3\)](#) of the amending Act) by [Finance Act 2005 \(c. 7\)](#), [s. 59](#), [Sch. 3 para. 3\(1\)\(4\)](#)

**F177** Ss. 136-144 repealed (with effect as mentioned in ss. 46, 47 of the repealing Act) by [Finance Act 2006 \(c. 25\)](#), [s. 178](#), {Sch. 26 Pt. 3(4) Note 1}

#### *Certified master versions: limited-budget films*

### 139 Certified master versions: production expenditure on limited-budget films

F178 . . . . .

#### Textual Amendments

**F178** Ss. 136-144 repealed (with effect as mentioned in ss. 46, 47 of the repealing Act) by [Finance Act 2006 \(c. 25\)](#), [s. 178](#), {Sch. 26 Pt. 3(4) Note 1}

### 140 Certified master versions: acquisition expenditure on limited-budget films

F179 . . . . .

#### Textual Amendments

**F179** Ss. 136-144 repealed (with effect as mentioned in ss. 46, 47 of the repealing Act) by [Finance Act 2006 \(c. 25\)](#), [s. 178](#), {Sch. 26 Pt. 3(4) Note 1}

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

### *[<sup>F180</sup> Interpretation of sections 138 to 140*

#### **Textual Amendments**

**F180** S. 140A and preceding cross-heading inserted (with effect as mentioned in [Sch. 3 para. 6\(2\)-\(4\)](#) of the amending Act) by [Finance Act 2005 \(c. 7\)](#), [Sch. 3 para. 6\(1\)](#)

#### **140A “Disqualifying deduction”**

**F181** .....]

#### **Textual Amendments**

**F181** Ss. 136-144 repealed (with effect as mentioned in ss. 46, 47 of the repealing Act) by [Finance Act 2006 \(c. 25\)](#), [s. 178](#), {Sch. 26 Pt. 3(4) Note 1}

#### **141 “Total production expenditure in respect of the original master version”**

**F182** .....

#### **Textual Amendments**

**F182** Ss. 136-144 repealed (with effect as mentioned in ss. 46, 47 of the repealing Act) by [Finance Act 2006 \(c. 25\)](#), [s. 178](#), {Sch. 26 Pt. 3(4) Note 1}

#### **142 When expenditure is incurred**

**F183** .....

#### **Textual Amendments**

**F183** Ss. 136-144 repealed (with effect as mentioned in ss. 46, 47 of the repealing Act) by [Finance Act 2006 \(c. 25\)](#), [s. 178](#), {Sch. 26 Pt. 3(4) Note 1}

### *[<sup>F184</sup> Deferred income agreements*

#### **Textual Amendments**

**F184** Ss. 142A-142E and preceding cross-heading inserted (with effect as mentioned in [s. 65\(2\)](#) of the amending Act) by [Finance Act 2005 \(c. 7\)](#), [s. 65\(1\)](#)

#### **142A Deferred income agreements which exist when deduction made**

**F185** .....

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

**Textual Amendments**

**F185** Ss. 136-144 repealed (with effect as mentioned in ss. 46, 47 of the repealing Act) by [Finance Act 2006 \(c. 25\)](#), [s. 178](#), {Sch. 26 Pt. 3(4) Note 1}

**142B Meaning of “deferred income agreement in respect of a film”**

**F186** . . . . .

**Textual Amendments**

**F186** Ss. 136-144 repealed (with effect as mentioned in ss. 46, 47 of the repealing Act) by [Finance Act 2006 \(c. 25\)](#), [s. 178](#), {Sch. 26 Pt. 3(4) Note 1}

**142C Deferred income agreements entered into after deduction made**

**F187** . . . . .

**Textual Amendments**

**F187** Ss. 136-144 repealed (with effect as mentioned in ss. 46, 47 of the repealing Act) by [Finance Act 2006 \(c. 25\)](#), [s. 178](#), {Sch. 26 Pt. 3(4) Note 1}

**142D Meaning of the “net excess relief”**

**F188** . . . . .

**Textual Amendments**

**F188** Ss. 136-144 repealed (with effect as mentioned in ss. 46, 47 of the repealing Act) by [Finance Act 2006 \(c. 25\)](#), [s. 178](#), {Sch. 26 Pt. 3(4) Note 1}

**142E Sections 142A to 142D: time of entry into an agreement**

**F189** . . . . .]

**Textual Amendments**

**F189** Ss. 136-144 repealed (with effect as mentioned in ss. 46, 47 of the repealing Act) by [Finance Act 2006 \(c. 25\)](#), [s. 178](#), {Sch. 26 Pt. 3(4) Note 1}

*Election for sections 134 to 140 not to apply*

**143 Election for sections 134 to 140 not to apply**

**F190** . . . . .



*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

#### Textual Amendments

**F190** Ss. 136-144 repealed (with effect as mentioned in ss. 46, 47 of the repealing Act) by [Finance Act 2006 \(c. 25\)](#), [s. 178](#), {Sch. 26 Pt. 3(4) Note 1}

### Supplementary

#### 144 Meaning of “genuinely intended for theatrical release”

**F191** .....

#### Textual Amendments

**F191** Ss. 136-144 repealed (with effect as mentioned in ss. 46, 47 of the repealing Act) by [Finance Act 2006 \(c. 25\)](#), [s. 178](#), {Sch. 26 Pt. 3(4) Note 1}

## CHAPTER 10

### TRADE PROFITS: CERTAIN TELECOMMUNICATION RIGHTS

#### **[<sup>F192</sup>144] Chapter not to apply where cash basis used**

Nothing in this Chapter applies in calculating the profits of a trade on the cash basis.]

#### Textual Amendments

**F192** S. 144A inserted (with effect in accordance with Sch. 4 paras. 56, 57 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 4 para. 26](#)

#### 145 Professions and vocations

The provisions of this Chapter apply to professions and vocations as they apply to trades.

#### 146 Meaning of “relevant telecommunication right”

In this Chapter a “relevant telecommunication right” means—

- (a) a licence [<sup>F193</sup>granted under section 8 of the Wireless Telegraphy Act 2006 in accordance with regulations made under section 14 of that Act (bidding for licences),]
- (b) an indefeasible right to use a telecommunications cable system, or
- (c) a right derived (directly or indirectly) from such a licence or indefeasible right.

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

### Textual Amendments

**F193** Words in s. 146(a) substituted (8.2.2007) by [Wireless Telegraphy Act 2006 \(c. 36\)](#), s. 123, [Sch. 7 para. 37](#)

## 147 Expenditure and receipts treated as revenue in nature

- (1) This section applies if, in accordance with generally accepted accounting practice, an amount in respect of—
  - (a) expenditure on the acquisition of a relevant telecommunication right, or
  - (b) a receipt from the disposal of a relevant telecommunication right,
 is recognised in the accounts of a trade as an item in the calculation of profit or loss.
- (2) The amount is treated for income tax purposes as an item of a revenue nature.
- (3) “The acquisition of a relevant telecommunication right” includes—
  - (a) the extension of rights attached to a relevant telecommunication right, and
  - (b) if a relevant telecommunication right is subject to a derivative right, the cancellation or restriction of rights attached to the derivative right.
- (4) “The disposal of a relevant telecommunication right” includes—
  - (a) the cancellation or restriction of rights attached to a relevant telecommunication right, and
  - (b) the granting of a derivative right or the extension of rights attached to a derivative right.

## 148 Credits or debits arising from revaluation

- (1) This section applies if, in accordance with generally accepted accounting practice, an amount in respect of the revaluation of a relevant telecommunication right is recognised in the accounts of a trade (whether or not as an item in the calculation of profit or loss).
- (2) The amount is treated for income tax purposes as an item of a revenue nature.
- (3) In calculating the profits of the trade, the amount is brought into account for the period of account in which it is recognised.

## <sup>F194</sup>CHAPTER 10A

### LEASES OF PLANT OR MACHINERY: SPECIAL RULES FOR LONG FUNDING LEASES

### Textual Amendments

**F194** Pt. 2 Ch. 10A, (ss 148A-148J) inserted (19.7.2006) by [Finance Act 2006 \(c. 25\)](#), s. 81, [Sch. 8 para. 13](#)

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

## *[<sup>F195</sup>Application of Chapter*

### **Textual Amendments**

**F195** S. 148ZA and cross-heading inserted (with effect in accordance with Sch. 4 paras. 56, 57 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 4 para. 27](#)

## **148ZA Chapter not to apply where cash basis used**

Nothing in this Chapter applies in calculating the profits of a trade on the cash basis.]

## *[<sup>F196</sup>Lessors under long funding finance leases]*

### **Textual Amendments**

**F196** Pt. 2 Ch. 10A inserted (19.7.2006) by [Finance Act 2006 \(c. 25\)](#), s. 81, [Sch. 8 para. 13](#)

## **148A Lessor under long funding finance lease: rental earnings**

- (1) This section applies for the purpose of calculating the profits of a person carrying on a trade for a period of account in which he is the lessor of any plant or machinery under a long funding finance lease.
- (2) The amount to be brought into account as the lessor's taxable income from the lease for the period of account is the amount of the rental earnings in respect of the lease for the period of account.
- (3) The “rental earnings” for any period is the amount which, in accordance with generally accepted accounting practice, falls (or would fall) to be treated as the gross return on investment for that period in respect of the long funding lease where it meets the finance lease test.
- (4) If the lease is one which, under generally accepted accounting practice, falls (or would fall) to be treated as a loan in the accounts in question, so much of the rentals under the lease as fall (or would fall) to be treated as interest are to be treated for the purposes of this section as rental earnings.

### **Modifications etc. (not altering text)**

- C7** S. 148A excluded (21.7.2008) by [Finance Act 2008 \(c. 9\)](#), [Sch. 20 para. 11\(2\)](#)  
**C8** S. 148A excluded (21.7.2009) by [Finance Act 2009 \(c. 10\)](#), [Sch. 33 para. 5](#) (with [Sch. 33 paras. 4, 9](#))

## **148B Lessor under long funding finance lease: exceptional items**

- (1) This section applies for the purpose of calculating the profits of a person carrying on a trade for a period of account if he is or has been the lessor under a long funding finance lease.
- (2) This section has effect where a profit or loss (whether of an income or capital nature)—
  - (a) arises to the person in connection with the lease, and

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (b) in accordance with generally accepted accounting practice falls to be recognised for accounting purposes in a period of account, but
  - (c) would not, apart from this section, be brought into account in calculating the profits of the person.
- (3) The profit or loss is to be treated—
- (a) in the case of a profit, as income of the person that is attributable to the lease,
  - (b) in the case of a loss, as a revenue expense incurred by the person in connection with the lease.
- (4) Any reference in this section to an amount falling to be recognised for accounting purposes in a period of account is a reference to an amount falling to be recognised for accounting purposes—
- (a) in the person's profit and loss account or income statement,
  - (b) in the person's statement of recognised gains and losses or statement of changes in equity, or
  - (c) in any other statement of items brought into account in computing the person's profits or losses for that period.

**Modifications etc. (not altering text)**

**C9** S. 148B excluded (21.7.2008) by [Finance Act 2008 \(c. 9\)](#), [Sch. 20 para. 11\(8\)](#)

**C10** S. 148B excluded (21.7.2009) by [Finance Act 2009 \(c. 10\)](#), [Sch. 33 para. 7](#) (with [Sch. 33 paras. 4, 9](#))

**148C Lessor under long funding finance lease making termination payment**

- (1) This section applies for the purpose of calculating the profits of a person carrying on a trade for a period of account if he is or has been the lessor under a long funding finance lease.
- (2) Where—
- (a) the lease terminates, and
  - (b) a sum calculated by reference to the termination value is paid to the lessee, no deduction in respect of the sum paid to the lessee is allowed in calculating the profits of the person.
- (3) This section does not prevent a deduction in respect of a sum to the extent that the sum is brought into account in determining the person's rental earnings.

*[<sup>F197</sup>Lessors under long funding operating leases]*

**Textual Amendments**

**F197** Pt. 2 Ch. 10A, (ss. 148A-148J) inserted (19.7.2006) by [Finance Act 2006 \(c. 25\)](#), s. 81, [Sch. 8 para.](#)

**13**

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

## **[<sup>F198</sup>148D] Lessor under long funding operating lease: periodic deduction**

- (1) This section applies if a person carrying on a trade is the lessor of any plant or machinery under a long funding operating lease for the whole or part of a period of account.
- (2) A deduction is allowed in calculating the profits of the person for the period of account for income tax purposes.
- (3) The amount of the deduction is so much of the expected gross reduction in value over the term of the lease as is attributable to the period of account.
- (4) The expected gross reduction in value over the term of the lease is—
  - (a) the starting value of the plant or machinery, less
  - (b) the amount which at the commencement of the term of the lease is expected to be its residual value (or, if section 148DB applies, would have been expected to be that value had that value been estimated at that time).
- (5) The expected gross reduction in value over the term of the lease that is attributable to the period of account is found by apportioning that reduction on a time basis according to the proportion of the term of the lease that falls in the period of account.
- (6) For the meaning of “starting value”, see—
  - (a) section 148DA (“starting value”: general), and
  - (b) section 148DB (“starting value” where plant or machinery originally unqualifying).
- (7) For the meaning of “residual value”, see section 148J(2).]

### **Textual Amendments**

**F198** S. 148D substituted (1.4.2010) (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 1 para. 447** (with **Sch. 2**)

## **[<sup>F199</sup>148DA] “Starting value”: general**

- (1) This section is about the meaning of “starting value” in section 148D in relation to a long funding operating lease (“the section 148D lease”).
- (2) But this section does not apply if the conditions in section 148DB(2) (“starting value” where plant or machinery originally unqualifying) are met.
- (3) If the only use of the plant or machinery by the lessor has been the leasing of it under the section 148D lease as a qualifying activity, the starting value is the amount of the expenditure incurred by the lessor on the provision of the plant or machinery (“cost”).
- (4) If subsection (3) does not apply, the starting value depends on the last previous use of the plant or machinery by the lessor.
- (5) If that use was the leasing of it under another long funding operating lease as a qualifying activity, the starting value is the market value of the plant or machinery at the commencement of the term of the section 148D lease (“market value”).
- (6) If that use was the leasing of it under a long funding finance lease as a qualifying activity, the starting value is the value at which the plant or machinery is recognised

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

in the books or other finance records of the lessor at the commencement of the term of the section 148D lease.

- (7) If that use was for the purposes of a qualifying activity other than leasing under a long funding lease, the starting value is the lower of cost and market value.
- (8) For the meaning of “qualifying activity”, see section 148J(2).

#### Textual Amendments

**F199** Ss. 148DA, 148DB inserted (1.4.2010) (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), [Sch. 1 para. 448](#) (with [Sch. 2](#))

### 148DB “Starting value” where plant or machinery originally unqualifying

- (1) This section applies if the conditions in subsection (2) are met in relation to a long funding operating lease to which section 148D applies.
- (2) The conditions are that—
- the lessor owns the plant or machinery as a result of having incurred expenditure on its provision for purposes other than those of a qualifying activity,
  - the plant or machinery is brought into use by the lessor for the purposes of a qualifying activity on or after 1 April 2006, and
  - that qualifying activity is the leasing of the plant or machinery under the lease.
- (3) For the purposes of section 148D the starting value is the lower of—
- first use market value, and
  - first use amortised market value.
- (4) “First use market value” means the market value of the plant or machinery at the time when it is first brought into use for the purposes of the qualifying activity.
- (5) “First use amortised value” means the value that the plant or machinery would have at the time when it is first brought into use for the purposes of the qualifying activity on the assumptions in subsection (6).
- (6) The assumptions are that—
- the cost of acquiring the plant or machinery had been written off on a straight line basis over its remaining useful economic life, and
  - any further capital expenditure incurred had been written off on a straight line basis over so much of its remaining economic life as remains at the time when the expenditure is incurred.
- (7) For the meaning of “qualifying activity”, “remaining useful economic life” and writing off on a straight line basis, see section 148J(2), section 148J(4) (and section 70YI of CAA 2001 as applied by that section) and section 148J(3) respectively.]

#### Textual Amendments

**F199** Ss. 148DA, 148DB inserted (1.4.2010) (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), [Sch. 1 para. 448](#) (with [Sch. 2](#))

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

## **[<sup>F200</sup>148E] Long funding operating lease: lessor's additional expenditure**

- (1) This section applies if in any period of account—
  - (a) a person carrying on a trade is the lessor of any plant or machinery under a long funding operating lease,
  - (b) the person incurs capital expenditure in relation to the plant or machinery (the “additional expenditure”), and
  - (c) the additional expenditure is not reflected in the market value of the plant or machinery at the commencement time (see subsection (7)).
- (2) An additional deduction is allowed in calculating the profits of the person for income tax purposes for each period of account—
  - (a) which ends after the incurring of the additional expenditure, and
  - (b) in which the person is the lessor of the plant or machinery under the lease.
- (3) The amount of the deduction is so much of the expected reduction in value of the additional expenditure (“the expected reduction”) as is attributable to the period of account.
- (4) The expected reduction is the amount of the additional expenditure, less the remaining residual value of the plant or machinery resulting from that expenditure.
- (5) For how to determine that remaining residual value, see—
  - (a) section 148EA (determination of remaining residual value resulting from lessor's first additional expenditure), and
  - (b) section 148EB (determination of remaining residual value resulting from lessor's further additional expenditure).
- (6) The amount of the expected reduction attributable to the period of account is found by apportioning that reduction on a time basis according to the proportion of the term of the lease that falls in the period of account.
- (7) In this section “the commencement time” means—
  - (a) except where section 148DB applies, the commencement of the term of the lease, and
  - (b) if that section applies, the time when the plant or machinery is first brought into use by the lessor for the purposes of the qualifying activity.]

### **Textual Amendments**

**F200** S. 148E substituted (1.4.2010) (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 1 para. 449** (with Sch. 2)

## **[<sup>F201</sup>148EA] Determination of remaining residual value resulting from lessor's first additional expenditure**

- (1) This section sets out how the remaining residual value of the plant or machinery resulting from the additional expenditure (“RRV”) is determined for the purposes of section 148E(4) if section 148E has not applied in relation to any previous additional expenditure incurred by the person in relation to the leased plant or machinery.
- (2) RRV depends on whether—

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (a) the amount (“ARV”) which is expected to be the residual value of the plant or machinery at the time when the additional expenditure is incurred, exceeds
  - (b) the amount (“CRV”) which at the commencement of the term of the lease is expected to be its residual value (or, if section 148DB applies, would have been expected to be that value had that value been estimated at that time).
- (3) If ARV exceeds CRV, RRV is the part of the excess that is a result of the additional expenditure.
- (4) Otherwise, RRV is nil.
- (5) For the meaning of “residual value”, see section 148J(2).

#### Textual Amendments

**F201** Ss. 148EA, 148EB inserted (1.4.2010) (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 1 para. 450** (with Sch. 2)

### 148EB Determination of remaining residual value resulting from lessor's further additional expenditure

- (1) This section sets out how the remaining residual value of the plant or machinery resulting from the additional expenditure (“RRV”) is determined for the purposes of section 148E(4) if section 148E has applied in relation to previous additional expenditure incurred by the person in relation to the leased plant or machinery.
- (2) RRV depends on whether—
- (a) the amount which is expected to be the residual value of the plant or machinery at the time when the further additional expenditure is incurred (“FARV”), exceeds
  - (b) the sum of the amounts in subsection (3).
- (3) Those amounts are—
- (a) the amount which at the commencement of the term of the lease is expected to be the residual value of the plant or machinery (or, if section 148DB applies, would have been expected to be that value had that value been estimated at that time), and
  - (b) any amounts that were subtracted under section 148E(4) as the remaining residual value of the plant or machinery resulting from the previous additional expenditure.
- (4) If FARV exceeds the sum of the amounts in subsection (3), RRV is the portion of the excess that is a result of the further additional expenditure.
- (5) Otherwise, RRV is nil.
- (6) For the meaning of “residual value”, see section 148J(2).]

#### Textual Amendments

**F201** Ss. 148EA, 148EB inserted (1.4.2010) (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 1 para. 450** (with Sch. 2)



*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

## **[<sup>F202</sup>148F] Lessor under long funding operating lease: termination of lease**

- (1) This section applies in calculating for income tax purposes the profits of a person carrying on a trade if the person is the lessor immediately before the termination of a long funding operating lease.
- (2) If the termination amount exceeds the sum of the amounts in subsection (3), an amount equal to the excess is treated as income of the person attributable to the lease arising in the period of account in which it terminates.
- (3) The amounts referred to in subsection (2) are—
  - (a) the total amounts paid to the lessee that are calculated by reference to the termination value,
  - (b) the excess relevant value for section 148D (see subsection (6)), and
  - (c) the excess expenditure for section 148E (see subsection (7)).
- (4) If the sum of the amounts in subsection (3) exceeds the termination amount, the excess is treated as a revenue expense incurred by the person in connection with the lease in the period of account in which it terminates.
- (5) No deduction is allowed in respect of any sums within subsection (3)(a).
- (6) “The excess relevant value for section 148D” is the amount (if any) by which—
  - (a) the starting value of the plant or machinery for the purposes of section 148D(4) (lessor under long funding operating lease: periodic deduction), exceeds
  - (b) the total of the deductions allowable under section 148D for periods of account for the whole or part of which the person was the lessor.
- (7) “The excess expenditure for section 148E” is the amount (if any) by which—
  - (a) the total of any amounts of capital expenditure incurred by the person which constitute additional expenditure in the case of the lease for the purposes of section 148E (long funding operating lease: lessor's additional expenditure), exceeds
  - (b) the total of any deductions allowable under section 148E for periods of account for the whole or part of which the person was the lessor.
- (8) For the meaning of “termination amount” and “termination value”, see sections 70YG and 70YH of CAA 2001 (as applied by section 148J(4)).]

### **Textual Amendments**

**F202** S. 148F substituted (1.4.2010) (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), [Sch. 1 para. 451](#) (with [Sch. 2](#))

*[<sup>F203</sup>Lessors under long funding finance or operating leases: avoidance etc*

### **Textual Amendments**

**F203** S. 148FA and cross-heading inserted (with effect in accordance with Sch. 20 para. 10(5) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 20 para. 10\(2\)](#)

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

#### **148FA Cases where ss. 148A to 148F do not apply: plant or machinery held as trading stock**

- (1) Sections 148A to 148F do not apply in the case of a person carrying on a trade who is or has been the lessor of any plant or machinery under a long funding lease if the following condition is met.
- (2) The condition is that any part of the expenditure incurred by the person on the acquisition of the plant or machinery for leasing under the lease—
  - (a) is (apart from those sections) allowable as a deduction in calculating the profits or losses of the trade, and
  - (b) is so allowable as a result of the plant or machinery forming part of the trading stock of the trade.
- (3) For the purposes of this section the cases in which expenditure incurred by a person carrying on a trade on the acquisition of any plant or machinery for leasing under a lease is allowable as such a deduction include any case where—
  - (a) the person becomes entitled to the deduction at any time after the expenditure is incurred, and
  - (b) the deduction arises as a result of the plant or machinery forming part of the trading stock of the trade at that time.
- (4) If—
  - (a) at any time any of sections 148A to 148F has applied for determining the amounts to be taken into account in calculating the profits or losses of the trade, and
  - (b) the condition in subsection (2) is met at any subsequent time,
 those amounts, and any other amounts which (as a result of this section) are to be so taken into account, are subject to such adjustments as are just and reasonable.
- (5) All such assessments and adjustments of assessments are to be made as are necessary to give effect to subsection (4).]

#### **148FB Cases where ss. 148A to 148F do not apply: lessor also lessee under non-long funding lease**

- (1) This section applies if—
  - (a) a person is the lessee of any plant or machinery under a lease (“lease A”) that is not a long funding lease,
  - (b) the person enters into a lease (“lease B”) of any of that plant or machinery (as lessor), and
  - (c) lease B is a long funding lease.
- (2) Sections 148A to 148F do not apply in relation to lease B.
- (3) If by virtue of section 70H of CAA 2001 (tax return by lessee treating lease as long funding lease) lease A becomes a long funding lease (and does not cease to be such a lease), treat this section as never having applied in relation to lease B.]

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

### Textual Amendments

**F204** S. 148FB inserted (with effect in accordance with Sch. 20 para. 10(6) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 20 para. 10\(3\)](#)

### **Cases where ss. 148A to 148F do not apply: other avoidance**

**F205** **148FC**

- (1) Sections 148A to 148F do not apply in the case of a person carrying on a trade who is or has been the lessor of any plant or machinery under a long funding lease if conditions A to C are met.
- (2) Condition A is that the long funding lease forms part of any arrangement entered into by the person which includes one or more other transactions (whether the arrangement is entered into before or after or at the inception of the lease).
- (3) Condition B is that the main purpose, or one of the main purposes, of the arrangement is to secure that, over the relevant period, there would be a substantial difference between—
  - (a) the total amount of the amounts under the arrangement which are, in accordance with generally accepted accounting practice, recognised in determining the profit or loss of the trade for any period or taken into account in calculating the amounts which are so recognised, and
  - (b) the total amount of the amounts under the arrangement which are taken into account in calculating the profits or losses of the trade.
- (4) For the purposes of condition B “the relevant period” means the period which begins with the inception of the lease and ends with the end of the term of the lease.
- (5) Condition C is that the difference would be attributable (wholly or partly) to the application of any of sections 148A to 148F in relation to the person by reference to the plant or machinery under the lease.
- (6) The reference in this section to an amount being recognised in determining the profit or loss of a trade for a period is to an amount being recognised for accounting purposes—
  - (a) in the profit and loss account or income statement relating to the trade,
  - (b) in the statement of recognised gains and losses or statement of changes in equity relating to the trade, or
  - (c) in any other statement of items brought into account in calculating the profits and losses of the trade for that period.
- (7) For the purposes of this section it does not matter whether the parties to any transaction which forms part of the arrangement differ from the parties to any of the other transactions.
- (8) For the purposes of this section the cases in which two or more transactions are to be taken as forming part of an arrangement include any case in which it would be reasonable to assume that one or more of them—
  - (a) would not have been entered into independently of the other or others, or
  - (b) if entered into independently of the other or others, would not have taken the same form or been on the same terms.
- (9) If—

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (a) at any time any of sections 148A to 148F has applied for determining the amounts to be taken into account in calculating the profits or losses of the trade, and
- (b) conditions A to C are met at any subsequent time,
- those amounts, and any other amounts which (as a result of this section) are to be so taken into account, are subject to such adjustments as are just and reasonable.
- (10) All such assessments and adjustments of assessments are to be made as are necessary to give effect to subsection (9).]

#### Textual Amendments

**F205** S. 148FC inserted (with effect in accordance with Sch. 20 para. 10(7) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 20 para. 10\(4\)](#)

#### <sup>F206</sup> **148FD** Cases where ss 148A to 148F do not apply: films

- (1) If a person is or has been a lessor under a long funding lease of a film, sections 148A to 148F do not apply in respect of the lease.
- (2) “Film” has the same meaning as in Part 15 of CTA 2009 (see section 1181 of that Act).]

#### Textual Amendments

**F206** S. 148FD inserted (with effect in accordance with Sch. 33 para. 3 of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 33 para. 2](#) (with [Sch. 33 para. 9](#))

<sup>F207</sup> *Lessees under long funding finance leases*

#### Textual Amendments

**F207** Pt. 2 Ch. 10A inserted (19.7.2006) by [Finance Act 2006 \(c. 25\)](#), s. 81, [Sch. 8 para. 13](#)

#### **148G Lessee under long funding finance lease: limit on deductions**

- (1) This section applies for the purpose of calculating the profits of a person carrying on a trade, profession or vocation for a period of account in which the person is the lessee of any plant or machinery under a long funding finance lease.
- (2) In calculating the person's profits for the period of account,—
- (a) the amount deducted in respect of amounts payable under the lease, must not exceed
- (b) the amounts which, in accordance with generally accepted accounting practice, fall (or would fall) to be shown in the person's accounts as finance charges in respect of the lease.
- (3) If the lease is one which, under generally accepted accounting practice, falls (or would fall) to be treated as a loan, subsection (2) applies as if the lease were one which, under generally accepted accounting practice, fell to be treated as a finance lease.

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

## 148H Lessee under long funding finance lease: termination

- (1) This section applies where—
  - (a) a person carrying on a trade, profession or vocation is or has been the lessee under a long funding finance lease, and
  - (b) in connection with the termination of the lease, a payment calculated by reference to the termination value falls to be made to the person.
- (2) The payment is not to be brought into account in calculating the profits of the person for any period of account.
- (3) Subsection (2) does not affect the amount of any disposal value that falls to be brought into account by the person under CAA 2001.

*[<sup>F208</sup> Lessees under long funding operating leases]*

### Textual Amendments

**F208** Pt. 2 Ch. 10A inserted (19.7.2006) by [Finance Act 2006 \(c. 25\)](#), s. 81, [Sch. 8 para. 13](#)

## 148I Lessee under long funding operating lease

- (1) This section applies for the purpose of calculating the profits of a person carrying on a trade, profession or vocation for a period of account in which the person is the lessee of any plant or machinery under a long funding operating lease.
- (2) The deductions that may be allowed in calculating the profits of the person for the period of account are to be reduced in accordance with the following provisions of this section.
- (3) The amount of the reduction for any period of account is to be determined as follows.
- (4) First, find the “relevant value” for the purposes of subsection (6)(a), which is—
  - (a) the market value of the plant or machinery at the commencement of the term of the lease, unless paragraph (b) applies;
  - (b) if the lessee—
    - (i) owns the plant or machinery as a result of having incurred expenditure on its provision for purposes other than those of a qualifying activity, but
    - (ii) brings the plant or machinery into use for the purposes of a qualifying activity on or after 1st April 2006,the lower of first use market value and first use amortised market value.
- (5) In subsection (4)—

“first use amortised market value” means the value that the plant or machinery would have—

  - (a) at the time when it is first brought into use for the purposes of the qualifying activity, but
  - (b) on the assumption that the market value of the plant or machinery at the commencement of the term of the lease had been written off on a straight line basis over the remaining useful economic life of the plant or machinery;

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

“first use market value” means the market value of the plant or machinery at the time when it is first brought into use for the purposes of the qualifying activity.

- (6) From—
- (a) the relevant value determined in accordance with subsection (4),  
subtract
  - (b) the amount which, at the commencement of the term of the lease, is (or, in a case falling within subsection (4)(b), would have been) expected to be the market value of the plant or machinery at the end of the term of the lease,  
to find the expected gross reduction over the term of the lease.
- (7) Apportion the amount of that expected gross reduction to each period of account in which any part of the term of the lease falls.
- (8) The apportionment must be on a time basis according to the proportion of the term of the lease that falls in each period of account.
- (9) The amount of the reduction for any period of account is the amount so apportioned to that period.

*[<sup>F209</sup> Interpretation of this Chapter]*

**Textual Amendments**

**F209** Pt. 2 Ch. 10A inserted (19.7.2006) by [Finance Act 2006 \(c. 25\)](#), s. 81, [Sch. 8 para. 13](#)

**148J Interpretation of Chapter 10A**

- (1) This section has effect for the interpretation of this Chapter.
- (2) In this Chapter—
- “qualifying activity” has the same meaning as in Part 2 of CAA 2001;
  - “residual value”, in relation to any plant or machinery leased under a long funding operating lease, means—
    - (a) the estimated market value of the plant or machinery on a disposal at the end of the term of the lease,  
less
    - (b) the estimated costs of that disposal.
- (3) Any reference in this Chapter to a sum being written off on a straight line basis over a period of time (the “writing-off period”) is a reference to—
- (a) the sum being apportioned between each of the periods of account in which any part of the writing-off period falls,
  - (b) that apportionment being made on a time basis, according to the proportion of the writing-off period that falls in each of the periods of account, and
  - (c) the sum being written off accordingly.
- (4) Chapter 6A of Part 2 of CAA 2001 (interpretation of that Part so far as relating to long funding leases) also applies for the purposes of this Chapter.]

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

## CHAPTER 11

### TRADE PROFITS: OTHER SPECIFIC TRADES

#### *F<sup>210</sup>* Cash basis accounting

#### Textual Amendments

**F210** S. 148K and cross-heading inserted (with effect in accordance with Sch. 4 paras. 56, 57 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 4 para. 28](#)

#### **148K Application of Chapter to the cash basis**

The following sections do not apply in calculating the profits of a trade, profession or vocation on the cash basis—

- sections 149 to 154A (dealers in securities etc),
- section 157 (relief in respect of mineral royalties),
- section 158 (lease premiums etc: reduction of receipts),
- section 159 (ministers of religion),
- section 161 (mineral exploration and access),
- section 162 (payments by persons liable to pool betting duty),
- sections 163 and 164 (intermediaries treated as making employment payments),
- section 164A (managed service companies),
- sections 165 to 168 (waste disposal),
- sections 169 to 172ZE (cemeteries and crematoria).]

*Dealers in securities etc.*

#### **149 Taxation of amounts taken to reserves**

- (1) This section applies for the purpose of calculating the profits of a person's trade if a profit on the sale of securities would be brought into account in calculating the profits of the trade.
- (2) Profits and losses from the securities that in accordance with generally accepted accounting practice are—
  - (a) calculated by reference to the fair value of the securities, and
  - (b) recognised in the person's statement of recognised gains and losses or statement of changes in equity,
 are brought into account in calculating the profits of the trade.
- (3) But subsection (2) does not apply—
  - (a) to an amount so far as deriving from or otherwise relating to an amount brought into account under that subsection in an earlier period of account, or
  - (b) to an amount recognised for accounting purposes by way of correction of a fundamental error.
- (4) In this section “securities” includes—
  - (a) shares,

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (b) rights of unit holders in unit trust schemes to which TCGA 1992 applies as a result of section 99 of TCGA 1992,
  - [<sup>F211</sup>(ba) rights of participants in certain offshore funds to which TCGA 1992 applies as a result of section 103A of TCGA 1992,] and
  - (c) in the case of a company with no share capital, interests in the company possessed by members of the company,
- but does not include a loan relationship (within the meaning of Chapter 2 of Part 4 of FA 1996).

#### Textual Amendments

**F211** S. 149(4)(ba) inserted (1.12.2009 for specified purposes, 1.4.2010 for specified purposes) (with effect in accordance with Sch. 22 para. 12 to the amending Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 22 para. 11\(3\)\(a\)](#); [S.I. 2010/670](#), [art. 2](#)

### 150 Conversion etc. of securities held as circulating capital

- (1) This section applies for the purpose of calculating the profits of a trade if—
  - (a) a transaction falling within subsection (2) occurs in relation to securities (“the original holding”), and
  - (b) a profit on the sale of the securities would be brought into account in calculating the profits of the trade.
- (2) A transaction falls within this subsection if—
  - (a) it results in a new holding being treated as the same as the original holding as a result of sections 126 to 136 of TCGA 1992 (CGT roll-over relief in cases of conversion etc.), or
  - (b) it is treated, as a result of section 134 of TCGA 1992 (compensation stock), as an exchange for a new holding which does not involve a disposal of the original holding,

and it does not fall within section 151(1) or 152(1) below (exchanges of gilts for gilt strips and consolidation of gilt strips).
- (3) This section does not apply to securities in respect of which unrealised profits or losses, calculated by reference to the fair value of the securities at the end of the period of account, are taken into account in the period of account in which the transaction occurs.
- (4) The transaction is treated as not involving a disposal of the original holding and the new holding is treated as the same asset as the original holding.
- (5) But if, under the transaction, the person carrying on the trade—
  - (a) receives consideration in addition to the new holding, or
  - (b) becomes entitled to receive such consideration,

subsection (4) applies as if the references to the original holding were to the proportion of the original holding given by the following fraction.
- (6) The fraction is—



*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

$$\frac{\text{NH}}{\text{NH} + \text{C}}$$

where—

NH is the market value of the new holding at the time of the transaction, and

C is the market value of the consideration at the time of the transaction or (if the consideration is cash) the amount of the consideration.

- (7) In determining whether subsection (2)(a) applies as a result of section 135 or 136 of TCGA 1992, the reference to capital gains tax in section 137(1) of TCGA 1992 is to be read as a reference to income tax.
- (8) In this section “securities” includes—
- (a) shares,
  - (b) loan stocks or similar securities (whether secured or unsecured) of a government, a local or other public authority (in the United Kingdom or elsewhere) or a company,
  - (c) rights of unit holders in unit trust schemes to which TCGA 1992 applies as a result of section 99 of TCGA 1992,
  - [<sup>F212</sup>(ca) rights of participants in certain offshore funds to which TCGA 1992 applies as a result of section 103A of TCGA 1992,]
  - (d) in the case of a company with no share capital, interests in the company possessed by members of the company,
  - (e) quoted options to subscribe for shares which are treated as shares as a result of section 147 of TCGA 1992, and
  - (f) earn-out rights which are assumed to be securities as a result of section 138A(3) of TCGA 1992.

#### Textual Amendments

**F212** S. 150(8)(ca) inserted ((1.12.2009 for specified purposes, 1.4.2010 for specified purposes) (with effect in accordance with Sch. 22 para. 12 of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 22 para. 11\(3\)\(b\)](#); [S.I. 2010/670](#), art. 2

## 151 Exchanges of gilts for gilt strips

- (1) This section applies for the purpose of calculating the profits of a trade if—
- (a) the person carrying it on (“the trader”) exchanges a gilt-edged security for strips of the security, and
  - (b) a profit on the sale of the security would be brought into account in calculating the profits of the trade.
- (2) The security is treated as having been redeemed at the time of the exchange by the payment to the trader of its market value.
- (3) The trader is treated as having acquired each strip for the proportion of the market value of the security given by the following fraction.
- (4) The fraction is—

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

$$\frac{SV}{TV}$$

where—

SV is the market value of one strip, and

TV is the total of the market values of all the strips received in exchange for the security.

- (5) In this section references to market value are to market value at the time of the exchange.
- (6) This section applies to professions and vocations as it applies to trades.
- (7) See also—
  - section 153 (meaning of “gilt-edged security” and “strip”), and
  - section 154 (regulations for determining market value of securities or strips).

## 152 Consolidation of gilt strips

- (1) This section applies for the purpose of calculating the profits of a trade if—
  - (a) strips of a gilt-edged security are consolidated into a single security by being exchanged by the person carrying on the trade (“the trader”) for the single security, and
  - (b) a profit on the sale of any of the strips would be brought into account in calculating the profits of the trade.
- (2) Each strip is treated as having been redeemed at the time of the exchange by payment to the trader of its market value.
- (3) The trader is treated as having acquired the gilt-edged security for an amount equal to the total of the market values of the strips given in exchange.
- (4) In this section references to market value are to market value at the time of the exchange.
- (5) This section applies to professions and vocations as it applies to trades.
- (6) See also—
  - section 153 (meaning of “gilt-edged security” and “strip”), and
  - section 154 (regulations for determining market value of securities or strips).

## 153 Meaning of “gilt-edged security” and “strip”

- (1) In this Act “gilt-edged security” means a security which—
  - (a) is a gilt-edged security for the purposes of TCGA 1992 (see Schedule 9 to that Act), or

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (b) will be such a security on the making of an order under paragraph 1 of Schedule 9 to TCGA 1992, if the making of the order is anticipated in the prospectus under which the security is issued.
- (2) For the purposes of sections 151 and 152 “strip”, in relation to a gilt-edged security, means a security issued under the National Loans Act 1968 (c. 13) which meets conditions A to C.
- (3) Condition A is that the security is issued for the purpose of representing the right to or of securing—
  - (a) a payment corresponding to a payment of interest or principal remaining to be made under the gilt-edged security, or
  - (b) two or more payments each corresponding to a payment to be so made.
- (4) Condition B is that the security is issued in conjunction with the issue of one or more other securities which, together with that security—
  - (a) represent the right to, or
  - (b) secure,payments corresponding to every payment remaining to be made under the gilt-edged security.
- (5) Condition C is that the security is not itself a security which—
  - (a) represents the right to, or
  - (b) secures,payments corresponding to a part of every payment remaining to be made under the gilt-edged security.

#### **154 Regulations for determining market value of securities or strips**

- (1) The Treasury may by regulations make provision for the purposes of sections 151 and 152 as to the manner of determining the market value at any time of a gilt-edged security (including any strip).
- (2) The regulations may—
  - (a) make different provision for different cases, and
  - (b) contain such incidental, supplemental, consequential and transitional provision as the Treasury consider appropriate.
- (3) The power in this section does not affect the power under section 202(5) of FA 1996 (gilt stripping).

#### **[<sup>F213</sup>154A Certain non-UK residents with interest on 3½% War Loan 1952 Or After**

- (1) This section applies if—
  - (a) in any tax year a person who is not <sup>F214</sup>... resident in the United Kingdom carries on a trade there—
    - (i) consisting of banking or insurance, or
    - (ii) consisting wholly or partly of dealing in securities, and
  - (b) in calculating the profits of the trade for the tax year any amount is disregarded as a result of section 714 (exemption of profits from FOTRA securities) because of a condition subject to which any 3½% War Loan 1952 Or After was issued.

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (2) Interest on money borrowed for the purposes of the trade is to be deducted in calculating the profits of the trade of that tax year only so far as it exceeds the ineligible amount.
- (3) The ineligible amount is found as follows—
- Step 1* Add together all sums borrowed for the purposes of the trade and still owing in the basis period for the tax year.
- Step 2* If the person carrying on the trade is a company, deduct any sums carrying interest which is not deducted in calculating the profits of the trade (otherwise than because of subsection (2)).
- Step 3* If the amount found at Step 2 exceeds the total cost of the 3½% War Loan 1952 Or After held for the purposes of the trade in the basis period, deduct the excess from that amount.
- Step 4* Calculate the average rate of interest in the basis period on money borrowed for the purposes of the trade.
- Step 5* Calculate the amount of interest payable on the amount found at Step 3 at the rate found at Step 4 for the basis period.

The result is the ineligible amount.

- (4) If the person's holding of 3½% War Loan 1952 Or After has fluctuated during the basis period, the total cost for the purposes of Step 3 is taken to be—

$$C \times AHTH$$

where—

C is the cost of acquisition of the initial holding (if any) and any holdings acquired during the basis period,

AH is the average holding in that period, and

TH is the total of the initial holding (if any) and any holdings acquired during the basis period.

- (5) In subsection (4) “initial holding” means the holding held by the person at the beginning of the basis period.]

#### Textual Amendments

**F213** S. 154A inserted (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. 7 para. 43](#) (with [Sch. 9 paras. 1-9, 22](#))

**F214** Word in s. 154A(1)(a) omitted (with effect in accordance with Sch. 46 para. 72 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\), Sch. 46 para. 44](#)

#### Persons authorised for purposes of FISMA 2000

### 155 Levies and repayments under FISMA 2000

- (1) This section applies for the purpose of calculating the profits of a trade <sup>F215</sup>...

[<sup>F216</sup>(2) A deduction is allowed for any sum—

- (a) spent by the person carrying on the trade in paying a levy, or
- (b) paid by that person as a result of an award of costs under costs rules,

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

so far as it is not otherwise allowable.]

- (3) A payment made to the person [<sup>F217</sup>carrying on the trade] as a result of a repayment provision is brought into account as a receipt.

[<sup>F218</sup>(3A) For the purposes of this section “costs rules” means—

- (a) rules made under section 230 of FISMA 2000, or
- (b) provision relating to costs contained in standard terms fixed under paragraph 18 of Schedule 17 to FISMA 2000.]

(4) For the purposes of this section “levy” means—

- (a) a payment required under rules made under section 136(2) of FISMA 2000,
- (b) a levy imposed under the Financial Services Compensation Scheme,
- (c) a payment required under rules made under section 234 of FISMA 2000,
- (d) a payment required under the rules referred to in paragraph 14(1) of Schedule 17 to FISMA 2000 (“scheme rules”) in accordance with paragraph 15(1) of that Schedule, or
- (e) a payment required in accordance with the standard terms fixed under paragraph 18 of that Schedule [<sup>F219</sup>(other than a sum paid as a result of an award of costs under costs rules)].

(5) For the purposes of this section “repayment provision” means—

- (a) any provision made by virtue of section 136(7) or 214(1)(e) of FISMA 2000, or
- (b) any provision made by scheme rules for fees to be refunded in specified circumstances.

#### Textual Amendments

- F215** Words in s. 155(1) repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 1 para. 601(2), **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)
- F216** S. 155(2) substituted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 601(3)** (with Sch. 2 Pts. 1, 2)
- F217** Words in s. 155(3) inserted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 601(4)** (with Sch. 2 Pts. 1, 2)
- F218** S. 155(3A) inserted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 601(5)** (with Sch. 2 Pts. 1, 2)
- F219** Words in s. 155(4)(e) substituted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 601(6)** (with Sch. 2 Pts. 1, 2)

*Dealers in land etc.*

## 156 Purchase or sale of woodlands

- (1) This section applies for the purpose of calculating the profits of a trade of dealing in land.
- (2) If the person carrying on the trade buys woodlands in the United Kingdom in the course of the trade, the part of the cost of the woodlands which is attributable to trees or saleable underwood growing on the land is ignored.
- (3) If—

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (a) the woodlands are subsequently sold in the course of the trade, and
- (b) any of the trees or underwood are still growing on the land at the time of the sale,

the part of the price that is equal to the amount ignored under subsection (2) for the trees or underwood is ignored.

## <sup>F220</sup>157 Relief in respect of mineral royalties

.....

### Textual Amendments

**F220** S. 157 repealed (with effect in accordance with Sch. 39 para. 43(3) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 39 para. 43\(1\)\(a\)](#)

## 158 Lease premiums etc: reduction of receipts

- (1) This section applies for the purpose of calculating the profits of a trade of dealing in land if a receipt of the trade falls within one of the following categories—
  - (a) lease premiums within section 277,
  - (b) sums within section 279 (sums payable instead of rent),
  - (c) sums within section 280 (sums payable for surrender of a lease),
  - (d) sums within section 281 (sums payable for variation or waiver of [<sup>F221</sup>terms] of lease),
  - (e) consideration for the assignment of a lease within section 282 (lease granted at an undervalue), and
  - (f) amounts received on the sale of an estate or interest in land within section 284 (sales with right to re-conveyance) or section 285 (sale and leaseback transactions).
- (2) The receipt is reduced by the relevant amount.
- (3) The relevant amount is the amount which is treated as a receipt of a property business as a result of any of sections 277 to 285.
- (4) But if—
  - (a) the person carrying on the trade makes a claim under section 301 or 302, and
  - (b) as a result of the claim a repayment of tax is made to that person,
 the relevant amount is the amount which, for the purpose of determining the amount of the repayment of tax, is treated as brought into account as a receipt in calculating the profits of the property business.
- (5) If subsection (4) applies, any adjustment of liability to tax may be made—
  - (a) by assessment or otherwise, and
  - (b) at any time at which it could be made if it related only to tax for the tax year in which the claim under section 301 or 302 is made.

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

### Textual Amendments

**F221** Word in s. 158(1)(d) substituted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 602** (with Sch. 2 Pts. 1, 2)

### *Ministers of religion*

#### **159 Ministers of religion**

- (1) This section applies for the purpose of calculating the profits of the profession or vocation of a minister of a religious denomination.
- (2) If the minister pays rent in respect of a dwelling-house and any part of the dwelling-house is used mainly and substantially for the purposes of the minister's duty, a deduction is allowed for—
  - (a) one-quarter of the rent, or
  - (b) if less, the part of the rent that, on a just and reasonable apportionment, is attributable to that part of the dwelling-house.
- (3) If—
  - (a) an interest in premises belongs to a charity or an ecclesiastical corporation,
  - (b) because of that interest, the minister has a residence in the premises from which to perform the minister's duty, and
  - (c) the minister incurs expenses on the maintenance, repair, insurance or management of the premises,a deduction is allowed under this subsection for part of those expenses.
- (4) The amount of the deduction under subsection (3) is—

$$\frac{A}{4} - B$$

where—

A is the amount of the expenses, and

B is the amount of the expenses for which a deduction is otherwise allowable.

### *Barristers and advocates*

#### **<sup>F222</sup>160 Alternative basis of calculation in early years of practice**

.....

### Textual Amendments

**F222** S. 160 omitted (with effect in accordance with Sch. 4 paras. 56, 57 of the amending Act) by virtue of Finance Act 2013 (c. 29), **Sch. 4 para. 51**

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

### *Mineral exploration and access*

#### **161 Mineral exploration and access**

- (1) This section applies for the purpose of calculating the profits of a trade if—
  - (a) the person carrying on the trade incurs expenditure on mineral exploration and access in an area or group of sands, and
  - (b) the presence of mineral deposits in commercial quantities has already been established in that area or group of sands.
- (2) A deduction is allowed for the expenditure only if a deduction would have been allowed for it if the presence of mineral deposits in commercial quantities had not already been established in that area or group of sands.
- (3) In this section “mineral exploration and access” has the same meaning as in Part 5 of CAA 2001 (see section 396(1) of that Act).

### *Persons liable to pool betting duty*

#### **<sup>F223</sup>162 Payments by persons liable to pool betting duty**

.....

#### **Textual Amendments**

**F223** S. 162 repealed (with effect in accordance with Sch. 39 para. 21(3) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 39 para. 21\(1\)\(a\)](#)

### *Intermediaries treated as making employment payments*

#### **163 Deduction for deemed employment payment**

- (1) This section applies for the purpose of calculating the profits of a trade, profession or vocation carried on by an intermediary who is treated as making a deemed employment payment in connection with the trade, profession or vocation.
- (2) A deduction is allowed for—
  - (a) the amount of the deemed employment payment, and
  - (b) the amount of any employer's national insurance contributions paid by the intermediary in respect of it.
- (3) The deduction is allowed for the period of account in which the deemed employment payment is treated as made.
- (4) No deduction in respect of—
  - (a) the deemed employment payment, or
  - (b) any employer's national insurance contributions paid by the intermediary in respect of it,
 may be made except in accordance with this section.



*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (5) In this section “deemed employment payment” and “intermediary” have the same meaning as in Chapter 8 of Part 2 of ITEPA 2003.

## 164 Special rules for partnerships

- (1) This section applies for the purpose of calculating the profits of a trade, profession or vocation carried on by a firm that is treated as making a deemed employment payment in connection with the trade, profession or vocation.
- (2) The amount of the deduction allowed under section 163 is limited to the amount that reduces the profits of the firm for the tax year to nil.
- (3) The expenses of the firm in connection with the relevant engagements for any period of account are limited to the total of—
- (a) 5% of the amount taken into account in step 1 of the calculation in section 54(1) of ITEPA 2003 (calculation of deemed employment payment), and
  - (b) the amount deductible in step 3 of that calculation.
- (4) In this section “deemed employment payment” and “the relevant engagements” have the same meaning as in Chapter 8 of Part 2 of ITEPA 2003.

### *F<sup>224</sup> Managed service companies*

#### Textual Amendments

**F224** S. 164A and cross-heading inserted (retrospective to 6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), s. 25, [Sch. 3 para. 9](#)

## 164A Deduction for deemed employment payments

- (1) This section applies for the purpose of calculating the profits of a trade, profession or vocation carried on by a managed service company (“the MSC”) which is treated as making a deemed employment payment in connection with the trade, profession or vocation.
- (2) A deduction is allowed for—
- (a) the amount of the deemed employment payment, and
  - (b) the amount of any employer's national insurance contributions paid by the MSC in respect of it.
- (3) The deduction is allowed for the period of account in which the deemed employment payment is treated as made.
- (4) The amount of the deduction allowed under subsection (2) is limited to the amount that reduces the profits of the firm for the tax year to nil.
- (5) No deduction in respect of—
- (a) the deemed employment payment, or
  - (b) any employer's national insurance contributions paid by the MSC in respect of it,
- may be made except in accordance with this section.

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

- (6) In this section “deemed employment payment”, “employer's national insurance contributions” and “managed service company” have the same meaning as in Chapter 9 of Part 2 of ITEPA 2003.]

### *Waste disposal*

#### **165 Deduction for site preparation expenditure**

- (1) This section applies for the purpose of calculating the profits of a trade of a period of account in which waste materials are deposited on a waste disposal site if—
- (a) the person carrying on the trade (“the trader”), or a predecessor, has incurred site preparation expenditure in relation to the site in the course of carrying on the trade, and
  - (b) at the time the trader first deposits waste materials on the site, the trader holds a waste disposal licence which is then in force.
- (2) A deduction is allowed for the amount of the site preparation expenditure allocated to the period of account under section 166.
- (3) For the purposes of this section “predecessor”, in relation to the trader, means a person who—
- (a) has ceased to carry on the trade carried on by the trader or ceased to carry on a trade so far as relating to the site, and
  - (b) has transferred the whole of the site to the trader,
- and it does not matter for this purpose whether or not the estate or interest in the site transferred to the trader is the same as that held by that person.
- (4) For the purposes of this section and section 166, if site preparation expenditure has been incurred by a predecessor—
- (a) the trade carried on by the trader is treated as the same as the trade carried on by the predecessor, and
  - (b) deductions are to be allowed to the trader (and not to the predecessor) as if everything done to or by the predecessor were done to or by the trader.
- (5) For—
- (a) the meaning of “site preparation expenditure”, “waste disposal licence” and “waste disposal site”, and
  - (b) a rule about pre-trading expenditure,
- see section 167.

#### **166 Allocation of site preparation expenditure**

- (1) The amount of site preparation expenditure allocated to a period of account for the purposes of section 165(2) is the amount given by the formula—

$$RE \times \frac{WD}{SV + WD}$$

where—

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

RE means residual expenditure (see subsection (2)),

WD means the volume of waste materials deposited on the waste disposal site during the period, and

SV means the volume of the waste disposal site not used up for the deposit of waste materials at the end of the period.

- (2) “Residual expenditure” means the total of all site preparation expenditure incurred by the trader in relation to the waste disposal site at any time before the end of the period, less—
- (a) any of that expenditure for which an allowance has been, or may be, made for income or corporation tax purposes under the enactments relating to capital allowances,
  - (b) any of that expenditure for which a deduction has been allowed in calculating for income or corporation tax purposes the profits of an earlier period of account, and
  - (c) if the trader started to carry on the trade before 6th April 1989, the excluded amount of any unrelieved old expenditure (see subsections (3) and (4)).
- (3) The excluded amount of unrelieved old expenditure is calculated by multiplying the unrelieved old expenditure (see subsection (4)) by the fraction—

$$\frac{\text{WD}}{\text{SV} + \text{WD}}$$

where—

WD means the volume of waste materials deposited on the site before 6th April 1989, and

SV means the volume of the site not used up for the deposit of waste materials immediately before that date.

- (4) “Unrelieved old expenditure” means site preparation expenditure which—
- (a) was incurred by the trader in relation to the waste disposal site before 6th April 1989, and
  - (b) does not fall within subsection (2)(a) or (b).

## 167 Site preparation expenditure: supplementary

- (1) For the purposes of this section and sections 165 and 166—
- “site preparation expenditure”, in relation to a waste disposal site, means expenditure incurred on preparing the site for the deposit of waste materials,
- “waste disposal licence” means—
- (a) a disposal licence under Part 1 of the Control of Pollution Act 1974 (c. 40) or Part 2 of the Pollution Control and Local Government (Northern Ireland) Order 1978 (S.I. 1978/1049 (N.I. 19)),
  - (b) a waste management licence under Part 2 of the Environmental Protection Act 1990 (c. 43) or any corresponding provision for the time being in force in Northern Ireland,

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (c) a permit under regulations under section 2 of the Pollution Prevention and Control Act 1999 (c. 24) or any corresponding provision for the time being in force in Northern Ireland,
  - (d) [<sup>F225</sup>an authorisation under the Radioactive Substances Act 1960 (c. 34) or the Radioactive Substances Act 1993 (c. 12) for the disposal of radioactive waste, or]
  - (e) a nuclear site licence under the Nuclear Installations Act 1965 (c. 57), and
- “waste disposal site” means a site used, or to be used, for the disposal of waste materials by their deposit on the site.
- (2) For the purposes of sections 165 and 166, expenditure incurred for the purposes of a trade by a person about to carry on the trade is treated as if it were incurred—
- (a) on the date on which the person starts to carry on the trade, and
  - (b) in the course of carrying it on.

#### Textual Amendments

**F225** Words in s. 167(1) repealed (E.W.) (6.4.2010) by [The Environmental Permitting \(England and Wales\) Regulations 2010 \(S.I. 2010/675\)](#), reg. 1(1)(b), Sch. 26 para. 18, **Sch. 28** (with reg. 1(2), Sch. 4)

### 168 Site restoration payments

- (1) This section applies for the purpose of calculating the profits of a trade if the person carrying on the trade makes a site restoration payment in the course of carrying it on.
- (2) [<sup>F226</sup> Subject to subsection (3A), ] A deduction is allowed for the unrelieved amount of the payment.
- [<sup>F227</sup>(3) The deduction is allowed—
- (a) (if the payment is made, whether directly or indirectly, to a connected person) for the period of account in which that part of the restoration work to which the payment relates is completed, or
  - (b) (in any other case) for the period of account in which the payment is made.]
- [<sup>F227</sup>(3A) But no deduction is allowed if the payment arises from arrangements—
- (a) to which the person carrying on the trade is a party, and
  - (b) the main purpose, or one of the main purposes, of which is to obtain a deduction under this section.]
- (4) The unrelieved amount of a site restoration payment is the amount of the payment, less—
- (a) any amount of the payment that represents expenditure for which an allowance has been, or may be, made under the enactments relating to capital allowances, and
  - (b) any amount of the payment that represents expenditure for which a deduction has been allowed in calculating the profits of the trade of an earlier period of account.
- (5) A “site restoration payment” means a payment made in connection with the restoration of a site (or part of a site) in order to comply with—
- (a) a condition of a waste disposal licence (as defined in section 167(1)),

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (b) a condition imposed on the grant of planning permission to use the site for the collection, treatment, conversion and final depositing of waste materials or for the carrying out of any of those activities, or
  - (c) a relevant planning obligation.
- (6) For this purpose “a relevant planning obligation” means—
- (a) an obligation arising under an agreement made under section 106 of the Town and Country Planning Act 1990 (c. 8) (as originally enacted) or any corresponding provision for the time being in force in Northern Ireland,
  - (b) an obligation arising under an agreement made under section 75 of the Town and Country Planning (Scotland) Act 1997 (c. 8),
  - (c) a planning obligation entered into under section 106 of the Town and Country Planning Act 1990 (as substituted by section 12 of the Planning and Compensation Act 1991 (c. 34)) or any corresponding provision for the time being in force in Northern Ireland, or
  - (d) a planning obligation entered into under section 299A of the Town and Country Planning Act 1990 or any corresponding provision for the time being in force in Northern Ireland.

[<sup>F228</sup>(7) Arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable).]

#### Textual Amendments

- F226** Words in s. 168(2) inserted (with effect in accordance with s. 53(7)(8) of the amending Act) by [Finance Act 2012 \(c. 14\), s. 53\(1\)](#)
- F227** S. 168(3)(3A) substituted for s. 168(3) (with effect in accordance with s. 53(7)(8) of the amending Act) by [Finance Act 2012 \(c. 14\), s. 53\(2\)](#)
- F228** S. 168(7) inserted (with effect in accordance with s. 53(7)(8) of the amending Act) by [Finance Act 2012 \(c. 14\), s. 53\(3\)](#)

### *Cemeteries and crematoria*

#### **169** [<sup>F229</sup>*Cemeteries and crematoria: interests in land*]

- (1) This section and sections 170 to 172 apply for the purpose of calculating the profits of a period of account (“the relevant period”) of a trade which consists of or includes—
- (a) the carrying on of a cemetery, or
  - (b) the carrying on of a crematorium and, in connection with doing so, the maintenance of memorial garden plots,
- and the following provisions of this section apply for the interpretation of this section and those sections.
- (2) References to the sale of land in a cemetery include the sale of a right of interment in land in a cemetery.
- (3) References to the sale of land in a memorial garden include the appropriation of part of a memorial garden in return for a dedication fee or similar payment.
- (4) “Ancillary capital expenditure” means capital expenditure incurred for the purposes of the trade by the person carrying on the trade (“the trader”), or a predecessor, on—

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (a) any building or structure (other than a dwelling-house) which is in the cemetery or memorial garden and is likely to have little or no value when the cemetery or memorial garden is full,
  - (b) the purchase of an interest in, or the preparation of, any land taken up by such a building or structure, or
  - (c) the purchase of an interest in, or the preparation of, any other land in the cemetery or memorial garden which is not suitable or adaptable for use for interments or memorial garden plots and which is likely to have little or no value when the cemetery or memorial garden is full.
- (5) “Predecessor”, in relation to the trader, means a person who carried on the trade at any time before the trader started to do so.
- (6) “Preparation”, in relation to land, means levelling or draining the land or making it suitable in some other way for use as a cemetery or memorial garden.

#### Textual Amendments

**F229** S. 169 cross-heading substituted (1.3.2012) by [The Enactment of Extra-Statutory Concessions Order 2012 \(S.I. 2012/266\)](#), arts. 1, **4(2)** (with art. 4(5))

## 170 Deduction for capital expenditure

- (1) This section applies if, in the relevant period, an interest in land in the cemetery or memorial garden is sold with a view to the land being used—
- (a) for the purpose of interments, or
  - (b) for memorial garden plots.
- (2) A deduction is allowed for—
- (a) capital expenditure incurred by the trader, or a predecessor, on the purchase of an interest in the land or on the preparation of the land, and
  - (b) ancillary capital expenditure allocated to the relevant period under section 171 (allocation of ancillary capital expenditure).
- (3) But no expenditure is to be brought into account—
- (a) under both paragraphs (a) and (b) of subsection (2), <sup>F230</sup> ...
  - (b) under both subsection (2)(a) above and [<sup>F231</sup>section 147(2)(b) of CTA 2009] (relief for corporation tax purposes) or under both subsection (2)(b) above and [<sup>F231</sup>section 147(2)(a) of CTA 2009], [<sup>F232</sup>or
  - (c) under both subsection (2)(b) above and section 172ZB(4), 172ZC(4) or 172ZD(3).]
- whether for the same or different periods of account.
- (4) Any purchase price paid on a sale in connection with a change in the persons carrying on the trade is ignored in calculating the amount of the deduction.
- (5) No deduction is allowed for any expenditure which is excluded by section 172 (exclusion of expenditure met by subsidies).

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

### Textual Amendments

- F230** Word in s. 170(3)(a) omitted (1.3.2012) by virtue of [The Enactment of Extra-Statutory Concessions Order 2012 \(S.I. 2012/266\)](#), arts. 1, **4(3)(a)** (with art. 4(5))
- F231** Words in s. 170(3)(b) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), **Sch. 1 para. 603** (with Sch. 2 Pts. 1, 2)
- F232** S. 170(3)(c) and word inserted (1.3.2012) by [The Enactment of Extra-Statutory Concessions Order 2012 \(S.I. 2012/266\)](#), arts. 1, **4(3)(b)** (with art. 4(5))

## 171 Allocation of ancillary capital expenditure

- (1) The amount of ancillary capital expenditure allocated to the relevant period for the purposes of section 170(2)(b) is the amount given by the formula—

$$RE \times \frac{PSR}{PAR + PSR}$$

where—

RE means residual expenditure (see subsection (2)),

PSR means the number of grave-spaces or memorial garden plots in the cemetery or memorial garden sold in the relevant period, and

PAR means the number of grave-spaces or memorial garden plots in the cemetery or memorial garden which are or could be made available for sale at the end of the relevant period.

- (2) “Residual expenditure” means the total of all ancillary capital expenditure incurred at any time before the end of the relevant period, less—
- ancillary capital expenditure incurred on buildings or structures which were destroyed before the beginning of the first sale period,
  - the excluded amount of any remaining old expenditure (see subsection (3)),
  - if, after the beginning of the first sale period and before the end of the relevant period, an asset representing ancillary capital expenditure was sold or destroyed, the net sale proceeds or the compensation, and
  - any amount deducted under section 170(2)(b) above, or under <sup>F233</sup>section 147(2)(b) of CTA 2009], for a period of account ending before the relevant period.
- (3) The excluded amount of remaining old expenditure is calculated by multiplying the remaining old expenditure by the fraction—

$$\frac{PSB}{PAB + PSB}$$

where—

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

PSB means the number of grave-spaces or memorial garden plots in the cemetery or memorial garden sold before the beginning of the basis period for the tax year 1954-55, and

PAB means the number of grave-spaces or memorial garden plots in the cemetery or memorial garden which were or could have been made available for sale immediately before the beginning of the basis period for that tax year.

(4) In this section—

“compensation”, in relation to the destruction of an asset, means—

(a) insurance money or other compensation received by the trader, or a predecessor, in respect of the destruction, and

(b) money received for the remains of the asset by the trader or predecessor, “the first sale period” means—

(a) the period of account in which an interest in land in the cemetery or memorial garden was first sold for the purposes of the trade with a view to the land being used for the purpose of interments or for memorial garden plots, or

(b) if later, the basis period for the tax year 1954-55, and

“remaining old expenditure” means ancillary capital expenditure which—

(a) was incurred before the beginning of the basis period for the tax year 1954-55, and

(b) does not fall within subsection (2)(a).

#### Textual Amendments

**F233** Words in s. 171(2)(d) substituted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 604** (with **Sch. 2 Pts. 1, 2**)

## 172 Exclusion of expenditure met by subsidies

(1) Expenditure is excluded for the purposes of section 170 so far as it has been, or is to be, met (directly or indirectly) by—

(a) the Crown,

(b) a government or local or other public authority (whether in the United Kingdom or elsewhere), or

(c) any person other than the person incurring the expenditure.

(2) This is subject to the following exceptions.

(3) Expenditure is not excluded for the purposes of section 170 if it is met (directly or indirectly) by a grant—

(a) made under Northern Ireland legislation, and

(b) declared by the Treasury by an order under section 534 of CAA 2001 to correspond to a grant under Part 2 of the Industrial Development Act 1982 (c. 52).

(4) Expenditure is not excluded for the purposes of section 170 if it is met (directly or indirectly) by—

(a) insurance money, or



*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (b) other compensation money,  
payable in respect of an asset which has been destroyed, demolished or put out of use.
- (5) Expenditure is not excluded for the purposes of section 170 if—
  - (a) it has been, or is to be, met (directly or indirectly) by a person other than the Crown or a government or local or other public authority, and
  - (b) no deduction is allowed for the expenditure in calculating for income or corporation tax purposes the profits of a trade carried on by that person.

*<sup>F234</sup>Crematoria: niches, memorials and inscriptions*

#### Textual Amendments

**F234** Ss. 172ZA-172ZE and cross-heading inserted (1.3.2012) by [The Enactment of Extra-Statutory Concessions Order 2012 \(S.I. 2012/266\)](#), arts. 1, **4(4)** (with art. 4(5))

### **172ZA Niches, memorials and inscriptions: introduction**

- (1) Sections 172ZB to 172ZE apply in calculating the profits of a trade which consists of or includes—
  - (a) the carrying on of a crematorium, and
  - (b) in connection with carrying on the crematorium—
    - (i) the sale of niches or memorials, or
    - (ii) the making of inscriptions.
- (2) In those sections—
  - (a) “the trade” is the trade mentioned in subsection (1),
  - (b) “the trader” is the person carrying on the trade, and
  - (c) a “predecessor” is a person who carried on the trade at any time before the trader started doing so.

### **172ZB Allowable deductions: niches**

- (1) This section sets out the deductions that are allowed in respect of a niche if proceeds from the sale of the niche are brought into account as a receipt in calculating the profits of the trade.
- (2) A deduction is allowed for two-thirds of the costs incurred (by the trader or a predecessor) in the formation of the niche.
- (3) Formation of the lining and of any tablet associated with the niche is taken to be part of the formation of the niche.
- (4) If the niche is in a building that is used wholly or mainly for the purpose of providing niches, a further deduction is allowed for two-thirds of the associated building costs.
- (5) In relation to a niche in a building—
  - (a) “the associated building costs” is the relevant proportion of the costs of the building, and
  - (b) “the relevant proportion” is the proportion that the area occupied by the niche bears to the area of the building as a whole or, if the proportion cannot

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

reasonably be calculated on that basis, such proportion as may be calculated on a just and reasonable basis.

#### **172ZC Allowable deductions: memorials**

- (1) This section sets out the deductions that are allowed in respect of a memorial if proceeds from the sale of the memorial are brought into account as a receipt in calculating the profits of the trade.
- (2) A deduction is allowed for the costs incurred (by the trader or a predecessor) in producing the memorial.
- (3) If the memorial includes an inscription, making that inscription is taken to be part of producing the memorial.
- (4) If the memorial is attached to a building that is used wholly or mainly for the purpose of accommodating memorials or the memorial comprises an entire building, a further deduction is allowed for two-thirds of the associated building costs.
- (5) In relation to a memorial attached to or comprising a building, “the associated building costs” means—
  - (a) the amount found by dividing the costs of the building by the total number of memorials that the building is capable of accommodating, or
  - (b) if the memorial comprises an entire building, the costs of that building.

#### **172ZD Allowable deductions: inscriptions**

- (1) This section sets out the deductions that are allowed in respect of an inscription if proceeds from making the inscription are brought into account in calculating the profits of the trade.
- (2) A deduction is allowed for the costs incurred (by the trader or a predecessor) in making the inscription.
- (3) If the inscription is made on an existing framework designed to hold more than one inscription, a further deduction is allowed for two-thirds of the associated framework costs.
- (4) In relation to an inscription made on an existing framework, “the associated framework costs”—
  - (a) is the amount found by dividing the costs of the framework by the total number of inscriptions that the framework is designed to hold, and
  - (b) includes, if the framework is attached to a building that is used wholly or mainly for the purpose of accommodating memorials, the amount found by dividing the costs of the building by the total number of memorials that the building is capable of accommodating.
- (5) This section does not apply to an inscription if it is made as part of producing a memorial (see section 172ZC).

#### **172ZE Costs of the building**

- (1) For the purposes of sections 172ZB to 172ZD, the costs of a building are to be determined in accordance with this section.

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (2) If the building was acquired for the purposes of the trade, the costs of the building are the lower of—
  - (a) the market value of the building when it was acquired, and
  - (b) the costs incurred in acquiring the building.
- (3) If the building was constructed for the purposes of the trade, the costs of the building are the costs incurred in constructing the building.
- (4) In either case—
  - (a) the acquisition cost (or market value) of the land on which the building is situated is to be ignored, and
  - (b) for these purposes, costs (or values) are to be apportioned between the land and the building on a just and reasonable basis.
- (5) Any construction costs incurred with respect to the building after it was acquired or constructed for the purposes of the trade must be brought into account as costs of the building.
- (6) But costs incurred in maintaining the building must not be brought into account.
- (7) Costs must not be included as costs of the building if a deduction is or is to be brought into account for them under section 170(2) (deduction for capital expenditure).
- (8) A reference in this section to costs incurred is to costs incurred either by the trader or a predecessor.
- (9) In sections 172ZB to 172ZD and this section, “building” includes any other type of structure.]

## [<sup>F235</sup> CHAPTER 11A

### TRADE PROFITS: CHANGES IN TRADING STOCK

#### Textual Amendments

**F235** Pt. 2 Ch. 11A inserted (with effect in accordance with s. 37(2) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 15 para. 2](#)

#### *Introduction*

#### **172A Meaning of “trading stock”**

- (1) In this Chapter “trading stock”, in relation to a trade, means anything (whether land or other property)—
  - (a) which is sold in the ordinary course of trade, or
  - (b) which would be so sold if it were mature or its manufacture, preparation or construction were complete.
- (2) It does not include—
  - (a) materials used in the manufacture, preparation or construction of any such thing,

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (b) any services performed in the ordinary course of the trade, or
- (c) any article produced, or any material used, in the performance of any such services.

### **Chapter not to apply where cash basis used**

**F236 172AA** Nothing in this Chapter applies in calculating the profits of a trade on the cash basis.]

#### **Textual Amendments**

**F236** S. 172AA inserted (with effect in accordance with Sch. 4 paras. 56, 57 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 4 para. 29](#)

#### *Transfers of trading stock between trade and trader*

### **172B Trading stock appropriated by trader**

- (1) This section applies if trading stock of a person's trade is appropriated by the person for any other purpose.
- (2) In calculating the profits of the trade—
  - (a) the amount which the stock appropriated would have realised if sold in the open market at the time of the appropriation is brought into account as a receipt, and
  - (b) the value of anything in fact received for it is left out of account.
- (3) The receipt is treated as arising on the date of the appropriation.

### **172C Trading stock supplied by trader**

- (1) This section applies if something that—
  - (a) belongs to a person carrying on a trade, but
  - (b) is not trading stock of the trade,
 becomes trading stock of the trade.
- (2) In calculating the profits of the trade—
  - (a) the cost of the stock is taken to be the amount which it would have realised if sold in the open market at the time it became trading stock of the trade, and
  - (b) the value of anything in fact given for it is left out of account.
- (3) The cost is treated as being incurred on the date it became trading stock of the trade.

#### *Other disposals not made in the course of trade*

### **172D Disposals not made in the course of trade**

- (1) This section applies if—
  - (a) trading stock of a trade is disposed of otherwise than in the course of a trade, and
  - (b) section 172B does not apply.

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

- (2) In calculating the profits of the trade—
  - (a) the amount which the stock disposed of would have realised if sold in the open market at the time of the disposal is brought into account as the receipt, and
  - (b) any consideration obtained for it is left out of account.
- (3) The receipt is treated as arising on the date of the disposal.
- (4) This section is subject to section 172F.

#### **172E Acquisitions not made in the course of trade**

- (1) This section applies if—
  - (a) trading stock of a trade has been acquired otherwise than in the course of trade, and
  - (b) section 172C does not apply.
- (2) In calculating the profits of the trade—
  - (a) the cost of the stock is taken to be the amount which it would have realised if sold in the open market at the time of the acquisition, and
  - (b) the value of anything in fact given for it is left out of account.
- (3) The cost is treated as being incurred on the date of the acquisition.
- (4) This section is subject to section 172F.

#### *Relationship with transfer pricing rules*

#### **172F Transfer pricing rules to take precedence**

- (1) Section 172D or 172E does not apply if the relevant consideration—
  - (a) falls to be adjusted for tax purposes under [<sup>F237</sup>Part 4 of TIOPA 2010], or
  - (b) falls within [<sup>F238</sup>that Part] without falling to be so adjusted.
- (2) For the purposes of subsection (1)(b), the relevant consideration falls within [<sup>F239</sup>Part 4 of TIOPA 2010 without falling to be adjusted under that Part] if—
  - [<sup>F240</sup>(a) the condition in section 147(1)(a) of TIOPA 2010 is met, and
    - (aa) the participation condition is met (see subsection (2B)), but
    - (b) either—
      - (i) one of the conditions in section 147(1)(c) and (d) of TIOPA 2010 is not met, or
      - (ii) one of the exceptions mentioned in subsection (2A) applies.]

[ The exceptions are those in—

- <sup>F241</sup>(2A)
  - (a) section 447(5) of CTA 2009 (exchange gains or losses from loan relationships),
  - (b) section 694(8) of CTA 2009 (exchange gains or losses from derivative contracts),
  - (c) section 213 of TIOPA 2010 (saving for provisions relating to capital allowances), and
  - (d) section 214 of TIOPA 2010 (saving for provisions relating to chargeable gains).

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

(2B) Section 148 of TIOPA 2010 (when the participation condition is met) applies for the purposes of subsection (2)(aa) as it applies for the purposes of section 147(1)(b) of TIOPA 2010.]

(3) In this section “relevant consideration” means—

- (a) in relation to section 172D, the consideration for the disposal of the stock, and
- (b) in relation to section 172E, the consideration for the acquisition of the trading stock.]

#### Textual Amendments

**F237** Words in s. 172F(1)(a) 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. 121\(2\)](#) (with [Sch. 9 paras. 1-9, 22](#))

**F238** Words in s. 172F(1)(b) 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. 121\(3\)](#) (with [Sch. 9 paras. 1-9, 22](#))

**F239** Words in s. 172F(2) 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. 121\(4\)](#) (with [Sch. 9 paras. 1-9, 22](#))

**F240** S. 172F(2)(a)(aa)(b) substituted (1.4.2010) for s. 172F(2)(a)(b) (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. 121\(5\)](#) (with [Sch. 9 paras. 1-9, 22](#))

**F241** S. 172F(2A)(2B) inserted (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. 121\(6\)](#) (with [Sch. 9 paras. 1-9, 22](#))

## CHAPTER 12

### TRADE PROFITS: VALUATION OF STOCK AND WORK IN PROGRESS [ <sup>F242</sup> ON CESSATION OF TRADE ]

#### Textual Amendments

**F242** Words in Pt. 2 Ch. 12 heading inserted (with effect in accordance with s. 37(2) of the amending Act) by [Finance Act 2008 \(c. 9\), Sch. 15 para. 3](#)

#### *Valuation of trading stock*

### 173 Valuation of trading stock on cessation

- (1) If a person permanently ceases to carry on a trade, in calculating the profits of the trade—
- (a) trading stock belonging to the trade at the time of the cessation must be valued, and
  - (b) the value must be determined in accordance with sections 175 to 178 (bases of valuation).

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (2) But no valuation of the stock is required under this Chapter if [<sup>F243</sup>section 147(3) or (5) of TIOPA 2010] (provision not at arm's length) has effect in relation to any provision which—
- (a) is made or imposed in relation to the stock, and
  - (b) has effect in connection with the cessation.
- (3) If there is a change in the persons carrying on a trade, no valuation of the stock is required under this Chapter so long as a person carrying on the trade immediately before the change continues to carry it on after the change.
- (4) If an individual carries on a trade alone, no valuation of the stock is required under this Chapter if the cessation is because of the individual's death.

#### Textual Amendments

**F243** Words in s. 173(2) 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. 122](#) (with [Sch. 9 paras. 1-9, 22](#))

#### 174 Meaning of “trading stock”

- (1) In this Chapter “trading stock” means—
- (a) any property (whether land or other property) which is sold in the ordinary course of the trade or would be so sold if it were mature or its manufacture, preparation or construction were complete, or
  - (b) materials used in the manufacture, preparation or construction of any property mentioned in paragraph (a).
- (2) In this Chapter “trading stock” includes also any services performed in the ordinary course of the trade—
- (a) the performance of which is wholly or partly completed at the time of the cessation, and
  - (b) for which it would be reasonable to expect that a charge would be made if there were no cessation and, in the case of partly completed services, their performance were fully completed,
- and any article produced, and any material used, in the performance of any such services.
- (3) In this Chapter references to the sale or transfer of trading stock include the sale or transfer of any benefits and rights which accrue, or might reasonably be expected to accrue, from the performance of any such services.

#### 175 Basis of valuation of trading stock

- (1) The value of trading stock belonging to the trade at the time of the cessation is determined as follows.
- (2) If the stock is sold to a person who—
- (a) carries on, or intends to carry on, a trade [<sup>F244</sup>, profession or vocation] in the United Kingdom, and

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (b) is entitled to deduct the cost of the stock as an expense in calculating the profits of that trade<sup>F245</sup>, [profession or vocation] for income or corporation tax purposes,
- the value is determined in accordance with section 176 (sale to unconnected person), 177 (sale to connected person) or 178 (election by connected persons).
- (3) But if section 127 (preventing abuse of the herd basis rules) applies—
- (a) the value is not determined in accordance with any of those sections, and
- (b) the value is instead taken to be that given by section 127 (the price which the animals transferred would have fetched if sold in the open market at the time of the sale).
- (4) In any other case, the value is taken to be the amount which the stock would have realised if sold in the open market at the time of the cessation.

#### Textual Amendments

**F244** Words in s. 175(2)(a) inserted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), [Sch. 1 para. 605\(a\)](#) (with [Sch. 2 Pts. 1, 2](#))

**F245** Words in s. 175(2)(b) inserted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), [Sch. 1 para. 605\(b\)](#) (with [Sch. 2 Pts. 1, 2](#))

### 176 Sale basis of valuation: sale to unconnected person

- (1) The value of trading stock is determined in accordance with this section if—
- (a) it is sold to a person who carries on, or intends to carry on, a trade<sup>F246</sup>, [profession or vocation] in the United Kingdom and is entitled to deduct the cost of the stock as an expense in calculating the profits of that trade<sup>F246</sup>, [profession or vocation] for income or corporation tax purposes, and
- (b) the buyer is not connected with the seller.
- (2) The value is taken to be the amount in fact realised on the sale.
- (3) If the stock is sold together with other assets, so much of the amount realised on the sale as, on a just and reasonable apportionment, is properly attributable to each asset is treated as the amount realised on the sale of that asset.

#### Textual Amendments

**F246** Words in s. 176(1)(a) inserted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), [Sch. 1 para. 606](#) (with [Sch. 2 Pts. 1, 2](#))

### 177 Sale basis of valuation: sale to connected person

- (1) The value of trading stock is determined in accordance with this section if—
- (a) it is sold to a person who carries on, or intends to carry on, a trade<sup>F247</sup>, [profession or vocation] in the United Kingdom and is entitled to deduct the cost of the stock as an expense in calculating the profits of that trade<sup>F247</sup>, [profession or vocation] for income or corporation tax purposes,
- (b) the buyer is connected with the seller, and
- (c) no election is made under section 178 (election by connected persons).



*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (2) The value is taken to be the amount which would have been realised if the sale had been between independent persons dealing at arm's length.

#### Textual Amendments

**F247** Words in s. 177(1)(a) inserted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 607** (with Sch. 2 Pts. 1, 2)

### 178 Sale basis of valuation: election by connected persons

- (1) The value of trading stock is determined in accordance with this section if—
- it is sold to a person who carries on, or intends to carry on, a trade<sup>F248</sup>, profession or vocation] in the United Kingdom and is entitled to deduct the cost of the stock as an expense in calculating the profits of that trade<sup>F248</sup>, profession or vocation] for income or corporation tax purposes,
  - the buyer is connected with the seller, and
  - an election is made under this section.
- (2) The parties to the sale may make an election under this section if the value of the stock determined under section 177 exceeds both—
- its acquisition value, and
  - the amount in fact realised on the sale.
- (3) If an election is made, the value is taken to be—
- its acquisition value, or,
  - if greater, the amount in fact realised on the sale.
- (4) An election under this section must be made by both parties on or before the first anniversary of the normal self-assessment filing date for the tax year in which the cessation occurred.
- (5) The “acquisition value” of trading stock means the amount which would have been deductible as representing its acquisition value, in calculating the profits of the trade, on the following assumptions—
- that the stock had been sold in the course of the trade, immediately before the cessation, for a price equal to the value of the stock determined under section 177, and
  - that the period for which those profits were to be calculated began immediately before the sale.
- (6) If the stock is sold together with other assets, so much of the amount realised on the sale as, on a just and reasonable apportionment, is properly attributable to each asset is treated as the amount realised on the sale of that asset.

#### Textual Amendments

**F248** Words in s. 178(1)(a) inserted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 608** (with Sch. 2 Pts. 1, 2)

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

## 179 Connected persons

For the purposes of sections 175 to 178 two persons are connected with each other if any of the following tests is met—

- (a) they are connected with each other within the meaning of [F249 section 993 of ITA 2007] ,
- (b) one of them is a firm and the other has a right to a share of the assets or income of the firm,
- (c) one of them is a body corporate and the other has control over that body,
- (d) both of them are firms and some other person has a right to a share of the assets or income of both of them, or
- (e) both of them are bodies corporate, or one of them is a firm and the other is a body corporate, and in either case some other person has control over both of them.

### Textual Amendments

**F249** Words in s. 179(a) substituted (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), ss. 1027, 1034, [Sch. 1 para. 501](#) (with transitional provisions and savings in [Sch. 2](#))

## 180 Cost to buyer of stock valued on sale basis of valuation

- (1) This section applies for the purpose of calculating the profits of the trade[F250, profession or vocation] carried on by the buyer of trading stock.
- (2) If the value of the stock is determined in accordance with—
  - (a) section 175(3) or sections 176 to 178 (sale basis of valuation), or
  - (b) [F251 section 164(3) or sections 165 to 167 of CTA 2009] (corresponding corporation tax rules),
 the cost of the stock to the buyer is taken to be the value as so determined.

### Textual Amendments

**F250** Words in s. 180(1) inserted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), [Sch. 1 para. 609\(2\)](#) (with [Sch. 2 Pts. 1, 2](#))

**F251** Words in s. 180(2)(b) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), [Sch. 1 para. 609\(3\)](#) (with [Sch. 2 Pts. 1, 2](#))

## 181 Meaning of “sale” and related expressions

- (1) In sections 175 to 178 (except in section 178(5)) references to a sale include a transfer for valuable consideration.
- (2) In relation to a transfer which is not a sale—
  - “amount realised on the sale” means the value of the consideration given for the transfer,
  - “buyer” means the person to whom the transfer is made, and
  - “seller” means the person who makes the transfer.

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

### *Valuation of work in progress*

#### **182 Valuation of work in progress on cessation**

- (1) If—
  - (a) a person permanently ceases to carry on a profession or vocation, and
  - (b) the work in progress is valued in calculating the profits of the profession or vocation,
 the value must be determined in accordance with section 184 (basis of valuation of work in progress) or 185 (election for valuation at cost).
- (2) If there is a change in the persons carrying on a profession, subsection (1) does not apply so long as a person carrying on the profession immediately before the change continues to carry it on after the change.
- (3) If an individual carries on a profession alone or a vocation, subsection (1) does not apply if the cessation is because of the individual's death.

#### **183 Meaning of “work in progress”**

- (1) In this Chapter “work in progress” means services performed in the ordinary course of the profession or vocation—
  - (a) the performance of which is wholly or partly completed at the time of the cessation, and
  - (b) for which it would be reasonable to expect that a charge would be made if there were no cessation and, in the case of partly completed services, their performance were fully completed,
 and includes any article produced, and any material used, in the performance of any such services.
- (2) In this Chapter references to the transfer of work in progress include the transfer of any benefits and rights which accrue, or might reasonably be expected to accrue, from the performance of any such services.

#### **184 Basis of valuation of work in progress**

- (1) If the work in progress is transferred for money or other valuable consideration to a person who—
  - (a) carries on, or intends to carry on, a [<sup>F252</sup>trade,] profession or vocation in the United Kingdom, and
  - (b) is entitled to deduct the cost of the work as an expense in calculating the profits of that [<sup>F253</sup>trade,] profession or vocation for income or corporation tax purposes,
 the value of the work is taken to be the amount paid or other consideration given for the transfer.
- (2) In any other case, the value of the work is taken to be the amount which would have been paid for a transfer of the work at the time of the cessation as between independent parties dealing at arm's length.
- (3) These rules are subject to any election under section 185 (election for valuation at cost).

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

### Textual Amendments

- F252** Word in s. 184(1)(a) inserted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\)](#), **Sch. 1 para. 610(a)** (with [Sch. 2 Pts. 1, 2](#))
- F253** Word in s. 184(1)(b) inserted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\)](#), **Sch. 1 para. 610(b)** (with [Sch. 2 Pts. 1, 2](#))

## 185 Election for valuation at cost

- (1) The person who was carrying on the profession or vocation immediately before the cessation may elect that—
- the value of work in progress brought into account in calculating the profits of the period immediately before the cessation is to be the actual cost of the work, and
  - the amount by which any sums received for the transfer of the work exceed the actual cost of the work is to be treated as a post-cessation receipt (see Chapter 18).
- (2) An election under this section must be made on or before the first anniversary of the normal self-assessment filing date for the tax year in which the cessation occurred.

### Supplementary

## 186 Determination of questions <sup>F254</sup> ...

- (1) Any question arising under—
- section 175(3) or sections 176 to 178 (sale basis of valuation of trading stock), or
  - section 184(1) (valuation of work in progress transferred for valuable consideration),
- must be determined <sup>F255</sup> ... in the same way as an appeal.

<sup>F256</sup>(2) .....

<sup>F256</sup>(3) .....

<sup>F256</sup>(4) .....

### Textual Amendments

- F254** Words in s. 186 heading omitted (1.4.2009) by virtue of [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 439(2)**
- F255** Words in s. 186(1) omitted (1.4.2009) by virtue of [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 439(3)**
- F256** S. 186(2)-(4) omitted (1.4.2009) by virtue of [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 439(4)**

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

## CHAPTER 13

### DEDUCTIONS FROM PROFITS: UNREMITTABLE AMOUNTS

#### 187 Professions and vocations

The provisions of this Chapter apply to professions and vocations as they apply to trades.

#### 188 Application of Chapter

- (1) This Chapter applies if—
  - (a) an amount received by, or owed to, a person carrying on a trade (“the trader”) is brought into account as a receipt in calculating the profits of the trade,
  - (b) the amount is paid or owed in a territory outside the United Kingdom, and
  - (c) some or all of the amount is unremittable.
- (2) An amount received is unremittable if it cannot be transferred to the United Kingdom merely because of foreign exchange restrictions.
- (3) An amount owed is unremittable if it cannot be paid in the United Kingdom and—
  - (a) it temporarily cannot be paid in the territory in which it is owed merely because of foreign exchange restrictions, or
  - (b) it can be paid in that territory but, if it were paid there, the amount paid would not be transferable to the United Kingdom merely because of foreign exchange restrictions.
- (4) “Foreign exchange restrictions” are restrictions imposed by any of the following—
  - (a) the laws of the territory where the amount is paid or owed,
  - (b) executive action of its government, and
  - (c) the impossibility of obtaining there currency that could be transferred to the United Kingdom.

#### [<sup>F257</sup>188A] Chapter not to apply where cash basis used

Nothing in this Chapter applies in calculating the profits of a trade on the cash basis.]

#### Textual Amendments

**F257** S. 188AA inserted (with effect in accordance with Sch. 4 paras. 56, 57 of the amending Act) by [Finance Act 2013 \(c. 29\), Sch. 4 para. 30](#)

#### 189 Relief for unremittable amounts

- (1) If—
  - (a) the trader has profits from the trade in a period of account, and
  - (b) an unremittable amount has been brought into account as a receipt for that period,a deduction of the amount is allowed from those profits (but see subsection (5)).
- (2) If the trader has profits from the trade in a period of account and the total of—

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (a) any unremittable amounts brought into account as receipts for that period, and
  - (b) any amount carried forward under this subsection or subsection (3) from the previous period of account,
- exceeds the amount of those profits, the excess may be carried forward to the next period of account.
- (3) If the trader does not have profits from the trade in a period of account and an unremittable amount has been brought into account as a receipt for that period, the total of—
- (a) any unremittable amounts brought into account as receipts for that period, and
  - (b) any amount carried forward under this subsection or subsection (2) from the previous period of account,
- may be carried forward to the next period of account.
- (4) If an amount is carried forward under this section to a period of account in which the trader has profits from the trade, a deduction of the amount is allowed from those profits (but see subsection (5)).
- (5) The total amount deducted under this section from the profits from a trade in a period of account must not exceed the amount of the profits.

## **190 Restrictions on relief**

- (1) No deduction is allowed under section 189 in relation to an amount so far as—
- (a) it is used to finance expenditure or investment outside the United Kingdom, or
  - (b) it is applied outside the United Kingdom in another way.
- (2) No deduction is allowed under section 189 in relation to an amount owed so far as a deduction is allowed in respect of it under section 35 (bad and doubtful debts).
- (3) No deduction is allowed under section 189 in relation to an amount owed so far as a payment under a contract of insurance has been received in relation to it.
- (4) No deduction is allowed under section 189 in relation to an amount brought into account in calculating profits if relief under section 842 (unremittable income) may be claimed in relation to that amount.

## **191 Withdrawal of relief**

- (1) This section applies if—
- (a) some or all of an unremittable amount has been deducted from profits under section 189, and
  - (b) any of the following events occurs.
- (2) The events are that—
- (a) the amount or part of it ceases to be unremittable,
  - (b) the amount or part of it is used to finance expenditure or investment outside the United Kingdom,
  - (c) the amount or part of it is applied outside the United Kingdom in another way,
  - (d) the amount or part of it is exchanged for, or discharged by, an amount that is not unremittable,

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (e) a deduction is allowed in respect of the amount or part of it under section 35 (bad and doubtful debts), and
  - (f) if the amount is an amount owed, a payment under a contract of insurance is received in relation to the amount or part of it.
- (3) The amount or the part of it in question is brought into account as a receipt in calculating the profits of the trade for the period of account in which the event occurs, but only so far as—
- (a) it has been deducted from profits under section 189, and
  - (b) it has not already been brought into account as a receipt in calculating the profits of the trade as a result of this section.
- (4) If the event is the receipt of a payment under a contract of insurance, the amount brought into account as a receipt must not exceed the amount of the payment.

## CHAPTER 14

### DISPOSAL AND ACQUISITION OF KNOW-HOW

#### [<sup>F258</sup>191A] Chapter not to apply where cash basis used

Nothing in this Chapter applies in calculating the profits of a trade on the cash basis.]

#### Textual Amendments

**F258** S. 191A inserted (with effect in accordance with Sch. 4 paras. 56, 57 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 4 para. 31](#)

#### 192 Meaning of “know-how” etc.

- (1) In this Chapter “know-how” means any industrial information or techniques likely to assist in—
- (a) manufacturing or processing goods or materials,
  - (b) working a source of mineral deposits (including searching for, discovering or testing mineral deposits or obtaining access to them), or
  - (c) carrying out any agricultural, forestry or fishing operations.
- (2) For this purpose—
- “mineral deposits” includes any natural deposits capable of being lifted or extracted from the earth and for this purpose geothermal energy is treated as a natural deposit, and
- “source of mineral deposits” includes a mine, an oil well and a source of geothermal energy.
- (3) For the purposes of this Chapter any consideration received for giving, or wholly or partly fulfilling, an undertaking which—
- (a) is given in connection with a disposal of know-how, and
  - (b) restricts, or is designed to restrict, any person's activities in any way,
- is treated as consideration received for the disposal of the know-how.

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

- (4) It does not matter whether or not the undertaking is legally enforceable.
- (5) For the purposes of this Chapter references to a sale of know-how include an exchange of know-how and any provision of this Chapter referring to a sale has effect with the necessary modifications.
- (6) Those modifications include, in particular, reading references to the proceeds of sale and to the price as including the consideration for the exchange.

### **193 Disposal of know-how if trade continues to be carried on**

- (1) This section applies if—
  - (a) a person carrying on a trade receives consideration for the disposal of know-how which has been used in the trade,
  - (b) the person continues to carry on the trade after the disposal, and
  - (c) neither section 194 (disposal of know-how as part of disposal of all or part of a trade) nor section 195 (seller controlled by buyer etc.) applies.
- (2) The amount or value of the consideration is treated for all purposes as a trading receipt, except so far as it is brought into account under section 462 of CAA 2001 (disposal values).
- (3) If the know-how is sold together with other property, the net proceeds of the sale of the know-how are treated as being so much of the net proceeds of the sale of all the property as, on a just and reasonable apportionment, is attributable to the know-how.
- (4) For this purpose all property sold as a result of one bargain is treated as sold together even though—
  - (a) separate prices are, or purport to be, agreed for separate items of that property, or
  - (b) there are, or purport to be, separate sales of separate items of that property.
- (5) Any question about the way in which a sum is to be apportioned under this section must be determined in accordance with section 563(2) to (6) of CAA 2001 (procedure for determining certain questions affecting two or more persons) if it materially affects two or more taxpayers.
- (6) For this purpose a question materially affects two or more taxpayers if at the time when the question falls to be determined it appears that the determination is material to the liability to tax (for whatever period) of two or more persons.

### **194 Disposal of know-how as part of disposal of all or part of a trade**

- (1) This section applies if—
  - (a) a person carrying on a trade receives consideration for the disposal of know-how which has been used in the trade, and
  - (b) the know-how is disposed of as part of the disposal of all or part of the trade.
- (2) If the person disposing of the know-how is within the charge to income tax, the consideration is treated for income tax purposes as a capital receipt for goodwill.
- (3) If the person acquiring the know-how—
  - (a) is within the charge to income tax, and



*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (b) provided the consideration,  
the consideration is treated for income tax purposes as a capital payment for goodwill.
- (4) But the consideration is not treated for income tax purposes as a capital payment for goodwill if, before the acquisition, the trade was carried on wholly outside the United Kingdom.
- (5) If the person disposing of the know-how is within the charge to income tax—
- (a) that person, and
  - (b) the person acquiring the know-how (whether or not within the charge to income tax),
- may jointly elect for this section not to apply (but see section 195).
- (6) The election must be made within two years of the disposal.
- (7) If—
- (a) an election is made under [<sup>F259</sup>section 178 of CTA 2009] (corresponding corporation tax provision), and
  - (b) the person making the acquisition mentioned in [<sup>F260</sup>that section] is within the charge to income tax,
- the persons making the election under [<sup>F260</sup>that section] are treated as also making an election under this section (even though the person disposing of the know-how is not within the charge to income tax).

#### Textual Amendments

**F259** Words in s. 194(7)(a) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 611\(a\)](#) (with [Sch. 2 Pts. 1, 2](#))

**F260** Words in s. 194(7) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 611\(b\)](#) (with [Sch. 2 Pts. 1, 2](#))

### 195 Seller controlled by buyer etc.

- (1) This section applies if a disposal of know-how is by way of sale and—
- (a) the seller is a body of persons over which the buyer has control,
  - (b) the buyer is a body of persons over which the seller has control, or
  - (c) both the seller and the buyer are bodies of persons and another person has control over both of them.
- (2) In such a case—
- (a) section 193 does not apply, and
  - (b) no election may be made under section 194.
- (3) For the purposes of this section “body of persons” includes a firm.

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

## CHAPTER 15

### BASIS PERIODS

#### Modifications etc. (not altering text)

**C11** Pt. 2 Ch. 15 excluded (14.2.2006 with effect as mentioned in reg. 1(2) of the amending S.I.) by S.I. 1997/2681 reg. 6(1)(a) as amended by [The Lloyd's Underwriters \(Scottish Limited Partnerships\) \(Tax\) \(Amendment\) Regulations 2006 \(S.I. 2006/111\)](#), **reg. 8**

#### *Introduction*

### 196 Professions and vocations

The provisions of this Chapter apply to professions and vocations as they apply to trades.

#### *Accounting date*

### 197 Meaning of “accounting date”

- (1) In this Chapter “accounting date”, in relation to a tax year, means—
  - (a) the date in the tax year to which accounts are drawn up, or
  - (b) if there are two or more such dates, the latest of them.
- (2) This is subject to—
  - (a) section 211(2) (middle date treated as accounting date), and
  - (b) section 214(3) (date treated as accounting date if date changed in tax year in which there is no accounting date).

#### *The normal rules*

### 198 General rule

- (1) The general rule is that the basis period for a tax year is the period of 12 months ending with the accounting date in that tax year.
- (2) This applies unless a different basis period is given by one of the following sections—
  - section 199 (first tax year),
  - section 200 (second tax year),
  - section 201 (tax year in which there is no accounting date),
  - section 202 (final tax year),
  - section 209 or 210 (first accounting date shortly before end of tax year),
  - section 212 (tax year in which middle date treated as accounting date),
  - section 215 (change of accounting date in third tax year), and
  - section 216 (change of accounting date in later tax year).

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

## **199 First tax year**

- (1) The basis period for the tax year in which a person starts to carry on a trade—
  - (a) begins with the date on which the person starts to carry on the trade, and
  - (b) ends with 5th April in the tax year.
- (2) But if a person starts and permanently ceases to carry on a trade in the same tax year, the basis period for the tax year is that given by section 202(2).

## **200 Second tax year**

- (1) The basis period for the second tax year in which a person carries on a trade is determined as follows.
- (2) If in that tax year—
  - (a) the accounting date falls less than 12 months after the date on which the person starts to carry on the trade, and
  - (b) the person does not permanently cease to carry on the trade,the basis period is the period of 12 months beginning with the date on which the person starts to carry on the trade.
- (3) If in that tax year—
  - (a) the accounting date falls 12 months or more after the date on which the person starts to carry on the trade, and
  - (b) the person does not permanently cease to carry on the trade,the basis period is that given by the general rule in section 198.
- (4) If in that tax year—
  - (a) there is no accounting date, and
  - (b) the person does not permanently cease to carry on the trade,the basis period is the same as the tax year.
- (5) If in that tax year the person permanently ceases to carry on the trade, the basis period is that given by section 202(1).

## **201 Tax year in which there is no accounting date**

- (1) If a person carries on a trade in a tax year and—
  - (a) there is no accounting date in the tax year, and
  - (b) the person does not start or permanently cease to carry on the trade in the tax year,the basis period for the tax year is the period of 12 months beginning immediately after the end of the basis period for the previous tax year.
- (2) But this is subject to—
  - (a) section 200 (second tax year), and
  - (b) sections 215 and 216 (change of accounting date in third tax year or later tax year).

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

## 202 Final tax year

- (1) The basis period for the tax year in which a person permanently ceases to carry on a trade—
  - (a) begins immediately after the end of the basis period for the previous tax year, and
  - (b) ends with the date on which the person permanently ceases to carry on the trade.
- (2) But if a person starts and permanently ceases to carry on a trade in the same tax year, the basis period—
  - (a) begins with the date on which the person starts to carry on the trade, and
  - (b) ends with the date on which the person permanently ceases to carry on the trade.

### *Apportionment of profits*

## 203 Apportionment etc. of profits to basis periods

- (1) This section applies if the basis period for a tax year does not coincide with a period of account.
- (2) Any of the following steps may be taken if they are necessary in order to arrive at the profits or losses of the basis period—
  - (a) apportioning the profits or losses of a period of account to the parts of that period falling in different basis periods, and
  - (b) adding the profits or losses of a period of account (or part of a period) to profits or losses of other periods of account (or parts).
- (3) The steps must be taken by reference to the number of days in the periods concerned.
- (4) But the person carrying on the trade may use a different way of measuring the length of the periods concerned if—
  - (a) it is reasonable to do so, and
  - (b) the way of measuring the length of periods is used consistently for the purposes of the trade.

### **Modifications etc. (not altering text)**

**C12** S. 203(3)(4) applied (6.4.2007 with effect as stated in [s. 1034\(1\)](#) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), [ss. 90\(4\), 1034](#) (with transitional provisions and savings in [Sch. 2](#))

### *Overlap profits and losses*

## 204 Meaning of “overlap period” and “overlap profit”

In this Chapter—

“overlap period” means a period which falls within two basis periods, and  
 “overlap profit” means profit which arises in an overlap period.

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

## **205 Deduction for overlap profit in final tax year**

- (1) If a person permanently ceases to carry on a trade in a tax year, a deduction is allowed for overlap profit in calculating the profits of the trade of the tax year.
- (2) The amount of the deduction is calculated as follows.

### *Step 1*

Add together the overlap profits arising in all overlap periods.

### *Step 2*

Subtract from that any deductions for overlap profit made under section 220 (deduction for overlap profit on change of accounting date).

The balance is the amount of the deduction allowed under this section.

## **206 Restriction on bringing losses into account twice**

If a loss arises in, or is apportioned under section 203 to, two overlapping basis periods, the amount of the loss—

- (a) is brought into account in calculating the profits of the first basis period, and
- (b) is not brought into account in calculating the profits of the second basis period.

## **207 Treatment of business start-up payments received in an overlap period**

- (1) This section applies if—
  - (a) a person carrying on a trade receives a business start-up payment (see subsection (3)) in a period which falls within two basis periods, and
  - (b) the payment is not a lump sum payment.
- (2) The payment—
  - (a) is brought into account in calculating the profits of the trade of the first basis period, and
  - (b) is not brought into account in calculating the profits of the trade of the second basis period.
- (3) A “business start-up payment” means a payment under a Business Start-Up scheme which is of the kind originally known as enterprise allowance and is made—
  - (a) in England and Wales, by a training and enterprise council pursuant to arrangements under section 2(2)(d) of the Employment and Training Act 1973 (c. 50),
  - (b) in Scotland, by a local enterprise company under section 2(4)(c) of the Enterprise and New Towns (Scotland) Act 1990 (c. 35) in relation to arrangements under section 2(3) of that Act, or
  - (c) in Northern Ireland, by or on behalf of the Department for Employment and Learning under section 1(1A)(d) of the Employment and Training Act (Northern Ireland) 1950 (c. 29 (N.I.)).

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

*Rules where first accounting date shortly before end of tax year*

**208 When the late accounting date rules apply**

- (1) Sections 209 and 210 contain rules for the purpose of—
  - (a) avoiding the need to apportion profits, and
  - (b) preventing overlap profit from arising,
 in relation to the tax year in which a person (“the trader”) starts to carry on a trade and the following tax year.
- (2) Sections 209 and 210 apply in relation to a tax year if—
  - (a) the first accounting date is 31st March or 1st, 2nd, 3rd or 4th April, and
  - (b) that date falls in the tax year in which the trader starts to carry on the trade or in either of the following two tax years,
 but the trader may elect for those sections not to apply in relation to a tax year.
- (3) In this section and section 210 “the first accounting date” means—
  - (a) the first accounting date after the trader starts to carry on the trade, or
  - (b) the date that is intended to be that accounting date if, at the time the trader delivers a return for a tax year, there has been no accounting date.
- (4) An election under this section must be made on or before the first anniversary of the normal self-assessment filing date for the tax year to which it relates.

**209 Rule if there is an accounting date**

- (1) This section applies if there is an accounting date in a tax year and that date is 31st March or 1st, 2nd, 3rd or 4th April.
- (2) If—
  - (a) the basis period for the tax year would otherwise end after the accounting date, and
  - (b) the part of the basis period that would otherwise fall after the accounting date is included in the basis period for the following tax year,
 the basis period for the tax year ends on the accounting date.

**210 Rules if there is no accounting date**

- (1) This section applies if there is no accounting date in a tax year (“the relevant tax year”).
- (2) If the trader—
  - (a) starts to carry on the trade in the relevant tax year, and
  - (b) does so before 1st April,
 the basis period ends on the date in the relevant tax year that corresponds to the first accounting date.
- (3) If the trader started to carry on the trade in the previous tax year and there was no accounting date in the previous tax year, the basis period for the relevant tax year—
  - (a) begins immediately after the end of the basis period for the previous tax year, and

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

- (b) ends on the date in the relevant tax year that corresponds to the first accounting date.
- (4) If the trader—
  - (a) starts to carry on the trade in the relevant tax year, and
  - (b) does so after 31st March,the profits or losses of the trade of the relevant tax year are treated as nil.
- (5) In that case, the actual profits or losses of the trade of the relevant tax year are treated as arising in the basis period for the following tax year, so far as they do not already do so.

*Slight variations in accounting date*

## **211 Treating middle date as accounting date**

- (1) This section applies for the purpose of preventing the rules in sections 215 to 220 from applying if—
  - (a) accounts of a trade are drawn up to a particular day (rather than to a particular date), and
  - (b) that day is capable of falling on one of only 7 consecutive dates (or, if that day is in February, on one of only 8 consecutive dates).
- (2) The person carrying on the trade may elect in relation to a tax year for the fourth of those dates (“the middle date”) to be treated as the accounting date in the tax year.
- (3) The election has effect for the purposes of this Chapter, but not for any other purposes.
- (4) An election under this section—
  - (a) must specify the day to which the accounts are drawn up and the middle date, and
  - (b) must be made on or before the first anniversary of the normal self-assessment filing date for the tax year to which it relates.

## **212 Consequence of treating middle date as accounting date**

- (1) If—
  - (a) a date (“the middle date”) is treated under section 211 as the accounting date in a tax year (“the current tax year”),
  - (b) the basis period for the current tax year would otherwise be that given by the general rule in section 198, and
  - (c) subsection (2) or (3) applies,the basis period for the current tax year begins immediately after the end of the basis period for the previous tax year and ends with the middle date.
- (2) This subsection applies if—
  - (a) the accounting date in the previous tax year was not determined under section 211, and
  - (b) that accounting date was one of the 7 (or 8) dates on which the day in the current tax year to which accounts are drawn up is capable of falling.
- (3) This subsection applies if—

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

- (a) the accounting date in the previous tax year was determined under section 211, and
- (b) the accounting date in the current tax year is the same as the accounting date in the previous tax year.

### **213 Circumstances in which middle date not treated as accounting date**

(1) If—

- (a) a date (“the middle date”) is treated under section 211 as the accounting date in a tax year (“the earlier tax year”),
- (b) the basis period for the earlier tax year ends on the middle date, and
- (c) the basis period for the following tax year (“the later tax year”) is that given by one of the provisions listed in subsection (2),

the basis period for the later tax year is determined as if the basis period for the earlier tax year had ended on the date to which accounts were actually drawn up in the earlier tax year.

(2) The provisions are—

- (a) section 201(1) (tax year in which there is no accounting date),
- (b) section 202(1) (tax year in which person permanently ceases to carry on a trade),
- (c) section 215(2) (change of accounting date in third tax year), and
- (d) section 216(3) (change of accounting date in later tax year).

*Special rules if accounting date changes*

### **214 When a change of accounting date occurs**

(1) If there is a change from one accounting date (“the old accounting date”) to another accounting date (“the new accounting date”), the change of accounting date occurs—

- (a) in the first tax year in which accounts are drawn up to the new accounting date, or
- (b) if earlier, in the first tax year in which accounts are not drawn up to the old accounting date.

(2) A change from a date determined under section 211 to an actual accounting date is taken to be a change from one accounting date to another, even if the two dates are the same.

(3) If, because of subsection (1)(b), a change of accounting date occurs in a tax year in which there is no actual accounting date, the date corresponding to the new accounting date is treated as the accounting date in that tax year for the purpose of determining—

- (a) the basis period for that tax year, and
- (b) if section 219 applies, the basis period for the following tax year.

### **215 Change of accounting date in third tax year**

(1) This section applies if—

- (a) a change of accounting date occurs in the third tax year in which a person carries on a trade,



---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

- (b) the person does not permanently cease to carry on the trade in that tax year, and
  - (c) the accounting date in that tax year falls more than 12 months after the end of the basis period for the second tax year in which the person carries on the trade.
- (2) The basis period—
- (a) begins immediately after the end of the basis period for the second tax year in which the person carries on the trade, and
  - (b) ends with the accounting date in the third tax year in which the person carries on the trade.

## **216 Change of accounting date in later tax year**

- (1) This section applies if—
- (a) a change of accounting date occurs in a tax year in which a person carries on a trade,
  - (b) the tax year is later than the third tax year in which the person carries on the trade, and
  - (c) the person does not permanently cease to carry on the trade in the tax year.
- (2) If—
- (a) the conditions in section 217 are met (conditions for basis period to end with new accounting date), and
  - (b) the new accounting date falls less than 12 months after the end of the basis period for the previous tax year,
- the basis period is that given by the general rule in section 198.
- (3) If—
- (a) the conditions in section 217 are met, and
  - (b) the new accounting date falls more than 12 months after the end of the basis period for the previous tax year,
- the basis period begins immediately after the end of the basis period for the previous tax year and ends with the accounting date.
- (4) If the conditions in section 217 are not met, the basis period for the tax year is the period of 12 months ending with the old accounting date.

## **217 Conditions for basis period to end with new accounting date**

- (1) The conditions in this section are met if—
- (a) the person carrying on the trade gives appropriate notice of the change of accounting date to [<sup>F261</sup>an officer of Revenue and Customs](see subsection (2)),
  - (b) the 18 month test is met (see subsection (3)), and
  - (c) either condition A or B is met (see subsections (4) to (6)).
- (2) Appropriate notice of the change of accounting date is given to [<sup>F261</sup>an officer of Revenue and Customs] if (and only if) the notice is given—
- (a) in a return under the provision of TMA 1970 that applies to the person carrying on a trade (see section 8, 8A or 12AA of that Act), and

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (b) on or before the day on which the return is required to be made and delivered under that provision.
- (3) The 18 month test is met if the period of account ending—
  - (a) with the new accounting date in the tax year in which the change of accounting date occurs, or
  - (b) if there is no new accounting date in that tax year, with the new accounting date in the first tax year in which accounts are drawn up to the new accounting date,
 is not longer than 18 months.
- (4) Condition A is that, in the 5 tax years immediately before the tax year in which the change of accounting date occurs, there has been no change of accounting date that counts for the purposes of this condition.
- (5) A change of accounting date counts for the purposes of condition A if it results in the basis period for the tax year in which the change occurs ending with the accounting date in that tax year.
- (6) Condition B is that—
  - (a) the change of accounting date is made for commercial reasons (see section 218), and
  - (b) the notice under subsection (2) sets out the reasons for the change.

#### Textual Amendments

**F261** Words in s. 217(1)(2) substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005](#) (c. 11), ss. 50, 53(1), [Sch. 4 para. 132\(1\)](#); S.I. 2005/1126, [art. 2\(h\)](#)

### 218 Commercial reasons for change of accounting date

- (1) If the Inland Revenue [<sup>F262</sup>does] not give notice under this section to the person carrying on the trade, a change of accounting date is treated for the purposes of condition B in section 217 as made for commercial reasons.
- (2) If the Inland Revenue [<sup>F262</sup>does] give notice under this section to the person carrying on the trade, a change of accounting date is treated for the purposes of condition B in section 217 as made for reasons which are not commercial.
- (3) The notice must—
  - (a) state that [<sup>F263</sup>the officer is not] satisfied that the change of accounting date is made for commercial reasons, and
  - (b) be given within the period of 60 days beginning with the date on which the notice under section 217(2) is received.
- (4) A person to whom notice is given under this section may appeal against it within the period of 30 days beginning with the date on which it is given.
- (5) On an appeal [<sup>F264</sup>that is notified to the tribunal] —
  - (a) if the [<sup>F265</sup>tribunal is] satisfied that the change is made for commercial reasons, [<sup>F266</sup>the tribunal] may set aside the notice, and
  - (b) if [<sup>F267</sup>the tribunal is] not satisfied that the change is made for commercial reasons, [<sup>F268</sup>the tribunal may] confirm the notice.

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (6) For the purposes of this section obtaining a tax advantage is not a commercial reason.
- (7) Part 5 of TMA 1970 (appeals against assessments to tax), apart from section 50, applies in relation to an appeal under this section as it applies in relation to an appeal against an assessment to tax.

#### Textual Amendments

- F262** Words in s. 218(1)(2) substituted (18.4.2005) by Commissioners for Revenue and Customs Act 2005 ss. 50, 53(1), {Sch. 4 para. 133(2)(a)}; **S.I. 2005/1126, art. 2(h)**
- F263** Words in s. 218(3)(a) substituted (18.4.2005) by Commissioners for Revenue and Customs Act 2005 ss. 50, 53(1), {Sch. 4 para. 133(2)(b)}; **S.I. 2005/1126, art. 2(h)**
- F264** Words in s. 218(5) inserted (1.4.2009) by The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56), art. 1(2), **Sch. 1 para. 440(2)(a)**
- F265** Words in s. 218(5)(a) substituted (1.4.2009) by The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56), art. 1(2), **Sch. 1 para. 440(2)(b)(i)**
- F266** Words in s. 218(5)(a) substituted (1.4.2009) by The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56), art. 1(2), **Sch. 1 para. 440(2)(b)(ii)**
- F267** Words in s. 218(5)(b) substituted (1.4.2009) by The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56), art. 1(2), **Sch. 1 para. 440(2)(c)(i)**
- F268** Words in s. 218(5)(b) substituted (1.4.2009) by The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56), art. 1(2), **Sch. 1 para. 440(2)(c)(ii)**

### 219 The year after an ineffective change of accounting date

- (1) This section applies to a tax year in which a person carries on a trade if—
  - (a) the tax year falls immediately after a tax year in which a change of accounting date occurs, and
  - (b) the basis period for the tax year in which the change occurs ends with the old accounting date.
- (2) If the accounting date in the tax year is the new accounting date, a change of accounting date is treated as occurring in that tax year for the purposes of sections 216 to 220 (including this section).
- (3) If the accounting date in the tax year reverts to the old accounting date, that change of accounting date is ignored for the purposes of—
  - (a) section 214, and
  - (b) sections 216 to 220 (including this section).

### 220 Deduction for overlap profit on change of accounting date

- (1) This section applies for the purpose of calculating the profits of a trade of a tax year if—
  - (a) a change of accounting date occurs in the tax year, and
  - (b) the basis period for the tax year is longer than 12 months.
- (2) A deduction must be made for overlap profit.
- (3) The amount of the deduction is calculated as follows.

*Step 1*

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

Add together the overlap profit arising in all overlap periods ending before the end of the tax year.

*Step 2*

Subtract from that any deductions made under this section for previous tax years.

The balance is “the remaining overlap profit”.

*Step 3*

Add together the number of days in all overlap periods ending before the end of the tax year.

Subtract from that the total number of days given by Step 5 on any previous occasions on which a deduction was made under this section.

The balance is “the number of days on which the remaining overlap profit arises”.

*Step 4*

Divide the remaining overlap profit by the number of days on which the remaining overlap profit arises.

The result of this step is “one day's worth of remaining overlap profit”.

*Step 5*

Subtract the number of days in the tax year from the number of days in the basis period.

The balance is “the number of days' worth of overlap profit that may be deducted on this occasion”.

*Step 6*

Multiply one day's worth of remaining overlap profit (see Step 4) by the number of days' worth of overlap profit that may be deducted on this occasion (see Step 5).

The result of this step is the amount of the deduction.

- (4) The above steps are expressed in terms of numbers of days in periods, but the person carrying on the trade may use a different way of measuring the length of the periods concerned if—
- (a) it is reasonable to do so, and
  - (b) the way of measuring the length of periods is used consistently for the purposes of the trade.
- (5) If the accounting date in the tax year is 31st March or 1st, 2nd, 3rd or 4th April, the person carrying on the trade may treat the basis period for the tax year as ending on 5th April for the purpose of calculating the amount of the deduction.
- (6) If a period used in calculating the amount of the deduction contains a 29th February and—
- (a) the accounting date in the tax year is 5th April, or
  - (b) the basis period for the tax year is treated under subsection (5) as ending on 5th April,

the person carrying on the trade may ignore the 29th February for the purpose of calculating the amount of the deduction.

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

## CHAPTER 16

### AVERAGING PROFITS OF FARMERS AND CREATIVE ARTISTS

#### 221 Claim for averaging of fluctuating profits

- (1) This Chapter enables an individual (a “taxpayer”) to make a claim (an “averaging claim”) if—
  - (a) the taxpayer is, or has been, carrying on a qualifying trade, profession or vocation (alone or in partnership), and
  - (b) the taxpayer's profits from it (“the relevant profits”) fluctuate from one tax year to the next.
- (2) A trade, profession or vocation is a “qualifying trade, profession or vocation” if—
  - (a) it is farming or market gardening in the United Kingdom,
  - (b) it is the intensive rearing in the United Kingdom of livestock or fish on a commercial basis for the production of food for human consumption, or
  - (c) the taxpayer's profits from it are derived wholly or mainly from creative works.
- (3) For this purpose “creative works” means—
  - (a) literary, dramatic, musical or artistic works, or
  - (b) designs,created by the taxpayer personally or, if the qualifying trade, profession or vocation is carried on in partnership, by one or more of the partners personally.
- (4) For the purposes of this Chapter references to the relevant profits of a tax year are to profits before making any deduction for a loss made in any tax year.
- (5) If the taxpayer makes a loss in the qualifying trade, profession or vocation in a tax year, the relevant profits of the tax year for the purposes of this Chapter are nil.
- [<sup>F269</sup>(6) For the purposes of this Chapter references to the relevant profits of a tax year are to profits after any adjustment made under Chapter 16ZA (compensation for compulsory slaughter of animals).]

#### Textual Amendments

**F269** S. 221(6) inserted (1.3.2012) by [The Enactment of Extra-Statutory Concessions Order 2012 \(S.I. 2012/266\)](#), arts. 1, 7 (with art. 9)

#### [<sup>F270</sup>221A] Claim not available where cash basis used

Nothing in this Chapter applies in calculating the profits of a trade on the cash basis.]

#### Textual Amendments

**F270** S. 221A inserted (with effect in accordance with Sch. 4 paras. 56, 57 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 4 para. 32](#)

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

## 222 Circumstances in which claim may be made

- (1) An averaging claim may be made in relation to two consecutive tax years in which a taxpayer is or has been carrying on the qualifying trade, profession or vocation if—
  - (a) the relevant profits of one of the tax years are less than 75% of the relevant profits of the other tax year, or
  - (b) the relevant profits of one (but not both) of the tax years are nil.
- (2) An averaging claim may be made in relation to a tax year which was the later year on a previous averaging claim.
- (3) An averaging claim may not be made in relation to a tax year if an averaging claim has already been made in relation to a later tax year in respect of the trade, profession or vocation.
- (4) An averaging claim may not be made in relation to the tax year in which—
  - (a) the taxpayer starts, or permanently ceases, to carry on the trade, profession or vocation, or
  - (b) in the case of a trade, profession or vocation within section 221(2)(c), it begins or ceases to be a qualifying trade, profession or vocation.
- (5) An averaging claim must be made on or before the first anniversary of the normal self-assessment filing date for the second of the tax years to which the claim relates.
- (6) But see section 225(4) (extended time limit if profits adjusted for some other reason).

## 223 Adjustment of profits

- (1) If a taxpayer makes an averaging claim, the amount taken to be the taxpayer's profits of each of the tax years for which the claim is made is adjusted in accordance with this section.
- (2) But this is subject to paragraph 3 of Schedule 1B to TMA 1970 (claim given effect in the second of the two tax years).
- (3) If—
  - (a) the relevant profits of one of the tax years are 70% or less of the relevant profits of the other tax year, or
  - (b) the relevant profits of one (but not both) of the tax years are nil,
 the amount of the adjusted profits of each of the tax years is the average of the relevant profits of the two tax years.
- (4) If the relevant profits of one of the tax years—
  - (a) are more than 70%, but
  - (b) are less than 75%,
 of the relevant profits of the other tax year, the amount of the adjusted profits of each of the tax years is calculated as follows, so as to reduce the variation between them.

### *Step 1*

Calculate the amount of the adjustment by applying the formula—

$$(D \times 3) - (P \times 0.75)$$

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

where—

D is the difference between the relevant profits of the two tax years, and

P is the relevant profits of the tax year of which those profits are higher.

*Step 2*

Add the amount of the adjustment to the relevant profits of the tax year of which those profits are lower.

The result is the amount of the adjusted profits of that tax year.

*Step 3*

Subtract the amount of the adjustment from the relevant profits of the tax year of which those profits are higher.

The result is the amount of the adjusted profits of that tax year.

## **224 Effect of adjustment**

- (1) The adjusted profits are taken to be the relevant profits of the tax years to which the claim relates for all income tax purposes, including the further application of this Chapter.
- (2) This is subject to—
  - (a) subsection (3) of this section and section 225(2), and
  - (b) paragraph 3 of Schedule 1B to TMA 1970.
- (3) If the relevant profits of one of the tax years are nil, this Chapter does not prevent the taxpayer from obtaining relief under the Income Tax Acts for a loss made by the taxpayer in the tax year in question or any other tax year.
- (4) A claim by the taxpayer for relief under any other provision of the Income Tax Acts for either of the tax years to which an averaging claim relates (“the other claim”)—
  - (a) is not out of time if made on or before the last date on which the averaging claim could have been made, and
  - (b) if already made, may be amended or revoked on or before that date.
- (5) For this purpose—
  - (a) references to a claim include an election or notice, and
  - (b) if the other claim is made in a return, the reference to amending or revoking the other claim is to amending the return by amending or omitting the other claim.
- (6) For provision determining in which tax year a claim, amendment or revocation made as a result of subsection (4) has effect, see paragraph 4 of Schedule 1B to TMA 1970 (claim, amendment or revocation given effect in the second of the two tax years).

## **225 Effect of later adjustment of profits**

- (1) This section applies if, after the taxpayer has made an averaging claim, the relevant profits in either or both of the tax years to which the claim relates are adjusted for another reason.

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (2) The averaging claim is ignored.
- (3) But this does not prevent a further averaging claim from being made in relation to the taxpayer's profits as adjusted for the other reason.
- (4) A further averaging claim is not out of time as long as it is made on or before the first anniversary of the normal self-assessment filing date for the tax year in which the adjustment for the other reason is made.

## [<sup>F271</sup>CHAPTER 16ZA

### COMPENSATION FOR COMPULSORY SLAUGHTER OF ANIMALS

#### Textual Amendments

**F271** Pt. 2 Ch. 16ZA inserted (1.3.2012) by [The Enactment of Extra-Statutory Concessions Order 2012 \(S.I. 2012/266\)](#), arts. 1, 6 (with art. 9)

#### **225ZA Application of Chapter 16ZA**

- (1) This Chapter applies if—
  - (a) an animal treated as trading stock of a farming trade is slaughtered under a disease control order,
  - (b) the animal is not part of a production herd of a class in respect of which a herd basis election may be made under section 126, and
  - (c) the farmer receives or will receive compensation for the animal.
- (2) Such an animal is referred to in this Chapter as a “relevant animal”.
- (3) “Disease control order” has the same meaning as in section 126.

#### [<sup>F272</sup>Chapter not to apply where cash basis used

#### **225ZAA**

Nothing in this Chapter applies in calculating the profits of a trade on the cash basis.]

#### Textual Amendments

**F272** S. 225ZAA inserted (with effect in accordance with Sch. 4 paras. 56, 57 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 4 para. 33](#)

#### **225ZB Right to make claim**

- (1) The farmer may make a claim under this section.
- (2) A claim may only be made in respect of the total compensation profit for a period of account.
- (3) The total compensation profit for a period of account is the sum of the profits which the farmer makes for all the relevant animals slaughtered in that period.



---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

- (4) For the purposes of this Chapter the profit which the farmer makes for a relevant animal is—
- (a) the amount by which the compensation for the animal exceeds its book value, or
  - (b) if the trade is carried on in partnership, the farmer's share of that amount, determined in accordance with Part 9.
- (5) Nothing in this section prevents a claim being made before the amount of the compensation has been finally determined.

### **225ZC Book value**

- (1) For the purposes of this Chapter the book value of an animal is the value shown in the accounts as the value of the animal at the start of the period of account in which it was slaughtered.
- (2) If, for an animal, no value is shown in the accounts as that value, the book value is as follows—
- (a) in the case of an animal which was born in the period of account in which it was slaughtered and did not become part of the trading stock in any other way, the book value is 75% of the compensation payable for it,
  - (b) in the case of an animal in relation to which section 172C (trading stock supplied by trader) or 172E (acquisitions not made in the course of trade) applies, the book value is the cost treated as incurred under section 172C(2) or 172E(2) as the case may be, and
  - (c) in any other case, the book value is the cost of acquiring the animal for the purposes of the trade.

### **225ZD Effect of claim for spreading profits**

- (1) If the farmer makes a claim under section 225ZB in respect of the total compensation profit for a period of account ("period X"), the profits of the trade carried on by the farmer are to be adjusted for income tax purposes as follows—

#### *Step 1*

Treat the compensation payable for all of the relevant animals slaughtered in period X as a receipt of that period (regardless of when the compensation is finally determined or paid).

#### *Step 2*

If the farmer makes a profit in the trade in Year 1, deduct from the profits of Year 1 an amount equal to—

- (a) the total compensation profit for period X, or
- (b) if the total compensation profit exceeds the profits of Year 1, such portion of the total compensation profit as will reduce the profits to nil.

"Year 1" is—

- (a) the tax year whose basis period includes the whole or a part of period X, or
- (b) if there is more than one, the earliest of those tax years.

#### *Step 3*

If—

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (a) there is more than one tax year whose basis period includes the whole or a part of period X,
- (b) either—
  - (i) the farmer did not make a profit in the trade in Year 1, or
  - (ii) by virtue of step 2, a portion only of the total compensation profit for period X is deducted from the profits of Year 1, and
- (c) the farmer makes a profit in the trade in the next tax year (“Year 2”), deduct from the profits of Year 2 the applicable amount.

In a case where the farmer did not make a profit in Year 1, “the applicable amount” is—

- (a) the total compensation profit for period X, or
- (b) if the total compensation profit exceeds the profits of Year 2, such portion of the total compensation profit as will reduce the profits to nil.

In a case where a portion only of the total compensation profit for period X is deducted from the profits of Year 1, “the applicable amount” is—

- (a) an amount equal to the difference between the total compensation profit for period X and the portion so deducted, or
- (b) if that amount exceeds the profits of Year 2, such portion of that amount as will reduce the profits to nil.

No further deduction is to be made in respect of the total compensation profit for period X from the profits of any later tax year whose basis period includes a part of that period.

*Step 4*

Include in the profits of each of the 3 consecutive tax years following Year 1 an amount equal to one third of the total amount deducted by virtue of steps 2 and 3.

- (2) Nothing in this section affects the calculation of overlap profit (within the meaning of Chapter 15 of this Part).

**225ZE Adjustment: cessation of trading**

If the farmer permanently ceases to carry on the farming trade before the end of the second of the 3 consecutive tax years following Year 1, step 4 in section 225ZD(1) is to be replaced by the following two steps—

*Step 4*

Divide the total amount deducted by virtue of steps 2 and 3 by the number of tax years (“the remaining tax years”) in which, or in any part of which, the farmer carried on the farming trade, starting with Year 1.

*Step 5*

Include in the profits of each of the remaining tax years the amount resulting from the division in step 4.

**225ZF Time limits etc for spreading claim**

- (1) A claim under section 225ZB must be made on or before the first anniversary of the normal self-assessment filing date for Year 1.

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

- (2) If the profits of a tax year are to be adjusted or further adjusted in accordance with this Chapter after an assessment for that tax year has become final and conclusive, any assessment or repayment or discharge of tax that is necessary to give effect to this Chapter must be made.
- (3) But repayment or discharge of tax is due only if a claim for it is made.

## 225ZG Interpretation

In this Chapter—

- “animal” means any animal or other living creature;
- “farming trade” means a trade of farming;
- “the farmer”, in relation to a farming trade, means the individual who (alone or in partnership) carries on that trade;
- “total compensation profit” has the meaning given by section 225ZB.]

## <sup>F273</sup>CHAPTER 16A

### OIL ACTIVITIES

#### Textual Amendments

**F273** Pt. 2 Ch. 16A inserted (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. 1 para. 2** (with [Sch. 9 paras. 1-9, 22](#))

### <sup>F274</sup>Application of Chapter

#### Textual Amendments

**F274** S. 225ZH and cross-heading inserted (with effect in accordance with [Sch. 4 paras. 56, 57](#) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), **Sch. 4 para. 34**

## 225ZH Chapter not to apply where cash basis used

Nothing in this Chapter applies in calculating the profits of a trade on the cash basis.]

### *Basic definitions*

## 225A Meaning of “oil extraction activities”

- (1) In this Chapter “oil extraction activities” means activities within any of subsections (2) to (5) (but see also section 225M(6)).
- (2) Activities of a person in searching for oil in the United Kingdom or a designated area or causing such searching to be carried out for that person.

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

- (3) Activities of a person in extracting, or causing to be extracted for that person, oil at any place in the United Kingdom or a designated area under rights which—
- (a) authorise the extraction, and
  - (b) are held by that person.
- (4) Activities of a person in transporting, or causing to be transported for that person, oil extracted at any such place not on dry land under rights which—
- (a) authorise the extraction, and
  - (b) are held by that person,
- if the transportation meets condition A or B (see subsections (6) and (7)).
- (5) Activities of a person in effecting, or causing to be effected for that person, the initial treatment or initial storage of oil won from any oil field under rights which—
- (a) authorise its extraction, and
  - (b) are held by that person.
- (6) Condition A is that the transportation is to the place where the oil is first landed in the United Kingdom.
- (7) Condition B is that the transportation—
- (a) is to the place in the United Kingdom, or
  - (b) in the case of oil first landed in another country, is to the place in that or any other country (other than the United Kingdom),
- at which the seller in a sale at arm's length could reasonably be expected to deliver it (or, if there is more than one such place, the one nearest to the place of extraction).
- (8) The definition of “initial storage” in section 12(1) of OTA 1975 applies for the purposes of this section.
- (9) But in its application for those purposes in relation to the person mentioned in subsection (5) and to oil won from any one oil field, that definition is to have effect as if the reference to the maximum daily production rate of oil for the field mentioned in that definition were to a share of that maximum daily production rate proportionate to that person's share of the oil won from that field.
- (10) In this section “initial treatment” has the same meaning as in Part 1 of OTA 1975 (see section 12(1) of that Act).

### **225B Meaning of “oil rights”**

In this Chapter “oil rights” means—

- (a) rights to oil to be extracted at any place in the United Kingdom or a designated area, or
- (b) rights to interests in or to the benefit of such oil.

### **225C Meaning of “ring fence income”**

In this Chapter “ring fence income” means income arising from oil extraction activities or oil rights.

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

## **225D Meaning of “ring fence trade”**

In this Chapter “ring fence trade” means activities which—

- (a) are within the definition of “oil-related activities” in section 16(2) (oil extraction and related activities), and
- (b) constitute a separate trade (whether because of section 16(1) or otherwise).

## **225E Other definitions**

In this Chapter—

“chargeable period” has the same meaning as in Part 1 of OTA 1975 (see section 1(3) of that Act),

“designated area” means an area designated by Order in Council under section 1(7) of the Continental Shelf Act 1964,

“oil” means any substance won or capable of being won under the authority of a licence granted under Part 1 of the Petroleum Act 1998 or the Petroleum (Production) Act (Northern Ireland) 1964 (c. 28 (N.I.)), other than methane gas won in the course of operations for making and keeping mines safe,

“oil field” has the same meaning as in Part 1 of OTA 1975 (see section 12(1) of that Act),

“OTA 1975” means the Oil Taxation Act 1975, and

“participator” has the same meaning as in Part 1 of OTA 1975 (see section 12(1) of that Act).

### *Oil valuation*

## **225F Valuation where market value taken into account under section 2 of OTA 1975**

- (1) This section applies if a person disposes of oil in circumstances such that the market value of the oil—
  - (a) falls to be taken into account under section 2 of OTA 1975, otherwise than by virtue of paragraph 6 of Schedule 3 to that Act, in calculating for petroleum revenue tax purposes the assessable profit or allowable loss accruing to that person in a chargeable period from an oil field, or
  - (b) would so fall but for section 10 of that Act.
- (2) For income tax purposes, the disposal of the oil, and its acquisition by the person to whom it was disposed of, are to be treated as having been for a consideration equal to the market value of the oil—
  - (a) as so taken into account under section 2 of that Act, or
  - (b) as would have been so taken into account under that section but for section 10 of that Act.

## **225G Valuation where disposal not sale at arm's length**

- (1) This section applies if conditions A, B and C are met.
- (2) Condition A is that a person disposes of oil acquired by the person—
  - (a) in the course of oil extraction activities carried on by the person, or
  - (b) as a result of oil rights held by the person.

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

- (3) Condition B is that the disposal is not a sale at arm's length (as defined in paragraph 1 of Schedule 3 to OTA 1975).
- (4) Condition C is that section 225F does not apply in relation to the disposal.
- (5) For income tax purposes, the disposal of the oil, and its acquisition by the person to whom it was disposed of, are to be treated as having been for a consideration equal to the market value of the oil.
- (6) Paragraphs 2 and 3A of Schedule 3 to OTA 1975 (definition of market value of oil including light gases) apply for the purposes of this section as they apply for the purposes of Part 1 of that Act, but with the following modifications.
- (7) Those modifications are that—
  - (a) any reference in paragraph 2 to the notional delivery day for the actual oil is to be read as a reference to the day on which the oil is disposed of as mentioned in this section, and
  - (b) paragraph 2(4) is to be treated as omitted.

#### **225H Valuation where excess of nominated proceeds**

- (1) This section applies if an excess of nominated proceeds for a chargeable period—
  - (a) is taken into account in calculating a person's profits under section 2(5)(e) of OTA 1975, or
  - (b) would have been so taken into account if the person were chargeable to tax under OTA 1975 in respect of an oil field.
- (2) For income tax purposes, the amount of the excess is to be added to the consideration which the person is treated as having received in respect of oil disposed of by that person in the period.

#### **225I Valuation where relevant appropriation but no disposal**

- (1) This section applies if conditions A and B are met.
- (2) Condition A is that a person makes a relevant appropriation of oil without disposing of it.
- (3) Condition B is that the person does so in circumstances such that the market value of the oil—
  - (a) falls to be taken into account under section 2 of OTA 1975 in calculating for petroleum revenue tax purposes the assessable profit or allowable loss accruing to that person in a chargeable period from an oil field, or
  - (b) would so fall but for section 10 of that Act.
- (4) For income tax purposes, the person is to be treated as having, at the time of the appropriation—
  - (a) sold the oil in the course of the separate trade consisting of activities falling within the definition of “oil-related activities” in section 16(2) (oil extraction and related activities), and
  - (b) purchased it in the course of the separate trade consisting of activities not so falling.

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

- (5) For income tax purposes, that sale and purchase is to be treated as having been at a price equal to the market value of the oil—
  - (a) as so taken into account under section 2 of OTA 1975, or
  - (b) as would have been so taken into account under that section but for section 10 of that Act.
- (6) In this section “relevant appropriation” has the meaning given by section 12(1) of OTA 1975.

## **225J Valuation where appropriation to refining etc**

- (1) This section applies if conditions A, B and C are met.
- (2) Condition A is that a person appropriates oil acquired by the person—
  - (a) in the course of oil extraction activities carried on by the person, or
  - (b) as a result of oil rights held by the person.
- (3) Condition B is that the oil is appropriated to refining or to any use except the production purposes of an oil field (as defined in section 12(1) of OTA 1975).
- (4) Condition C is that section 225I does not apply in relation to the appropriation.
- (5) For income tax purposes—
  - (a) the person is to be treated as having, at the time of the appropriation, sold and purchased the oil as mentioned in section 225I(4)(a) and (b), and
  - (b) that sale and purchase is to be treated as having been at a price equal to the market value of the oil.
- (6) Paragraphs 2 and 3A of Schedule 3 to OTA 1975 (definition of market value of oil including light gases) apply for the purposes of this section as they apply for the purposes of Part 1 of that Act, but with the following modifications.
- (7) Those modifications are that—
  - (a) any reference in paragraph 2 to the notional delivery day for the actual oil is to be read as a reference to the day on which the oil is appropriated as mentioned in this section,
  - (b) any reference in paragraphs 2 and 2A to oil being relevantly appropriated is to be read as a reference to its being appropriated as mentioned in this section, and
  - (c) paragraph 2(4) is to be treated as omitted.

### *Regional development grants*

## **225K Reduction of expenditure by reference to regional development grant**

- (1) This section applies if conditions A and B are met.
- (2) Condition A is that a person has incurred expenditure (by way of purchase, rent or otherwise) on the acquisition of an asset in a transaction to which paragraph 2 of Schedule 4 to OTA 1975 applies (transactions between connected persons or otherwise than at arm's length).

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (3) Condition B is that the expenditure incurred by the other person mentioned in that paragraph in acquiring, bringing into existence or enhancing the value of the asset as mentioned in that paragraph—
  - (a) has been or is to be met by a regional development grant, and
  - (b) falls (in whole or in part) to be taken into account under Part 2 or 6 of CAA 2001 (capital allowances relating to plant and machinery or research and development).
- (4) Subsection (5) applies for the purposes of the charge to income tax on the income arising from the activities of the person mentioned in subsection (2) which are treated by section 16(1) (oil extraction and related activities) as a separate trade for those purposes.
- (5) The expenditure mentioned in subsection (2) is to be reduced by the amount of the regional development grant mentioned in subsection (3).
- (6) In this section “regional development grant” means a grant falling within section 534(1) of CAA 2001 (Northern Ireland regional development grant).

**Modifications etc. (not altering text)**

- C13** S. 225K(3)(b) modified (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. 9 para. 35\(a\)](#) (with [Sch. 9 paras. 1-9, 22](#))

**225L Adjustment as a result of regional development grant**

- (1) This section applies if conditions A, B and C are met.
- (2) Condition A is that expenditure incurred by a person in relation to an asset in a tax year (“the initial period”) has been or is to be met by a regional development grant.
- (3) Condition B is that, despite the provisions of section 534(2) and (3) of CAA 2001 (Northern Ireland regional development grants) and section 225K of this Act, in determining that person's liability to income tax for the initial period, the whole or some part of that expenditure falls to be taken into account under Part 2 or 6 of CAA 2001.
- (4) Condition C is that—
  - (a) expenditure on the asset becomes allowable under section 3 or 4 of OTA 1975 in a tax year (an “adjustment period”) subsequent to the initial period, or
  - (b) the proportion of any such expenditure which is allowable in an adjustment period is different as compared with the initial period.
- (5) There is to be redetermined for the purposes of subsections (7) and (8) the amount of the expenditure mentioned in subsection (2) which would have been taken into account as mentioned in subsection (3) if the circumstances mentioned in subsection (4) had existed in the initial period.
- (6) According to whether the amount as so redetermined is greater or less than the amount actually taken into account as mentioned in subsection (3), the difference is referred to in subsections (7) and (8) as the increase or the reduction in the allowance.



*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (7) If there is an increase in the allowance, an amount of capital expenditure equal to the increase is to be treated, for the purposes of Part 2 or 6 of CAA 2001, as having been incurred by the person concerned in the adjustment period on an extension of, or addition to, the asset mentioned in subsection (2).
- (8) If there is a reduction in the allowance, the person concerned is to be treated, for the purpose of determining that person's liability to income tax, as having received in the adjustment period, as income of the trade in connection with which the expenditure mentioned in subsection (2) was incurred, a sum equal to the amount of the reduction in the allowance.
- (9) In this section “regional development grant” has the meaning given by section 225K(6).

**Modifications etc. (not altering text)**

- C14** S. 225L(3) modified (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. 9 para. 35\(b\)](#) (with Sch. 9 paras. 1-9, 22))
- C15** S. 225L(7) modified (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. 9 para. 35\(b\)](#) (with Sch. 9 paras. 1-9, 22))

*Tariff receipts etc*

**225M Tariff receipts etc**

- (1) Subsection (5) applies to a sum which meets conditions A, B and C.
- (2) Condition A is that the sum constitutes a tariff receipt or tax-exempt tariffing receipt of a person who is a participator in an oil field.
- (3) Condition B is that the sum constitutes consideration in the nature of income rather than capital.
- (4) Condition C is that the sum would not, but for subsection (5), be treated as mentioned in that subsection.
- (5) The sum is to be treated as a receipt of the separate trade mentioned in section 16(1) (oil extraction and related activities).
- (6) So far as they would not otherwise be so treated, the activities—
  - (a) of a participator in an oil field, or
  - (b) of a person connected with the participator,in making available an asset in a way which gives rise to tariff receipts or tax-exempt tariffing receipts of the participator are to be treated for the purposes of this Chapter as oil extraction activities.
- (7) In determining for the purposes of subsection (2) whether a sum constitutes a tariff receipt or tax-exempt tariffing receipt of a person who is a participator, no account may be taken of any sum which—
  - (a) is in fact received or receivable by a person connected with the participator,and

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (b) constitutes a tariff receipt or tax-exempt tariffing receipt of the participator. But in relation to the person by whom such a sum is actually received, subsection (2) has effect as if the person were a participator and as if condition A were met.
- (8) References in this section to a person connected with a participator include a person with whom the person is associated, within the meaning of paragraph 11 of Schedule 2 to the Oil Taxation Act 1983, but section 878(5) of this Act (application of definition of “connected” persons) does not apply for the purposes of this section.
- (9) In this section—  
     “tax-exempt tariffing receipt” has the meaning given by section 6A(2) of the Oil Taxation Act 1983, and  
     “tariff receipt” has the same meaning as in that Act.

#### *Abandonment guarantees*

### 225N [F275] **Expenditure on abandonment guarantees**

- (1) Subsection (2) applies if, as a result of section 3(1)(hh) of OTA 1975 (obtaining abandonment guarantee), expenditure incurred by a participator in an oil field is allowable (in whole or in part) for petroleum revenue tax purposes under section 3 of that Act.
- [ Subsection (2) also applies if expenditure incurred by a participator in an oil field F276(1A) would be so allowable as a result of section 3(1)(hh) of that Act but for the fact that the oil field is a non-taxable oil field within the meaning of Part 3 of FA 1993 (see section 185 of that Act).]
- (2) So far as [F277 the expenditure mentioned in subsection (1) or (1A) is or would be so allowable], it is to be allowed as a deduction in calculating the participator's ring fence income.
- F278(3) .....
- F278(4) .....
- F279(5) .....
- (6) In this Chapter—  
     “abandonment guarantee” has the same meaning as it has for the purposes of [F280 section 3 of OTA 1975] (see section 104 of [F281 FA 1991]), and  
     “the guarantor” and “the relevant participator” have the same meaning as in section 104 of that Act.

#### **Textual Amendments**

- F275** S. 225N heading substituted (with effect in accordance with Sch. 31 para. 23 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 31 para. 14\(4\)](#)
- F276** S. 225N(1A) inserted (with effect in accordance with Sch. 31 para. 23 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 31 para. 1\(2\)\(a\)](#)
- F277** Words in s. 225N(2) substituted (with effect in accordance with Sch. 31 para. 23 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 31 para. 1\(2\)\(b\)](#)

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- F278** S. 225N(3)(4) omitted (with effect in accordance with Sch. 31 para. 23 of the amending Act) by virtue of Finance Act 2013 (c. 29), **Sch. 31 para. 6(2)**
- F279** S. 225N(5) omitted (with effect in accordance with Sch. 31 para. 23 of the amending Act) by virtue of Finance Act 2013 (c. 29), **Sch. 31 para. 14(2)**
- F280** Words in s. 225N(6) substituted (with effect in accordance with Sch. 31 para. 23 of the amending Act) by Finance Act 2013 (c. 29), **Sch. 31 para. 14(3)(a)**
- F281** Words in s. 225N(6) substituted (with effect in accordance with Sch. 31 para. 23 of the amending Act) by Finance Act 2013 (c. 29), **Sch. 31 para. 14(3)(b)**

**F282 225O Relief for reimbursement expenditure under abandonment guarantees**

.....

**Textual Amendments**

- F282** S. 225O omitted (with effect in accordance with Sch. 31 para. 23 of the amending Act) by virtue of Finance Act 2013 (c. 29), **Sch. 31 para. 6(3)**

**F283 225PP Payment under abandonment guarantee not immediately applied**

.....

**Textual Amendments**

- F283** Ss. 225P, 225Q omitted (with effect in accordance with Sch. 31 para. 23 of the amending Act) by virtue of Finance Act 2013 (c. 29), **Sch. 31 para. 15**

**F283 225QA Amounts excluded from section 225O(1)**

.....

**Textual Amendments**

- F283** Ss. 225P, 225Q omitted (with effect in accordance with Sch. 31 para. 23 of the amending Act) by virtue of Finance Act 2013 (c. 29), **Sch. 31 para. 15**

*Abandonment expenditure*

**225R** [<sup>F284</sup>**Introduction to section 225S**]

- (1) [<sup>F285</sup>Section 225S applies] if—
- (a) paragraph 2A of Schedule 5 to OTA 1975 applies <sup>F286</sup> ..., and
  - (b) the default payment falls (in whole or part) to be attributed to the contributing participator under paragraph 2A(2) of that Schedule [<sup>F287</sup>, or would fall to be so attributed if a claim under paragraph 2A(2) of that Schedule were made ].

[ The condition in subsection (1)(b) is to be treated as met for the purposes of this <sup>F288</sup>(1A) section if it would be met but for the fact that the contributing participator is (or was)

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

a participator in an oil field that is a non-taxable oil field within the meaning of Part 3 of FA 1993 (see section 185 of that Act).]

- (2) In section 225S “the additional abandonment expenditure” means the amount which is [<sup>F289</sup>or would be] attributed to the contributing participator as mentioned in subsection (1)(b) (whether representing the whole or only part of the default payment).
- (3) In this Chapter “default payment”, “the defaulter” and “contributing participator” have the same meaning as in paragraph 2A of Schedule 5 to OTA 1975.

#### Textual Amendments

- F284** S. 225R heading substituted (with effect in accordance with Sch. 31 para. 23 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 31 para. 16\(b\)](#)
- F285** Words in s. 225R(1) substituted (with effect in accordance with Sch. 31 para. 23 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 31 para. 16\(a\)](#)
- F286** Words in s. 225R(1)(a) omitted (with effect in accordance with Sch. 31 para. 23 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 31 para. 1\(3\)\(a\)](#)
- F287** Words in s. 225R(1)(b) inserted (with effect in accordance with Sch. 31 para. 23 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 31 para. 1\(3\)\(b\)](#)
- F288** S. 225R(1A) inserted (with effect in accordance with Sch. 31 para. 23 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 31 para. 1\(3\)\(c\)](#)
- F289** Words in s. 225R(2) inserted (with effect in accordance with Sch. 31 para. 23 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 31 para. 1\(3\)\(d\)](#)

#### **225S Relief for expenditure incurred by a participator in meeting defaulter's abandonment expenditure**

- (1) Relief by way of capital allowance, or a deduction in calculating ring fence income, is to be available to the contributing participator in respect of the additional abandonment expenditure if any such relief or deduction would have been available to the defaulter if—
  - (a) the defaulter had incurred the additional abandonment expenditure, and
  - (b) at the time that that expenditure was incurred the defaulter continued to carry on a ring fence trade.
- (2) The basis of qualification for or entitlement to any relief or deduction which is available to the contributing participator under this section is to be determined on the assumption that the conditions in subsection (1)(a) and (b) are met.
- (3) But, subject to subsection (2), any such relief or deduction is to be available in the same way as if the additional abandonment expenditure had been incurred by the contributing participator for the purposes of the ring fence trade carried on by the contributing participator.

#### <sup>F290</sup>**225T Reimbursement by defaulter in respect of certain abandonment expenditure**

.....

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

#### Textual Amendments

**F290** S. 225T omitted (with effect in accordance with Sch. 31 para. 23 of the amending Act) by virtue of Finance Act 2013 (c. 29), **Sch. 31 para. 9**

### *Interest on repayment of APRT*

#### **225U Interest on repayment of APRT**

- (1) Subsection (2) applies if interest is paid to a participator under paragraph 10(4) of Schedule 19 to FA 1982 (interest on advance petroleum revenue tax which becomes repayable).
- (2) The interest paid is to be disregarded in calculating the participator's income for income tax purposes.]

### *[<sup>F291</sup>Receipts arising from decommissioning*

#### Textual Amendments

**F291** S. 225V and cross-heading inserted (with effect in accordance with Sch. 31 para. 23 of the amending Act) by Finance Act 2013 (c. 29), **Sch. 31 para. 22**

#### **225V Receipts arising from decommissioning**

- (1) This section applies if—
  - (a) a person that is or has been carrying on a ring fence trade (“the defaulter”) has defaulted on a liability under—
    - (i) a relevant agreement, or
    - (ii) an abandonment programme,to make a payment towards decommissioning expenditure,
  - (b) another person that is or has been carrying on a ring fence trade (“the contributing person”) pays an amount (“the relevant contribution”) in or towards meeting the whole or part of the default, and
  - (c) the amount of the relevant contribution is less than the sum of the amounts within subsection (2).
- (2) The amounts within this subsection are—
  - (a) any payments made (directly or indirectly) to the contributing person by the guarantor under an abandonment guarantee as a result of the defaulter defaulting on the liability,
  - (b) any reimbursement payments, and
  - (c) any relief from tax which the contributing person obtains in respect of the relevant contribution.
- (3) The difference between—
  - (a) the sum of the amounts within subsection (2), and
  - (b) the relevant contribution,

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

(“the relevant difference”) is to be treated as a receipt (in the nature of income) of the contributing person's ring fence trade for the relevant tax year (see subsection (4)).

- (4) “The relevant tax year” means the tax year that includes the day on which the Secretary of State certifies that the relevant abandonment programme has been satisfactorily completed (“the certification date”).

This is subject to subsection (5).

- (5) If the contributing person's ring fence trade is permanently discontinued before the certification date, “the relevant tax year” is the last tax year in which that trade is carried on.

- (6) The relevant difference is to be determined—

- (a) in a case where subsection (5) applies, at the end of the tax year in which the certification date falls, and
- (b) in any other case, at the end of the relevant tax year.

- (7) In a case where subsection (5) applies, any income tax chargeable for the relevant tax year by virtue of this section is due and payable for the tax year in which the certification date falls.

- (8) Any additional assessment to income tax required in order to take account of a receipt arising under this section may be made at any time not later than 4 years after the end of the tax year in which the certification date falls.

- (9) In this section—

“abandonment programme” means an abandonment programme approved under Part 4 of the Petroleum Act 1998 (including such a programme as revised),

“decommissioning expenditure” has the meaning given by section 330C of CTA 2010,

“reimbursement payment” means any payment made to the contributing person by the defaulter in reimbursing the contributing person in respect of, or otherwise making good to the contributing person, the whole or any part of the relevant contribution,

“the relevant abandonment programme” means the abandonment programme in respect of which the decommissioning expenditure mentioned in subsection (1)(a) was incurred, and

“relevant agreement” has the meaning given by section 104(5)(a) of FA 1991.]

## CHAPTER 17

### ADJUSTMENT INCOME

#### *Introduction*

#### **226 Professions and vocations**

The provisions of this Chapter apply to professions and vocations as they apply to trades.

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

### *Adjustment on change of basis*

## **227 Application of Chapter**

- (1) This Chapter applies if—
- a person carrying on a trade changes, from one period of account to the next, the basis on which profits of the trade are calculated for income tax purposes,
  - the old basis accorded with the law or practice applicable in relation to the period of account before the change, and
  - the new basis accords with the law and practice applicable in relation to the period of account after the change,
- but does not apply to income which is charged in accordance with section 832 (relevant foreign income charged on the remittance basis).
- (2) The practice applicable in any case means the accepted practice in cases of that description as to how profits of a trade should be calculated for income tax purposes.
- (3) A person changes the basis on which profits of a trade are calculated for income tax purposes if the person makes—
- a [<sup>F292</sup>change of accounting policy ] (see subsection (4)), or
  - a change in the tax adjustments applied (see subsections (5) and (6)).
- [<sup>F293</sup>(4) A “change of accounting policy” includes, in particular—
- a change from using UK generally accepted accounting practice to using generally accepted accounting practice with respect to accounts prepared in accordance with international accounting standards, and
  - a change from using generally accepted accounting practice with respect to accounts prepared in accordance with international accounting standards to using UK generally accepted accounting practice.]
- (5) A “tax adjustment” means any adjustment required or authorised by law in calculating profits of a trade for income tax purposes.
- (6) A “change in the tax adjustments applied”—
- does not include a change made in order to comply with amending legislation not applicable to the previous period of account, but
  - includes a change resulting from a change of view as to what is required or authorised by law or as to whether any adjustment is so required or authorised.

#### **Textual Amendments**

**F292** Words in s. 227(3)(a) substituted (with effect in accordance with s. 54(5)(6) of the amending Act) by [Finance Act 2012 \(c. 14\), s. 54\(1\)\(a\)](#)

**F293** S. 227(4) substituted (with effect in accordance with s. 54(5)(6) of the amending Act) by [Finance Act 2012 \(c. 14\), s. 54\(1\)\(b\)](#)

## [<sup>F294</sup>**227A Application of Chapter where cash basis used**

- (1) This Chapter applies if—

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (a) an election under section 25A (cash basis for small businesses) has effect in relation to a trade for a tax year but no such election has effect in relation to the trade for the following tax year, or
  - (b) no such election has effect in relation to a trade for a tax year but such an election has effect in relation to the trade for the following tax year.
- (2) But this Chapter does not apply to income which is charged in accordance with section 832.]

#### Textual Amendments

**F294** S. 227A inserted (with effect in accordance with Sch. 4 paras. 56, 57 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 4 para. 36](#)

### 228 Adjustment income and adjustment expense

- (1) An amount by way of adjustment must be calculated in accordance with section 231.
- (2) If the amount produced by the calculation is positive, it is treated as income and charged to income tax under this Chapter.

It is referred to in this Chapter as “adjustment income”.

- (3) If the amount produced by the calculation is negative, a deduction is allowed for it in calculating the profits of the trade.

It is referred to in this Chapter as an “adjustment expense”.

- (4) This section is subject to section 234 (no adjustment for certain expenses previously brought into account).

### 229 Income charged

- (1) Tax is charged under this Chapter on the full amount of any adjustment income arising in the tax year.
- (2) This is subject to—
  - (a) [<sup>F295</sup>sections 237 to 239B] (which provide for spreading of adjustment income), and
  - (b) Part 8 (foreign income: special rules).

#### Textual Amendments

**F295** Words in s. 229(2)(a) substituted (with effect in accordance with Sch. 4 paras. 56, 57 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 4 para. 52\(2\)](#)

### 230 Person liable

The person liable for any tax charged under this Chapter is the person receiving or entitled to the adjustment income.



---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

## 231 Calculation of the adjustment

The amount of the adjustment is calculated as follows. *Step 1*

Add together any amounts representing the extent to which, comparing the two bases, profits were understated (or losses overstated) on the old basis.

The amounts are—

---

	<i>Amounts</i>
1	Receipts which on the new basis would have been brought into account in calculating the profits of a period of account before the change, so far as they were not so brought into account.
2	Expenses which on the new basis fall to be brought into account in calculating the profits of a period of account after the change, so far as they were brought into account in calculating the profits of a period of account before the change.
3	Deductions in respect of opening trading stock or opening work in progress in the first period of account on the new basis, so far as they— (a) are not matched by credits in respect of closing trading stock or closing work in progress in the last period of account before the change, or (b) are calculated on a different basis that if used to calculate those credits would have given a higher figure.
4	Amounts recognised for accounting purposes in respect of depreciation in the last period of account before the change, so far as they were not the subject of an adjustment for income tax purposes, where such an adjustment would be required on the new basis.

---

### *Step 2*

Then deduct any amounts representing the extent to which, comparing the two bases, profits were overstated (or losses understated) on the old basis.

The amounts are—

---

*Amounts*

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

- |   |  |
|---|--|
| 1 | Receipts which were brought into account in a period of account before the change, so far as they would not have been so brought into account if the profits had been calculated on the new basis.   |
| 2 | Expenses which were not brought into account in calculating the profits of a period of account before the change, so far as they— <ul style="list-style-type: none"> <li>(a) would have been brought into account for a period of account before the change if the profits had been calculated on the new basis, and</li> <li>(b) would have been brought into account for a period of account after the change if the profits had continued to be calculated on the old basis.</li> </ul> |
| 3 | Credits in respect of closing trading stock or closing work in progress in the last period of account before the change, so far as they— <ul style="list-style-type: none"> <li>(a) are not matched by deductions in respect of opening trading stock or opening work in progress in the first period of account on the new basis, or</li> <li>(b) are calculated on a different basis that if used to calculate those deductions would have given a lower figure.</li> </ul>              |

---

An amount so deducted may not be deducted again in calculating the profits of a period of account.

*Treatment of adjustment income and adjustment expense*

**232 Treatment of adjustment income**

- (1) Adjustment income is treated as arising on the last day of the first period of account for which the new basis is adopted.
- (2) But this is subject to sections 235 (cases where adjustment not required until assets realised or written off) and 236 (change from realisation basis to mark to market).
- (3) Adjustment income is treated for the purposes of [F296Part 4 of ITA 2007](loss relief) as profits of the trade for the tax year in which tax is charged on it.

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (4) In the case of an individual whose income from <sup>F297</sup>the trade is relevant UK earnings within section 189(2)(b) of FA 2004, adjustment income is similarly relevant UK earnings.]

#### Textual Amendments

**F296** Words in s. 232(3) substituted (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), ss. 1027, 1034, [Sch. 1 para. 502\(2\)](#) (with transitional provisions and savings in [Sch. 2](#))

**F297** Words in s. 232(4) substituted (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), ss. 1027, 1034, [Sch. 1 para. 502\(3\)](#) (with transitional provisions and savings in [Sch. 2](#))

#### Modifications etc. (not altering text)

**C16** S. 232(1)(2) applied (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), ss. 524(5), 526(6), 1034 (with transitional provisions and savings in [Sch. 2](#))

### 233 Treatment of adjustment expense

- (1) An adjustment expense is treated as an expense of the trade arising on the last day of the first period of account for which the new basis is adopted.
- (2) But this is subject to sections 235 (cases where adjustment not required until assets realised or written off) and 236 (change from realisation basis to mark to market).

*Expenses previously brought into account*

### 234 No adjustment for certain expenses previously brought into account

- (1) This section applies if, as a result of a change of basis, expenses brought into account before the change on the old basis would on the new basis be brought into account over more than one period of account after the change.
- (2) In such a case—
  - (a) no adjustment is made under this Chapter, and
  - (b) in calculating the profits of the trade no deduction is allowed for the expenses for any period of account after the change.

*Realising or writing off assets*

### 235 Cases where adjustment not required until assets realised or written off

- (1) This section applies if there is a change of basis resulting from a tax adjustment affecting the calculation of any of the following amounts.
- (2) The amounts are—
  - (a) any amount brought into account in respect of closing trading stock or closing work in progress in the last period of account before the change of basis,
  - (b) any amount brought into account in respect of opening trading stock or opening work in progress in the first period of account on the new basis, and

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (c) any amount brought into account in respect of depreciation.
- (3) Adjustment income or (as the case may be) an adjustment expense is treated as arising only when the asset to which it relates is realised or written off.

**Modifications etc. (not altering text)**

**C17** S. 235 applied (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), [ss. 524\(5\), 526\(6\)](#), 1034 (with transitional provisions and savings in [Sch. 2](#))

*Mark to market*

**236 Change from realisation basis to mark to market**

- (1) This section applies if there is a change of basis from—
- (a) not recognising a profit or loss on an asset until the asset is realised, to
  - (b) bringing assets into account in each period of account at a fair value.
- (2) So far as—
- (a) a receipt within item 1 of step 1 in section 231 represents the fair value of an asset that is trading stock, or
  - (b) an expense within item 2 of that step relates to such an asset,
- adjustment income or (as the case may be) an adjustment expense is treated as not arising until the period of account in which the value of the asset is realised.
- (3) In the case of adjustment income, this is subject to any election under section 237 (election for spreading).
- (4) In this section “trading stock” has the same meaning as in section 174.

**Modifications etc. (not altering text)**

**C18** S. 236 applied (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), [ss. 524\(5\), 526\(6\)](#), 1034 (with transitional provisions and savings in [Sch. 2](#))

**237 Election for spreading if section 236 applies**

- (1) If section 236 applies, the person who is liable to tax on any adjustment income may elect for the adjustment income to be spread over 6 periods of account.
- (2) The election must be made on or before the first anniversary of the normal self-assessment filing date for the tax year in which the change of basis occurs.
- (3) If an election is made, an amount equal to one-sixth of the amount of the adjustment income—
- (a) is treated as arising, and
  - (b) is charged to tax,
- in each of the 6 periods of account beginning with the first period to which the new basis applies.

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (4) But if, before the whole of the adjustment income has been charged to tax, the person permanently ceases to carry on the trade, the whole of the amount so far as not previously brought into charge to tax—
- (a) is treated as arising, and
  - (b) is charged to tax,
- immediately before the cessation.

*Spreading of adjustment income: barristers and advocates*

**<sup>F298</sup>238 Spreading on ending of exemption for barristers and advocates**

.....

**Textual Amendments**

**F298** Ss. 238, 239 omitted (with effect in accordance with Sch. 4 paras. 56, 57 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 4 para. 52\(3\)](#)

**<sup>F298</sup>239 Election to accelerate charge under section 238**

.....

**Textual Amendments**

**F298** Ss. 238, 239 omitted (with effect in accordance with Sch. 4 paras. 56, 57 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 4 para. 52\(3\)](#)

*<sup>F299</sup>Spreading of adjustment income on leaving cash basis*

**Textual Amendments**

**F299** Ss. 239A, 239B and cross-heading inserted (with effect in accordance with Sch. 4 paras. 56, 57 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 4 para. 37](#)

**239A Spreading on leaving cash basis**

- (1) This section applies if—
- (a) an election under section 25A (cash basis for small businesses) has effect in relation to a trade for a tax year, and
  - (b) no such election has effect in relation to the trade for the following tax year.
- (2) Any adjustment income is spread over 6 tax years as follows.
- (3) In each of the 6 tax years beginning with that in which the whole amount of the adjustment income would otherwise be chargeable to tax, an amount equal to one-sixth of the amount of the adjustment income is treated as arising and is charged to tax.

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (4) This section is subject to any election under section 239B (election to accelerate charge).

### **239B Election to accelerate charge under section 239A**

- (1) A person who under section 239A is liable to tax for a tax year on an amount of adjustment income may elect for an additional amount to be treated as arising in the tax year.
- (2) The election must be made on or before the first anniversary of the normal self-assessment filing date for the tax year.
- (3) The election must specify the amount to be treated as income arising in the tax year (which may be any amount of the adjustment income not previously charged to tax).
- (4) If an election is made, section 239A applies in relation to any subsequent tax year as if the amount of adjustment income (as reduced by any previous application of this section) were reduced by the amount given by the following formula—

$$A \times 6 T$$

where—

A is the additional amount treated as arising in the tax year for which the election is made, and

T is the number of tax years remaining after that tax year in the period of 6 tax years referred to in section 239A.]

### *Supplementary*

### **240 Liability of personal representatives if person liable dies**

- (1) This section applies in the case of the death of a person who would otherwise have been liable to tax under this Chapter on adjustment income.
- (2) The tax under this Chapter for which the person would otherwise have been liable—
  - (a) is to be assessed and charged on the personal representatives, and
  - (b) is to be a debt due from and payable out of the deceased's estate.
- (3) The personal representatives may make any election under this Chapter that the deceased might have made.

## [<sup>F300</sup>CHAPTER 17A

### CASH BASIS: ADJUSTMENTS FOR CAPITAL ALLOWANCES

#### **Textual Amendments**

**F300** Pt. 2 Ch. 17A inserted (with effect in accordance with Sch. 4 paras. 56, 57 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 4 para. 38](#)

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

## *Introduction*

### **240A Professions and vocations**

The provisions of this Chapter apply to professions and vocations as they apply to trades.

### *Adjustments on entering cash basis*

### **240B “Entering the cash basis”**

For the purposes of this Chapter a person carrying on a trade enters the cash basis for a tax year if—

- (a) an election under section 25A has effect in relation to the trade for the tax year, and
- (b) immediately before the beginning of the basis period for the tax year, such an election does not have effect in relation to the trade.

### **240C Unrelieved qualifying expenditure**

(1) This section applies if—

- (a) a person carrying on a trade enters the cash basis for a tax year (“the current tax year”), and
- (b) at the end of the basis period for the previous tax year, the person has unrelieved qualifying expenditure to carry forward from the chargeable period ending with that basis period.

(2) But this section does not apply if section 240D (assets not fully paid for) applies.

(3) In calculating the profits of the trade for the current tax year, a deduction is allowed for the relevant portion of the expenditure.

(4) The “relevant portion” of the expenditure means the amount of the expenditure for which a deduction would be allowed in calculating the profits of the trade on the cash basis for a period if the expenditure was paid during that period.

(5) The relevant portion of the expenditure is to be determined on such basis as is just and reasonable in all the circumstances.

(6) Section 59(1) and (2) of CAA 2001 (unrelieved qualifying expenditure) has effect for the purposes of this section.

### **240D Assets not fully paid for**

(1) This section applies if—

- (a) a person carrying on a trade enters the cash basis for a tax year,
- (b) at any time before the beginning of the basis period for that tax year the person has obtained capital allowances in respect of expenditure on the provision of plant or machinery (“the relevant expenditure”), and
- (c) not all of the relevant expenditure has actually been paid by the person.

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (2) If the amount of the relevant expenditure that the person has actually paid exceeds the amount of capital allowances given in respect of the relevant expenditure, the difference is to be deducted in calculating the profits of the trade for the tax year.
- (3) If the amount of the relevant expenditure that the person has actually paid is less than the amount of capital allowances given in respect of the relevant expenditure, the difference is to be treated as a receipt in calculating the profits of the trade for the tax year.
- (4) The amount of any capital allowance obtained in respect of expenditure on the provision of any plant or machinery is to be determined on such basis as is just and reasonable in all the circumstances.
- (5) If the amount of capital allowances given in respect of the relevant expenditure has been reduced under section 205 or 207 of CAA 2001 (reduction where asset provided or used only partly for qualifying activity), the amount of the relevant expenditure that the person has actually paid is to be proportionately reduced for the purposes of this section.
- (6) This section does not apply where the relevant expenditure was incurred on the provision of a car.

In this subsection “car” has the same meaning as in Part 2 of CAA 2001 (see section 268A of that Act).

*Successions where predecessor and successor are connected persons*

**240E Effect of election where predecessor and successor are connected persons**

- (1) This section applies if—
  - (a) a person carrying on a trade enters the cash basis for a tax year,
  - (b) the person is the successor for the purposes of section 266 of CAA 2001, and
  - (c) as a result of an election under section 267 of that Act, relevant plant or machinery is treated as sold by the predecessor to the successor at any time during the basis period for the tax year.
- (2) The provisions of this Chapter have effect in relation to the successor as if everything done to or by the predecessor had been done to or by the successor.
- (3) Any expenditure actually incurred by the successor on acquiring the relevant plant or machinery is to be ignored for the purposes of calculating the profits of the trade for the tax year.
- (4) In this section “the predecessor” and “relevant plant or machinery” have the same meaning as in section 267 of CAA 2001.]



*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

## CHAPTER 18

### POST-CESSATION RECEIPTS

#### *Introduction*

#### **241 Professions and vocations**

The provisions of this Chapter apply to professions and vocations as they apply to trades.

#### *Charge to tax on post-cessation receipts*

#### **242 Charge to tax on post-cessation receipts**

Income tax is charged on post-cessation receipts arising from a trade.

#### **243 Extent of charge to tax**

- (1) A post-cessation receipt is chargeable to tax under this Chapter only so far as it is not otherwise chargeable to income or corporation tax.
- (2) Accordingly, a post-cessation receipt arising from a trade is not chargeable to tax under this Chapter so far as it is brought into account in calculating the profits of the trade for any period.
- (3) A post-cessation receipt is not chargeable to tax under this Chapter if—
  - (a) it is received by or on behalf of a non-UK resident who is beneficially entitled to it, and
  - (b) it represents income arising outside the United Kingdom.
- (4) A post-cessation receipt is not chargeable to tax under this Chapter if it arises from a trade carried on wholly outside the United Kingdom.
- (5) A post-cessation receipt is not chargeable to tax under this Chapter in the case of a partner in a firm if—
  - (a) it represents income arising outside the United Kingdom from a trade carried on by the firm, and
  - (b) the partner's share of the firm's income arising out of the United Kingdom is treated as relevant foreign income by section 857(3) (partners to whom the remittance basis applies).

[<sup>F301</sup>(6) If the tax year is a split year as respects a UK resident individual, this section has effect as if, for the overseas part of that year, the individual were non-UK resident.]

#### **Textual Amendments**

**F301** S. 243(6) inserted (with effect in accordance with Sch. 45 para. 153(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 77](#)

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

## 244 Income charged

- (1) Tax is charged under this Chapter on the full amount of the receipts received in the tax year.
- (2) This is subject to—
  - (a) sections 254 and 255 (allowable deductions), and
  - (b) section 257 (election to carry back).

## 245 Person liable

The person liable for any tax charged under this Chapter is the person receiving or entitled to the receipts.

*Meaning of “post-cessation receipts”*

## 246 Basic meaning of “post-cessation receipt”

- (1) In this Part “post-cessation receipt” means a sum—
  - (a) which is received after a person permanently ceases to carry on a trade, and
  - (b) which arises from the carrying on of the trade before the cessation.
- (2) For this purpose the reference to a person permanently ceasing to carry on a trade includes [<sup>F302</sup>a reference to a company ceasing to be within the charge to corporation tax in respect of a trade.]
- [<sup>F303</sup>(2A) If, immediately before a person permanently ceases to carry on a trade, an election under section 25A (cash basis for small businesses) has effect in relation to the trade, a sum is to be treated as a post-cessation receipt only if it would have been brought into account in calculating the profits of the trade on the cash basis had it been received at that time.]
- (3) Subsection (4) applies if—
  - (a) a firm carries on a trade,
  - (b) a person ceases to be a partner in the firm, and
  - (c) the departure results in the partner permanently ceasing to carry on the notional trade (see section 852).
- (4) The partner is treated for the purposes of this Chapter as permanently ceasing to carry on the trade.

### Textual Amendments

**F302** Words in s. 246(2) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), [Sch. 1 para. 612](#) (with [Sch. 2 Pts. 1, 2](#))

**F303** S. 246(2A) inserted (with effect in accordance with [Sch. 4 paras. 56, 57](#) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 4 para. 39\(2\)](#)

## 247 Other rules about what counts as post-cessation receipts

- (1) The following provisions treat certain amounts as post-cessation receipts for the purposes of this Part—

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

section 82(6) (contributions to local enterprise organisations or urban regeneration companies),  
section 104(3) (distribution of assets of mutual concerns),  
section 109(2) (receipt by donor or connected person of benefit attributable to certain gifts),  
section 185(1) (election for valuation at cost),  
section 248 (debts paid after cessation),  
section 249 (debts released after cessation), as qualified, where appropriate, by section 48(4) (car <sup>F304</sup>... hire),  
section 250 (receipts relating to post-cessation expenditure),  
section 251 (transfer of rights if transferee does not carry on trade), and  
section 844 (income charged on withdrawal of relief after source ceases: unremittable income).

- (2) Section 98 (acquisition of trade: receipts from transferor's trade) and section 251 (transfer of rights if transferee does not carry on trade) treat certain amounts as not being post-cessation receipts for the purposes of this Part.

#### Textual Amendments

**F304** Words in s. 247(1) omitted (with effect in accordance with Sch. 11 paras. 65-67 of the amending Act) by virtue of [Finance Act 2009 \(c. 10\)](#), [Sch. 11 para. 40](#)

### *Sums treated as post-cessation receipts*

#### **248 Debts paid after cessation**

- (1) Subsection (2) applies if, in calculating the profits of a trade for income or corporation tax purposes, a deduction is made in respect of a debt under—
- (a) section 35 (bad and doubtful debts), or
  - (b) section 74(1)(j) of ICTA (corresponding corporation tax provision),
- and a person permanently ceases to carry on the trade.
- (2) A sum received after the cessation is treated as a post-cessation receipt so far as the deduction is made.
- (3) Subsection (4) applies if relief is given under [<sup>F305</sup>section 96 of ITA 2007](relief for post-cessation expenditure) [<sup>F306</sup>as a result of subsection (1)(b) of that section] in respect of a debt owed to a person who has permanently ceased to carry on a trade.
- (4) A sum received by the person in payment of the debt is treated as a post-cessation receipt so far as relief is given in respect of the sum.

#### Textual Amendments

**F305** Words in s. 248(3) substituted (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), ss. 1027, 1034, [Sch. 1 para. 503\(a\)](#)

**F306** Words in s. 248(3) inserted (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), ss. 1027, 1034, [Sch. 1 para. 503\(b\)](#)

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

## 249 Debts released after cessation

- (1) This section applies if—
  - (a) in calculating the profits of a trade for any period for income or corporation tax purposes, a deduction is allowed for the expense giving rise to a debt owed by the person who carried on the trade,
  - (b) the person has permanently ceased to carry on the trade at or after the end of that period,
  - (c) after the cessation, all or part of the debt is released, and
  - (d) the release is not part of a statutory insolvency arrangement.
- (2) The amount released is treated as a post-cessation receipt.
- (3) For the purposes of this section the reference to a person permanently ceasing to carry on a trade includes [<sup>F307</sup>a reference to a company ceasing to be within the charge to corporation tax in respect of a trade.]

### Textual Amendments

**F307** Words in s. 249(3) substituted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 613** (with Sch. 2 Pts. 1, 2)

## 250 Receipts relating to post-cessation expenditure

- (1) This section applies if a person who has permanently ceased to carry on a trade makes a payment in circumstances where relief is available under [<sup>F308</sup>section 96 of ITA 2007](relief for post-cessation expenditure).
- (2) The following sums are treated as post-cessation receipts—
  - (a) in the case of a payment within [<sup>F309</sup>section 97(2) or (3) of ITA 2007](payment to remedy defective work etc. or to defray expenses of a claim), the proceeds of insurance, or other sum received, for the purpose of enabling the payment to be made or by means of which it is reimbursed,
  - (b) in the case of a payment within [<sup>F310</sup>section 97(4) of ITA 2007](payment to insure against claims for defective work etc.), a refund of the premium, or other sum received, in connection with the insurance, and
  - (c) in the case of a payment within [<sup>F311</sup>section 97(5) of ITA 2007](payment for the purpose of collecting a debt), any sum received towards the cost of collecting the debt.
- (3) If a sum mentioned in subsection (2) is received in a tax year earlier than the tax year in which the related payment is made, it is treated as having been received in the later tax year (and not the earlier tax year).
- (4) Any adjustment required to give effect to subsection (3) is to be made by way of—
  - (a) amendment of an assessment, or
  - (b) discharge or repayment of tax.

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

### Textual Amendments

- F308** Words in s. 250(1) 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. 504\(2\)](#) (with transitional provisions and savings in [Sch. 2](#))
- F309** Words in s. 250(2)(a) 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. 504\(3\)\(a\)](#) (with transitional provisions and savings in [Sch. 2](#))
- F310** Words in s. 250(2)(b) 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. 504\(3\)\(b\)](#) (with transitional provisions and savings in [Sch. 2](#))
- F311** Words in s. 250(2)(c) 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. 504\(3\)\(c\)](#) (with transitional provisions and savings in [Sch. 2](#))

## 251 Transfer of rights if transferee does not carry on trade

- (1) This section applies if—
- a person (“the transferor”) permanently ceases to carry on a trade,
  - the transferor transfers to another person (“the transferee”) for value the right to receive sums arising from the carrying on of the trade, and
  - the transferee does not subsequently carry on the trade.
- (2) The transferor is treated as receiving a post-cessation receipt.
- (3) The amount of the receipt is—
- the amount or value of the consideration for the transfer, if the transfer is at arm's length, or
  - the value of the rights transferred as between parties at arm's length, if the transfer is not at arm's length.
- (4) Any sums mentioned in subsection (1)(b) which are received after the cessation of the trade are not post-cessation receipts.
- (5) This section is subject to—
- section 252 (transfer of trading stock or work in progress), and
  - section 253 (lump sums paid to personal representatives for copyright etc.).

*Sums that are not post-cessation receipts*

## 252 Transfer of trading stock or work in progress

- (1) When a person permanently ceases to carry on a trade, a sum realised by—
- the transfer of trading stock, or
  - the transfer of work in progress,
- is not a post-cessation receipt if a valuation of the stock or work is brought into account in accordance with Chapter 12 (valuation of stock and work in progress).
- (2) This does not prevent a sum from being treated as a post-cessation receipt as a result of an election under section 185 (election for valuation of work in progress at cost).

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

- (3) In this section—
- (a) “trading stock” has the meaning given by section 174, and
  - (b) “work in progress” and “transfer of work in progress” have the meaning given by section 183.

### **253 Lump sums paid to personal representatives for copyright etc.**

- (1) A lump sum which is paid to the personal representatives of the author of a literary, dramatic, musical or artistic work as consideration for the assignment by them of—
  - (a) the copyright in the work, or
  - (b) the public lending right in the work,
 is not a post-cessation receipt.
- (2) A lump sum which is paid to the personal representatives of the designer of a design in which design right subsists as consideration for the assignment by them of that right is not a post-cessation receipt.
- (3) For the purposes of this section it does not matter whether the whole or a part of the right is assigned.

### *Deductions*

### **254 Allowable deductions**

- (1) In calculating the amount on which tax is charged under this Chapter, deductions are allowed in accordance with—
    - (a) this section, and
    - (b) section 255,
 from the amount which would otherwise be chargeable to tax under this Chapter.
  - (2) A deduction is allowed for a loss, expense or debit which, if the person carrying on the trade had not permanently ceased to do so—
    - (a) would have been deducted in calculating the profits of the trade for income or corporation tax purposes, or
    - (b) would have been deducted from or set off against the profits of the trade for income or corporation tax purposes,
 but no deduction is allowed if the loss, expense or debit arises directly or indirectly from the cessation itself.
- [<sup>F312</sup>(2A) If, immediately before the person permanently ceases to carry on the trade, an election under section 25A (cash basis for small businesses) has effect in relation to the trade, assume for the purposes of subsection (2) that such an election has effect in relation to the trade.]
- [<sup>F313</sup>(2B) If—
- (a) the loss or expense is incurred, or the debit arises, in relation to a vehicle, and
  - (b) immediately before the person permanently ceases to carry on the trade, section 94D (deduction allowable at fixed rate for expenditure on vehicles) applies in relation to the vehicle,

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

assume for the purposes of subsection (2) that that section applies in relation to the vehicle.]

- (3) No deduction for an amount is allowed under this section if the amount has been allowed—
- (a) under any other provision of the Tax Acts, or
  - (b) as a result of [<sup>F314</sup>section 261D of TCGA 1992] (capital gains tax relief for post-cessation expenditure).

#### Textual Amendments

- F312** S. 254(2A) inserted (with effect in accordance with Sch. 4 paras. 56, 57 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 4 para. 39\(3\)](#)
- F313** S. 254(2B) inserted (with effect in accordance with Sch. 5 para. 6 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 5 para. 4](#)
- F314** Words in s. 254(3)(b) 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. 505](#) (with transitional provisions and savings in [Sch. 2](#))

## 255 Further rules about allowable deductions

- (1) An amount may not be deducted more than once under section 254.
- (2) A deduction under that section of a loss must be made from post-cessation receipts charged for an earlier tax year in preference to those charged for a later tax year.
- (3) But this does not authorise the deduction of a loss from post-cessation receipts charged for a tax year before the tax year in which the loss is made.
- (4) No deduction may be made under section 254 from any amount that is treated as a post-cessation receipt under—
- (a) section 248(4) (debts paid after cessation), or
  - (b) section 250 (receipts relating to post-cessation expenditure).

### Reliefs

## 256 Treatment of post-cessation receipts

- (1) This section applies if—
- (a) an individual has permanently ceased to carry on a trade, and
  - (b) the income arising to the individual from the trade was <sup>F315</sup> . . . relevant UK earnings within section 189(2)(b) of FA 2004.
- (2) Any post-cessation receipts arising to the individual from the trade are similarly <sup>F315</sup> . . . relevant UK earnings.

#### Textual Amendments

- F315** Words in s. 256(1)(b)(2) 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. 506\(2\)\(3\)](#), [Sch. 3 Pt. 1](#) (with transitional provisions and savings in [Sch. 2](#))

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

## 257 Election to carry back

- (1) This section applies if a post-cessation receipt is received by a person (or a person's personal representatives) in a tax year beginning no later than 6 years after the person permanently ceased to carry on the trade.
- (2) The person (or the person's personal representatives) may elect that the tax chargeable in respect of the receipt is to be charged as if the receipt had been received on the date of the cessation.
- (3) But this is subject to paragraph 5 of Schedule 1B to TMA 1970 (election given effect in the tax year in which the receipt is actually received).
- (4) The election must be made on or before the first anniversary of the normal self-assessment filing date for the tax year.

## CHAPTER 19

### SUPPLEMENTARY

## 258 Changes in trustees and personal representatives

- (1) This section applies if there is a change—
  - (a) in the trustees of a trust, or
  - (b) in the personal representatives of a person,
 at a time when they are carrying on a trade, profession or vocation.
- (2) For income tax purposes, the change does not result in—
  - (a) any of the trustees or personal representatives before the change permanently ceasing to carry on the trade, profession or vocation, or
  - (b) any of the trustees or personal representatives after the change starting to carry on the trade, profession or vocation.

## [<sup>F316</sup>259 Meaning of “statutory insolvency arrangement”

In this Part “statutory insolvency arrangement” means—

- (a) a voluntary arrangement that has taken effect under or as a result of the Insolvency Act 1986, Schedule 4 or 5 to the Bankruptcy (Scotland) Act 1985 or the Insolvency (Northern Ireland) Order 1989,
- (b) [<sup>F317</sup>a compromise or arrangement that has taken effect under Part 26 of the Companies Act 2006]
- (c) any arrangement or compromise of a kind corresponding to any of those mentioned in paragraph (a) or (b) that has taken effect under or by virtue of the law of a country or territory outside the United Kingdom.]

### Textual Amendments

**F316** S. 259 substituted (with effect as mentioned in [Sch. 6 para. 3\(2\)](#) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\), s. 37, Sch. 6 para.3\(1\)](#)

**F317** S. 259(b) substituted (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments\) \(Taxes and National Insurance\) Order 2008 \(S.I. 2008/954\), arts. 1\(1\), 37 \(with art. 4\)](#)



*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

## PART 3

### PROPERTY INCOME

#### CHAPTER 1

##### INTRODUCTION

### 260 Overview of Part 3

- (1) This Part imposes charges to income tax under—
  - (a) Chapter 3 (the profits of a UK property business or an overseas property business),
  - (b) Chapter 7 (amounts treated as adjustment income under section 330),
  - (c) Chapter 8 (rent receivable in connection with a UK section 12(4) concern),
  - (d) Chapter 9 (rent receivable for UK electric-line wayleaves), [<sup>F318</sup> and ]
  - (e) Chapter 10 (post-cessation receipts arising from a UK property business)<sup>F319</sup> ...
  - <sup>F319</sup>(f) .....
- (2) Part 6 deals with exemptions from the charges under this Part.
- (3) See, in particular, the exemptions under sections 769 (housing grants), 777 (VAT repayment supplements) and 778 (incentives to use electronic communications).
- (4) The charges under Chapters 3, 7, 8, 9 and 10 apply to non-UK residents as well as UK residents but this is subject to section 269 (charges on non-UK residents only on UK source income).
- (5) This section needs to be read with the relevant priority rules (see sections 2 and 261).

#### Textual Amendments

**F318** Word in s. 260(1)(d) inserted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by Finance Act 2008 (c. 9), Sch. 7 para. 47(a)

**F319** S. 260(1)(f) omitted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by virtue of Finance Act 2008 (c. 9), Sch. 7 para. 47(b)

### 261 Provisions which must be given priority over Part 3

Any receipt or other credit item, so far as it falls within—

- (a) Chapter 3 of this Part so far as it relates to an overseas property business or Chapter 8 or 9 of this Part (rent receivable in connection with a UK section 12(4) concern or for UK electric-line wayleaves), and
  - (b) Chapter 2 of Part 2 (receipts of a trade, profession or vocation),
- is dealt with under Part 2.

### 262 Priority between Chapters within Part 3

- (1) Any receipt, so far as it falls within—
  - (a) Chapter 3 so far as it relates to a UK property business, and

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

- (b) Chapter 8 (rent receivable in connection with a UK section 12(4) concern), is dealt with under Chapter 8.
- (2) Any receipt, so far as it falls within—
  - (a) Chapter 3 so far as it relates to a UK property business, and
  - (b) Chapter 9 (rent receivable for UK electric-line wayleaves), is dealt with under Chapter 9.
- (3) Any receipt, so far as it falls within Chapter 8 (rent receivable in connection with a UK section 12(4) concern) and Chapter 9 (rent receivable for UK electric-line wayleaves), is dealt with under Chapter 9.

## CHAPTER 2

### PROPERTY BUSINESSES

#### *Introduction*

#### **263 Introduction**

- (1) This Chapter explains for the purposes of this Act what is meant by—
  - (a) a person's UK property business (see section 264), and
  - (b) a person's overseas property business (see section 265).
- (2) Both those sections need to be read with—
  - (a) section 266 (which explains what is meant by generating income from land), and
  - (b) section 267 (which provides that certain activities do not count as activities for generating income from land).
- (3) In the case of the property business of a firm, the basic rules in sections 264 and 265 are explained in section 859(2) and (3).
- (4) References in this Act to an overseas property business are to an overseas property business so far as any profits of the business are chargeable to tax under Chapter 3 (as to which see, in particular, section 269).
- (5) Accordingly, nothing in Chapter 4 or 5 is to be read as treating an amount as a receipt of an overseas property business if the profits concerned would not be chargeable to tax under Chapter 3.
- (6) In this Act “property business” means a UK property business or an overseas property business.

#### *Basic meaning of UK and overseas property business*

#### **264 UK property business**

A person's UK property business consists of—

- (a) every business which the person carries on for generating income from land in the United Kingdom, and

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

- (b) every transaction which the person enters into for that purpose otherwise than in the course of such a business.

## **265 Overseas property business**

A person's overseas property business consists of—

- (a) every business which the person carries on for generating income from land outside the United Kingdom, and
- (b) every transaction which the person enters into for that purpose otherwise than in the course of such a business.

### *Generating income from land*

## **266 Meaning of “generating income from land”**

- (1) In this Chapter “generating income from land” means exploiting an estate, interest or right in or over land as a source of rents or other receipts.
- (2) “Rents” includes payments by a tenant for work to maintain or repair leased premises which the lease does not require the tenant to carry out.
- (3) “Other receipts” includes—
  - (a) payments in respect of a licence to occupy or otherwise use land,
  - (b) payments in respect of the exercise of any other right over land, and
  - (c) rentcharges and other annual payments reserved in respect of, or charged on or issuing out of, land.
- (4) For the purposes of this section a right to use a caravan or houseboat at only one location is treated as a right deriving from an estate or interest in land.

## **267 Activities not for generating income from land**

For the purposes of this Chapter the following activities are not carried on for generating income from land—

- (a) farming or market gardening in the United Kingdom (but see section 9 (UK farming or market gardening treated as trade)),
- (b) any other occupation of land (but see section 10 (certain commercial occupation of UK land treated as trade)), and
- (c) activities for the purposes of a concern to which section 12 applies (profits of mines, quarries etc.).

## **CHAPTER 3**

### **PROFITS OF PROPERTY BUSINESSES: BASIC RULES**

#### *Charge to tax on profits of a property business*

## **268 Charge to tax on profits of a property business**

Income tax is charged on the profits of a property business.

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

## 269 Territorial scope of charge to tax

- (1) Profits of a UK property business are chargeable to tax under this Chapter whether the business is carried on by a UK resident or a non-UK resident.
- (2) Profits of an overseas property business are chargeable to tax under this Chapter only if the business is carried on by a UK resident.
- <sup>F320</sup>(3) .....
- <sup>F321</sup>(4) .....

### Textual Amendments

**F320** S. 269(3) omitted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by virtue of Finance Act 2008 (c. 9), **Sch. 7 para. 48**

**F321** S. 269(4) omitted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by virtue of Finance Act 2008 (c. 9), **Sch. 7 para. 48**

## 270 Income charged

- (1) Tax is charged under this Chapter on the full amount of the profits arising in the tax year.
- (2) Subsection (1) is subject to Part 8 (foreign income: special rules).
- <sup>F322</sup>(3) If, as respects an individual carrying on an overseas property business, the tax year is a split year—
  - (a) tax is charged under this Chapter on so much of the profits referred to in subsection (1) as arise in the UK part of the tax year, and
  - (b) the portion of the profits arising in the overseas part of the tax year is, accordingly, not chargeable to tax under this Chapter.
- (4) In determining how much of the profits arise in the UK part of the tax year—
  - (a) determine first how much of the non-CAA profits arise in the UK part by apportioning the non-CAA profits between the UK part and the overseas part on a just and reasonable basis, and
  - (b) then adjust the portion of the non-CAA profits arising in the UK part by deducting any CAA allowances for the year and adding any CAA charges for the year.
- (5) In subsection (4)—
 

“CAA allowances” means allowances treated under section 250 or 250A of CAA 2001 (capital allowances for overseas property businesses) as an expense of the business;

“CAA charges” means charges treated under either of those sections as a receipt of the business;

“non-CAA profits” means profits before account is taken of any CAA allowances or CAA charges.]

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

### Textual Amendments

**F322** S. 270(3)-(5) inserted (with effect in accordance with Sch. 45 para. 153(2) of the amending Act) by Finance Act 2013 (c. 29), **Sch. 45 para. 81**

## 271 Person liable

The person liable for any tax charged under this Chapter is the person receiving or entitled to the profits.

### *Calculation of profits*

## 272 Profits of a property business: application of trading income rules

- (1) The profits of a property business are calculated in the same way as the profits of a trade.
- (2) But the provisions of Part 2 (trading income) which apply as a result of subsection (1) are limited to the following—

*In Chapter 3 (basic rules)—*

section 25	generally accepted accounting practice
section 26	losses calculated on same basis as profits
section 27	receipts and expenses
section 28	items treated under CAA 2001 as receipts and expenses
section 29	interest

*In Chapter 4 (rules restricting deductions)—*

section 33	capital expenditure
section 34	expenses not wholly and exclusively for trade and unconnected losses
section 35	bad and doubtful debts
sections 36 and 37	unpaid remuneration
sections 38 to 44	employee benefit contributions
sections 45 to 47	business entertainment and gifts
sections 48 to [F323 50B]	car F324
	... hire F325

.....	.....
section 52	exclusion of double relief for interest
section 53	social security contributions

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

section 54	penalties, interest and VAT surcharges
section 55	crime-related payments
[ <sup>F326</sup> section 55A	expenditure on integral features]
<i>In Chapter 5 (rules allowing deductions)—</i>	
section 57	pre-trading expenses
sections 58 and 59	incidental costs of obtaining finance
section 68	replacement and alteration of trade tools
section 69	payments for restrictive undertakings
sections 70 and 71	seconded employees
section 72	payroll deduction schemes: contributions to agents' expenses
sections 73 to 75	counselling and retraining expenses
sections 76 to 80	redundancy payments etc.
section 81	personal security expenses
sections 82 to 86	contributions to local enterprise organisations or urban regeneration companies
sections 87 and 88	scientific research
sections 89 and 90	expenses connected with patents, designs and trade marks
section 91	payments to Export Credits Guarantee Department
[ <sup>F327</sup> section 94A	costs of setting up SAYE option scheme or CSOP scheme]
[ <sup>F328</sup> section 94AA	deductions in relation to salaried members of limited liability partnerships]
<i>In Chapter 6 (receipts)—</i>	
section 96	capital receipts
section 97	debts incurred and later released
section 104	distribution of assets of mutual concerns
section 105	industrial development grants
section 106	sums recovered under insurance policies etc.
<i>In Chapter 7 (gifts to charities etc.)—</i>	
section 109	receipt by donor or connected person of benefit attributable to certain gifts
[ <sup>F329</sup> In Chapter 10A (long funding leases)—	

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

Sections 148A to 148J	Leases of plant or machinery: special rules for long funding leases]
<i>In Chapter 11 (other specific trades)—</i>	
section 155	levies and repayments under FISMA 2000
<i>In Chapter 13 (deductions from profits)—</i>	
sections 188 to 191	unremittable amounts

- (3) In those provisions the expression “this Part” is to be read as a reference to those provisions as applied by subsection (2) and to the other provisions of Part 3.

#### Textual Amendments

- F323** Word in s. 272(2) Table substituted (with effect in accordance with Sch. 11 paras. 65-67 of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 11 para. 41\(a\)](#)
- F324** Words in s. 272(2) Table omitted (with effect in accordance with Sch. 11 paras. 65-67 of the amending Act) by virtue of [Finance Act 2009 \(c. 10\)](#), [Sch. 11 para. 41\(b\)](#)
- F325** S. 272(2) Table: entry repealed (6.4.2007 with effect as stated in [s. 1034\(1\)](#) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), ss, 1027, 1031, 1034, Sch. 1 para. 507, {Sch. 3 Pt. 1} (with transitional provisions and savings in Sch. 2)
- F326** Words in s. 272(2) Table inserted (with effect in accordance with s. 73(6) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [s. 73\(5\)](#)
- F327** Words in s. 272(2) Table inserted (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. 7 para. 29](#) (with [Sch. 9 paras. 1-9, 22](#))
- F328** Words in s. 272(2) Table inserted (6.4.2014) by [Finance Act 2014 \(c. 26\)](#), [Sch. 17 paras. 3\(3\), 6](#)
- F329** S. 272(2) Table: entry relating to Ch. 10A (long funding leases) inserted (with effect as mentioned in [Sch. 8 para. 15](#) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [s. 81](#), [Sch. 8 para. 14\(2\)](#)

#### 273 Amounts not brought into account as part of a property business

- (1) The rules for calculating the profits of a property business need to be read with the following provisions of Part 2 (trading income)—
- section 19 (tied premises),
  - section 20 (caravan sites where trade carried on),
  - section 21 (surplus business accommodation), and
  - section 22(3) (payments for wayleaves).
- (2) Those provisions secure that amounts which would otherwise be brought into account in calculating the profits of the business are, or may be, brought into account instead in calculating the profits of a trade.

#### 274 Relationship between rules prohibiting and allowing deductions

- (1) Any relevant permissive rule in this Part—
- has priority over any relevant prohibitive rule in this Part, but
  - is subject to [F330 section 36 (unpaid remuneration), section 38 (employee benefit contributions), section 48 (car F331... hire) and section] 55 (crime-related payments), as applied by section 272.

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- [<sup>F332</sup>(1A) But, if the relevant permissive rule would allow a deduction in calculating the profits of a property business in respect of an amount which arises directly or indirectly in consequence of, or otherwise in connection with, relevant tax avoidance arrangements, that rule—
- (a) does not have priority under subsection (1)(a), and
  - (b) is subject to any relevant prohibitive rule in this Part (and to the provisions mentioned in subsection (1)(b)).]
- (2) In this section “any relevant permissive rule in this Part” means any provision of this Part (apart from sections 291 to 294) which allows a deduction in calculating the profits of a property business.
- (3) In this section “any relevant prohibitive rule in this Part”, in relation to any deduction, means any provision of this Part (apart from sections [<sup>F333</sup>36, 38,] 48 and 55, as applied by section 272) which might otherwise be read as—
- (a) prohibiting the deduction, or
  - (b) restricting the amount of the deduction.
- [<sup>F334</sup>(3A) In this section “relevant tax avoidance arrangements” means arrangements—
- (a) to which the person carrying on the property business is a party, and
  - (b) the main purpose, or one of the main purposes, of which is the obtaining of a tax advantage (within the meaning of section 1139 of CTA 2010).
- “Arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable).]
- (4) In this section any reference to any provision of this Part includes any provision applied by section 272.

#### Textual Amendments

- F330** Words in s. 274(1)(b) substituted (with effect as stated in s. 67(7) of the amending Act) by [Finance Act 2007 \(c. 11\), s. 67\(5\)](#)
- F331** Words in s. 274(1)(b) omitted (with effect in accordance with Sch. 11 paras. 65-67 of the amending Act) by virtue of [Finance Act 2009 \(c. 10\), Sch. 11 para. 42](#)
- F332** S. 274(1A) inserted (with effect in accordance with s. 78(5)-(7) of the amending Act) by [Finance Act 2013 \(c. 29\), s. 78\(2\)\(a\)](#)
- F333** Words in s. 274(3) inserted (with effect as stated in s. 67(7) of the amending Act) by [Finance Act 2007 \(c. 11\), s. 67\(6\)](#)
- F334** S. 274(3A) inserted (with effect in accordance with s. 78(5)-(7) of the amending Act) by [Finance Act 2013 \(c. 29\), s. 78\(2\)\(b\)](#)

### *Apportionment of profits*

#### **275 Apportionment etc. of profits to tax year**

- (1) This section applies if a period of account of a property business does not coincide with a tax year.
- (2) Any of the following steps may be taken if they are necessary in order to arrive at the profits or losses of the tax year—



*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (a) apportioning the profits or losses of a period of account to the parts of that period falling in different tax years, and
  - (b) adding the profits or losses of a period of account (or part of a period) to profits or losses of other periods of account (or parts).
- (3) The steps must be taken by reference to the number of days in the periods concerned.
- (4) But the person carrying on the business may use a different way of measuring the length of the periods concerned if—
- (a) it is reasonable to do so, and
  - (b) the way of measuring the length of periods is used consistently for the purposes of the business.

## CHAPTER 4

### PROFITS OF PROPERTY BUSINESSES: LEASE PREMIUMS ETC.

#### *Introduction*

#### **276 Introduction**

- (1) This Chapter provides for certain amounts (which would otherwise generally be amounts of a capital nature) to be brought into account as receipts in calculating the profits of a property business.
- (2) The amounts relate to short-term leases in the case of—  
section 277 (lease premiums),  
section 278 (amount treated as lease premium where work required),  
section 280 (sums payable for surrender of lease), and  
section 282 (assignments for profit of lease granted at undervalue).
- (3) The amounts relate to any lease in the case of—  
section 279 (sums payable instead of rent), and  
section 281 (sums payable for variation or waiver of [<sup>F335</sup>terms] of lease).
- (4) The amounts relate to the sale of any estate or interest in land in the case of—  
section 284 (sales with right to reconveyance), and  
section 285 (sale and leaseback transactions).
- (5) This Chapter also permits certain deductions in calculating the profits of property businesses carried on by tenants under certain leases (see sections 291 and 292).
- (6) In this Chapter “short-term lease” means a lease whose effective duration is 50 years or less.

#### **Textual Amendments**

**F335** Word in s. 276(3) substituted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 614** (with Sch. 2 Pts. 1, 2)

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

*Amounts treated as receipts: leases*

## 277 Lease premiums

- (1) This section applies if a premium is required to be paid—
  - (a) under a short-term lease, or
  - (b) otherwise under the terms subject to which a short-term lease is granted.
- (2) The person to whom the premium is due is treated as—
  - (a) entering into a transaction mentioned in section 264 (if the land to which the lease relates is in the United Kingdom) or section 265 (if that land is outside the United Kingdom), and
  - (b) receiving the amount calculated under subsections (4) and (5) as a result of that transaction.
- (3) That amount is brought into account as a receipt in calculating the profits of the property business which consists of or includes that transaction for the tax year in which the lease is granted.
- (4) The amount of the receipt is given by the formula—

$$P \times \left( \frac{50 - Y}{50} \right)$$

where—

P is the premium, and

Y is the number of complete periods of 12 months (other than the first) comprised in the effective duration of the lease.

- (5) But, if the rule in section 288 (the additional calculation rule) applies, the amount given by the formula in subsection (4) is reduced by the amount calculated in accordance with section 288.

### **Modifications etc. (not altering text)**

**C19** Ss. 277-281 excluded (with effect as mentioned in [Sch. 6 para. 6\(2\)-\(7\)](#) of the amending Act) by [1981 c. 1, s. 774G\(7\)](#) as inserted by [Finance Act 2006 \(c. 25\), s. 76, Sch. 6 para. 6\(1\)](#)

## 278 Amount treated as lease premium where work required

- (1) This section applies if the terms subject to which a lease is granted impose on the tenant an obligation to carry out work on the premises.
- (2) The lease is treated for the purposes of section 277 (lease premiums) as requiring the payment of a premium to the landlord (in addition to any other premium).
- (3) The amount of the premium is the amount by which the value of the landlord's estate or interest immediately after the commencement of the lease exceeds what its value would have been at that time if the terms of the lease did not impose the obligation on the tenant.

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (4) An obligation, or part of an obligation, that requires the carrying out of excepted work is ignored for the purposes of this section.
- (5) Work is “excepted work” if the payment for carrying it out would, if the landlord and not the tenant were obliged to carry it out, be deductible as an expense in calculating the profits of the landlord's property business.

**Modifications etc. (not altering text)**

**C20** Ss. 277-281 excluded (with effect as mentioned in [Sch. 6 para. 6\(2\)-\(7\)](#) of the amending Act) by [1981 c. 1, s. 774G\(7\)](#) as inserted by [Finance Act 2006 \(c. 25\), s. 76, Sch. 6 para. 6\(1\)](#)

**279 Sums payable instead of rent**

- (1) This section applies if—
  - (a) under the terms subject to which a lease is granted a sum becomes payable by the tenant instead of the whole or a part of the rent for a period, and
  - (b) the period is 50 years or less.
- (2) The person to whom the sum is due is treated as—
  - (a) entering into a transaction mentioned in section 264 (if the land to which the lease relates is in the United Kingdom) or section 265 (if that land is outside the United Kingdom), and
  - (b) receiving the amount calculated under subsections (4) and (5) as a result of that transaction.
- (3) That amount is brought into account as a receipt in calculating the profits of the property business which consists [<sup>F336</sup>of or] includes that transaction for the tax year in which the sum becomes payable.
- (4) The amount of the receipt is given by the formula—

$$S \times \left( \frac{50 - Y}{50} \right)$$

where—

S is the sum payable instead of rent, and

Y is the number of complete periods of 12 months (other than the first) comprised in the period in relation to which the sum is payable.

- (5) But, if the rule in section 288 (the additional calculation rule) applies, the amount given by the formula in subsection (4) is reduced by the amount calculated in accordance with section 288.
- (6) In determining for the purposes of this Chapter the duration of the period in relation to which the sum is payable, any part of the period that falls after the expiry of the effective duration of the lease is excluded.

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

### Textual Amendments

**F336** Words in s. 279(3) substituted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 615** (with Sch. 2 Pts. 1, 2)

### Modifications etc. (not altering text)

**C21** Ss. 277-281 excluded (with effect as mentioned in Sch. 6 para. 6(2)-(7) of the amending Act) by 1981 c. 1, s. 774G(7) as inserted by Finance Act 2006 (c. 25), s. 76, **Sch. 6 para. 6(1)**

## 280 Sums payable for surrender of lease

- (1) This section applies if, under the terms subject to which a short-term lease is granted, a sum becomes payable by the tenant as consideration for the surrender of the lease.
- (2) The person to whom the sum is due is treated as—
  - (a) entering into a transaction mentioned in section 264 (if the land to which the lease relates is in the United Kingdom) or section 265 (if that land is outside the United Kingdom), and
  - (b) receiving the amount calculated under subsections (4) and (5) as a result of that transaction.
- (3) That amount is brought into account as a receipt in calculating the profits of the property business which consists of or includes that transaction for the tax year in which the sum becomes payable.
- (4) The amount of the receipt is given by the formula—

$$S \times \left( \frac{50 - Y}{50} \right)$$

where—

S is the sum payable as consideration for the surrender of the lease, and

Y is the number of complete periods of 12 months (other than the first) comprised in the effective duration of the lease.

- (5) But, if the rule in section 288 (the additional calculation rule) applies, the amount given by the formula in subsection (4) is reduced by the amount calculated in accordance with section 288.

### Modifications etc. (not altering text)

**C22** Ss. 277-281 excluded (with effect as mentioned in Sch. 6 para. 6(2)-(7) of the amending Act) by 1981 c. 1, s. 774G(7) as inserted by Finance Act 2006 (c. 25), s. 76, **Sch. 6 para. 6(1)**

## 281 Sums payable for variation or waiver of [<sup>F337</sup> terms] of lease

- (1) This section applies if—

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (a) a sum becomes payable by the tenant (otherwise than by way of rent) as consideration for the variation or waiver of a term of a lease,
  - (b) the sum is due to the landlord or a person who is connected with the landlord, and
  - (c) the period for which the variation or waiver has effect is 50 years or less.
- (2) The person to whom the sum is due is treated as—
- (a) entering into a transaction mentioned in section 264 (if the land to which the lease relates is in the United Kingdom) or section 265 (if that land is outside the United Kingdom), and
  - (b) receiving the amount calculated under subsections (4) and (5) as a result of that transaction.
- (3) That amount is brought into account as a receipt in calculating the profits of the property business which consists of or includes that transaction for the tax year in which the contract providing for the variation or waiver is entered into.
- (4) The amount of the receipt is given by the formula—

$$S \times \left( \frac{50 - Y}{50} \right)$$

where—

S is the sum payable as consideration for the variation or waiver, and

Y is the number of complete periods of 12 months (other than the first) comprised in the period for which the variation or waiver has effect.

- (5) But, if the rule in section 288 (the additional calculation rule) applies, the amount given by the formula in subsection (4) is reduced by the amount calculated in accordance with section 288.
- (6) In determining for the purposes of this Chapter the duration of the period for which the variation or waiver has effect, any part of the period that falls after the expiry of the effective duration of the lease is excluded.

#### Textual Amendments

**F337** Word in s. 281 title substituted (1.4.2009) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 616](#) (with [Sch. 2 Pts. 1, 2](#))

#### Modifications etc. (not altering text)

**C23** Ss. 277-281 excluded (with effect as mentioned in [Sch. 6 para. 6\(2\)-\(7\)](#) of the amending Act) by [1981 c. 1, s. 774G\(7\)](#) as inserted by [Finance Act 2006 \(c. 25\), s. 76, Sch. 6 para. 6\(1\)](#)

#### [<sup>F338</sup>281] Sums to which sections 277 to 281 do not apply

- (1) This section applies if a grant of a lease constitutes a disposal of an asset for the purposes of section 809BZA(2)(b) or 809BZF(2)(a) of ITA 2007 (disposals under finance arrangements).

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

(2) Sections 277 to 281 do not apply in relation to a premium paid in respect of the grant.]

#### Textual Amendments

**F338** S. 281A inserted (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. 270](#) (with [Sch. 9 paras. 1-9, 22](#))

## 282 Assignments for profit of lease granted at undervalue

- (1) This section applies to an assignment of a short-term lease if—
  - (a) the lease was granted at an undervalue, and
  - (b) a profit is made on the assignment.
- (2) The person who assigns the lease is treated as—
  - (a) entering into a transaction mentioned in section 264 (if the land to which the lease relates is in the United Kingdom) or section 265 (if that land is outside the United Kingdom), and
  - (b) receiving the amount calculated under subsections (4) and (5) as a result of that transaction.
- (3) That amount is brought into account as a receipt in calculating the profits of the property business which consists of or includes that transaction for the tax year in which the consideration for the assignment becomes payable.
- (4) The amount of the receipt is given by the formula—

$$P \times \left( \frac{50 - Y}{50} \right)$$

where—

P is the lesser of—

- (a) the profit on the assignment, and
- (b) the amount by which the undervalue exceeds the total of the profits (if any) made on previous assignments of the lease, and

Y is the number of complete periods of 12 months (other than the first) comprised in the effective duration of the lease.

- (5) But, if the rule in section 288 (the additional calculation rule) applies, the amount given by the formula in subsection (4) is reduced by the amount calculated in accordance with section 288.
- (6) Section 283 explains references in this section to the grant of a lease at an undervalue and the making of a profit on an assignment of a lease.

## 283 Provisions supplementary to section 282

- (1) This section operates for the purposes of section 282.

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

- (2) A lease is granted at an undervalue if the terms subject to which it was granted are such that the landlord who granted it could have required the payment of an additional sum by way of premium, or additional premium, for its grant.
- (3) The additional sum is the undervalue.
- (4) The test in subsection (2) must be applied—
  - (a) having regard to values prevailing at the time the lease was granted, and
  - (b) on the assumption that the negotiations for the lease were at arm's length.
- (5) A profit is made on an assignment of a lease if the consideration for the assignment exceeds—
  - (a) if the lease has not previously been assigned, any premium for which it was granted, or
  - (b) in any other case, any consideration for which it was last assigned.
- (6) The amount of the excess is the profit.

*Other amounts treated as receipts*

**284 Sales with right to reconveyance**

- (1) This section applies if—
  - (a) an estate or interest in land is sold subject to terms which provide that it is to be, or may be required to be, reconveyed on a future date to the seller or a person connected with the seller,
  - (b) the period beginning with the sale and ending with the earliest date on which under the terms of the sale the estate or interest would fall to be reconveyed is 50 years or less, and
  - (c) the price at which the estate or interest is sold exceeds the price at which it is to be reconveyed.
- (2) The seller is treated as—
  - (a) entering into a transaction mentioned in section 264 (if the land is in the United Kingdom) or section 265 (if the land is outside the United Kingdom), and
  - (b) receiving the amount calculated under subsection (4) as a result of that transaction.
- (3) That amount is brought into account as a receipt in calculating the profits of the property business which consists of or includes that transaction for the tax year in which the estate or interest is sold.
- (4) The amount of the receipt is given by the formula—

$$E \times \left( \frac{50 - Y}{50} \right)$$

where—

E is the amount by which the price at which the estate or interest is sold exceeds the price at which it is to be reconveyed, and

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

Y is the number of complete periods of 12 months (other than the first) comprised in the period beginning with the sale and ending with the earliest date on which under the terms of the sale the estate or interest would fall to be reconveyed.

(5) See section 286 for some provisions which are supplementary to this section.

## 285 Sale and leaseback transactions

(1) This section applies if—

- (a) an estate or interest in land is sold subject to terms which provide for the grant of a lease directly or indirectly out of the estate or interest to the seller or a person connected with the seller,
- (b) the period beginning with the sale and ending with the earliest date on which under the terms of the sale the lease would fall to be granted is 50 years or less, and
- (c) the price at which the estate or interest is sold exceeds the total of—
  - (i) the amount of any premium for the lease, and
  - (ii) the value on the date of the sale of the right to receive a conveyance of the reversion immediately after the lease begins to run.

(2) This section does not apply if the lease is granted and begins to run within one month after the sale.

(3) The seller is treated as—

- (a) entering into a transaction mentioned in section 264 (if the land is in the United Kingdom) or section 265 (if the land is outside the United Kingdom), and
- (b) receiving the amount calculated under subsection (5) as a result of that transaction.

(4) That amount is brought into account as a receipt in calculating the profits of the property business which consists of or includes that transaction for the tax year in which the estate or interest is sold.

(5) The amount of the receipt is given by the formula—

$$E \times \left( \frac{50 - Y}{50} \right)$$

where—

E is the amount by which the price at which the estate or interest is sold exceeds the total of—

- (a) the amount of any premium for the lease, and
- (b) the value on the date of the sale of the right to receive a conveyance of the reversion immediately after the lease begins to run, and

Y is the number of complete periods of 12 months (other than the first) comprised in the period beginning with the sale and ending with the earliest date on which under the terms of the sale the lease would fall to be granted.

(6) See section 286 for some provisions which are supplementary to this section.



---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

## **286 Provisions supplementary to sections 284 and 285**

- (1) This section operates for the purposes of sections 284 (sales with right to reconveyance) and 285 (sale and leaseback transactions).
- (2) Subsection (3) explains how to determine for the purposes of section 284 the price at which an estate or interest is to be reconveyed when—
  - (a) the date on which the estate or interest would fall to be reconveyed is not fixed under the terms of the sale, and
  - (b) the price at which it is to be reconveyed varies with the date.
- (3) The price is taken to be the lowest possible under the terms of the sale.
- (4) Subsection (5) explains how to determine for the purposes of section 285 the total of—
  - (a) the amount of any premium for the lease, and
  - (b) the value on the date of the sale of the right to receive a conveyance of the reversion immediately after the lease begins to run,when the date for the grant of the lease is not fixed under the terms of the sale and the total varies with the date.
- (5) The total is taken to be the lowest possible under the terms of the sale.
- (6) For the purposes of sections 284(3) and 285(4) (receipts of property business for tax year in which estate or interest sold) an estate or interest in land is sold when any of the following occurs—
  - (a) an unconditional contract for its sale is entered into,
  - (b) a conditional contract for its sale becomes unconditional, or
  - (c) an option or right of pre-emption is exercised requiring the seller to enter into an unconditional contract for its sale.

*Additional calculation rule for reducing certain receipts*

## **287 Circumstances in which additional calculation rule applies**

- (1) The rule in section 288 (the additional calculation rule) applies in relation to the calculation of receipts under—
  - section 277 (lease premiums),
  - section 279 (sums payable instead of rent),
  - section 280 (sums payable for surrender of lease),
  - section 281 (sums payable for variation or waiver of [<sup>F339</sup>terms] of lease), or
  - section 282 (assignments for profit of lease granted at undervalue).
- (2) It applies if conditions A and B are met.
- (3) Condition A is that—
  - (a) in the case of a receipt under section 277, 279 or 280, the lease is granted out of a taxed lease,
  - (b) in the case of a receipt under section 281, the lease was granted out of a taxed lease, and
  - (c) in the case of a receipt under section 282, the assignment is of a taxed lease.
- (4) A lease is a “taxed lease” for the purposes of this Chapter if—

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (a) there is a receipt under any of sections 277 to 282 in respect of the lease, <sup>F340</sup>...
- (b) there would be such a receipt, but for the operation of the [<sup>F341</sup>rule in section 288 (the additional calculation rule)] in the calculation of its amount.
- <sup>F342</sup>(c) there is a receipt under any of sections 217 to 222 of CTA 2009 (receipts in respect of lease premiums, sums payable instead of rent, for surrender of lease and for variation or waiver of terms of lease and assignments) in respect of the lease, or
- (d) there would be such a receipt, but for the operation of the rule in section 228 of that Act (the additional calculation rule) in the calculation of its amount.]

In this Chapter [<sup>F343</sup>a receipt falling within paragraph (a), (b), (c) or (d)] is referred to as a “taxed receipt”.

- (5) Condition B is that the taxed receipt, or if there is more than one, at least one of them, has an unused amount.
- (6) See section 290 for an explanation of when a taxed receipt has an “unused amount”.

#### Textual Amendments

- F339** Word in s. 287(1) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 617\(2\)](#) (with [Sch. 2 Pts. 1, 2](#))
- F340** Word in s. 287(4) repealed (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 617\(3\)\(a\), Sch. 3 Pt. 1](#) (with [Sch. 2 Pts. 1, 2](#))
- F341** Words in s. 287(4)(b) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 617\(3\)\(b\)](#) (with [Sch. 2 Pts. 1, 2](#))
- F342** S. 287(4)(c)(d) inserted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 617\(3\)\(c\)](#) (with [Sch. 2 Pts. 1, 2](#))
- F343** Words in s. 287(4) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 617\(3\)\(d\)](#) (with [Sch. 2 Pts. 1, 2](#))

## 288 The additional calculation rule

- (1) The rule in this section applies if the conditions mentioned in section 287 are met.
- (2) The additional calculation rule is that the amount given by the formula in section 277, 279, 280, 281 or 282 must be reduced by the amount calculated in accordance with this section in order to give the amount of the receipt under calculation.
- (3) The amount of the reduction is—
  - (a) if there is one taxed receipt which has an unused amount, the basic relieving amount by reference to that receipt, and
  - (b) if there is more than one taxed receipt which has an unused amount, the total of the basic relieving amounts by reference to each receipt, adjusted, if necessary, in the light of section 289(5) (reduction not to exceed amount being reduced).
- (4) The basic relieving amount by reference to a taxed receipt is given by the formula—

$$\frac{A \times LRP}{TRP}$$

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

where—

A is the unreduced amount of the taxed receipt (which is, generally, the amount given by the formula in section 277, 279, 280, 281 or [<sup>F344</sup>282 above, or in section 217, 219, 220, 221 or 222 of CTA 2009,] but see section 290(2) to (4) [<sup>F345</sup>above]),

LRP is the receipt period of the receipt under calculation, and

TRP is the receipt period of the taxed receipt.

- (5) But the basic relieving amount is different if section 289(2) or (4) applies (certain special cases).
- (6) For the purposes of this Chapter, the “receipt period” of a receipt is—
- in the case of a receipt under section 277 or 280, the effective duration of the lease,
  - in the case of a receipt under section 279, the period in relation to which the sum payable instead of rent is payable,
  - in the case of a receipt under section 281, the period for which the variation or waiver has effect, <sup>F346</sup>...
  - in the case of a receipt under section 282, the effective duration of the lease remaining at the date of the assignment<sup>F347</sup>, and
  - in the case of a receipt under Chapter 4 of Part 4 of CTA 2009 (profits of property businesses: lease premiums etc), its receipt period within the meaning of that Chapter (see section 228(6) of that Act).]

#### Textual Amendments

- F344** Words in s. 288(4) substituted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 618(2)(a)** (with Sch. 2 Pts. 1, 2)
- F345** Word in s. 288(4) inserted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 618(2)(b)** (with Sch. 2 Pts. 1, 2)
- F346** Word in s. 288(6) repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 1 para. 618(3)(a), **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)
- F347** S. 288(6)(e) and word inserted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 618(3)(b)** (with Sch. 2 Pts. 1, 2)

### 289 The additional calculation rule: special cases

- (1) This section explains how section 288 operates in some special cases.
- (2) If—
- the receipt under calculation is under any of sections 277 to 281, and
  - the lease does not extend to the whole of the premises subject to the taxed lease,
- the basic relieving amount by reference to a taxed receipt is calculated by multiplying the amount given by the formula in subsection (4) of section 288 by the fraction of those premises which is subject to the lease.
- (3) This fraction is calculated on a just and reasonable basis.

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (4) If the basic relieving amount given by section 288(4) or subsection (2) above by reference to a taxed receipt would otherwise exceed the unused amount of the taxed receipt, the basic relieving amount is the unused amount.
- (5) If the amount of the reduction under section 288 would otherwise exceed the amount given, in respect of the receipt under calculation, by the formula in section 277, 279, 280, 281 or 282, the amount of the reduction is equal to the amount given by the formula.

## 290 Meaning of “unused amount” and “unreduced amount”

- (1) For the purposes of this Chapter, a taxed receipt has an “unused amount” if the unreduced amount exceeds the total of the reductions and deductions referred to in subsection (5).
- (2) In this Chapter the “unreduced amount” of a taxed receipt is the amount given, in respect of the taxed receipt, by the <sup>F348</sup>formula in—
  - (a) section 277, 279, 280, 281 or 282 above, or
  - (b) section 217, 219, 220, 221 or 222 of CTA 2009 (corporation tax provisions corresponding to those listed in paragraph (a)).]

<sup>F349</sup>(3) Subsection (4) applies—

- (a) to a taxed receipt under section 277 (lease premiums) as a result of section 278 (amount treated as lease premium where work required), and
  - (b) to a taxed receipt under section 217 of CTA 2009 (lease premiums) as a result of section 218 of that Act (amount treated as lease premium where work required).]
- (4) If the obligation to carry out work included the carrying out of work which gives, or will give, rise to qualifying expenditure under CAA 2001, the unreduced amount of the taxed receipt is calculated as if the obligation had not included the carrying out of that work.
  - (5) The reductions and deductions mentioned in subsection (1) are—
    - (a) the reductions under section 288 <sup>F350</sup>above or section 228 of CTA 2009 (the additional calculation rule)] by reference to the taxed receipt,
    - (b) the deductions allowed in calculating the profits of a trade, profession or vocation for expenses under section 61 <sup>F351</sup>above or section 63 of CTA 2009] (tenant under taxed lease who uses land in connection with trade treated as incurring expenses) by reference to the taxed receipt, and
    - (c) the deductions allowed in calculating the profits of a property business for expenses under section 292 <sup>F352</sup>below or section 232 of CTA 2009] (tenant under taxed lease who uses premises for purposes of property business treated as incurring expenses) by reference to the taxed receipt.
  - (6) For the purposes of this Chapter references to a reduction under section 288 <sup>F353</sup>above or section 228 of CTA 2009] by reference to a taxed receipt are to a reduction under <sup>F354</sup>the section concerned] so far as attributable to the taxed receipt.

### Textual Amendments

**F348** Words in s. 290(2) substituted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 619(2)** (with Sch. 2 Pts. 1, 2)

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- F349** S. 290(3) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 619\(3\)](#) (with [Sch. 2 Pts. 1, 2](#))
- F350** Words in s. 290(5)(a) inserted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 619\(4\)\(a\)](#) (with [Sch. 2 Pts. 1, 2](#))
- F351** Words in s. 290(5)(b) inserted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 619\(4\)\(b\)](#) (with [Sch. 2 Pts. 1, 2](#))
- F352** Words in s. 290(5)(c) inserted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 619\(4\)\(c\)](#) (with [Sch. 2 Pts. 1, 2](#))
- F353** Words in s. 290(6) inserted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 619\(5\)\(a\)](#) (with [Sch. 2 Pts. 1, 2](#))
- F354** Words in s. 290(6) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 619\(5\)\(b\)](#) (with [Sch. 2 Pts. 1, 2](#))

### *Deductions in relation to certain receipts*

## **291 Deductions for expenses under section 292**

- (1) Section 292 (tenants under taxed leases treated as incurring expenses) applies in calculating the profits of a property business carried on by the tenant under a taxed lease for the purpose of making deductions for the expenses of the property business.
- (2) A deduction is allowed for an expense under section 292 for a qualifying day on which the whole or part of the premises subject to the taxed lease is—
  - (a) occupied by the tenant for the purpose of carrying on the property business, or
  - (b) sublet.
- (3) But any deduction for an expense under section 292 is subject to the application of any provision of Chapter 4 of Part 2 (as applied to property businesses by section 272).
- (4) The amount of the deduction for an expense under section 292 for a qualifying day by reference to a taxed receipt may be reduced in order to comply with section 295 (limit on reductions and deductions).
- (5) For the meaning of expressions used in this section, see in particular—
  - section 287(4) (“taxed lease”), and
  - section 287(4) (“taxed receipt”).

## **292 Tenants under taxed leases treated as incurring expenses**

- (1) The tenant under a taxed lease is treated as incurring an expense of a revenue nature in respect of the premises subject to the taxed lease for each qualifying day.
- (2) If there is more than one taxed receipt, this section applies separately in relation to each of them.
- (3) A day is a “qualifying day”, in relation to a taxed receipt, if it falls within the receipt period of the taxed receipt.
- (4) The amount of the expense for the qualifying day by reference to the taxed receipt is given by the formula—

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

$$\frac{A}{\text{TRP}}$$

where—

A is the unreduced amount of the taxed receipt, and

TRP is the number of days in the receipt period of the taxed receipt.

- [<sup>F355</sup>(4A) No expense is to be determined under this section by reference to the taxed receipt if subsection (4B) or (4C) applies.
- (4B) This subsection applies if there would have been no taxed receipt but for the application of Rule 1 in section 303 in determining the effective duration of the lease.
- (4C) This subsection applies if there would have been no taxed receipt but for the application of Rule 1 in section 243 of CTA 2009 in determining the effective duration of the lease for the purposes of Chapter 4 of Part 4 of that Act.]
- (5) This section is subject to sections 293 and 294 (restrictions on expenses where the additional calculation rule is relevant).
- (6) For the meaning of expressions used in this section, see in particular—  
 section 288(6) (“receipt period”), and  
 section 290(2) to (4) (“unreduced amount”).

#### **Textual Amendments**

**F355** S. 292(4A)-(4C) inserted (with effect in accordance with Sch. 28 para. 4 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 28 para. 3](#)

### **293 Restrictions on section 292 expenses: the additional calculation rule**

- [<sup>F356</sup>(1) This section applies if—
- (a) in calculating the amount of a receipt under this Chapter there is a reduction under section 288 (the additional calculation rule) by reference to a taxed receipt, or
  - (b) in calculating the amount of a receipt under Chapter 4 of Part 4 of CTA 2009 (profits of a property business: lease premiums etc) there is a reduction under section 228 of that Act (the additional calculation rule) by reference to a taxed receipt.

The receipt that is so reduced is referred to in this section as the “lease premium receipt”.]

- (2) Subsections (3) to (5) provide for the application of section 292 for a qualifying day that falls within the receipt period of the lease premium receipt.
- (3) The tenant under the taxed lease is treated as incurring an expense under section 292 for the qualifying day by reference to the taxed receipt only if the daily amount of the taxed receipt exceeds the daily reduction of the lease premium receipt.

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (4) If the condition in subsection (3) is met, the amount of the expense under section 292 for the qualifying day by reference to the taxed receipt is equal to that excess.
- (5) If the qualifying day falls within the receipt periods of more than one lease premium receipt, the reference in subsection (3) to the daily reduction of the lease premium receipt is to be read as a reference to the total of the daily reductions of each of the lease premium receipts whose receipt period includes the qualifying day.
- (6) In this section—

the “daily amount” of the taxed receipt is given by the formula—

$$\frac{A}{\text{TRP}}$$

where—

A is the unreduced amount of the taxed receipt (see section 290(2) to (4)), and

TRP is the number of days in the receipt period of the taxed receipt, and  
the “daily reduction” of a lease premium receipt is given by the formula—

$$\frac{\text{AR}}{\text{RRP}}$$

where—

AR is the reduction under section 288 [<sup>F357</sup>above or section 228 of CTA 2009] by reference to the taxed receipt (see section 290(6)), and

RRP is the number of days in the receipt period of the lease premium receipt.

- (7) Section 294 explains how this section operates if the lease premium receipt is in respect of a lease that has been granted out of the taxed lease and does not extend to the whole of the premises subject to the taxed lease.

#### Textual Amendments

**F356** S. 293(1) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 620\(2\)](#) (with [Sch. 2 Pts. 1, 2](#))

**F357** Words in s. 293(6) inserted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 620\(3\)](#) (with [Sch. 2 Pts. 1, 2](#))

## 294 Restrictions on section 292 expenses: lease of part of premises

- (1) This section applies if—
- a lease has been granted out of the taxed lease,
  - the lease does not extend to the whole of the premises subject to the taxed lease, and
  - <sup>F358</sup>(c) the condition in subsection (1A) is met.

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

(1A) The condition is that—

- (a) in calculating the amount of a receipt under any of sections 277 to 281 (receipts in respect of lease premiums or sums payable instead of rent, for surrender of lease or for variation or waiver of terms of lease) in respect of the lease, there is a reduction under section 288 by reference to a taxed receipt, or
- (b) in calculating the amount of a receipt under any of sections 217 to 221 of CTA 2009 (receipts in respect of lease premiums or sums payable instead of rent, for surrender of lease or for variation or waiver of terms of lease) in respect of the lease, there is a reduction under section 228 of that Act (the additional calculation rule) by reference to a taxed receipt.

The receipt that is so reduced is referred to in this section as the “lease premium receipt”.]

- (2) Subsections (3) to (5) apply for a qualifying day that falls within the receipt period of the lease premium receipt.
- (3) Sections 292 and 293 apply separately in relation to the part of the premises subject to the lease and to the remainder of the premises.
- (4) If—
  - (a) more than one lease that does not extend to the whole of the premises subject to the taxed lease has been granted out of the taxed lease, and
  - (b) the qualifying day falls within the receipt period of two or more lease premium receipts that relate to different leases,
 sections 292 and 293 apply separately in relation to each part of the premises subject to a lease to which such a receipt relates and to the remainder of the premises.
- (5) Where sections 292 and 293 apply in relation to a part of the premises, A becomes the amount calculated by multiplying the unreduced amount of the taxed receipt by the fraction of the premises constituted by the part.
- (6) This fraction is calculated on a just and reasonable basis.

#### **Textual Amendments**

**F358** S. 294(1)(c)(1A) substituted for s. 294(1)(c) (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), **Sch. 1 para. 621** (with [Sch. 2 Pts. 1, 2](#))

#### *Limit on effect of additional calculation rule and deductions*

### **295 Limit on reductions and deductions**

- (1) The total of—
  - (a) the reductions under section 288 by reference to a taxed receipt, and
  - (b) the deductions allowed in calculating the profits of a property business for expenses under section 292 (tenant under taxed lease who uses premises for purposes of property business treated as incurring expenses) by reference to the taxed receipt,
 must not exceed the amount referred to in subsection (2).



*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (2) The amount mentioned in subsection (1) is the difference between—
- (a) the unreduced amount of the taxed receipt, and
  - [<sup>F359</sup>(b) the total of the amounts mentioned in subsection (3).
- (3) Those amounts are—
- (a) the reductions under section 228 of CTA 2009 (the additional calculation rule) by reference to the taxed receipt,
  - (b) the deductions allowed in calculating the profits of a property business for expenses under section 232 of CTA 2009 (tenant under taxed lease which uses premises for purposes of property business treated as incurring expenses) by reference to the taxed receipt, and
  - (c) the deductions allowed in calculating the profits of a trade, profession or vocation for expenses under section 61 above or section 63 of CTA 2009 (tenant under taxed lease who uses land in connection with trade treated as incurring expenses) by reference to the taxed receipt.]

#### Textual Amendments

**F359** S. 295(2)(b)(3) substituted for s. 295(2)(b) (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), [Sch. 1 para. 622](#) (with [Sch. 2 Pts. 1, 2](#))

#### *Relationship with ICTA*

### **296 Corporation tax receipts treated as taxed receipts**

- (1) This section applies if in respect of a lease—
- (a) there is a receipt of a Schedule A business or an overseas property business (within the meaning of section 70A(4) of ICTA) as a result of section 34 or 35 of ICTA (treatment of premiums etc. as rent and assignments for profit of lease granted at an undervalue) for an accounting period ending after 5th April 2005 [<sup>F360</sup>but before 1st April 2009], or
  - (b) there would be such a receipt, but for the operation of section 37(2) or (3) of ICTA (reductions in certain receipts under section 34 or 35 of ICTA).

In this Chapter such a receipt is referred to as a “corporation tax receipt”.

- (2) For the purposes of this Chapter—
- (a) the lease is treated as a taxed lease, and
  - (b) the corporation tax receipt is treated as a taxed receipt.
- (3) For the purposes of this Chapter, the “receipt period” of a taxed receipt which is a corporation tax receipt is—
- (a) in the case of a corporation tax receipt as a result of section 34 of ICTA, the period treated in calculating the amount of the receipt as being the duration of the lease, and
  - (b) in the case of a corporation tax receipt as a result of section 35 of ICTA, the period treated in calculating the amount of the receipt as being the duration of the lease remaining at the date of the assignment.

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (4) For the purposes of this Chapter the “unreduced amount” of a taxed receipt which is a corporation tax receipt is the amount of the corporation tax receipt as a result of section 34 or 35 of ICTA, before the operation of section 37(2) or (3) of ICTA.
- (5) Subsection (6) applies to a taxed receipt which is a corporation tax receipt arising as a result of section 34(2) of ICTA (obligation on tenant to carry out work under lease).
- (6) If the obligation to carry out work includes the carrying out of work which gives, or will give, rise to qualifying expenditure under CAA 2001, the unreduced amount of the taxed receipt is calculated as if the obligation had not included the carrying out of that work.

#### Textual Amendments

**F360** Words in s. 296(1)(a) inserted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 623** (with Sch. 2 Pts. 1, 2)

### 297 Taking account of reductions in corporation tax receipts

- (1) This section applies if—
  - (a) in calculating the amount of a corporation tax receipt, there is a reduction under section 37(2) or (3) of ICTA by reference to the amount chargeable on the superior interest for the purposes of that section, and
  - (b) the amount chargeable on the superior interest is the taxed receipt for the purposes of this Chapter.
- (2) For the purposes of this Chapter references to a reduction under section 37(2) or (3) of ICTA in a corporation tax receipt by reference to the amount chargeable on the superior interest are to the difference between—
  - (a) the amount of the corporation tax receipt before the operation of section 37(2) or (3) of ICTA, and
  - (b) the amount of the receipt after the operation of that subsection,
 so far as attributable to the amount chargeable on the superior interest for the purposes of section 37 of ICTA.
- (3) In sections 290(5)(a) (meaning of “unused amount”) and 295(1)(a) (limit on reductions and deductions) references to reductions under section 288 by reference to the taxed receipt include references to reductions under section 37(2) or (3) of ICTA in corporation tax receipts by reference to the amount chargeable on the superior interest.
- (4) Sections 292 to 294 apply as follows—
  - (a) the corporation tax receipt is treated as if it were a lease premium receipt for the purposes of sections 293 and 294,
  - (b) references in those sections to the reduction under section 288 by reference to the taxed receipt are, in relation to the corporation tax receipt, to the reduction under section 37(2) or (3) of ICTA by reference to the amount chargeable on the superior interest, and
  - (c) for the purposes of those sections the receipt period of the corporation tax receipt is—

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (i) in the case of a corporation tax receipt as a result of section 34 of ICTA, the period treated in calculating the amount of the receipt as being the duration of the lease, and
- (ii) in the case of a corporation tax receipt as a result of section 35 of ICTA, the period treated in calculating the amount of the receipt as being the duration of the lease remaining at the date of the assignment.

## 298 Taking account of deductions for rent as a result of section 37(4) or 87(2) of ICTA

- (1) Subsection (2) applies if—
  - (a) in calculating the profits of a trade, profession or vocation for an accounting period ending after 5th April 2005 [<sup>F361</sup>but before 1st April 2009], a company is treated as paying rent under section 87(2) of ICTA by reference to the amount chargeable for the purposes of that section, and
  - (b) the amount chargeable is the taxed receipt for the purposes of this Chapter.
- (2) References in sections 290(5)(b) and [<sup>F362</sup>295(3)(c)] to the deductions allowed for expenses under section 61 by reference to the taxed receipt include references to the deductions allowed in calculating the profits of the trade, profession or vocation for the rent that the company is treated as paying under section 87(2) of ICTA by reference to the amount chargeable.
- (3) Subsection (4) applies if—
  - (a) in calculating the profits of a Schedule A business or an overseas property business (within the meaning of section 70A(4) of ICTA) for an accounting period ending after 5th April 2005 [<sup>F363</sup>but before 1st April 2009], a company is treated as paying rent as a result of section 37(4) of ICTA by reference to the amount chargeable on the superior interest for the purposes of that section, and
  - (b) the amount chargeable on the superior interest is the taxed receipt for the purposes of this Chapter.
- (4) References in sections 290(5)(c) and 295(1)(b) to the deductions allowed for expenses under section 292 by reference to the taxed receipt include references to the deductions allowed in calculating the profits of the Schedule A business or overseas property business (within the meaning of section 70A(4) of ICTA) for the rent that the company is treated as paying as a result of section 37(4) of ICTA by reference to the amount chargeable on the superior interest.

### Textual Amendments

- F361** Words in s. 298(1)(a) inserted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), [Sch. 1 para. 624\(a\)](#) (with [Sch. 2 Pts. 1, 2](#))
- F362** Word in s. 298(2) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), [Sch. 1 para. 624\(b\)](#) (with [Sch. 2 Pts. 1, 2](#))
- F363** Words in s. 298(3)(a) inserted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), [Sch. 1 para. 624\(a\)](#) (with [Sch. 2 Pts. 1, 2](#))

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

### *Certain administrative provisions*

## **299 Payment of tax by instalments**

- (1) This section applies if—
  - (a) there is a receipt under section 277 (lease premiums) in respect of a premium which is payable by instalments, or
  - (b) there is a receipt under any of sections 279 to 281 (sums payable instead of rent, for surrender of lease or for variation or waiver of <sup>F364</sup>terms] of lease) in respect of a sum which is payable by instalments.
- (2) The person who is liable to pay tax by reference to the receipt may choose to pay the tax by such instalments as <sup>F365</sup>an officer of Revenue and Customs] may allow.
- (3) The period over which the instalments of tax must be paid—
  - (a) must be 8 years or less, and
  - (b) must end before, or at the same time as, the time when the last of the instalments mentioned in subsection (1)(a) or (b) is payable.

#### **Textual Amendments**

**F364** Word in s. 299(1)(b) substituted (with effect in accordance with s. 1329(1) of the amending Act) by *Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 1 para. 625 (with Sch. 2 Pts. 1, 2)*

**F365** Words in s. 299(2) substituted (18.4.2005) by Commissioners for Revenue and Customs Act 2005 ss. 50, 53(1), {Sch. 4 para. 132(2)}; *S.I. 2005/1126, art. 2(h)*

## **300 Statement of accuracy for purposes of section 282**

- (1) This section applies if any of the persons mentioned in subsection (3) provides <sup>F366</sup>an officer of Revenue and Customs] with a statement showing—
  - (a) whether or not there is, or may be, a receipt under section 282 (assignments for profit of lease granted at undervalue), and
  - (b) the amount of any receipt.
- (2) <sup>F366</sup>an officer of Revenue and Customs] must certify the accuracy of the statement, if satisfied as to its accuracy.
- (3) The persons referred to in subsection (1) are—
  - (a) the landlord who granted the lease,
  - (b) a person who assigned it, or
  - (c) a person to whom it was assigned.

#### **Textual Amendments**

**F366** Words in s. 300(1)(2) substituted (18.4.2005) by Commissioners for Revenue and Customs Act 2005 ss. 50, 53(1), {Sch. 4 para. 132(1)}; *S.I. 2005/1126, art. 2(h)*

## **301 Claim for repayment of tax payable by virtue of section 284**

- (1) This section applies if—

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (a) there is a receipt under section 284 (sales with right to reconveyance), and
  - (b) the date on which the estate or interest would fall to be reconveyed was not fixed under the terms of the sale.
- (2) If the seller makes a claim, the seller must be repaid the amount by which A exceeds B, where—
- A is the amount of tax paid by the seller which was payable by virtue of section 284, and
- B is the amount of tax that would have been so payable if the date on which the estate or interest was reconveyed had been taken as the date fixed by the terms of the sale.
- (3) The claim must be made within [<sup>F367</sup>4 years] after the day on which the estate or interest was reconveyed.

#### Textual Amendments

**F367** Words in s. 301(3) substituted (1.4.2010) by Finance Act 2008 (c. 9), s. 118(2), Sch. 39 para. 51; S.I. 2009/403, art. 2(2) (with art. 10)

### 302 Claim for repayment of tax payable by virtue of section 285

- (1) This section applies if—
- (a) there is a receipt under section 285 (sale and leaseback transactions), and
  - (b) the date for the grant of the lease was not fixed under the terms of the sale.
- (2) If the seller makes a claim, the seller must be repaid the amount by which A exceeds B, where—
- A is the amount of tax paid by the seller which was payable by virtue of section 285, and
- B is the amount of tax that would have been so payable if the date on which the lease was granted had been taken as the date fixed by the terms of the sale.
- (3) The claim must be made within [<sup>F368</sup>4 years] after the day on which the lease was granted.

#### Textual Amendments

**F368** Words in s. 302(3) substituted (1.4.2010) by Finance Act 2008 (c. 9), s. 118(2), Sch. 39 para. 52; S.I. 2009/403, art. 2(2) (with art. 10)

*[<sup>F369</sup>Determinations affecting liability of more than one person*

#### Textual Amendments

**F369** Ss. 302A-302C and cross-heading inserted (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. 7 para. 22 (with Sch. 9 paras. 1-9, 22)

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

### 302A Appeals against proposed determinations

- (1) Subsection (2) applies if it appears to an officer of Revenue and Customs that—
  - (a) a determination is needed of an amount that is to be brought into account as a receipt under this Chapter in calculating the liability to tax of a person (“the first taxpayer”), and
  - (b) the determination may affect the liability to income tax, corporation tax or capital gains tax of other persons.
- (2) The officer may give notice (a “provisional notice of determination”) to the first taxpayer and the other persons of—
  - (a) the determination the officer proposes to make, and
  - (b) their rights under this section and section 302C.
- (3) A person to whom a provisional notice of determination is given may object to the proposed determination by giving notice (a “notice of objection”) to the officer.
- (4) The notice of objection must be given within 30 days of the date on which the provisional notice of determination was given.
- (5) If an officer gives provisional notices of determination and no person gives a notice of objection—
  - (a) a determination must be made by the officer as proposed in the provisional notices, and
  - (b) the determination is not to be called in question in any proceedings.

### 302B Section 302A: supplementary

- (1) A provisional notice of determination under section 302A(2) may include a statement of the grounds on which the officer proposes to make the determination.
- (2) Subsection (1) applies despite any obligation as to secrecy or other restriction on the disclosure of information.

<sup>F370</sup>(3) .....

<sup>F370</sup>(4) .....

#### Textual Amendments

**F370** S. 302B(3)(4) omitted (with effect in accordance with Sch. 23 para. 65 of the amending Act) by virtue of [Finance Act 2011 \(c. 11\)](#), [Sch. 23 paras. 57\(2\)](#), [65\(1\)\(a\)](#) (with [Sch. 23 paras. 50](#), [65\(1\)\(b\)](#))

### 302C Determination by tribunal

- (1) If a notice of objection is given under section 302A(3), the amount mentioned in section 302A(1) must be determined in the same way as an appeal.
- (2) All persons to whom provisional notices of determination have been given under section 302A(2) may be a party to—
  - (a) any proceedings under subsection (1), and
  - (b) any appeal arising out of those proceedings.

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (3) Those persons are bound by the determination made in the proceedings or on appeal, whether or not they have taken part in the proceedings.
- (4) Their successors in title are bound in the same way.]

### *Effective duration of lease*

## **303 Rules for determining effective duration of lease**

- (1) The following rules apply for determining the effective duration of a lease for the purposes of this Chapter.

<sup>F371</sup>*Rule 1: If-*

- (a) the terms of the lease or any other circumstances make it unlikely that the lease will continue beyond a date before the end of the term for which the lease was granted, and
- (b) the premium was not substantially greater than it would have been had the term been one ending on that date,]

*Rule 2: If the terms of the lease include provision for the extension of the lease beyond a given date by notice given by the tenant, account may be taken of any circumstances making it likely that the lease will be so extended.*

*Rule 3: If the tenant or a person connected with the tenant is, or may become, entitled to a further lease or the grant of a further lease (whenever commencing)—*

- (a) of the same premises, or
- (b) of premises including the whole or part of the same premises,

*the term of the lease may be treated as continuing until the end of the term of the further lease.*

- (2) The rules are to be applied in accordance with section 304.

<sup>F372</sup>(2A) In Rule 1 “premium” includes—

- (a) an amount treated as a premium under section 278 (amount treated as lease premium where work required),
- (b) a sum payable by the tenant under the terms subject to which the lease is granted instead of the whole or a part of the rent for a period,
- (c) a sum payable by the tenant under the terms subject to which the lease is granted as consideration for the surrender of the lease, and
- (d) a sum payable by the tenant (otherwise than by way of rent) as consideration for the variation or waiver of a term of the lease.]

- (3) In this section and section 304, in relation to Scotland, “term”, where referring to the duration of a lease, means period.

### **Textual Amendments**

**F371** Words in s. 303 substituted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 626(2)** (with Pts. 1, 2, Sch. 2 para. 44)

**F372** S. 303(2A) inserted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 626(3)** (with Pts. 1, 2, Sch. 2 para. 44)

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

#### **Modifications etc. (not altering text)**

**C24** S. 303 applied by 2001 c. 2, s. 360I(3)(a) (as inserted (7.4.2005 with effect in relation to expenditure incurred on or after 11.4.2007) by Finance Act 2005 (c. 7). s. 92, {Sch. 6 para. 1}; S.I. 2007/949, **art. 2**

### **304 Applying the rules in section 303**

- (1) The rules in section 303 apply by reference to the facts known or ascertainable—
  - (a) at the time of the grant of the lease, or
  - (b) if the determination is for the purposes of section 281 (sums payable for variation or waiver of [<sup>F373</sup>terms] of lease), at the time when the contract for the variation or waiver is entered into.
- (2) In applying those rules, it is assumed that all parties concerned, whatever their relationship, act as if they were at arm's length.
- (3) Subsection (5) applies if—
  - (a) special benefits were conferred by the lease or in connection with its grant, or
  - (b) payments were made which one would not expect to be made by parties acting at arm's length unless such benefits had been conferred.
- (4) But subsection (5) does not apply if it can be shown that the special benefits were not conferred nor the payments made for the purpose of [<sup>F374</sup>securing—
  - (a) an income tax advantage in the application of this Chapter, or
  - (b) a corporation tax advantage in the application of Chapter 4 of Part 4 of CTA 2009 (profits of property business: lease premiums etc).]
- (5) In applying [<sup>F375</sup>paragraph (b) of] rule 1 in section 303, it is assumed that the special benefits would not have been conferred nor the payments made if the lease had been granted for a term ending on the date mentioned in that rule.
- (6) In this section “special benefits” means benefits other than—
  - (a) vacant possession and beneficial occupation of the premises, or
  - (b) the right to receive rent at a reasonable commercial rate in respect of the premises.

#### **Textual Amendments**

- F373** Word in s. 304(1)(b) substituted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 627(2)** (with Sch. 2 Pts. 1, 2)
- F374** Words in s. 304(4) substituted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 627(3)** (with Sch. 2 Pts. 1, 2)
- F375** Words in s. 304(5) inserted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 627(4)** (with Sch. 2 Pts. 1, 2)

### <sup>F376</sup>**305 Information about effective duration of lease**

.....



*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

### Textual Amendments

**F376** S. 305 omitted (13.8.2009) by virtue of [The Finance Act 2009, Schedule 47 \(Consequential Amendments\) Order 2009 \(S.I. 2009/2035\)](#), art. 1, [Sch. para. 44](#)

### *Other interpretative provisions*

#### **306 Provisions about premiums**

- (1) For the purposes of this Chapter, the presumption is that a sum paid on or in connection with the granting of a tenancy has been paid by way of premium.
- (2) This does not apply if the sum is rent.
- (3) This also does not apply so far as other sufficient consideration for the payment can be shown to have been given.
- (4) In this section “sum” includes the value of any consideration.
- (5) Where rule 3 in section 303 (rules for determining effective duration of lease) applies, the premium, or an appropriate part of it, payable for or in connection with either lease mentioned in that rule may be treated for the purposes of this Chapter as having been required under the other.

#### **307 Interpretation**

- (1) In this Chapter “premium” includes any similar sum payable to the immediate or a superior landlord or to a person connected with such a person.
- (2) In subsection (1) “sum” includes the value of any consideration.
- (3) In the application of this Chapter to Scotland—
  - “premium” includes, in particular, a grassum payable to the landlord under the lease in respect of which the grassum is payable or the landlord under any other lease of the property, and
  - “reversion” means the interest of the landlord in the property subject to the lease.
- (4) In the application of this Chapter to Scotland—
  - (a) references to a lease being granted out of a taxed lease are to the grant of a sublease of land subject to the taxed lease, and
  - (b) references to the lease so granted are to be read as references to the sublease.

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

## CHAPTER 5

### PROFITS OF PROPERTY BUSINESSES: OTHER RULES ABOUT RECEIPTS AND DEDUCTIONS

#### *Furnished accommodation: receipts and deductions*

#### **308** **Furnished lettings**

- (1) In calculating the profits of a property business which consists of or includes a furnished letting—
  - (a) any sum payable for the use of furniture is brought into account as a receipt, and
  - (b) a deduction is allowed for expenses incurred in connection with the provision of furniture.
- (2) But subsection (1) does not apply to receipts or expenses brought into account in calculating the profits of a trade which consists of, or involves, making furniture available for use in premises.
- (3) A furnished letting is a lease or other arrangement under which—
  - (a) a sum is payable in respect of the use of premises, and
  - (b) the person entitled to the use of the premises is also entitled, in connection with that use, to the use of furniture.
- (4) In this section—
  - (a) “premises” includes a caravan and a houseboat, and
  - (b) “sum” includes the value of any consideration.

*[<sup>F377</sup>Furnished accommodation: wear and tear allowance*

#### **Textual Amendments**

**F377** Ss. 308A-308C and cross-heading inserted (with effect in accordance with art. 13(1) of the amending S.I.) by [The Enactment of Extra-Statutory Concessions Order 2011 \(S.I. 2011/1037\)](#), arts. 1, **11(2)**

#### **308A** **Wear and tear allowance election**

- (1) Where—
  - (a) a person (“P”) carries on a property business in a tax year which consists of or includes a furnished letting, and
  - (b) a dwelling-house that is subject to the letting is eligible in relation to P at any time in the year,

P may make an election (a “wear and tear allowance election”) in relation to the business for the year.
- (2) A wear and tear allowance election for a tax year must be made on or before the first anniversary of the normal self-assessment filing date for the tax year.
- (3) In this section and sections 308B and 308C, “furnished letting” means a furnished letting as defined in section 308 but does not include a commercial letting of furnished holiday accommodation (within the meaning of Chapter 6).

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

(4) See—

section 308B for the meaning of “eligible” in relation to a dwelling-house,  
and  
section 308C for the effect of a wear and tear allowance election.

### **308B Meaning of “eligible” in relation to a dwelling-house**

- (1) A dwelling-house is “eligible” at any time in relation to a person (“P”) who carries on a property business in a tax year if, at that time—
- (a) the dwelling-house is subject to a furnished letting comprised in the business,
  - (b) the dwelling-house contains sufficient furniture, furnishings and equipment for normal residential use, and
  - (c) P is responsible for the state of affairs mentioned in paragraph (b).
- (2) P is so responsible if—
- (a) any of the furniture, furnishings and equipment contained in the dwelling-house at the time mentioned in subsection (1) is provided by P,
  - (b) that furniture, furnishings and equipment, together with any furniture, furnishings and equipment in the dwelling-house at that time provided by a superior landlord of P, is sufficient for normal residential use, and
  - (c) the conditions in paragraphs (a) and (b) are not met in relation to a superior landlord of P.
- (3) References in this section to a superior landlord of P are to any person who—
- (a) has an interest in the dwelling-house that is superior to that of P, and
  - (b) carries on a property business in the tax year that consists of or includes a furnished letting to which the dwelling-house is subject.

### **308C Effect of wear and tear allowance election**

- (1) This section applies where a person (“P”) makes a wear and tear allowance election that has effect in relation to a property business (“the property business”) for a tax year (“the tax year”).
- (2) In calculating the profits of the property business for the tax year—
- (a) a wear and tear allowance is allowed as a deduction, and
  - (b) no deduction is allowed—
    - (i) whether under section 68 or otherwise, for expenses incurred on replacing or altering any tool (within the meaning of subsection (3) of that section), so far as the expenses are within subsection (6), or
    - (ii) whether under section 308 or otherwise, for expenses incurred in connection with the provision of furniture, so far as the expenses are within subsection (6).
- (3) The amount of the wear and tear allowance is 10% of the relevant rental amount.
- (4) In subsection (3) “the relevant rental amount” means—
- (a) the sum of the amounts brought into account as receipts by P in calculating the profits of the property business, so far as the receipts are within subsection (6), less

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

- (b) the sum of any amounts brought into account as relevant expenses by P in calculating the profits of the property business, so far as the expenses are within subsection (6).
- (5) In subsection (4)(b) “relevant expenses” means expenses in relation to utilities, council tax or anything else the cost of which is, in the case of a furnished letting, normally borne by the lessee.
- (6) Receipts or expenses are within this subsection so far as they are attributable to a dwelling-house that is subject to a furnished letting comprised in the property business, but disregarding any amounts that are so attributable in respect of a time at which the dwelling-house is not eligible in relation to P.
- (7) Receipts and expenses are to be attributed for the purposes of subsection (6) on a just and reasonable basis.

*Furnished accommodation: rent-a-room relief*

**309 Rent-a-room relief**

- (1) The rules for calculating the profits of an individual's UK property business are subject to Chapter 1 of Part 7 (rent-a-room relief).
- (2) That Chapter provides relief on income from the use of furnished accommodation in the individual's only or main residence (see, in particular, sections 793 and 797).

*Treatment of receipts on acquisition of business*

**310 Acquisition of business: receipts from transferor's UK property business**

- (1) This section applies if—
  - (a) a person (“the transferor”) permanently ceased to carry on a UK property business at any time,
  - (b) at that time the transferor transferred to another (“the transferee”) the right to receive sums arising from the carrying on of any business (“the transferred business”) comprised in the transferor's UK property business, and
  - (c) the transferee subsequently carries on the transferred business.
- (2) Sums—
  - (a) which the transferee receives as a result of the transfer, and
  - (b) which are not brought into account in calculating the profits of the transferor's UK property business for any period before the cessation,
 are brought into account in calculating the profits of the transferee's UK property business in the period of account in which they are received.
- (3) Any sums mentioned in subsection (1)(b) which are received after the cessation of the transferor's property business are not post-cessation receipts (see Chapter 10).
- (4) This section has effect as if it were contained in Chapter 10.

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

### *Reverse premiums as receipts*

#### **311 Reverse premiums**

- (1) This section applies if—
  - (a) a person receives a reverse premium, and
  - (b) the reverse premium is not brought into account under section 101(2) in calculating the profits of any trade carried on by the person.
- (2) The person is treated as—
  - (a) entering into a transaction mentioned in section 264 (if the land to which the property transaction relates is in the United Kingdom) or section 265 (if that land is outside the United Kingdom), and
  - (b) receiving the reverse premium as a result of that transaction.
- (3) Accordingly, the reverse premium is brought into account as a receipt in calculating the profits of the property business which consists of or includes that transaction.
- (4) Subsection (5) applies if—
  - (a) two or more of the parties to the property arrangements are connected persons, and
  - (b) the terms of those arrangements are not such as would reasonably have been expected if those persons had been dealing at arm's length.
- (5) The whole amount or value of the reverse premium is brought into account in the period of account in which the property transaction is entered into.
- (6) Expressions used in this section and sections 99 to 103 have the same meaning in this section as they do in those sections.

### *Deductions for expenditure on energy-saving items*

#### **312 Deduction for expenditure on energy-saving items**

- (1) This section applies if—
  - (a) a person carries on a property business in relation to land which consists of or includes a dwelling-house,
  - (b) the person incurs expenditure in acquiring and installing [<sup>F378</sup>an energy-saving item in the dwelling-house or in a building containing the dwelling-house [(see subsections (5) to (7)),
  - (c) the expenditure is incurred before 6th April [<sup>F379</sup>2015] ,
  - (d) a deduction for the expenditure is not prohibited by the wholly and exclusively rule but would otherwise be prohibited by the capital prohibition rule (see subsection (8)), and
  - (e) no allowance under CAA 2001 may be claimed in respect of the expenditure.
- (2) In calculating the profits of the business, a deduction for the expenditure is allowed.
- (3) But any deduction is subject to—
  - (a) section 313 (restrictions on the relief), and
  - (b) any provision made by regulations under section 314.

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (4) If, on a just and reasonable apportionment of any expenditure, part of the expenditure would qualify for the relief (but the remainder would not), a deduction is allowed for that part.
- (5) “Energy-saving item” means—
- (a) cavity wall insulation,
  - (b) loft insulation, or
  - (c) such other descriptions of items of an energy-saving nature as are for the time being specified in regulations made by the Treasury.
- (6) The Treasury may by regulations provide for an item to be treated as an energy-saving item only if it satisfies such conditions as may be—
- (a) specified in, or
  - (b) determined in accordance with,
- the regulations.
- (7) The conditions may include conditions imposed by reference to information or documents issued by any body, person or organisation.
- (8) In this section—
- “the capital prohibition rule” means the rule in section 33 (capital expenditure), as applied by section 272, and
- “the wholly and exclusively rule” means the rule in section 34 (expenses not wholly and exclusively for trade and unconnected losses), as applied by section 272.

#### Textual Amendments

**F378** Words in s. 312(1)(b) substituted (19.7.2007 with effect as stated in s. 18(6) of the amending Act) by [Finance Act 2007 \(c. 11\), s. 18\(2\)](#)

**F379** Word in s. 312(1)(c) substituted (19.7.2007) by [Finance Act 2007 \(c. 11\), s. 18\(3\)](#)

### 313 Restrictions on relief

- (1) This section restricts deductions that would otherwise be allowable under section 312.
- (2) No deduction is allowed if, when the energy-saving item is installed, the dwelling-house—
- (a) is in the course of construction, or
  - (b) is comprised in land in which the person does not have an interest or is in the course of acquiring an interest or further interest.
- (3) No deduction is allowed in respect of expenditure in a tax year if—
- (a) the business consists of or includes the commercial letting of furnished holiday accommodation (see Chapter 6), and
  - (b) the dwelling-house constitutes some or all of that accommodation for the tax year.
- (4) No deduction is allowed if—
- (a) the person derives rent-a-room receipts from the dwelling-house, and

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (b) those receipts are brought into account in calculating the profits of the business in accordance with section 793 or 797 (rent-a-room relief).
- (5) No deduction is allowed in respect of expenditure treated by section 57 (as applied by section 272) as incurred on the date on which the person starts to carry on the business unless the expenditure was incurred not more than 6 months before that date.
- [<sup>F380</sup>(6) No deduction is allowed in respect of expenditure incurred in acquiring and installing the energy-saving item in a building containing the dwelling-house in so far as the expenditure is not for the benefit of the dwelling-house.]

#### Textual Amendments

**F380** S. 313(6) inserted (19.7.2007 with effect as stated in s. 18(6) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), s. 18(4)

### 314 Regulations

- (1) In relation to any deduction under section 312, the Treasury may make regulations for—
- restricting or reducing the amount of expenditure for which the deduction is allowable,
  - excluding entitlement to the deduction in such cases as may be specified in, or determined in accordance with, the regulations,
  - determining who is (and is not) entitled to the deduction if different persons have different interests in land that consists of or includes the whole or part of a building containing one or more dwelling-houses,
  - making apportionments if the property business is carried on by persons in partnership or an interest in land is beneficially owned by persons jointly or in common.
- (2) The apportionments that may be made include apportionments to companies within the charge to corporation tax.
- [<sup>F381</sup>(3) Regulations under this section may—
- make different provision for different cases, and
  - contain incidental, supplemental, consequential and transitional provision and savings (including provision as to appeals in relation to apportionments mentioned in subsection (1)(d)).]

#### Textual Amendments

**F381** S. 314(3) inserted (retrospectively with effect as stated in s. 18(7)(8) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), s. 18(5)

### *Deductions for expenditure on sea walls*

### 315 Deduction for expenditure on sea walls

- (1) This section applies if in a tax year a person —

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

- (a) is the owner or tenant of any premises, and
  - (b) incurs expenditure in making a sea wall or other embankment necessary for the preservation or protection of the premises against the encroachment or overflowing of the sea or any tidal river.
- (2) In calculating the profits of any property business carried on by the person in relation to the premises, a deduction is allowed for the expenditure in each tax year in the deduction period.
- (3) The deduction period comprises—
- (a) the tax year in which the expenditure is incurred, and
  - (b) the next 20 tax years.
- (4) The amount of the deduction is 1/21 of the expenditure.
- (5) No deduction is allowed for any expenditure in respect of which a capital allowance has been made.
- (6) Section 316 deals with the case of an interest in the premises being transferred (and this section applies in that case as if the reference to the person in subsection (2) above included the transferor and the transferee).

### **316 Transfer of interest in premises**

- (1) This section applies if, during the deduction period, the whole of the person's interest in the premises or in any part of them is transferred, whether by operation of law or otherwise.
- (2) For the tax year in which the transfer takes place—
- (a) the transferor and the transferee are entitled to a part of any deduction under section 315, and
  - (b) the amount of the deduction is determined by what is just and reasonable.
- (3) For subsequent tax years in the deduction period, the entitlement to any deduction under section 315 depends on whether the interest transferred is in the whole of the premises or in part of them.
- (4) If the interest transferred is in the whole of the premises, the transferee (but not the transferor) is entitled to any deduction under section 315.
- (5) If the interest transferred is in part of the premises—
- (a) the transferor and the transferee are entitled to a part of any deduction under section 315, and
  - (b) the amount of the deduction is determined by reference to what is properly referable to the part of the premises.
- (6) This section is supplemented by sections 317 (ending of lease of premises) and 318 (transfer involving company within the charge to corporation tax).

### **317 Ending of lease of premises**

- (1) If a person's interest in the premises is a lease that comes to an end before the end of the deduction period, the interest is treated as if transferred to the following persons.



*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (2) If a new lease of the premises is granted and the new tenant makes a payment in respect of the embankment in question to the old tenant, the transferee is the new tenant.
- (3) Otherwise the transferee is the owner of the interest in immediate reversion on the lease (or, in Scotland, the landlord).

### **318 Transfer involving company within the charge to corporation tax**

- (1) This section explains how section 316 works if—
  - (a) the transferor is a person within the charge to income tax and the transferee is a company within the charge to corporation tax, or
  - (b) the transferor is a company within the charge to corporation tax and the transferee is a person within the charge to income tax.
- (2) Section 316 applies only for the purpose of determining—
  - (a) whether the person within the charge to income tax is entitled to a deduction (or part of a deduction) under section 315, and
  - (b) the amount of any such deduction.
- (3) Accordingly, any reference to—
  - (a) whether a person is entitled to a deduction (or part of a deduction) under section 315, or
  - (b) the amount of any such deduction,
 is ignored if the person is a company within the charge to corporation tax.
- (4) For any entitlement of a company within the charge to corporation tax to a deduction for any of the expenditure, see [<sup>F382</sup>sections 255 to 257 of CTA 2009] (corresponding corporation tax provision).

#### **Textual Amendments**

**F382** Words in s. 318(4) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 628](#) (with [Sch. 2 Pts. 1, 2](#))

### *Mineral royalties*

#### <sup>F383</sup>**319 Relief in respect of mineral royalties**

.....

#### **Textual Amendments**

**F383** [S. 319](#) repealed (with effect in accordance with [Sch. 39 para. 43\(3\)](#) of the amending Act) by [Finance Act 2012 \(c. 14\), Sch. 39 para. 43\(1\)\(b\)](#)

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

### *Apportionments on sale of land*

#### **320 Nature of item apportioned on sale of estate or interest in land**

- (1) This section applies if—
  - (a) a person sells an estate or interest in land,
  - (b) on the sale a part of a receipt or outgoing in respect of the estate or interest is apportioned to the seller, and
  - (c) the receipt or outgoing is receivable or to be paid by the buyer after the apportionment is made.
- (2) In calculating the profits of the seller's property business, the part apportioned is treated as being of the same nature as the receipt or outgoing.

### *Mutual business*

#### **321 Mutual business**

- (1) Nothing in this Part is to be read as applying the rules relating to mutual business to property businesses.
- (2) Accordingly, receipts and expenses are to be brought into account in calculating the profits of a person's property business even if a relationship of mutuality exists between that person and another.

## **CHAPTER 6**

### COMMERCIAL LETTING OF FURNISHED HOLIDAY ACCOMMODATION

### *Introduction*

#### **322 Introduction**

- (1) This Chapter explains for the purposes of this Part what is meant by the commercial letting of furnished holiday accommodation (see sections 323 to 326).
- (2) It matters whether a UK property business consists of or includes the commercial letting of furnished holiday accommodation for the purposes of—
  - (a) section 312 (deduction for expenditure on energy-saving items: see section 313(3)),
  - (b) <sup>F384</sup> .....
  - (c) <sup>F384</sup> .....
  - (d) certain provisions of TCGA 1992 (see section 241 of that Act),
  - (e) CAA 2001 (see, for example, sections 248 and 249 of that Act),
  - <sup>F385</sup>(f) section 189(2)(ba) of FA 2004 (meaning of “relevant UK earnings” for pension purposes),
  - (g) Part 4 of ITA 2007 (loss relief: see section 127 of that Act), and
  - (h) section 836(3) of ITA 2007 (jointly held property: see exception D).]

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- [<sup>F386</sup>(2A) It matters whether an overseas property business consists of or includes the commercial letting of furnished holiday accommodation in one or more EEA states for the purposes of—
- (a) section 312 (deduction for expenditure on energy-saving items: see section 313(3)),
  - (b) certain provisions of TCGA 1992 (see section 241A of that Act),
  - (c) CAA 2001 (see, for example, sections 250 and 250A of that Act),
  - (d) section 189(2)(bb) of FA 2004 (meaning of “relevant UK earnings” for pension purposes),
  - (e) Part 4 of ITA 2007 (loss relief: see section 127ZA of that Act), and
  - (f) section 836(3) of ITA 2007 (jointly held property: see exception DA).]
- (3) This Chapter also supplements [<sup>F387</sup> the provisions mentioned in subsection (2) ] by providing in certain circumstances for the profits of the furnished holiday lettings part of a UK property business to be calculated separately (see sections 327 and 328).
- [<sup>F388</sup>(4) This Chapter also supplements the provisions mentioned in subsection (2A) by providing in certain circumstances for the profits of the EEA furnished holiday lettings part of an overseas property business to be calculated separately (see sections 328A and 328B).]

#### Textual Amendments

- F384** S. 322(2)(b)(c) repealed (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), ss. 1027, 1031, 1034, [Sch. 1 para. 508\(a\)](#), [Sch. 3 Pt. 1](#) (with transitional provisions and savings in [Sch. 2](#))
- F385** S. 322(2)(f)-(h) substituted for s. 322(2)(f) and preceding word (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), ss. 1027, 1034, [Sch. 1 para. 508\(b\)](#) (with transitional provisions and savings in [Sch. 2](#))
- F386** S. 322(2A) inserted (with effect in accordance with [Sch. 14 para. 4](#) of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 14 para. 2\(2\)\(a\)](#)
- F387** Words in s. 322(3) substituted (with effect in accordance with [Sch. 14 para. 4](#) of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 14 para. 2\(2\)\(b\)](#)
- F388** S. 322(4) inserted (with effect in accordance with [Sch. 14 para. 4](#) of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 14 para. 2\(2\)\(c\)](#)

#### Definition

### 323 Meaning of “commercial letting of furnished holiday accommodation”

- (1) A letting is a lease or other arrangement under which a person is entitled to the use of accommodation.
- (2) A letting of accommodation is commercial if the accommodation is let—
  - (a) on a commercial basis, and
  - (b) with a view to the realisation of profits.
- (3) A letting is of furnished holiday accommodation if—
  - (a) the person entitled to the use of the accommodation is also entitled, in connection with that use, to the use of furniture, and

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (b) the accommodation is qualifying holiday accommodation (see sections 325 and 326).

- (4) This section applies for the purposes of this Chapter.

### **324 Meaning of “relevant period” in sections 325 and 326**

- (1) For the purposes of sections 325 and 326 “the relevant period” for accommodation let by a person in a tax year is determined as follows.
- (2) If the accommodation was not let by the person as furnished accommodation in the previous tax year, “the relevant period” is 12 months beginning with the first day in the tax year on which it is let by the person as furnished accommodation.
- (3) If the accommodation—
- (a) was let by the person as furnished accommodation in the previous tax year, but
  - (b) is not let by the person as furnished accommodation in the following tax year,
- “the relevant period” is 12 months ending with the last day in the tax year on which it is let by the person as furnished accommodation.
- (4) Otherwise “the relevant period” is the tax year.

### **325 Meaning of “qualifying holiday accommodation”**

- (1) Accommodation which is let by a person during a tax year is “qualifying holiday accommodation” for the tax year if the availability, letting and pattern of occupation conditions are met.
- (2) The availability condition is that, during the relevant period, the accommodation is available for commercial letting as holiday accommodation to the public generally for at least [<sup>F389</sup> 210 days ] .
- (3) The letting condition is that, during the relevant period, the accommodation is commercially let as holiday accommodation to members of the public for at least [<sup>F390</sup> 105 days ] .
- (4) For the purposes of the letting condition, a letting of accommodation for a period of longer-term occupation (see subsection (6)) is not a letting of it as holiday accommodation.
- (5) The pattern of occupation condition is that, during the relevant period, not more than 155 days fall during periods of longer-term occupation.
- (6) For the purposes of this section a “period of longer-term occupation” is a continuous period of more than 31 days during which the accommodation is in the same occupation otherwise than because of circumstances that are not normal.

#### **Textual Amendments**

**F389** Words in s. 325(2) substituted (with effect in accordance with Sch. 14 para. 5 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 14 para. 2\(3\)\(a\)](#)

**F390** Words in s. 325(3) substituted (with effect in accordance with Sch. 14 para. 5 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 14 para. 2\(3\)\(b\)](#)

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

### **326 Under-used holiday accommodation: averaging elections**

- (1) This section applies if during a tax year a person lets both—
    - (a) qualifying holiday accommodation, and
    - (b) accommodation that would be qualifying holiday accommodation if the letting condition (see section 325(3)) were met in relation to it (“under-used accommodation”).
  - (2) The person may make an election for the tax year specifying—
    - (a) the qualifying holiday accommodation, and
    - (b) any or all of the under-used accommodation.
  - (3) The under-used accommodation so specified is treated as qualifying holiday accommodation for the tax year if the average of the number of let days for the tax year of all the accommodation specified in the election is at least [<sup>F391</sup> 105 ] .
  - (4) “The number of let days” for a tax year of any accommodation is the number of days during the relevant period for which it is commercially let by the person as holiday accommodation to members of the public.
  - (5) Qualifying holiday accommodation may not be specified in more than one election for a tax year.
  - (6) An election for a tax year must be made on or before the first anniversary of the normal self-assessment filing date for the tax year.
- [<sup>F392</sup>(7) This section is to apply separately in relation to accommodation in the United Kingdom and accommodation in EEA states other than the United Kingdom.]

#### **Textual Amendments**

**F391** Word in s. 326(3) substituted (with effect in accordance with Sch. 14 para. 5 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 14 para. 2\(4\)\(a\)](#)

**F392** S. 326(7) inserted (with effect in accordance with Sch. 14 para. 4 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 14 para. 2\(4\)\(b\)](#)

### [<sup>F393</sup>**326A Under-used holiday accommodation: letting condition not met**

- (1) This section applies if—
  - (a) during a tax year a person lets qualifying holiday accommodation,
  - (b) the accommodation is let by the person—
    - (i) during the next tax year, or
    - (ii) during the next two tax years,
  - (c) the accommodation would (apart from this section) not be qualifying holiday accommodation—
    - (i) during the tax year mentioned in paragraph (b)(i), or
    - (ii) during both of the tax years mentioned in paragraph (b)(ii),only because of a failure to meet the letting condition (see section 325(3)), and
  - (d) there was a genuine intention to meet the letting condition for the tax year within subsection (1)(c)(i) or each of the tax years within subsection (1)(c)(ii) (as the case may be).

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (2) If the person makes an election in respect of that accommodation for any tax year in respect of which the failure mentioned in subsection (1)(c) occurs, the accommodation is to be treated as qualifying holiday accommodation for that tax year.
- (3) Subsection (2) does not apply for the purposes of section 326 or subsection (1)(a).
- (4) If an election is not made for the first of the tax years within subsection (1)(c)(ii), an election may not be made for the second.
- (5) An election for a tax year must be made on or before the first anniversary of the normal self-assessment filing date for the tax year.
- (6) References in subsection (1)(a) and (c) to qualifying holiday accommodation include accommodation treated as such under section 326.]

#### Textual Amendments

**F393** S. 326A inserted (with effect in accordance with Sch. 14 para. 6 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 14 para. 2\(5\)](#)

#### *Separate profit calculations*

### 327 [F394 relief: UK property business ]

- (1) If a UK property business consists of both—
  - (a) the commercial letting of furnished holiday accommodation (“the furnished holiday lettings part”), and
  - (b) other businesses or transactions (“the other part”),
 this section requires separate calculations to be made of the profits of the furnished holiday lettings part and the other part.
- (2) The calculations must be made if—
  - (a) section 248 or 249 of CAA 2001 (giving effect to allowances and charges) applies to the furnished holiday lettings part or the other part, or
  - (b) any provision of [F395 Part 4 of ITA 2007](loss relief) applies in relation to a loss made in either of those parts.[F396, or
  - (c) a wear and tear allowance is allowed in relation to the business under section 308C of this Act.]
- (3) If there is a letting of accommodation only part of which is holiday accommodation, such apportionments are to be made for the purposes of this section as are just and reasonable.

#### Textual Amendments

**F394** Words in s. 327 heading substituted (with effect in accordance with Sch. 14 para. 4 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 14 para. 2\(6\)](#)

**F395** Words in s. 327(2)(b) substituted (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), ss. 1027, 1034, [Sch. 1 para. 509](#) (with transitional provisions and savings in Sch. 2)

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

**F396** S. 327(2)(c) and word inserted (with effect in accordance with art. 13(1) of the amending S.I.) by [The Enactment of Extra-Statutory Concessions Order 2011 \(S.I. 2011/1037\)](#), arts. 1, **11(3)**

### **328 Relevant UK earnings for pension [<sup>F397</sup> purposes: UK property business ]**

- (1) If a UK property business consists of both—
  - (a) the commercial letting of furnished holiday accommodation (“the furnished holiday lettings part”), and
  - (b) other businesses or transactions,this section requires a separate calculation to be made of the profits of the furnished holiday lettings part.
- (2) The calculation must be made if the profits of the furnished holiday lettings part are [<sup>F398</sup>relevant UK earnings within section 189(2)(ba) of FA 2004.]
- (3) If there is a letting of accommodation only part of which is holiday accommodation, such apportionments are to be made for the purposes of this section as are just and reasonable.

#### **Textual Amendments**

**F397** Words in s. 328 heading substituted (with effect in accordance with Sch. 14 para. 4 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), **Sch. 14 para. 2(7)**

**F398** Words in s. 328(2) substituted (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), ss. 1027, 1034, **Sch. 1 para. 510(2)** (with transitional provisions and savings in Sch. 2)

### **[<sup>F399</sup>328A Capital allowances and loss relief: overseas property business**

- (1) If an overseas property business consists of both—
  - (a) the commercial letting of furnished holiday accommodation in one or more EEA states (“the EEA furnished holiday lettings part”), and
  - (b) other businesses or transactions (“the other part”),this section requires separate calculations to be made of the profits of the EEA furnished holiday lettings part and the other part.
- (2) The calculations must be made if—
  - (a) section 250 or 250A of CAA 2001 (giving effect to allowances and charges) applies to the EEA furnished holiday lettings part or the other part, or
  - (b) any provision of Part 4 of ITA 2007 (loss relief) applies in relation to a loss made in either of those parts.
- (3) If there is a letting of accommodation only part of which is holiday accommodation, such apportionments are to be made for the purposes of this section as are just and reasonable.

#### **Textual Amendments**

**F399** Ss. 328A, 328B inserted (with effect in accordance with Sch. 14 para. 4 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), **Sch. 14 para. 2(8)**

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

### **328B Relevant UK earnings for pension purposes: overseas property business**

- (1) If an overseas property business consists of both—
  - (a) the commercial letting of furnished holiday accommodation in one or more EEA states (“the EEA furnished holiday lettings part”), and
  - (b) other businesses or transactions,
 this section requires a separate calculation to be made of the profits of the EEA furnished holiday lettings part.
- (2) The calculation must be made if the profits of the EEA furnished holiday lettings part are relevant UK earnings within section 189(2)(bb) of FA 2004.
- (3) If there is a letting of accommodation only part of which is holiday accommodation, such apportionments are to be made for the purposes of this section as are just and reasonable.]

#### **Textual Amendments**

**F399** Ss. 328A, 328B inserted (with effect in accordance with Sch. 14 para. 4 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 14 para. 2\(8\)](#)

## **CHAPTER 7**

### **ADJUSTMENT INCOME**

#### *Adjustment on change of basis*

### **329 Application of Chapter**

- (1) This Chapter applies if—
  - (a) a person carrying on a UK property business changes, from one period of account to the next, the basis on which profits of the business are calculated for income tax purposes,
  - (b) the old basis accorded with the law or practice applicable in relation to the period of account before the change, and
  - (c) the new basis accords with the law and practice applicable in relation to the period of account after the change.
- (2) The practice applicable in any case means the accepted practice in cases of that description as to how profits of a UK property business should be calculated for income tax purposes.
- (3) Subsections (3) to (6) of section 227 (what is meant by a person changing the basis on which profits are calculated) apply for the purposes of this section as they apply for the purposes of that section (but as if any reference to a trade were to a UK property business).

### **330 Adjustment income and adjustment expense**

- (1) An amount by way of adjustment must be calculated in accordance with section 231, which applies in relation to a UK property business as it applies in relation to a trade.



*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (2) If the amount produced by the calculation is positive, it is treated as income and charged to income tax under this Chapter.

It is referred to in this Chapter as “adjustment income”.

- (3) If the amount produced by the calculation is negative, a deduction is allowed for it in calculating the profits of the business.

It is referred to in this Chapter as an “adjustment expense”.

- (4) This section is subject to section 234 (no adjustment for certain expenses previously brought into account), which applies in relation to a UK property business as it applies in relation to a trade.

### **331 Income charged**

Tax is charged under this Chapter on the full amount of any adjustment income arising in the tax year.

### **332 Person liable**

The person liable for any tax charged under this Chapter is the person receiving or entitled to the adjustment income.

#### *Treatment of adjustment income and adjustment expense*

### **333 Treatment of adjustment income**

- (1) Adjustment income is treated as arising on the last day of the first period of account for which the new basis is adopted.
- (2) But if there is a change of basis resulting from a tax adjustment affecting the calculation of any amount brought into account in respect of depreciation, adjustment income is treated as arising only when the asset to which it relates is realised or written off.
- (3) Adjustment income is treated for the purposes of <sup>F400</sup>Part 4 of ITA 2007 (loss relief) as profits of the UK property business for the tax year in which tax is charged on it.

#### **Textual Amendments**

**F400** Words in s. 333(3) substituted (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), ss. 1027, 1034, [Sch. 1 para. 511](#) (with transitional provisions and savings in [Sch. 2](#))

### **334 Treatment of adjustment expense**

- (1) An adjustment expense is treated as an expense of the business arising on the last day of the first period of account for which the new basis is adopted.
- (2) But if there is a change of basis resulting from a tax adjustment affecting the calculation of any amount brought into account in respect of depreciation, an

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

adjustment expense is treated as arising only when the asset to which it relates is realised or written off.

## CHAPTER 8

### RENT RECEIVABLE IN CONNECTION WITH A UK SECTION 12(4) CONCERN

#### *Charge to tax on rent receivable in connection with a UK section 12(4) concern*

#### **335 Charge to tax on rent receivable in connection with a UK section 12(4) concern**

Income tax is charged on rent receivable in connection with a UK section 12(4) concern.

#### **336 Meaning of “rent receivable in connection with a UK section 12(4) concern”**

- (1) For the purposes of this Chapter rent is receivable in connection with a UK section 12(4) concern if—
  - (a) it is receivable in respect of an estate, interest or right in or over land in the United Kingdom, and
  - (b) the estate, interest or right is used, occupied or enjoyed in connection with a concern listed in section 12(4).
- (2) For the purposes of this Chapter rent is also receivable in connection with a UK section 12(4) concern if—
  - (a) it is receivable in respect of an estate, interest or right in or over land in the United Kingdom,
  - (b) the lease or other agreement under which it is receivable provides for its recoupment by reducing royalties or payments of a similar nature, and
  - (c) the reduction applies if the estate, interest or right is used, occupied or enjoyed in connection with a concern listed in section 12(4).
- (3) In this Chapter “rent” includes—
  - (a) a receipt mentioned in section 266(3), and
  - (b) any other receipt in the nature of rent.

#### **337 Income charged**

- (1) Tax is charged under this Chapter on the full amount of the profits arising in the tax year.
- (2) This is subject to—
  - section 339 (deduction for management expenses of owner of mineral rights),
  - F401 ...
  - F401 ...
  - F401 ...

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

**Textual Amendments**

**F401** S. 337 entry omitted (with effect in accordance with Sch. 39 para. 43(3) of the amending Act) by virtue of Finance Act 2012 (c. 14), **Sch. 39 para. 43(2)(a)(i)**

**338 Person liable**

The person liable for any tax charged under this Chapter is the person receiving or entitled to the rent.

*Management expenses of owner of mineral rights*

**339 Deduction for management expenses of owner of mineral rights**

- (1) This section applies if in a tax year—
  - (a) a person lets a right to work minerals in the United Kingdom, and
  - (b) the person pays a sum wholly and exclusively as an expense of management or supervision of the minerals in the tax year.
- (2) In calculating the amount of rent receivable in connection with a UK section 12(4) concern, a deduction is allowed for the sum for the tax year.

<sup>F402</sup>(3) .....

**Textual Amendments**

**F402** S. 339(3) omitted (with effect in accordance with Sch. 39 para. 43(3) of the amending Act) by virtue of Finance Act 2012 (c. 14), **Sch. 39 para. 43(2)(a)(ii)**

*Mineral royalties*

<sup>F403</sup>**340 Relief in respect of mineral royalties**

.....

**Textual Amendments**

**F403** Ss. 340-343 repealed (with effect in accordance with Sch. 39 para. 43(3) of the amending Act) by Finance Act 2012 (c. 14), **Sch. 39 para. 43(1)(c)**

<sup>F403</sup>**341 Meaning of “mineral lease or agreement” and “mineral royalties”**

.....

**Textual Amendments**

**F403** Ss. 340-343 repealed (with effect in accordance with Sch. 39 para. 43(3) of the amending Act) by Finance Act 2012 (c. 14), **Sch. 39 para. 43(1)(c)**

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

### <sup>F403</sup>**342 Extended meaning of “mineral royalties” etc. in Northern Ireland**

.....

#### **Textual Amendments**

**F403** Ss. 340-343 repealed (with effect in accordance with Sch. 39 para. 43(3) of the amending Act) by Finance Act 2012 (c. 14), **Sch. 39 para. 43(1)(c)**

### <sup>F403</sup>**343 Power of [<sup>F404</sup>Commissioners] to determine what counts as “mineral royalties”**

.....

#### **Textual Amendments**

**F403** Ss. 340-343 repealed (with effect in accordance with Sch. 39 para. 43(3) of the amending Act) by Finance Act 2012 (c. 14), **Sch. 39 para. 43(1)(c)**

**F404** Word in s. 343 substituted (18.4.2005) by Commissioners for Revenue and Customs Act 2005 ss. 50, 53(1), {Sch. 4 para. 132(3)(a)}; **S.I. 2005/1126, art. 2(h)**

## CHAPTER 9

### RENT RECEIVABLE FOR UK ELECTRIC-LINE WAYLEAVES

#### *Charge to tax on rent receivable for UK electric-line wayleaves*

### **344 Charge to tax on rent receivable for a UK electric-line wayleave**

Income tax is charged on rent receivable for a UK electric-line wayleave.

### **345 Meaning of “rent receivable for a UK electric-line wayleave”**

- (1) For the purposes of this Chapter rent is receivable for a UK electric-line wayleave if—
  - (a) it is receivable in respect of an easement, servitude or right in or over land in the United Kingdom, and
  - (b) the easement, servitude or right is enjoyed in connection with an electric, telegraph or telephone wire or cable.
- (2) The reference to the enjoyment of an easement, servitude or right in connection with an electric, telegraph or telephone wire or cable includes (in particular) its enjoyment in connection with—
  - (a) a pole or pylon supporting such a wire or cable, or
  - (b) apparatus used in connection with such a wire or cable.
- (3) In this Chapter “rent” includes—
  - (a) a receipt mentioned in section 266(3), and
  - (b) any other receipt in the nature of rent.

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

### **346 Extent of charge to tax**

- (1) Rent receivable for a UK electric-line wayleave is not chargeable to tax under this Chapter for a tax year if—
  - (a) a person carries on a UK property business in relation to some or all of the land to which the wayleave relates, and
  - (b) receipts (other than rents receivable for UK electric-line wayleaves) in respect of some or all of that land are brought into account in calculating the profits of the business for the tax year.
- (2) In such a case, the rent receivable for the UK electric-line wayleave is brought into account in calculating the profits of the person's UK property business.
- (3) The rules for determining whether an amount is chargeable to tax under this Chapter also need to be read with section 22(2) (payments for wayleaves if person carries on a trade).
- (4) That subsection secures that an amount which would otherwise be chargeable to tax under this Chapter may be brought into account instead in calculating the profits of a trade.

### **347 Income charged**

Tax is charged under this Chapter on the full amount of the profits arising in the tax year.

### **348 Person liable**

The person liable for any tax charged under this Chapter is the person receiving or entitled to the rent.

## **CHAPTER 10**

### **POST-CESSATION RECEIPTS**

#### *Charge to tax on post-cessation receipts*

### **349 Charge to tax on post-cessation receipts**

Income tax is charged on post-cessation receipts arising from a UK property business.

### **350 Extent of charge to tax**

- (1) A post-cessation receipt is chargeable to tax under this Chapter only so far as the receipt is not otherwise chargeable to income or corporation tax.
- (2) Accordingly, a post-cessation receipt arising from a UK property business is not chargeable to tax under this Chapter so far as it is brought into account in calculating the profits of the business for any period.

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

### **351 Income charged**

- (1) Tax is charged under this Chapter on the full amount of the receipts received in the tax year.
- (2) This is subject to—
  - (a) sections 254 and 255 (allowable deductions), and
  - (b) section 257 (election to carry back),
 which apply for the purposes of this Chapter as they apply for the purposes of Chapter 18 of Part 2 (but as if any reference to a trade were to a UK property business).

### **352 Person liable**

The person liable for any tax charged under this Chapter is the person receiving or entitled to the receipts.

*Meaning of “post-cessation receipts”*

### **353 Basic meaning of “post-cessation receipt”**

- (1) In this Chapter “post-cessation receipt” means a sum—
  - (a) which is received after a person permanently ceases to carry on a UK property business, and
  - (b) which arises from the carrying on of the business before the cessation.
- (2) Subsection (3) applies if—
  - (a) a firm carries on a UK property business,
  - (b) a person ceases to be a partner in the firm, and
  - (c) at least one of the persons with whom the partner carried on the business before ceasing to be a partner continues to carry it on afterwards.
- (3) The partner is treated for the purposes of this Chapter as permanently ceasing to carry on the business.

#### **Modifications etc. (not altering text)**

**C25** Ss. 353-368 modified (7.4.2005) by [Finance Act 2005 \(c. 7\), s. 51\(2\)](#)

### **354 Other rules about what counts as a “post-cessation receipt”**

- (1) Section 355 (transfer of rights if transferee does not carry on UK property business) treats certain amounts as being, or not being, post-cessation receipts for the purposes of this Chapter.
- (2) The following provisions (which treat certain amounts as post-cessation receipts) apply for the purposes of this Chapter as they apply for the purposes of Chapter 18 of Part 2 (but as if any reference to a trade were to a UK property business)—
  - section 82(6) (contributions to local enterprise organisations or urban regeneration companies),
  - section 104(3) (distribution of assets of mutual concerns),

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

section 109(2) (receipt by donor or connected person of benefit attributable to certain gifts),

section 248 (debts paid after cessation) [<sup>F405</sup>(reading the reference in subsection (3) to section 96 of ITA 2007 as a reference to section 125 of that Act)] ,

section 249 (debts released after cessation), as qualified, where appropriate, by section 48(4) (car <sup>F406</sup>... hire), and

section 250 (receipts relating to post-cessation expenditure) [<sup>F407</sup>(reading the reference in subsection (1) to section 96 of ITA 2007 as a reference to section 125 of that Act)] .

(3) This Chapter also needs to be read with—

- (a) section 310(3) (which treats certain amounts as not being post-cessation receipts), and
- (b) section 844 (which treats certain income as a post-cessation receipt: unremittable income).

#### Textual Amendments

**F405** Words in s. 354(2) inserted (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), ss. 1027, 1034, [Sch. 1 para. 512\(a\)](#) (with transitional provisions and savings in [Sch. 2](#))

**F406** Words in s. 354(2) omitted (with effect in accordance with Sch. 11 paras. 65-67 of the amending Act) by virtue of [Finance Act 2009 \(c. 10\)](#), [Sch. 11 para. 43](#)

**F407** Words in s. 354(2) inserted (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), ss. 1027, 1034, [Sch. 1 para. 512\(b\)](#) (with transitional provisions and savings in [Sch. 2](#))

#### Modifications etc. (not altering text)

**C26** Ss. 353-368 modified (7.4.2005) by [Finance Act 2005 \(c. 7\)](#), s. 51(2)

### 355 Transfer of rights if transferee does not carry on UK property business

(1) This section applies if—

- (a) a person (“the transferor”) permanently ceases to carry on a UK property business,
- (b) the transferor transfers to another person (“the transferee”) for value the right to receive sums arising from the carrying on of any business (“the transferred business”) comprised in the transferor's UK property business, and
- (c) the transferee does not subsequently carry on the transferred business.

(2) The transferor is treated as receiving a post-cessation receipt.

(3) The amount of the receipt is—

- (a) the amount or value of the consideration for the transfer, if the transfer is at arm's length, or
- (b) the value of the rights transferred as between parties at arm's length, if the transfer is not at arm's length.

(4) Any sums mentioned in subsection (1)(b) which are received after the cessation of the property business are not post-cessation receipts.

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

**Modifications etc. (not altering text)**

**C27** Ss. 353-368 modified (7.4.2005) by [Finance Act 2005 \(c. 7\), s. 51\(2\)](#)

*Supplementary*

**356 Application to <sup>F408</sup>businesses within the charge to corporation tax]**

- (1) In this Chapter (except in section 355) any reference to a UK property business includes <sup>F409</sup>one within the charge to corporation tax] .
- (2) In this Chapter (except in section 355) any reference to a person permanently ceasing to carry on a UK property business <sup>F410</sup>includes, in the case of a company, the occurrence of an event treated under section 289 of CTA 2009 (company starting or ceasing to be within the charge to corporation tax) as the company permanently ceasing to carry on the business.]
- (3) In applying any provision of Chapter 18 of Part 2 for the purposes of this Chapter references to the calculation of the profits of a trade for corporation tax purposes are to be read as references to the calculation of the profits of a <sup>F411</sup>UK property business] for corporation tax purposes.

**Textual Amendments**

**F408** Words in s. 356 title substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 629\(5\)](#) (with [Sch. 2 Pts. 1, 2](#))

**F409** Words in s. 356(1) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 629\(2\)](#) (with [Sch. 2 Pts. 1, 2](#))

**F410** Words in s. 356(2) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 629\(3\)](#) (with [Sch. 2 Pts. 1, 2](#))

**F411** Words in s. 356(3) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 629\(4\)](#) (with [Sch. 2 Pts. 1, 2](#))

**Modifications etc. (not altering text)**

**C28** Ss. 353-368 modified (7.4.2005) by [Finance Act 2005 \(c. 7\), s. 51\(2\)](#)

<sup>F412</sup>**CHAPTER 11**

**OVERSEAS PROPERTY INCOME**

**Textual Amendments**

**F412** Pt. 3 Ch. 11 omitted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\), Sch. 7 para. 49](#)

<sup>F412</sup>**357 Charge to tax on overseas property income**

.....



*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

**F412 358 Meaning of “overseas property income”**

.....

**F412 359 Income charged**

.....

**F412 360 Person liable**

.....

**CHAPTER 12**

**SUPPLEMENTARY**

**361 Changes in trustees and personal representatives**

- (1) This section applies if there is a change—
  - (a) in the trustees of a trust, or
  - (b) in the personal representatives of a person,at a time when they are carrying on a property business.
- (2) For income tax purposes, the change does not result in—
  - (a) any of the trustees or personal representatives before the change permanently ceasing to carry on the business, or
  - (b) any of the trustees or personal representatives after the change starting to carry on the business.

**Modifications etc. (not altering text)**

**C29** Ss. 353-368 modified (7.4.2005) by [Finance Act 2005 \(c. 7\), s. 51\(2\)](#)

**362 Effect of company starting or ceasing to be within charge to income tax**

- (1) This section applies if a company starts or ceases to be within the charge to income tax under Chapter 3 of this Part in respect of a UK property business.
- (2) The company is treated for the purposes of this Part—
  - (a) as starting to carry on the business when it starts to be within the charge, or
  - (b) as permanently ceasing to carry on the business when it ceases to be within the charge.

**Modifications etc. (not altering text)**

**C30** Ss. 353-368 modified (7.4.2005) by [Finance Act 2005 \(c. 7\), s. 51\(2\)](#)

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

### 363 Overseas property businesses and overseas land: adaptation of rules

- (1) This section applies if a provision of this Part—
- (a) applies to an overseas property business or land outside the United Kingdom, but
  - (b) is expressed by reference to a domestic concept of law.
- (2) In relation to that business or land, the provision is to be read so as to produce the result most closely corresponding with that produced by the provision in relation to a UK property business or land in the United Kingdom.

#### Modifications etc. (not altering text)

**C31** Ss. 353-368 modified (7.4.2005) by Finance Act 2005 (c. 7), s. 51(2)

### 364 Meaning of “lease” and “premises”

- (1) In this Part “lease” includes—
- (a) an agreement for a lease (so far as the context permits), and
  - (b) any tenancy,
- but does not include a mortgage.
- (2) In this Part “premises” includes land.

#### Modifications etc. (not altering text)

**C32** Ss. 353-368 modified (7.4.2005) by Finance Act 2005 (c. 7), s. 51(2)

## PART 4

### SAVINGS AND INVESTMENT INCOME

## CHAPTER 1

### INTRODUCTION

### 365 Overview of Part 4

- (1) This Part imposes charges to income tax under—
- (a) Chapter 2 (interest),
  - [<sup>F413</sup>(aa) Chapter 2A (disguised interest),]
  - (b) Chapter 3 (dividends etc. from UK resident companies etc.),
  - (c) Chapter 4 (dividends from non-UK resident companies),
  - (d) Chapter 5 (stock dividends from UK resident companies),
  - (e) Chapter 6 (release of loan to participator in close company),
  - (f) Chapter 7 (purchased life annuity payments),
  - (g) Chapter 8 (profits from deeply discounted securities),

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (h) Chapter 9 (gains from contracts for life insurance etc.),
  - <sup>F414</sup>(i) .....
  - (j) Chapter 11 (transactions in deposits),
  - <sup>F415</sup>(k) .....
  - (l) Chapter 13 (sales of foreign dividend coupons).
- (2) Part 6 deals with exemptions from the charges under this Part.
- (3) See, in particular, any exemptions mentioned in the particular Chapters.
- (4) The charges under this Part apply to non-UK residents as well as UK residents but this is subject to section 368(2) (charges on non-UK residents only on UK source income).
- (5) This section needs to be read with the relevant priority rules (see sections 2 and 366).

#### Textual Amendments

**F413** S. 365(1)(aa) inserted (with effect in accordance with Sch. 12 para. 18(1) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 12 para. 2\(a\)](#)

**F414** S. 365(1)(i) omitted (6.4.2014) by virtue of [The Unauthorised Unit Trusts \(Tax\) Regulations 2013 \(S.I. 2013/2819\)](#), regs. 1(3), [36\(2\)](#) (with reg. 32)

**F415** S. 365(1)(k) omitted (with effect in accordance with Sch. 12 para. 18(1) of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 12 para. 2\(b\)](#)

#### Modifications etc. (not altering text)

**C33** Ss. 353-368 modified (7.4.2005) by [Finance Act 2005 \(c. 7\)](#), [s. 51\(2\)](#)

### 366 Provisions which must be given priority over Part 4

- (1) Any income, so far as it falls within—
- (a) any Chapter of this Part, and
  - (b) Chapter 2 of Part 2 (receipts of a trade, profession or vocation),
- is dealt with under Part 2.
- (2) Any income, so far as it falls within—
- (a) any Chapter of this Part, and
  - (b) Chapter 3 of Part 3 so far as the Chapter relates to a UK property business,
- is dealt with under Part 3.
- (3) Any income, so far as it falls within—
- (a) any Chapter of this Part other than Chapter 3 or 6, and
  - (b) Part 2, 9 or 10 of ITEPA 2003 (employment income, pension income or social security income),
- is dealt with under the relevant Part of ITEPA 2003.
- (4) Nothing in this section prevents amounts both—
- (a) being counted as income for the purposes of Chapter 9 of this Part (gains from contracts for life insurance etc.), and
  - (b) being taken into account in calculating income, or counting as income, for the purposes of other Parts of this Act,

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

but see section 527 (reduction for sums taken into account otherwise than under Chapter 9).

**Modifications etc. (not altering text)**

**C34** Ss. 353-368 modified (7.4.2005) by [Finance Act 2005 \(c. 7\), s. 51\(2\)](#)

**367 Priority between Chapters within Part 4**

- (1) Any income, so far as it falls within Chapter 2 (interest) and Chapter 8 (profits from deeply discounted securities), is dealt with under Chapter 8.
- (2) Any income, so far as it falls within Chapter 3 (dividends etc. from UK resident companies etc.) and another Chapter, is dealt with under Chapter 3 (but this is subject to subsection (3)).
- (3) Any income, so far as it falls within—
  - (a) Chapter 2 (interest) as a result of section 372 (building society dividends) [<sup>F416</sup>, 378A (offshore fund distributions)] or 379 (industrial and provident society payments), and
  - (b) Chapter 3 [<sup>F417</sup> or Chapter 4 (or both)],
 is dealt with under Chapter 2.

**Textual Amendments**

**F416** Words in s. 367(3)(a) inserted (with effect in accordance with s. 39(5) of the amending Act) by [Finance Act 2009 \(c. 10\), s. 39\(4\)\(a\)](#)

**F417** Words in s. 367(3)(b) inserted (with effect in accordance with s. 39(5) of the amending Act) by [Finance Act 2009 \(c. 10\), s. 39\(4\)\(b\)](#)

**Modifications etc. (not altering text)**

**C35** Ss. 353-368 modified (7.4.2005) by [Finance Act 2005 \(c. 7\), s. 51\(2\)](#)

**368 Territorial scope of Part 4 charges**

- (1) Income arising to a UK resident is chargeable to tax under this Part whether or not it is from a source in the United Kingdom.
  - (2) Income arising to a non-UK resident is chargeable to tax under this Part only if it is from a source in the United Kingdom.
- [<sup>F418</sup>(2A) If income arising to an individual who is UK resident arises in the overseas part of a split year, it is to be treated for the purposes of this section as arising to a non-UK resident.]
- (3) References in this section to income which is from a source in the United Kingdom include, in the case of any income which does not have a source, references to income which has a comparable connection to the United Kingdom.
  - (4) This section is subject to any express or implied provision to the contrary in this Part (or elsewhere in the Income Tax Acts).

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

#### Textual Amendments

**F418** S. 368(2A) inserted (with effect in accordance with Sch. 45 para. 153(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), **Sch. 45 para. 83**

#### Modifications etc. (not altering text)

**C36** Ss. 353-368 modified (7.4.2005) by [Finance Act 2005 \(c. 7\)](#), **s. 51(2)**

### [<sup>F419</sup>**368A** Interpretation of special rules for temporary non-residents

- (1) This section concerns provisions of this Part that are expressed to apply if an individual is “temporarily non-resident” (“TNR provisions”).
- (2) Part 4 of Schedule 45 to FA 2013 (statutory residence test: anti-avoidance) explains for the purposes of TNR provisions—
  - (a) when an individual is to be regarded as “temporarily non-resident”, and
  - (b) what the following terms mean—
    - (i) “the temporary period of non-residence”,
    - (ii) “the year of departure”, and
    - (iii) “the period of return”.
- (3) A reference in TNR provisions to “the year of return” is to the tax year consisting of or including the period of return.
- (4) Nothing in any double taxation relief arrangements is to be read as preventing the individual from being chargeable to income tax by virtue of any TNR provisions (or as preventing a charge to that tax from arising as a result).
- (5) In this section and in TNR provisions, “double taxation relief arrangements” means arrangements that have effect under section 2(1) of TIOPA 2010.]

#### Textual Amendments

**F419** S. 368A inserted (with effect in accordance with Sch. 45 para. 153(3) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), **Sch. 45 para. 132**

## CHAPTER 2

### INTEREST

#### *Charge to tax on interest*

### **369** Charge to tax on interest

- (1) Income tax is charged on interest.
- (2) The following sections extend what is treated as interest for certain purposes—
  - section 372 (building society dividends),
  - section 373 (open-ended investment company interest distributions),

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

section 376 (authorised unit trust interest distributions),  
<sup>F420</sup>section 378A (offshore fund distributions),  
 section 379 (industrial and provident society payments),  
 section 380 (funding bonds),  
<sup>F421</sup>section 380A (FSCS payments representing interest),] and  
 section 381 (discounts).

(3) For exemptions, see in particular—

- (a) Chapter 2 of Part 6 (national savings income),
- (b) Chapter 3 of Part 6 (income from individual investment plans),
- (c) Chapter 4 of Part 6 (SAYE interest),
- (d) Chapter 6 of Part 6 (income from FOTRA securities),
- (e) sections 749 to <sup>F422</sup>756A] (<sup>F423</sup>repayment interest,] interest arising from repayment supplements, <sup>F424</sup>... damages for personal injury, employees' share schemes, repayments of student loans, <sup>F425</sup>unpaid relevant contributions, ] the redemption of funding bonds <sup>F426</sup>, certain foreign currency securities and interest on certain deposits of victims of National-Socialist persecution)], and
- (f) sections 757 to 767 (interest and royalty payments).

(4) Subsection (1) is also subject to <sup>F427</sup>Chapter 3 of Part 12 of ITA 2007 (exemption for interest on securities to which Chapter 2 of that Part applies)] .

<sup>F428</sup>(5) See also Chapter 3A of Part 14 of ITA 2007 (which provides for the receipts of certain types of company being wound up to be charged to income tax under that Chapter instead of under any other provision that would otherwise apply).]

#### Textual Amendments

- F420** Words in s. 369(2) inserted (with effect in accordance with s. 39(5) of the amending Act) by [Finance Act 2009 \(c. 10\), s. 39\(2\)](#)
- F421** Words in s. 369(2) inserted (with effect in accordance with s. 33(5) of the amending Act) by [Finance Act 2009 \(c. 10\), s. 33\(2\)](#)
- F422** Word in s. 369(3)(e) substituted (19.7.2006) by [Finance Act 2006 \(c. 25\), s. 64\(1\)\(a\)](#)
- F423** Words in s. 369(3)(e) inserted (with effect in accordance with art. 1(2) of the amending S.I.) by [The Finance Act 2009, Sections 101 and 102 \(Interest on Late Payments and Repayments\), Appointed Days and Consequential Provisions Order 2014 \(S.I. 2014/992\), arts. 1\(1\), 8\(2\)](#)
- F424** Words in s. 369(3)(e) omitted (with effect in accordance with Sch. 39 para. 53(3) of the amending Act) by virtue of [Finance Act 2012 \(c. 14\), Sch. 39 para. 53\(2\)](#)
- F425** Words in s. 369(3)(e) inserted (19.7.2011) by [Finance Act 2011 \(c. 11\), s. 69\(2\)](#)
- F426** Words in s. 369(3)(e) substituted (19.7.2006) by [Finance Act 2006 \(c. 25\), s. 64\(1\)\(b\)](#)
- F427** Words in s. 369(4) substituted (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\), ss. 1027, 1034, Sch. 1 para. 513](#) (with transitional provisions and savings in Sch. 2)
- F428** S. 369(5) inserted (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. 7 para. 67](#) (with Sch. 9 paras. 1-9, 22)

### 370 Income charged

(1) Tax is charged under this Chapter on the full amount of the interest arising in the tax year.

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

(2) Subsection (1) is subject to Part 8 (foreign income: special rules).

### **[<sup>F429</sup>370] Valuation of interest not paid in cash**

- (1) This section applies to the payment of an amount of interest in the form of—
  - (a) goods or services, or
  - (b) a voucher.
- (2) Where this section applies by virtue of subsection (1)(a), the amount of the payment is to be taken to be equal to the market value, at the time the payment is made, of the goods or services.
- (3) Where this section applies by virtue of subsection (1)(b), the amount of the payment is to be taken to be equal to whichever is the higher of—
  - (a) the face value of the voucher,
  - (b) the amount of money for which the voucher is capable of being exchanged, or
  - (c) the market value, at the time the payment is made, of any goods or services for which the voucher is capable of being exchanged.
- (4) In this section references to a voucher are to a voucher, stamp or similar document or token which is capable of being exchanged for money, goods or services.]

#### **Textual Amendments**

**F429** S. 370A inserted (with effect in accordance with Sch. 11 para. 12(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 11 para. 6](#)

### **371 Person liable**

The person liable for any tax charged under this Chapter is the person receiving or entitled to the interest.

*Other income taxed as interest*

### **372 Building society dividends**

- (1) Any dividend paid by a building society is treated as interest for the purposes of this Act.
- (2) In this section “dividend” [<sup>F430</sup>includes any distribution (whether or not described as a dividend)] .

#### **Textual Amendments**

**F430** Words in s. 372(2) substituted (6.4.2007 with effect as stated in [s. 1034\(1\)](#) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), ss. 1027, 1034, [Sch. 1 para. 514](#) (with transitional provisions and savings in [Sch. 2](#))

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

#### Modifications etc. (not altering text)

**C37** S. 372 excluded (1.3.2013) by [The Building Societies \(Core Capital Deferred Shares\) Regulations 2013 \(S.I. 2013/460\)](#), regs. 1(1), **3(1)(b)** (with reg. 1(2))

### 373 Open-ended investment company interest distributions

- (1) This section applies if the distribution accounts of an open-ended investment company show the total amount available for distribution to owners of shares in the company as available for distribution as yearly interest.
- (2) Subsection (1) is subject to [<sup>F431</sup>subsection (7)] .
- (3) For income tax purposes payments of yearly interest are treated as made to the owners of the shares by the company.
- (4) <sup>F432</sup> .....
- (5) The amount of the payment treated as made to each owner is so much of the total amount mentioned in subsection (1) as is proportionate to the owner's shares.
- (6) <sup>F432</sup> .....
- (7) This section does not apply if the open-ended investment company is an approved personal pension scheme.
- (8) See section 375 for the interpretation of this section and section 374.

#### Textual Amendments

**F431** Words in s. 373(2) substituted (1.4.2006 with effect as mentioned in reg. 1(2) of the amending S.I.) by [The Authorised Investment Funds \(Tax\) Regulations 2006 \(S.I. 2006/964\)](#), **reg. 91(2)**

**F432** S. 373(4)(6) repealed (with effect as mentioned in the commencing S.I.) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), ss. 17(1)(d), 19(1), 70, **Sch. 11 Pt. 2(3)**; S.I. 2006/982, **art. 2**

### 374 Date when interest payments under section 373 made

- (1) This section applies for determining the date on which payments of interest under section 373 are treated as made.
- (2) The date on which the payments are treated as made depends on whether a date is specified for any distribution for the distribution period in question by or in accordance with—
  - (a) the company's instrument of incorporation and its prospectus in issue for the time being (including any supplements), or
  - (b) in the case of an open-ended investment company which is part of an umbrella company, such parts of those documents of the umbrella company as apply to the open-ended investment company.
- (3) If such a date is so specified, the payments are treated as made on that date.
- (4) If no such date is so specified, the payments are treated as made on the last day of that period.



*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

### 375 Interpretation of sections 373 and 374

- (1) In sections 373 and 374 and this section—
  - “approved personal pension scheme” has the same meaning as in Chapter 4 of Part 14 of ICTA (see section 630(1) of that Act),
  - “distribution” includes investment on behalf of an owner of shares in respect of the owner's accumulation shares,
  - “distribution accounts” means the accounts showing how the total amount available for distribution to owners of shares is calculated,
  - “distribution period” means the period by reference to which that amount is ascertained,
  - “the OEIC Regulations” means the Open-ended Investment Companies (Tax) Regulations 1997 (S.I. 1997/1154),
  - “open-ended investment company” has the same meaning as in Chapter 3 of Part 12 of ICTA (unit trust schemes etc.) (see section 468(10) and (11) of ICTA, as inserted by regulation 10 of the OEIC Regulations),
  - “owner of shares” has the same meaning as in that Chapter (see section 468(10) and (15) of that Act, as so inserted), and
  - <sup>F433</sup>“umbrella company” has the meaning given by section 615 of CTA 2010.]
- (2) In subsection (1) “accumulation share” means a share in respect of which income is credited periodically to the capital part of the company's scheme property.
- (3) In subsection (2) “scheme property” has the same meaning as in Chapter 3 of Part 12 of ICTA (unit trust schemes etc.) (see section 468(10) and (13) of ICTA, as inserted by regulation 10 of the OEIC Regulations).

#### Textual Amendments

**F433** Words in s. 375(1) substituted (1.4.2010) (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), [Sch. 1 para. 452](#) (with [Sch. 2](#))

### 376 Authorised unit trust interest distributions

- (1) This section applies if the distribution accounts of an authorised unit trust show the total amount available for distribution to unit holders as available for distribution as yearly interest.
- (2) Subsection (1) is subject to [<sup>F434</sup>subsection (7)] .
- (3) For income tax purposes payments of yearly interest are treated as made to the unit holders.
- (4) <sup>F435</sup> .....
- (5) The amount of the payment treated as made to each unit holder is so much of the total amount mentioned in subsection (1) as is proportionate to the unit holder's rights.
- (6) <sup>F435</sup> .....
- (7) This section does not apply if the authorised unit trust is an approved personal pension scheme.

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

(8) See section 378 for the interpretation of this section and section 377.

#### Textual Amendments

**F434** Words in s. 376(2) substituted (1.4.2006 with effect as mentioned in reg. 1(2) of the amending S.I.) by [The Authorised Investment Funds \(Tax\) Regulations 2006 \(S.I. 2006/964\)](#), **reg. 91(3)**

**F435** S. 376(4)(6) repealed (with effect as mentioned in the commencing S.I.) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), ss. 17(1)(e), 19(1), 70, **Sch. 11 Pt. 2(3)**; S.I. 2006/982, **art. 2**

### 377 Date when interest payments under section 376 made

- (1) This section applies for determining the date on which payments of interest under section 376 are treated as made.
- (2) The date on which the payments are treated as made depends on whether a date is specified by or in accordance with the trust's terms for any distribution for the distribution period in question.
- (3) If such a date is so specified, the payments are treated as made on that date.
- (4) If no such date is so specified, the payments are treated as made on the last day of that period.

### 378 Interpretation of sections 376 and 377

In sections 376 and 377—

“approved personal pension scheme” has the same meaning as in Chapter 4 of Part 14 of ICTA (see section 630(1) of that Act),

“distribution” includes investment on behalf of a unit holder in respect of the holder's accumulation units,

“distribution accounts” means the accounts showing how the total amount available for distribution to unit holders is ascertained, and

“distribution period” means the period by reference to which that amount is ascertained.

### [<sup>F436</sup>378A] Offshore fund distributions

- (1) This section applies where—
  - (a) a dividend is paid by an offshore fund, and
  - (b) the offshore fund fails to meet the qualifying investments test at any time in the relevant period.
- (2) The dividend is treated as interest for income tax purposes.
- (3) For the purposes of this section, an offshore fund fails to meet the qualifying investments test if the market value of the fund's qualifying investments exceeds 60% of the market value of all of the assets of the fund (excluding cash awaiting investment).
- (4) “The relevant period” means—
  - (a) the relevant period of account of the offshore fund, or

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (b) if longer, the period of 12 months ending on the last day of that period.
- (5) “The relevant period of account” means—
- (a) the last period of account ending before the dividend is paid, in a case in which the profits available for distribution at the end of that period (and not used since then by distribution or otherwise) equal or exceed the amount of the dividend (aggregated with any other distribution made by the offshore fund at the same time), and
- (b) the period of account in which the dividend is paid, in any other case.
- (6) This section applies to a manufactured overseas dividend if, and only if, it is representative of a distribution to which this section would apply.
- (7) In this section—
- “dividend” includes any distribution that (but for this section) would be treated as a dividend for income tax purposes;
- “manufactured overseas dividend” has the same meaning as in Chapter 2 of Part 11 of ITA 2007 (manufactured payments);
- “offshore fund” has the same meaning as in [F437]section 354 of TIOPA 2010 (see sections 355 to 363 of that Act)];
- “qualifying investments” has the meaning given in section 494 of CTA 2009.]

#### Textual Amendments

- F436** S. 378A inserted (with effect in accordance with s. 39(5) of the amending Act) by [Finance Act 2009 \(c. 10\), s. 39\(3\)](#)
- F437** Words in s. 378A(7) 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. 168](#) (with [Sch. 9 paras. 1-9, 22](#))

#### Modifications etc. (not altering text)

- C38** S. 378A applied (1.12.2009) (with effect in accordance with art. 1(2)(3) of, Sch. 1 to the amending S.I.) by [The Offshore Funds \(Tax\) Regulations 2009 \(S.I. 2009/3001\), regs. 1\(1\), 96\(3\)\(a\)](#)

### 379 Industrial and provident society payments

- (1) Any dividend, bonus or other sum payable to a shareholder in—
- (a) a registered industrial and provident society, or
- (b) a UK agricultural or fishing co-operative,
- is treated as interest for income tax purposes if it is payable by reference to the amount of the shareholder's holding in its share capital.
- (2) In subsection (1)—
- “registered industrial and provident society” means a society registered or treated as registered under the Industrial and Provident Societies Act 1965 (c. 12) or the Industrial and Provident Societies Act (Northern Ireland) 1969 (c. 24 (N.I.)), and
- “UK agricultural or fishing co-operative” means a co-operative association—
- (a) which is established in the United Kingdom and UK resident, and

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (b) whose primary object is assisting its members in—
  - (i) carrying on agricultural or horticultural businesses on land occupied by them in the United Kingdom, or
  - (ii) carrying on businesses consisting in the catching or taking of fish or shellfish.
- (3) In subsection (2) “co-operative association” means a body with a written constitution from which the Secretary of State considers that it is in substance a co-operative association.
- (4) For the purposes of subsection (3), the Secretary of State must have regard to the way in which the body's constitution provides for its income to be applied for its members' benefit and all other relevant provisions.
- (5) In Northern Ireland subsections (3) and (4) apply with the substitution for “the Secretary of State” of “the Department of Agriculture and Rural Development”.

### 380 Funding bonds

- (1) This section applies to the issue of funding bonds to a creditor in respect of a liability to pay interest on a debt incurred by a government, public institution, other public authority or body corporate.
- (2) The issue is treated for income tax purposes as if it were the payment of so much of that interest as equals the market value of the bonds at their issue.
- (3) In this section “funding bonds” includes any bonds, stocks, shares, securities or certificates of indebtedness [<sup>F438</sup> (but does not include any instrument providing for payment in the form of goods or services or a voucher)] .

#### Textual Amendments

**F438** Words in s. 380(3) inserted (with effect in accordance with Sch. 11 para. 12(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 11 para. 7](#)

#### Modifications etc. (not altering text)

**C39** S. 380 modified (7.4.2005) by [Finance Act 2005 \(c. 7\)](#), s. 55, [Sch. 2 para. 10](#)

**C40** S. 380 modified (1.4.2010) by [Income Tax Act 2007 \(c. 3\)](#), s. 564M(2) (as inserted (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. 2 para. 14\(2\)](#) (with Sch. 9 paras. 1-9, 22))

### [<sup>F439</sup>380] FSCS payments representing interest

- (1) Any payment representing interest which is made under the FSCS is treated as interest for the purposes of this Act.
- (2) “Payment representing interest” means a payment calculated in the same way as interest which would have been paid to the recipient but for the circumstances giving rise to the making of payments under the FSCS.
- (3) Where a payment representing interest is made net of an amount equal to a sum representing income tax that would have been deducted on the payment of interest, the

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

amount treated as interest by this section is the aggregate of the payment representing interest and that sum.

- (4) This section applies to payments made under the FSCS whether or not they are made (in whole or in part) on behalf of the Treasury or any other person.
- (5) In this section “the FSCS” means the Financial Services Compensation Scheme (established under Part 15 of the Financial Services and Markets Act 2000).]

#### Textual Amendments

**F439** S. 380A inserted (with effect in accordance with s. 33(5) of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [s. 33\(3\)](#)

### 381 Discounts

- (1) All discounts, other than discounts in deeply discounted securities, are treated as interest for the purposes of this Act.
- (2) In this section “deeply discounted securities” means securities to which Chapter 8 of this Part applies (profits from deeply discounted securities).

#### Modifications etc. (not altering text)

**C41** S. 381 applied (1.4.2010) by [Income Tax Act 2007 \(c. 3\)](#), [s. 564R\(2\)](#) (as inserted (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. 2 para. 19\(2\)](#) (with [Sch. 9 paras. 1-9, 22\)](#))

## [<sup>F440</sup>CHAPTER 2A

### DISGUISED INTEREST

#### Textual Amendments

**F440** Pt. 4 Ch. 2A inserted (with effect in accordance with [Sch. 12 para. 18](#) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 12 para. 3](#)

### 381A Charge to tax on disguised interest

- (1) This Chapter applies where a person is party to an arrangement which produces for the person a return in relation to any amount which is economically equivalent to interest.
- (2) Income tax is charged on the return if the return is not charged to income tax under or as a result of any other provision of this Act or any other Act.
- (3) Subsection (2) does not apply to a return that would be charged to income tax under or as a result of another provision but for an exemption.
- (4) For the purposes of this Chapter a return produced for a person by an arrangement in relation to any amount is “economically equivalent to interest” if (and only if)—

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

- (a) it is reasonable to assume that it is a return by reference to the time value of that amount of money,
  - (b) it is at a rate reasonably comparable to what is (in all the circumstances) a commercial rate of interest, and
  - (c) at the relevant time there is no practical likelihood that it will cease to be produced in accordance with the arrangement unless the person by whom it falls to be produced is prevented (by reason of insolvency or otherwise) from producing it.
- (5) In subsection (4)(c) “the relevant time” means the time when the person becomes party to the arrangement or, if later, when the arrangement begins to produce a return for the person.
- (6) In this Chapter “arrangement” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable).

### **381B Income charged**

Tax is charged under this Chapter on the full amount of the return, or any part of the return, arising in the tax year.

### **381C Person liable**

The person liable for any tax charged under this Chapter is the person receiving or entitled to the return or the part of the return.

### **381D Avoidance of double taxation**

- (1) This section applies if at any time a tax other than income tax (“the other tax”) is charged in relation to a return on which income tax is charged under this Chapter.
- (2) In order to avoid a double charge to tax in respect of the return, a person may make a claim for one or more consequential adjustments to be made in respect of the other tax.
- (3) On a claim under this section an officer of Revenue and Customs must make such of the consequential adjustments claimed (if any) as are just and reasonable.
- (4) Consequential adjustments may be made—
  - (a) in respect of any period,
  - (b) by way of an assessment, the modification of an assessment, the amendment of a claim, or otherwise, and
  - (c) despite any time limit imposed by or under any enactment.

### **381E Exception for returns from certain shares**

- (1) This Chapter does not apply in relation to an arrangement that produces a return for a person, in relation to an amount, which is economically equivalent to interest where—
  - (a) the arrangement involves only excluded shares, and
  - (b) no relevant arrangement has been made (by any person) in relation to those excluded shares.
- (2) For the purposes of this section shares are excluded shares if they are admitted to trading on a regulated market and—

---

*Status: Point in time view as at 06/05/2014.*

**Changes to legislation:** There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

---

- (a) they were issued before 6 April 2013, or
  - (b) if issued on or after that date, at the time of issue no arrangements involving only the shares would produce a return, in relation to an amount, which is economically equivalent to interest.
- (3) In subsection (2) “regulated market” has the same meaning as in Directive [2004/39/EC](#) of the European Parliament and of the Council on markets in financial instruments (see Article 4.1(14)).
- (4) For the purposes of this section an arrangement is relevant, in relation to excluded shares, where—
- (a) the arrangement is made on or after 6 April 2013, and
  - (b) it is reasonable to assume that the main purpose, or one of the main purposes, of the arrangement is to secure that arrangements involving only the shares produce a return, in relation to an amount, which is economically equivalent to interest.]

### CHAPTER 3

#### DIVIDENDS ETC. FROM UK RESIDENT COMPANIES [<sup>F441</sup> AND TAX CREDITS ETC. IN RESPECT OF CERTAIN DISTRIBUTIONS]

##### Textual Amendments

**F441** Words in Pt. 4 Ch. 3 heading substituted (with effect in accordance with s. 34(2) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 12 para. 2](#)

#### Introduction

### 382 Contents of Chapter

- (1) This Chapter—
- (a) imposes a charge to income tax on dividends and other distributions of UK resident companies (see section 383),
  - (b) treats dividends as paid in some circumstances (see sections 386 to 391), and
  - (c) makes special provision where the charge is in respect of shares awarded under [<sup>F442</sup>a Schedule 2] share incentive plan (see sections 392 to 396).
- (2) This Chapter also makes provision about tax credits, tax being treated as paid and reliefs available in respect of certain distributions which applies whether or not the distributions are otherwise dealt with under this Chapter (see sections 397 to 401).
- (3) For exemptions from the charge under this Chapter, see in particular—
- Chapter 3 of Part 6 (income from individual investment plans),
  - Chapter 5 of that Part (venture capital trust dividends),
  - section 770 (amounts applied by SIP trustees acquiring dividend shares or retained for reinvestment), and
  - section 498 of ITEPA 2003 (no charge on shares ceasing to be subject to SIP in certain circumstances).

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (4) In this Chapter “dividends” does not include income treated as arising under section 410 (stock dividends).

#### **Textual Amendments**

**F442** Words in s. 382(1)(c) substituted (6.4.2014) by [Finance Act 2014 \(c. 26\)](#), **Sch. 8 paras. 54, 89** (with [Sch. 8 paras. 90-96](#))

### *Charge to tax on dividends and other distributions*

#### **383 Charge to tax on dividends and other distributions**

- (1) Income tax is charged on dividends and other distributions of a UK resident company.
- (2) For income tax purposes such dividends and other distributions are to be treated as income.
- (3) For the purposes of subsection (2), it does not matter that those dividends and other distributions are capital apart from that subsection.

#### **384 Income charged**

- (1) Tax is charged under this Chapter on the amount or value of the dividends paid and other distributions made in the tax year.
- (2) Subsection (1) is subject to—
  - section 393(2) and (3) (later charge where cash dividends retained in SIPs are paid over), and
  - section 394(3) (distribution when dividend shares cease to be subject to SIP).
- (3) See also section 398 (under which the amount or value of the dividends or other distributions is treated as increased if any person is entitled to a tax credit in respect of them).

#### **385 Person liable**

- (1) The person liable for any tax charged under this Chapter is—
  - (a) the person to whom the distribution is made or is treated as made (see Part 6 of ICTA and sections 386(3) and 389(3)), or
  - (b) the person receiving or entitled to the distribution.
- (2) Subsection (1) is subject to—
  - section 393(4) (later charge where cash dividends retained in SIPs are paid over), and
  - section 394(4) (distribution when dividend shares cease to be subject to SIP).



*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

*[<sup>F443</sup>Purchase by company of exempt employee shareholder shares*

**Textual Amendments**

**F443** S. 385A and cross-heading inserted (1.9.2013) by [Finance Act 2013 \(c. 29\)](#), [Sch. 23 paras. 16, 38](#); [S.I. 2013/1755, art. 2](#)

**385A No charge to tax on purchase by company of exempt employee shareholder shares**

- (1) No tax is charged under this Chapter on the amount or value of a payment made by a company on the purchase of shares from an individual if—
  - (a) the payment is made in respect of shares in the company,
  - (b) the shares are exempt employee shareholder shares, and
  - (c) at the time of the disposal, the individual is not an employee of, or an office-holder in, the employer company or an associated company of that company.
- (2) In this section—

“exempt employee shareholder share”, “employer company” and “associated company” have the same meaning as in sections 236B to 236D of TCGA 1992 (capital gains tax treatment of employee shareholder shares);

“in respect of shares in the company” has the same meaning as in Part 23 of CTA 2010 (company distributions) (see section 1113 of that Act).]

*Amounts treated as dividends*

**386 Open-ended investment company dividend distributions**

- (1) This section applies if the distribution accounts of an open-ended investment company show the total amount available for distribution to owners of shares in the company as available for distribution as dividends.
- (2) Subsection (1) is subject to subsection (5).
- (3) For income tax purposes dividends are treated as paid to the owners of the shares by the company.
- (4) The amount of the dividends treated as paid to each owner is so much of the total amount mentioned in subsection (1) as is proportionate to the owner's shares.
- (5) This section does not apply if the open-ended investment company is an approved personal pension scheme.
- (6) See section 388 for the interpretation of this section and section 387.

**387 Date when dividends paid under section 386**

- (1) This section applies for determining the date on which dividends are treated as paid under section 386.
- (2) The date on which the dividends are treated as paid depends on whether a date is specified for the distribution period in question by or in accordance with—

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (a) the company's instrument of incorporation and its prospectus in issue for the time being (including any supplements), or
  - (b) in the case of an open-ended investment company which is part of an umbrella company, such parts of those documents of the umbrella company as apply to the open-ended investment company.
- (3) If such a date is so specified, the dividends are treated as paid on that date.
- (4) If no such date is so specified, the dividends are treated as paid on the last day of that period.

### 388 Interpretation of sections 386 and 387

- (1) In sections 386 and 387 and this section—

“approved personal pension scheme” has the same meaning as in Chapter 4 of Part 14 of ICTA (see section 630(1) of that Act),

“distribution” includes investment on behalf of an owner of shares in respect of the owner's accumulation shares,

“distribution accounts” means the accounts showing how the total amount available for distribution to owners of shares is calculated,

“distribution period” means the period by reference to which that amount is ascertained,

“the OEIC Regulations” means the Open-ended Investment Companies (Tax) Regulations 1997 (S.I. 1997/1154),

“open-ended investment company” has the same meaning as in Chapter 3 of Part 12 of ICTA (unit trust schemes etc.) (see section 468(10) and (11) of ICTA, as inserted by regulation 10 of the OEIC Regulations),

“owner of shares” has the same meaning as in that Chapter (see section 468(10) and (15) of that Act, as so inserted), and

[<sup>F444</sup>“umbrella company” has the meaning given by section 615 of CTA 2010.]

- (2) In subsection (1) “accumulation share” means a share in respect of which income is credited periodically to the capital part of the company's scheme property.
- (3) In subsection (2) “scheme property” has the same meaning as in Chapter 3 of Part 12 of ICTA (unit trust schemes etc.) (see section 468(10) and (13) of ICTA, as inserted by regulation 10 of the OEIC Regulations).

#### Textual Amendments

**F444** Words in s. 388(1) substituted (1.4.2010) (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), [Sch. 1 para. 453](#) (with [Sch. 2](#))

### 389 Authorised unit trust dividend distributions

- (1) This section applies if the distribution accounts of an authorised unit trust show the total amount available for distribution to unit holders as available for distribution as dividends.
- (2) Subsection (1) is subject to subsection (6).

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

- (3) For income tax purposes dividends are treated as paid to the unit holders.
- (4) The amount of the dividends treated as paid to each unit holder is so much of the total amount mentioned in subsection (1) as is proportionate to the unit holder's rights.
- (5) The dividends are treated as paid on the shares and by the company referred to in <sup>F445</sup>section 617(1) of CTA 2010] (which relates to the trustees of an authorised unit trust being treated as a UK resident company in which the unit holders' rights are shares).
- (6) This section does not apply if the authorised unit trust is an approved personal pension scheme.
- (7) See section 391 for the interpretation of this section and section 390.

#### Textual Amendments

**F445** Words in s. 389(5) substituted (1.4.2010) (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), [Sch. 1 para. 454](#) (with [Sch. 2](#))

### 390 Date when dividends paid under section 389

- (1) This section applies for determining the date on which dividends are treated as paid under section 389.
- (2) The date on which the dividends are treated as paid depends on whether a date is specified by or in accordance with the trust's terms for any distribution for the distribution period in question.
- (3) If such a date is so specified, the dividends are treated as paid on that date.
- (4) If no such date is so specified, the dividends are treated as paid on the last day of that period.

### 391 Interpretation of sections 389 and 390

In sections 389 and 390—

“approved personal pension scheme” has the same meaning as in Chapter 4 of Part 14 of ICTA (see section 630(1) of that Act),

“distribution” includes investment on behalf of a unit holder in respect of the holder's accumulation units,

“distribution accounts” means the accounts showing how the total amount available for distribution to unit holders is ascertained, and

“distribution period” means the period by reference to which that amount is ascertained.

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

### *Shares in <sup>F446</sup>Schedule 2] share incentive plans (“SIPs”)*

#### **Textual Amendments**

**F446** Words in s. 392 cross-heading substituted (6.4.2014) by [Finance Act 2014 \(c. 26\)](#), [Sch. 8 paras. 55, 89](#) (with [Sch. 8 paras. 90-96](#))

### **392 SIP shares: introduction**

- (1) Sections 393 to 395 contain special rules about the charge under this Chapter in respect of shares awarded to an individual under <sup>F447</sup>a Schedule 2] share incentive plan.
- (2) Those sections only apply if condition A or B was met at the time the shares in question were so awarded.
- (3) Condition A is that—
  - (a) the earnings from the eligible employment were general earnings (see section 7(3) of ITEPA 2003) to which any of the charging provisions of Chapter 4 or 5 of Part 2 of ITEPA 2003 applied, or
  - (b) if there had been any earnings from it, they would have been such earnings.
- (4) In subsection (3)—
  - (a) “the eligible employment” means the employment resulting in the individual meeting the employment requirement in relation to the plan, and
  - (b) the reference to any of the charging provisions of Chapter 4 or 5 of Part 2 of ITEPA 2003 has the same meaning as it has in the employment income Parts of that Act (see sections 14(3) and 20(3) of that Act).
- (5) Condition B is that—
  - (a) the shares were awarded before 6th April 2003, and
  - (b) the individual was liable for tax under Schedule E in respect of the relevant employment.
- (6) In subsection (5) “the relevant employment” means the employment by reference to which the individual met the requirements in paragraph 14 of Schedule 8 to FA 2000 (employee share ownership plans: the employment requirement) in relation to the plan.
- (7) See section 396 for the general interpretation of this section and sections 393 to 395.

#### **Textual Amendments**

**F447** Words in s. 392(1) substituted (6.4.2014) by [Finance Act 2014 \(c. 26\)](#), [Sch. 8 paras. 56, 89](#) (with [Sch. 8 paras. 90-96](#))

### **393 Later charge where cash dividends retained in SIPs are paid over**

- (1) This section applies if a cash dividend is paid over to a participant under paragraph 68(4) of Schedule 2 to ITEPA 2003 (cash dividend paid over if not reinvested etc.).
- (2) Tax charged under this Chapter is charged for the tax year in which the cash dividend is paid over instead of the tax year in which it was originally paid.

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

- (3) Tax so charged is charged on the amount of the cash dividend paid over.
- (4) The person liable for any tax so charged is the participant.
- (5) For the purposes of determining—
  - (a) whether the participant is entitled to a tax credit under section 397 in respect of a cash dividend so charged, and
  - (b) the amount of that tax credit,
 that section applies as it has effect for the tax year in which the cash dividend is paid over.
- (6) For the purposes of this Chapter, the question whether a cash dividend paid over to a participant under paragraph 68(4) of Schedule 2 to ITEPA 2003 is a dividend paid by a company that is UK resident is determined by reference to the tax year in which the dividend was originally paid.

### **394 Distribution when dividend shares cease to be subject to SIP**

- (1) This section applies if dividend shares cease to be subject to [<sup>F448</sup>a Schedule 2] share incentive plan before the end of the period of 3 years beginning with the date on which the shares were acquired on the participant's behalf.
  - (2) For income tax purposes a distribution is treated as made to the participant in the tax year in which the shares cease to be subject to the plan.
  - (3) The amount of the distribution treated as made is the amount of the cash dividend applied to acquire the shares on the participant's behalf, so far as it represents a cash dividend paid in respect of plan shares in a UK resident company.
- [<sup>F449</sup>(3A) But if the shares cease to be subject to the plan by virtue of a provision of the kind mentioned in paragraph 65(2) of Schedule 2 to ITEPA 2003 (provision requiring dividend shares to be offered for sale), the amount of the distribution treated as made is the amount equal to the relevant fraction of the market value of the shares at the time they are offered for sale if that amount is less than the amount given by subsection (3).
- (3B) For the purposes of subsection (3A) “the relevant fraction” is—
- A B
- where—
- A is so much of the amount of the cash dividend applied to acquire the shares on the participant's behalf as represents a cash dividend paid in respect of plan shares in a UK resident company, and
- B is the amount of the cash dividend applied to acquire the shares on the participant's behalf.
- (3C) Paragraph 92(2) of Schedule 2 to ITEPA 2003 (market value of shares subject to a restriction) applies for the purposes of subsection (3A).]
- (4) The person liable for any tax charged on the distribution as a result of this section is the participant.
  - (5) For the purposes of determining—

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (a) whether the participant is entitled to a tax credit under section 397 in respect of a distribution so charged, and
  - (b) if so, the amount of that tax credit,
- that section applies as it has effect for the tax year in which the shares cease to be subject to the plan.
- (6) But for the purposes of this Chapter, the question whether the distribution under subsection (2) is a distribution by a company that is UK resident is determined by reference to the year in which the company paid the dividend applied to acquire the shares on the participant's behalf.
- (7) For rules identifying shares ceasing to be subject to [<sup>F450</sup>Schedule 2] share incentive plans, see section 508 of ITEPA 2003.

#### Textual Amendments

- F448** Words in s. 394(1) substituted (6.4.2014) by Finance Act 2014 (c. 26), **Sch. 8 paras. 57(2)**, 89 (with Sch. 8 paras. 90-96)
- F449** S. 394(3A)-(3C) inserted (6.4.2014) by Finance Act 2014 (c. 26), **Sch. 8 paras. 57(3)**, 89 (with Sch. 8 paras. 90-96)
- F450** Words in s. 394(7) substituted (6.4.2014) by Finance Act 2014 (c. 26), **Sch. 8 paras. 57(4)**, 89 (with Sch. 8 paras. 90-96)

### 395 Reduction in tax due in cases within section 394

- (1) This section applies if—
- (a) a person is liable to tax as a result of section 394, and
  - (b) any tax is paid on any capital receipts under section 501 of ITEPA 2003 (charge on capital receipts in respect of plan shares) in respect of the shares that cease to be subject to the [<sup>F451</sup>Schedule 2] share incentive plan.
- (2) The tax due is to be reduced by an amount equal to the total tax so paid.
- (3) In subsection (2) “the tax due” means the amount of tax due as a result of section 394 after deduction of the tax credit determined in accordance with section 394(5).
- (4) For rules identifying shares ceasing to be subject to [<sup>F452</sup>Schedule 2] share incentive plans, see section 508 of ITEPA 2003.

#### Textual Amendments

- F451** Words in s. 395(1)(b) substituted (6.4.2014) by Finance Act 2014 (c. 26), **Sch. 8 paras. 58**, 89 (with Sch. 8 paras. 90-96)
- F452** Words in s. 395(4) substituted (6.4.2014) by Finance Act 2014 (c. 26), **Sch. 8 paras. 58**, 89 (with Sch. 8 paras. 90-96)

### 396 Interpretation of sections 392 to 395

- (1) This section and sections 392 to 395 form part of the SIP code (see section 488 of ITEPA 2003 (<sup>F453</sup>... share incentive plans)).

---

*Status: Point in time view as at 06/05/2014.*

**Changes to legislation:** There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

---

- (2) Accordingly, expressions used in this section or those sections and contained in the index in paragraph 100 of Schedule 2 to that Act (<sup>F454</sup>... share incentive plans) have the meaning indicated by that index.
- (3) In particular—
- (a) for the meaning of “award of shares” see paragraph 5(1) of that Schedule,
  - (b) for the meaning of “ceasing to be subject to plan” see paragraph 97 of that Schedule,
  - (c) for the meaning of “dividend shares” see paragraph 62(3)(b) of that Schedule,
  - (d) for the meaning of “employment requirement” see paragraph 15(3) of that Schedule,
  - (e) for the meaning of “participant” see paragraph 5(4) of that Schedule,
  - (f) for the meaning of “plan shares” see paragraphs 86 to 88 and 99(1) of that Schedule, and
  - (g) for the meaning of “shares” see paragraphs 87(6) and 99(2) of that Schedule.

#### Textual Amendments

**F453** Word in s. 396(1) omitted (6.4.2014) by virtue of Finance Act 2014 (c. 26), Sch. 8 paras. 59, 89 (with Sch. 8 paras. 90-96)

**F454** Word in s. 396(2) omitted (6.4.2014) by virtue of Finance Act 2014 (c. 26), Sch. 8 paras. 59, 89 (with Sch. 8 paras. 90-96)

### *Tax credits and payment and deduction of tax*

#### **397 Tax credits for qualifying distributions [<sup>F455</sup>of UK resident companies] : UK residents and eligible non-UK residents**

- (1) A UK resident or eligible non-UK resident receiving a qualifying distribution made by a UK resident company is entitled to a tax credit equal to one-ninth of the amount or value of the distribution (but see subsections (3) and (6)).
- (2) Such a person may claim to deduct the tax credit from—
  - (a) the income tax charged on the person's total income for the tax year in which the distribution is made, <sup>F456</sup> . . . .
  - (b) <sup>F456</sup> .....
- (3) Subsection (1) only applies so far as the distribution is brought into charge to tax, and accordingly if the person's total income is reduced by any deductions which fall to be made from the distribution, the tax credit for the distribution is reduced in the same proportion as the distribution.
- (4) For the purposes of this section “eligible non-UK resident”, in relation to a qualifying distribution, means an individual who at any time in the tax year in which it is received is a non-UK resident within section 278(2) of ICTA [<sup>F457</sup>or section 56(3) of ITA 2007] (Commonwealth citizens, EEA nationals etc.).
- (5) If a distribution is, or is treated under any provision of the Tax Acts as, the income of a person (“P”) other than the recipient (“R”), P (not R) is treated as receiving it for the purposes of this section (and so P (not R) is entitled to a tax credit if P falls within subsection (1)).

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

(6) This section is subject to the following provisions—

F458

...

F459

...

[<sup>F459</sup>section 614ZD(6) of ITA 2007,] and

section 171(2B) of FA 1993 (no tax credit for distributions in respect of assets in Lloyd's member's premium trust fund).

#### Textual Amendments

**F455** Words in s. 397 heading inserted (with effect in accordance with s. 34(2) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), **Sch. 12 para. 3**

**F456** S. 397(2)(b) and preceding word repealed (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), ss. 1027, 1031, 1034, **Sch. 1 para. 515(2)**, **Sch. 3 Pt. 1** (with transitional provisions and savings in [Sch. 2](#))

**F457** Words in s. 397(4) inserted (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), ss. 1027, 1034, **Sch. 1 para. 515(3)** (with transitional provisions and savings in [Sch. 2](#))

**F458** Words in s. 397(6) omitted (6.4.2014) by virtue of [The Unauthorised Unit Trusts \(Tax\) Regulations 2013 \(S.I. 2013/2819\)](#), regs. 1(3), **36(3)** (with reg. 32)

**F459** Words in s. 397(6) substituted (1.1.2014) by [Finance Act 2013 \(c. 29\)](#), **Sch. 1 para. 52**, **Sch. 29 para. 13**

#### Modifications etc. (not altering text)

**C42** S. 397 excluded (19.7.2006) by [Finance Act 2006 \(c. 25\)](#), **s. 121(5)** (with [Sch. 17 para. 18\(2\)](#))

S. 397(1) excluded (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), **s. 504(4)(b)** (with transitional provisions and savings in [Sch. 2](#))

**C43** S. 397 excluded by S.I. 2006/694, regs. 69Z18(5), 69Z19(2) (as inserted (6.4.2008) by [The Authorised Investment Funds \(Tax\) \(Amendment\) Regulations 2008 \(S.I. 2008/705\)](#), regs. 1, 5)

**C44** S. 397 excluded (1.4.2010) (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), **ss. 549(2)**, 1184(1) (with [Sch. 2](#))

**C45** S. 397(1) excluded (6.4.2014) by [The Unauthorised Unit Trusts \(Tax\) Regulations 2013 \(S.I. 2013/2819\)](#), regs. 1(3), **12(3)(a)**

#### [<sup>F460</sup>397A] Tax credits for distributions of non-UK resident companies: UK residents and eligible non-UK residents

[<sup>F461</sup>(1) A UK resident or eligible non-UK resident receiving a relevant distribution made by a non-UK resident company is entitled to a tax credit equal to one-ninth of the amount or value of the grossed up distribution (but see subsections (3) and (6) and section 397AA).]

(3) Subsection [<sup>F462</sup>(1)] only applies so far as the distribution is brought into charge to tax, and accordingly if the person's total income is reduced by any deductions which fall to be made from the distribution, the tax credit for the distribution is reduced in the same proportion as the distribution.

(4) The person may claim to deduct the tax credit from the income tax charged on the person's total income for the tax year in which the distribution (or the part of the distribution to which the tax credit relates) is brought into charge to tax.



*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

(5) If a distribution is, or is treated under any provision of the Tax Acts as, the income of a person (“P”) other than the recipient (“R”), P (not R) is treated as receiving it for the purposes of this section (and so P (not R) is entitled to a tax credit if P falls within subsection (1)).

(6) This section is subject to the following provisions—  
section 171(2B) of FA 1993 (no tax credit for distributions in respect of assets in Lloyd's member's premium trust fund),

<sup>F463</sup>...

[<sup>F464</sup>section 614ZD(6) of ITA 2007.]

(7) In this section—

“eligible non-UK resident”, in relation to a distribution, means an individual who, at any time in the tax year in which the distribution (or the part of the distribution to which the tax credit relates) is brought into charge to tax, is a non-UK resident who meets the condition in section 56(3) of ITA 2007 (residence etc of claimants),

“grossed up distribution” means the distribution increased by the amount of any tax chargeable in respect of the distribution directly or by deduction under the laws of the territory in which the company is resident, including special withholding tax,

<sup>F465</sup>.....

“relevant distribution”, in relation to a person, means—

- (a) a qualifying distribution arising in a relevant tax year,
- (b) a cash dividend paid over to the person under paragraph 68(4) of Schedule 2 of ITEPA 2003 (cash dividend paid over if not reinvested etc) in a relevant tax year, and
- (c) a dividend treated under section 407 as paid to the person in a relevant tax year,

“relevant tax year” means the tax year 2008-09 or a subsequent tax year, and

“special withholding tax” has the meaning given in [<sup>F466</sup>section 136(6) of TIOPA 2010].

<sup>F467</sup>(8).....

#### Textual Amendments

**F460** Ss. 397A-397C inserted (with effect in accordance with s. 34(2) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 12 para. 4](#)

**F461** S. 397A(1) substituted for s. 397A(1)(2) (with effect in accordance with Sch. 19 para. 14 of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 19 para. 2\(2\)](#)

**F462** Word in s. 397A(3) substituted (with effect in accordance with Sch. 19 para. 14 of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 19 para. 2\(3\)](#)

**F463** Words in s. 397A(6) omitted (6.4.2014) by virtue of [The Unauthorised Unit Trusts \(Tax\) Regulations 2013 \(S.I. 2013/2819\)](#), [regs. 1\(3\)](#), [36\(4\)](#) (with [reg. 32](#))

**F464** Words in s. 397A(6) substituted (1.1.2014) by [Finance Act 2013 \(c. 29\)](#), [Sch. 1 para. 52](#), [Sch. 29 para. 14\(a\)](#)

**F465** Words in s. 397A(7) omitted (with effect in accordance with Sch. 19 para. 14 of the amending Act) by virtue of [Finance Act 2009 \(c. 10\)](#), [Sch. 19 para. 2\(4\)](#)

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

**F466** Words in s. 397A(7) 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. 66](#) (with [Sch. 9 paras. 1-9, 22](#))

**F467** S. 397A(8) omitted (1.1.2014) by virtue of [Finance Act 2013 \(c. 29\), Sch. 1 para. 52, Sch. 29 para. 14\(b\)](#)

#### **Modifications etc. (not altering text)**

**C46** S. 397A applied (1.12.2009) (with effect in accordance with art. 1(2)(3) Sch. 1 of the amending S.I.) by [The Offshore Funds \(Tax\) Regulations 2009 \(S.I. 2009/3001\), regs. 1\(1\), 95\(4\)](#)

**C47** S. 397A(1) excluded (6.4.2014) by [The Unauthorised Unit Trusts \(Tax\) Regulations 2013 \(S.I. 2013/2819\), regs. 1\(3\), 12\(3\)\(a\)](#)

### **Tax credit under section 397A: conditions**

**F468**

#### **397AA**

- (1) Section 397A(1) only applies if condition A, B or C is met.
- (2) Condition A is that—
  - (a) the relevant distribution is made by a company with issued share capital, and
  - (b) at the time the person receives the relevant distribution, the person is a minority shareholder in the company.
- (3) Condition B is that the company that makes the relevant distribution is an offshore fund.
- (4) Condition C is that—
  - (a) the company that makes the relevant distribution is a resident of (and only of) a qualifying territory at the time that the relevant distribution is received, and
  - (b) if the relevant distribution is one of a series of distributions made as part of a scheme—
    - (i) each company that makes a distribution in the series (a “scheme distribution”) is a resident of (and only of) a qualifying territory at the time that the scheme distribution is received, or
    - (ii) the scheme is not a tax advantage scheme.
- (5) In this section—
  - “minority shareholder”, in relation to a company, has the meaning given in section 397C;
  - “offshore fund” has the same meaning as in Chapter 5 of Part 17 of ICTA (see sections 756A to 756C of that Act);
  - “qualifying territory” has the meaning given by or under section 397BA;
  - “relevant distribution” has the same meaning as in section 397A;
  - “scheme” includes any scheme, arrangements or understanding of any kind, whether or not legally enforceable and whether involving a single transaction or two or more transactions;
  - “tax advantage scheme” means a scheme that, ignoring any incidental purposes, has as its only purpose or purposes either or both of the following—
    - (a) to enable a person to obtain a tax credit under section 397A, and
    - (b) to enable a person to obtain (in any territory) any other relief from tax on a distribution.]

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

### Textual Amendments

**F460** Ss. 397A-397C inserted (with effect in accordance with s. 34(2) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 12 para. 4](#)

**F468** S. 397AA inserted (with effect in accordance with Sch. 19 para. 14 of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 19 para. 3](#)

### Modifications etc. (not altering text)

**C48** S. 397AA modified (with effect in accordance with reg. 1 of the amending S.I.) by [The Tax Credits \(Excluded Companies\) Regulations 2009 \(S.I. 2009/3333\)](#), [reg. 2](#)

## <sup>F469</sup>**397B** Tax credits under section 397A: manufactured overseas dividends

### Textual Amendments

**F469** S. 397B omitted (1.1.2014) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 1 para. 52](#), [Sch. 29 para. 15](#)

### <sup>F470</sup>**397BA** Meaning of “qualifying territory”

- (1) For the purposes of section 397AA “qualifying territory” means—
- (a) the United Kingdom, or
  - (b) a territory within subsection (2).
- (2) A territory is within this subsection if—
- <sup>F471</sup>(a) arrangements made in relation to the territory have effect under section 2(1) of TIOPA 2010 (“double taxation relief arrangements”), and]
  - (b) the arrangements contain a non-discrimination provision.
- (3) The Treasury may by regulations—
- (a) provide that a territory specified in or of a description specified in the regulations that does not satisfy subsection (2)(a) or (b) is a qualifying territory for the purpose of section 397AA, and
  - (b) provide that a territory so specified or described that satisfies subsection (2) (a) or (b) is not a qualifying territory for that purpose.
- (4) For the purposes of section 397AA a company is a resident of a territory if, under the laws of the territory, the company is liable to tax there—
- (a) by reason of its domicile, residence or place of management, but
  - (b) not in respect only of income from sources in that territory or capital situated there.
- (5) In subsection (2) “non-discrimination provision”, in relation to double taxation relief arrangements, means a provision to the effect that nationals of a state which is a party to those arrangements (a “contracting state”) are not to be subject in any other contracting state to—
- (a) any taxation, or
  - (b) any requirement connected with taxation,

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

which is other or more burdensome than the taxation and connected requirements to which nationals of that other state in the same circumstances (in particular with respect to residence) are or may be subjected.

- (6) In subsection (5) “national”, in relation to a contracting state, includes—
- (a) an individual possessing the nationality or citizenship of the contracting state, and
  - (b) a legal person, partnership or association deriving its status as such from the laws in force in that contracting state.
- (7) Regulations under this section may—
- (a) describe a territory by reference to the double taxation relief arrangements for the time being in force in relation to the territory,
  - (b) make different provision in relation to different descriptions of company, and
  - (c) make provision having effect in relation to the tax year current on the day on which the regulations are made.
- (8) No regulations may be made under this section unless a draft of the instrument containing them has been laid before, and approved by a resolution of, the House of Commons.]

#### Textual Amendments

- F460** Ss. 397A-397C inserted (with effect in accordance with s. 34(2) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 12 para. 4](#)
- F470** S. 397BA inserted (with effect in accordance with Sch. 19 para. 14 of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 19 para. 5](#)
- F471** S. 397BA(2)(a) 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. 67](#) (with [Sch. 9 paras. 1-9, 22](#))

#### 397C Meaning of “minority shareholder”

- (1) In section [<sup>F472</sup>397AA] “minority shareholder”, in relation to a <sup>F473</sup>... company, means a person whose shareholding in the company is less than 10% of the company's issued share capital.
- [ Where the company has more than one class of share, the reference in subsection (1) <sup>F474</sup>(1A) to the company's issued share capital is to issued share capital of the same class as the share in respect of which the distribution is made.]
- (2) Subsections (3) to (6) make provision about the circumstances in which shares form part of a person's shareholding in a company for the purposes of this section.
- (3) Shares form part of a person's shareholding in a company to the extent that the person is beneficially entitled to the shares or to a distribution arising in respect of the shares (or both).
- (4) Shares form part of a person's shareholding in the company where—
- (a) a person is a settlor in relation to a settlement, and
  - (b) income arising from shares comprised in the settlement is treated for income tax purposes as the income of that person and of that person alone.

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (5) Shares form part of the shareholding in a company of a person (“P”) if—
- (a) they form part of the shareholding in the company of a person connected with P,
  - (b) P transferred the shares to the connected person or arranged for the connected person to acquire the shares, and
  - (c) the purpose of the transfer or arrangement was wholly or mainly to enable P to avoid tax.
- (6) Shares form part of a person's shareholding in a company if that person has transferred the shares to another person under a repo or stock lending arrangement.
- (7) In this section—
- “repo” has the same meaning as in Part 11 of ITA 2007 (see section 569 of that Act),
- “settlement” and “settlor” have the same meaning as in Chapter 5 of Part 5 of this Act, and
- “stock lending arrangement” has the same meaning as in Part 11 of ITA 2007 (see section 568 of that Act).

[ For the purposes of this section, shares are not of the same class if the amounts paid<sup>F475</sup> (8) up on them (otherwise than by way of premium) are different. ]

#### Textual Amendments

- F460** Ss. 397A-397C inserted (with effect in accordance with s. 34(2) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 12 para. 4](#)
- F472** Word in s. 397C(1) substituted (with effect in accordance with Sch. 19 para. 14 of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 19 para. 6\(2\)\(a\)](#)
- F473** Words in s. 397C(1) omitted (with effect in accordance with Sch. 19 para. 14 of the amending Act) by virtue of [Finance Act 2009 \(c. 10\)](#), [Sch. 19 para. 6\(2\)\(b\)](#)
- F474** S. 397C(1A) inserted (with effect in accordance with Sch. 19 para. 14 of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 19 para. 6\(3\)](#)
- F475** S. 397C(8) inserted (with effect in accordance with Sch. 19 para. 14 of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 19 para. 6\(4\)](#)

### 398 Increase in amount or value of dividends where tax credit available

- (1) If a person is entitled to a tax credit [<sup>F476</sup>under section 397 or 397A] in respect of a dividend or other distribution, the amount or value of the dividend or other distribution is treated as increased by the amount of the tax credit for all income tax purposes (except [<sup>F477</sup>sections 397(1) and [<sup>F478</sup>397A(1)]] ).
- (2) Subsection (1) does not apply if the distribution is dealt with under Chapter 2 of Part 2 unless the trade consists of the underwriting business of a member of Lloyd's.

#### Textual Amendments

- F476** Words in s. 398(1) inserted (with effect in accordance with s. 34(2) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 12 para. 5\(a\)](#)
- F477** Words in s. 398(1) substituted (with effect in accordance with s. 34(2) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 12 para. 5\(b\)](#)

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

**F478** Word in s. 398(1) substituted (with effect in accordance with Sch. 19 para. 14 of the amending Act) by Finance Act 2009 (c. 10), **Sch. 19 para. 7**

### 399 Qualifying distributions received by persons not entitled to tax credits

- (1) This section applies if a person is not entitled to a tax credit [<sup>F479</sup>under section 397 or 397A] for a qualifying distribution included in the person's income for a tax year.
- (2) The person is treated as having paid income tax at the dividend ordinary rate on the amount or value of the distribution (but see subsection (7)).
- (3) For the purposes of subsection (2), if the person is non-UK resident the amount or value of the distribution is treated as the grossed up amount, unless the person is a company which is beneficially entitled to the income.
- (4) If the person is non-UK resident [<sup>F480</sup>, the amount or value of the distribution is treated for the purposes of Chapters 3, 4 and 6 of Part 9 of ITA 2007 (special rates for trustees' income)] as the grossed up amount.
- (5) In this section “the grossed up amount” means the actual amount or value of the distribution, grossed up by reference to the dividend ordinary rate for the tax year.
- (6) The income tax treated as paid under subsection (2) is not repayable.
- (7) Subsection (2) is subject to the following provisions—
  - <sup>F481</sup> ...
  - [<sup>F482</sup>section 592 of ITA 2007 (no tax credits for borrower under stock lending arrangement), section 593 of ITA 2007 (no tax credits for interim holder under repo), and section 594 of ITA 2007 (no tax credits for original owner under repo).]

#### Textual Amendments

- F479** Words in s. 399(1) inserted (with effect in accordance with s. 34(2) of the amending Act) by Finance Act 2008 (c. 9), **Sch. 12 para. 6**
- F480** Words in s. 399(4) substituted (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by Income Tax Act 2007 (c. 3), ss. 1027, 1034, **Sch. 1 para. 516(2)** (with transitional provisions and savings in Sch. 2)
- F481** Words in s. 399(7) omitted (6.4.2014) by virtue of The Unauthorised Unit Trusts (Tax) Regulations 2013 (S.I. 2013/2819), regs. 1(3), **36(5)** (with reg. 32)
- F482** Words in s. 399(7) substituted (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by Income Tax Act 2007 (c. 3), ss. 1027, 1034, **Sch. 1 para. 516(3)** (with transitional provisions and savings in Sch. 2)

#### Modifications etc. (not altering text)

- C49** S. 399(2) excluded (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by Income Tax Act 2007 (c. 3), **ss. 594(3), 1034** (with transitional provisions and savings in Sch. 2)
- C50** S. 399(2) excluded (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by Income Tax Act 2007 (c. 3), **ss. 593(3), 1034** (with transitional provisions and savings in Sch. 2)
- C51** S. 399(2) excluded (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by Income Tax Act 2007 (c. 3), **ss. 592(3), 1034** (with transitional provisions and savings in Sch. 2)
- C52** S. 399(2)(6) excluded (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by Income Tax Act 2007 (c. 3), **ss. 504(4)(c), 1034** (with transitional provisions and savings in Sch. 2)

*Status: Point in time view as at 06/05/2014.*

**Changes to legislation:** There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

- C53** S. 399(2) excluded (6.4.2014) by [The Unauthorised Unit Trusts \(Tax\) Regulations 2013 \(S.I. 2013/2819\)](#), regs. 1(3), **12(3)(b)**
- C54** S. 399(6) excluded (6.4.2014) by [The Unauthorised Unit Trusts \(Tax\) Regulations 2013 \(S.I. 2013/2819\)](#), regs. 1(3), **12(3)(b)**

#### 400 Non-qualifying distributions

- (1) This section applies if a person's income in a tax year includes a non-qualifying distribution.
- (2) The person is treated as having paid income tax at the dividend ordinary rate on the amount or value of the distribution.
- (3) The income tax treated as paid under subsection (2) is not repayable.
- (4) If the distribution is [<sup>F483</sup>assessed (in whole or in part) at the dividend trust rate by virtue of Chapter 3 of Part 9 of ITA 2007 (trustees' accumulated or discretionary income to be charged at special rates), the trustees' liability for income tax at that rate is reduced]
- (5) The amount of the reduction is equal to income tax at the dividend ordinary rate on so much of the distribution as is assessed at the dividend trust rate.
- (6) In this section and section 401 “non-qualifying distribution” means a distribution which is not a qualifying distribution.

<sup>F484</sup>(7) .....

##### Textual Amendments

**F483** Words in s. 400(4) substituted (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), ss. 1027, 1034, **Sch. 1 para. 517(2)** (with transitional provisions and savings in [Sch. 2](#))

**F484** S. 400(7) omitted (6.4.2014) by virtue of [The Unauthorised Unit Trusts \(Tax\) Regulations 2013 \(S.I. 2013/2819\)](#), regs. 1(3), **36(6)** (with reg. 32)

##### Modifications etc. (not altering text)

**C55** S. 400(2)(3) excluded (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), ss. **504(4)(d)**, 1034 (with transitional provisions and savings in [Sch. 2](#))

**C56** S. 400(2) excluded (6.4.2014) by [The Unauthorised Unit Trusts \(Tax\) Regulations 2013 \(S.I. 2013/2819\)](#), regs. 1(3), **12(3)(c)**

**C57** S. 400(3) excluded (6.4.2014) by [The Unauthorised Unit Trusts \(Tax\) Regulations 2013 \(S.I. 2013/2819\)](#), regs. 1(3), **12(3)(c)**

#### 401 Relief: qualifying distribution after linked non-qualifying distribution

- (1) Where a person pays an amount in respect of extra liability for a non-qualifying distribution, the person's extra liability for a subsequent qualifying distribution is reduced by that amount if conditions A and B are met.
- (2) Condition A is that the non-qualifying distribution consists of the issue of share capital or security.
- (3) Condition B is that the qualifying distribution consists of a repayment of the share capital or the principal of the security.

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (4) A person's extra liability for a distribution charged to tax for the tax year 1999-2000 or a later tax year is the amount by which the person's liability to income tax on the distribution exceeds the amount it would be if it were charged only at the dividend ordinary rate.
  - (5) A person's extra liability for a distribution charged to tax for a tax year after the tax year 1992-93 and before the tax year 1999-2000 is the amount by which the person's liability to income tax on the distribution exceeds the amount it would be if it were charged only at the lower rate.
  - (6) A person's extra liability for a distribution charged to tax for a tax year before the tax year 1993-94 is the amount by which the person's liability to income tax on the distribution exceeds the amount it would be if it were charged only at the basic rate.
- [<sup>F485</sup>(6A) The reduction under this section is given effect at Step 6 of the calculation in section 23 of ITA 2007.]
- (7) In this section “security” has the meaning given in [<sup>F486</sup>section 1117(1) of CTA 2010].

#### Textual Amendments

- F485** S. 401(6A) inserted (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), ss. 1027, 1034, [Sch. 1 para. 518](#) (with transitional provisions and savings in [Sch. 2](#))
- F486** Words in s. 401(7) substituted (1.4.2010) (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), [Sch. 1 para. 455](#) (with [Sch. 2](#))

#### [<sup>F487</sup>401A] Recovery of overpaid tax credit etc

- (1) If an officer of Revenue and Customs discovers that a payment or set-off of tax credit should not have been made or is excessive, the officer may act in accordance with subsection (3) or (4).
- (2) For the purposes of subsection (1) it does not matter whether the payment or set-off was excessive when made or became so later.
- (3) The officer may make any assessment that in the officer's judgement is needed to recover—
  - (a) any income tax that should have been paid, or
  - (b) any payment of tax credit that should not have been made.
- (4) More generally, the officer may make any assessment that in the officer's judgement is needed to secure that the liabilities to income tax (and any liabilities to interest on income tax) of the persons concerned are what they would have been if only the correct set-offs and payments had been made.
- (5) TMA 1970 applies to an assessment under this section for recovering a payment of tax credit, or of interest on a tax credit—
  - (a) as if it were an assessment to income tax for the tax year in respect of which the payment was claimed, and
  - (b) as if the payment represented a loss of tax to the Crown.
- (6) Any sum charged by an assessment such as is mentioned in subsection (5) is due within 14 days after the notice of assessment is issued.



*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (7) The duty to comply with subsection (6) is subject to any appeal against the assessment.]

#### Textual Amendments

**F487** S. 401A inserted (1.4.2010) (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 1 para. 456** (with Sch. 2)

#### [<sup>F488</sup> **401B** Power to obtain information

- (1) An officer of Revenue and Customs may, for the purposes of section 397, by notice require any person in whose name any shares or loan capital are registered—
- (a) to state whether or not that person is the beneficial owner of the shares or loan capital, and
  - (b) if that person is not the beneficial owner of the shares or loan capital, to provide the name and address of the person on whose behalf the shares or loan capital are registered in that person's name.
- (2) Subsections (3) and (4) apply if a company (“the issuing company”) appears to an officer of Revenue and Customs to be a close company.
- (3) The officer may, for the purposes of section 397, by notice require the issuing company to provide the officer with—
- (a) particulars of any bearer securities issued by the company,
  - (b) the names and addresses of the persons to whom the securities were issued, and
  - (c) details of the amounts issued to each person.
- (4) The officer may, for the purposes of section 397, by notice require—
- (a) any person to whom bearer securities were issued by the company, or
  - (b) any person to or through whom bearer securities issued by the company were subsequently sold or transferred,
- to provide any further information that the officer reasonably requires with a view to enabling the officer to find out the names and addresses of the persons beneficially interested in the securities.
- (5) In this section—
- “loan creditor” has the meaning given by section 453 of CTA 2010, and
- “securities” includes—
- (a) shares, stocks, bonds, debentures and debenture stock, and
  - (b) any promissory note or other instrument evidencing indebtedness to a loan creditor of the company.]

#### Textual Amendments

**F488** S. 401B inserted (1.4.2010) (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 1 para. 457** (with Sch. 2)

*Status: Point in time view as at 06/05/2014.*

**Changes to legislation:** There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

## **I<sup>F489</sup> Anti-avoidance**

### **Textual Amendments**

**F489** S. 401C and cross-heading inserted (with effect in accordance with Sch. 45 para. 153(3) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 133](#)

### **401C Temporary non-residents**

- (1) This section applies if—
  - (a) an individual is temporarily non-resident,
  - (b) a relevant distribution is made or treated as made to the individual in the temporary period of non-residence,
  - (c) the tax year in which it is made or treated as made (“the distribution year”) is a tax year for which the individual is UK resident, and
  - (d) the amount of income tax charged on the distribution under this Chapter is less than it would have been if the existence of double taxation relief arrangements were disregarded.
- (2) Subsections (3) and (4) have effect in cases where the distribution year is not the year of return.
- (3) The total income (see Step 1 of the calculation in section 23 of ITA 2007) on which the individual is charged to income tax for the year of return is to be increased by an amount equal to the amount on which tax would be charged under this Chapter in respect of the distribution disregarding any double taxation relief arrangements.
- (4) But the notional UK tax on that distribution is to be allowed as a credit against the individual's liability to income tax for the year of return under Step 6 of the calculation in section 23.
- (5) If the distribution year is the year of return, the tax charged under this Chapter in respect of the relevant distribution is to be charged and assessed without regard to the existence of double taxation relief arrangements.
- (6) For the purposes of this section, a dividend or other distribution is a “relevant distribution” if—
  - (a) it is a dividend or other distribution of a close company, and
  - (b) it is made or treated as made to the individual because the individual was at a relevant time—
    - (i) a material participator in the company, or
    - (ii) an associate of a material participator in the company.
- (7) But a dividend or other distribution within subsection (6) in the form of a cash dividend is not a “relevant distribution” to the extent that the dividend is paid in respect of post-departure trade profits.
- (8) “Post-departure trade profits” are—
  - (a) trade profits of the close company arising in an accounting period that begins after the start of the temporary period of non-residence, and

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

- (b) so much of any trade profits of the close company arising in an accounting period that straddles the start of that temporary period as is attributable (on a just and reasonable basis) to a time after the start of that temporary period.
- (9) The extent to which a dividend is paid in respect of post-departure trade profits is to be determined on a just and reasonable basis.
- (10) The “notional UK tax” on the relevant distribution is so much of the income tax paid by the individual for the distribution year as is attributable on a just and reasonable basis to the relevant distribution.
- (11) If section 393 applies, references in this section to a distribution being made to the individual are to a cash dividend being paid over to the individual.
- (12) In this section—
- “associate” and “participator” have the same meanings as in Part 10 of CTA 2010 (see sections 448 and 454);
  - “material participator” means a participator who has a material interest in the company, as defined in section 457 of that Act;
  - “relevant time” means—
    - (a) any time in the year of departure or, if the year of departure is a split year as respects the individual, the UK part of that year, or
    - (b) any time in one or more of the 3 tax years preceding that year;
  - “trade profits of the close company” means the profits of any trade carried on by the close company, as calculated in accordance with Part 3 of CTA 2009 (trading income).]

## CHAPTER 4

### DIVIDENDS FROM NON-UK RESIDENT COMPANIES

#### *Charge to tax on dividends from non-UK resident companies*

#### **402 Charge to tax on dividends from non-UK resident companies**

- (1) Income tax is charged on dividends of a non-UK resident company.
- (2) For exemptions, see in particular section 770 (amounts applied by SIP trustees acquiring dividend shares or retained for reinvestment).
- (3) Subsection (1) is also subject to section 498 of ITEPA 2003 (no charge on shares ceasing to be subject to SIP in certain circumstances).
- (4) In this Chapter “dividends” does not include dividends of a capital nature.

#### **403 Income charged**

- (1) Tax is charged under this Chapter on the <sup>F490</sup>... amount of the dividends arising in the tax year.
- (2) Subsection (1) is subject to—

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

section 406(2) and (3) (later charge where cash dividends retained in SIPs are paid over),  
 section 407(3) (dividend payment when dividend shares cease to be subject to SIP), and  
 Part 8 (foreign income: special rules).

#### Textual Amendments

**F490** Word in s. 403(1) omitted (with effect in accordance with s. 34(2) of the amending Act) by virtue of Finance Act 2008 (c. 9), **Sch. 12 para. 18**

#### 404 Person liable

- (1) The person liable for any tax charged under this Chapter is the person receiving or entitled to the dividends.
- (2) Subsection (1) is subject to—
  - section 406(4) (later charge where cash dividends retained in SIPs are paid over), and
  - section 407(4) (dividend payment when dividend shares cease to be subject to SIP).

*Shares in [F491 Schedule 2] share incentive plans (“SIPs”)*

#### Textual Amendments

**F491** Words in s. 405 cross-heading substituted (6.4.2014) by Finance Act 2014 (c. 26), **Sch. 8 paras. 61, 89** (with Sch. 8 paras. 90-96)

#### 405 SIP shares: introduction

- (1) Sections 406 to 408 contain special rules about the charge under this Chapter in respect of shares awarded to an individual under [F492a Schedule 2] share incentive plan.
- (2) Those sections only apply if the condition in section 392(3) or (5) was met at the time the shares in question were so awarded (earnings within ITEPA 2003).
- (3) This section and sections 406 to 408 form part of the SIP code (see section 488 of ITEPA 2003 (F493 ... share incentive plans)).
- (4) Accordingly, expressions used in this section or those sections and contained in the index in paragraph 100 of Schedule 2 to that Act (F493 ... share incentive plans) have the meaning indicated by that index.
- (5) In particular—
  - (a) for the meaning of “award of shares” see paragraph 5(1) of that Schedule,
  - (b) for the meaning of “ceasing to be subject to plan” see paragraph 97 of that Schedule,
  - (c) for the meaning of “dividend shares” see paragraph 62(3)(b) of that Schedule,
  - (d) for the meaning of “participant” see paragraph 5(4) of that Schedule,

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (e) for the meaning of “plan shares” see paragraphs 86 to 88 and 99(1) of that Schedule, and
- (f) for the meaning of “shares” see paragraphs 87(6) and 99(2) of that Schedule.

#### Textual Amendments

**F492** Words in s. 405(1) substituted (6.4.2014) by [Finance Act 2014 \(c. 26\)](#), [Sch. 8 paras. 62\(2\)](#), 89 (with [Sch. 8 paras. 90-96](#))

**F493** Word in s. 405(3)(4) omitted (6.4.2014) by virtue of [Finance Act 2014 \(c. 26\)](#), [Sch. 8 paras. 62\(3\)](#), 89 (with [Sch. 8 paras. 90-96](#))

### 406 Later charge where cash dividends retained in SIPs are paid over

- (1) This section applies if a cash dividend is paid over to a participant under paragraph 68(4) of Schedule 2 to ITEPA 2003 (cash dividend paid over if not reinvested etc.).
  - (2) Tax charged under this Chapter is charged for the tax year in which the cash dividend is paid over instead of the tax year in which in which it was originally paid.
  - (3) Tax so charged is charged on the amount of the cash dividend paid over.
  - (4) The person liable for any tax so charged is the participant.
- [<sup>F494</sup>(4A) For the purposes of determining—
- (a) whether the participant is entitled to a tax credit under section 397A in respect of a cash dividend so charged, and
  - (b) the amount of that tax credit,
- that section applies as it has effect for the tax year in which the cash dividend is paid over.]
- (5) For the purposes of this Chapter, the question whether a cash dividend so paid over is a dividend paid by a company that is non-UK resident is determined by reference to the tax year in which the dividend was originally paid.

#### Textual Amendments

**F494** S. 406(4A) inserted (with effect in accordance with s. 34(2) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 12 para. 19](#)

### 407 Dividend payment when dividend shares cease to be subject to SIP

- (1) This section applies if dividend shares cease to be subject to [<sup>F495</sup>a Schedule 2] incentive plan before the end of the period of 3 years beginning with the date on which the shares were acquired on the participant's behalf.
- (2) For income tax purposes a dividend is treated as paid to the participant in the tax year in which the shares cease to be subject to the plan.
- (3) The amount of the dividend treated as paid is the amount of the cash dividend applied to acquire the shares on the participant's behalf, so far as it represents a cash dividend paid in respect of plan shares in a non-UK resident company.

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

[<sup>F496</sup>(3A) But if the shares cease to be subject to the plan by virtue of a provision of the kind mentioned in paragraph 65(2) of Schedule 2 to ITEPA 2003 (provision requiring dividend shares to be offered for sale), the amount of the dividend treated as paid is the amount equal to the relevant fraction of the market value of the shares at the time they are offered for sale if that amount is less than the amount given by subsection (3).

(3B) For the purposes of subsection (3A) “the relevant fraction” is—

A B

where—

A is so much of the amount of the cash dividend applied to acquire the shares on the participant's behalf as represents a cash dividend paid in respect of plan shares in a non-UK resident company, and

B is the amount of the cash dividend applied to acquire the shares on the participant's behalf.

(3C) Paragraph 92(2) of Schedule 2 to ITEPA 2003 (market value of shares subject to a restriction) applies for the purposes of subsection (3A).]

(4) The person liable for any tax charged as a result of this section is the participant.

[<sup>F497</sup>(4A) For the purposes of determining—

- (a) whether the participant is entitled to a tax credit under section 397A in respect of a dividend so charged, and
- (b) the amount of that tax credit,

that section applies as it has effect for the tax year in which the shares cease to be subject to the plan.]

(5) For rules identifying shares ceasing to be subject to [<sup>F498</sup>Schedule 2] share incentive plans, see section 508 of ITEPA 2003.

#### Textual Amendments

**F495** Words in s. 407(1) substituted (6.4.2014) by Finance Act 2014 (c. 26), Sch. 8 paras. 63(2), 89 (with Sch. 8 paras. 90-96)

**F496** S. 407(3A)-(3C) inserted (6.4.2014) by Finance Act 2014 (c. 26), Sch. 8 paras. 63(3), 89 (with Sch. 8 paras. 90-96)

**F497** S. 407(4A) inserted (with effect in accordance with s. 34(2) of the amending Act) by Finance Act 2008 (c. 9), Sch. 12 para. 20

**F498** Words in s. 407(5) substituted (6.4.2014) by Finance Act 2014 (c. 26), Sch. 8 paras. 63(4), 89 (with Sch. 8 paras. 90-96)

## 408 Reduction in tax due in cases within section 407

(1) This section applies if—

- (a) a person is liable for tax as a result of section 407, and
- (b) any tax is paid on any capital receipts under section 501 of ITEPA 2003 (charge on capital receipts in respect of plan shares) in respect of the shares that cease to be subject to the [<sup>F499</sup>Schedule 2] share incentive plan.

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (2) The tax due as a result of section 407 is to be reduced by an amount equal to the total tax so paid.
- [<sup>F500</sup>(2A) In subsection (2) “the tax due” means the amount of tax due as a result of section 407 after deduction of the tax credit determined in accordance with section 407(4A).]
- (3) For rules identifying shares ceasing to be subject to [<sup>F501</sup>Schedule 2] share incentive plans, see section 508 of ITEPA 2003.

#### Textual Amendments

- F499** Words in s. 408(1)(b) substituted (6.4.2014) by Finance Act 2014 (c. 26), **Sch. 8 paras. 64, 89** (with Sch. 8 paras. 90-96)
- F500** S. 408(2A) inserted (with effect in accordance with s. 34(2) of the amending Act) by Finance Act 2008 (c. 9), **Sch. 12 para. 21**
- F501** Words in s. 408(3) substituted (6.4.2014) by Finance Act 2014 (c. 26), **Sch. 8 paras. 64, 89** (with Sch. 8 paras. 90-96)

#### [<sup>F502</sup>Anti-avoidance

#### Textual Amendments

- F502** S. 408A and cross-heading inserted (with effect in accordance with Sch. 45 para. 153(3) of the amending Act) by Finance Act 2013 (c. 29), **Sch. 45 para. 134**

### 408A Temporary non-residents

- (1) This section applies if an individual is temporarily non-resident.
- (2) Dividends within subsection (3) are to be treated for the purposes of this Chapter as if they were received by the individual, or as if the individual became entitled to them, in the period of return.
- (3) A dividend is within this subsection if—
- the individual receives or becomes entitled to it in the temporary period of non-residence,
  - it is a dividend of a company that would be a close company if the company were UK resident,
  - the individual receives or becomes entitled to it by virtue of being at a relevant time—
    - a material participator in the company, or
    - an associate of a material participator in the company, and
  - ignoring this section, the individual—
    - is not liable for tax under this Chapter in respect of the dividend, but
    - would have been so liable if the individual had received the dividend, or become entitled to it, in the period of return.
- (4) For the purposes of subsection (3)—
- “associate” and “participator” have the same meanings as in Part 10 of CTA 2010 (see sections 448 and 454),

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (b) a “material participator” is a participator who has a material interest in the company, as defined in section 457 of that Act,
  - (c) “relevant time” means—
    - (i) any time in the year of departure or, if the year of departure is a split year as respects the individual, the UK part of that year, or
    - (ii) any time in one or more of the 3 tax years preceding that year, and
  - (d) paragraph (d)(i) includes a case where the individual could be relieved of liability on the making of a claim under section 6 of TIOPA 2010 (double taxation relief), even if no claim is in fact made.
- (5) If section 809B, 809D or 809E of ITA 2007 (remittance basis) applies to the individual for the year of return, any dividend within subsection (3) that was remitted to the United Kingdom in the temporary period of non-residence is to be treated as remitted to the United Kingdom in the period of return.
- (6) This section does not apply to a dividend within subsection (3) to the extent that it is paid in respect of post-departure trade profits.
- (7) “Post-departure trade profits” are—
- (a) trade profits of the company arising in an accounting period that begins after the start of the temporary period of non-residence, and
  - (b) so much of any trade profits of the company arising in an accounting period that straddles the start of that temporary period as is attributable (on a just and reasonable basis) to a time after the start of that temporary period.
- (8) The extent to which a dividend is paid in respect of post-departure trade profits is to be determined on a just and reasonable basis.
- (9) If section 406 or 407 applies, references in this section to a dividend being received by the individual are to a cash dividend being paid over to the individual or (as the case may be) a dividend being treated as paid to the individual.
- (10) In this section—
- “remitted to the United Kingdom” has the meaning given in Chapter A1 of Part 14 of ITA 2007;
  - “trade profits of the company” means the profits of any trade carried on by the company, as they would be calculated in accordance with Part 3 of CTA 2009 (trading income) if the company were UK resident.]

## CHAPTER 5

### STOCK DIVIDENDS FROM UK RESIDENT COMPANIES

#### **409 Charge to tax on stock dividend income**

- (1) Income tax is charged on stock dividend income.
- (2) In this Chapter “stock dividend income” means the income that is treated as arising under section 410.



*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

## 410 When stock dividend income arises

- [<sup>F503</sup>(1) This section applies to—
- (a) share capital issued by a UK resident company in lieu of a cash dividend, and
  - (b) bonus share capital issued by a UK resident company in respect of shares in the company of a qualifying class.
- (1A) For the purposes of subsection (1)(b), shares are of a qualifying class if—
- (a) shares of that class carry the right to receive bonus share capital in the company (of the same or a different class), and
  - (b) that right is conferred by the terms on which shares of that class were originally issued or by those terms as subsequently extended or otherwise varied.]
- (2) If an individual is beneficially entitled to that share capital, income is treated as arising to the individual.
- (3) If—
- (a) the share capital is issued to trustees in respect of shares they hold in the company (alone or with others), and
  - (b) a cash dividend paid to them in respect of the shares would have been to any extent [<sup>F504</sup>accumulated or discretionary income (as defined in section 480 of ITA 2007 but excluding income arising under a [<sup>F505</sup>charitable trust] or an unauthorised unit trust in relation to which [<sup>F506</sup>regulation 12 of the Unauthorised Unit Trusts (Tax) Regulations 2013] applies)] ,
- income is treated as arising to the trustees.
- (4) If the share capital is issued to personal representatives during the administration period, income is treated as arising (but see section 413(4)).
- (5) In subsection (4) “administration period” has the meaning given by section 653.
- (6) Income within this section is treated as arising on the earliest date on which the company is required to issue the share capital in question.
- (7) See section 413(5) (apportionment) if two or more persons are entitled to the share capital.
- [<sup>F507</sup>(8) There are special rules in paragraph 78A of Schedule 2 for share capital issued in respect of shares issued before 6 April 1975.]

### Textual Amendments

- F503** S. 410(1A) substituted (1.4.2010) for s. 410(1) (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), [Sch. 1 para. 458\(2\)](#) (with [Sch. 2](#))
- F504** Words in s. 410(3)(b) substituted (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), ss. 1027, 1034, [Sch. 1 para. 519](#) (with transitional provisions and savings in [Sch. 2](#))
- F505** Words in s. 410(3)(b) substituted (with effect in accordance with art. 15 of the commencing S.I.) by [Finance Act 2010 \(c. 13\)](#), [Sch. 6 paras. 21\(2\)](#), 34(2); S.I. 2012/736, art. 15
- F506** Words in s. 410(3) substituted (6.4.2014) by [The Unauthorised Unit Trusts \(Tax\) Regulations 2013 \(S.I. 2013/2819\)](#), regs. 1(3), [36\(7\)](#) (with reg. 32)
- F507** S. 410(8) inserted (1.4.2010) (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), [Sch. 1 para. 458\(3\)](#) (with [Sch. 2](#))

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

## **[<sup>F508</sup>410A Conversion etc of bonus share capital**

- (1) This section applies if bonus share capital falling within section 410(1)(b) is converted into, or exchanged for, shares in the company of a different class.
- (2) Section 410 does not apply to any shares in the company issued—
  - (a) in connection with the conversion or exchange, and
  - (b) in consideration of the cancellation, extinguishment or acquisition by the company of the bonus share capital.]

### **Textual Amendments**

**F508** S. 410A inserted (1.4.2010) (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 1 para. 459** (with Sch. 2)

## **411 Income charged**

- (1) Tax is charged under this Chapter on the amount of stock dividend income treated for income tax purposes as arising in the tax year.
- (2) That amount is the cash equivalent of the share capital on the issue of which the stock dividend income arises (see section 412), grossed up by reference to the dividend ordinary rate for the tax year.

## **412 Cash equivalent of share capital**

- (1) The cash equivalent of share capital [<sup>F509</sup>issued as mentioned in section 410(1)(a) is the amount of the cash dividend alternative (see section 414A(2))].
- (2) But if the difference between the cash dividend alternative and the share capital's market value equals or exceeds 15% of that market value—
  - (a) subsection (1) does not apply, and
  - (b) the cash equivalent of the share capital is its market value.
- (3) The cash equivalent of share capital [<sup>F510</sup>issued as mentioned in section 410(1)(b)] is its market value.
- (4) For the purposes of this section, market value is determined—
  - (a) in the case of listed share capital, on the date of first dealing, and
  - (b) in the case of other share capital, on the earliest date on which the company is required to issue it.
- (5) In this section—
 

“listed” means listed in the Stock Exchange Daily Official List, and  
 “market value” has the same meaning as in sections 272(1) and (3) and 273(3) of TCGA 1992.

### **Textual Amendments**

**F509** Words in s. 412(1) substituted (1.4.2010) (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 1 para. 460(2)** (with Sch. 2)

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

**F510** Words in s. 412(3) substituted (1.4.2010) (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), [Sch. 1 para. 460\(3\)](#) (with [Sch. 2](#))

**Modifications etc. (not altering text)**

**C58** S. 412(1)(2)(4)(5) applied (16.12.2010) by [Taxation of Chargeable Gains Act 1992 \(c. 12\)](#), s. 142A(5) (as inserted (with effect in accordance with [Sch. 4 para. 12](#) to the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 4 para. 1](#))

**C59** S. 412(1)(2)(4)(5) applied (16.12.2010) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 599A(2) (as inserted (with effect in accordance with [Sch. 4 para. 12](#) to the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 4 para. 10](#))

**413 Person liable**

- (1) The person liable for any tax charged under this Chapter is the person indicated by this section.
- (2) If section 410(2) applies, the individual is liable for the tax.
- (3) If section 410(3) applies, the trustees are liable for the tax.
- (4) If section 410(4) applies, tax is not charged under this Chapter, but see—
  - (a) section 664 (under which the income treated as arising to the personal representatives under section 410 is treated as part of the aggregate income of the estate for the purposes of Chapter 6 of Part 5), and
  - <sup>[F511]</sup>(b) section 947 of CTA 2009 (under which similar provision is made for the purposes of Chapter 3 of Part 10 of that Act)].
- (5) If two or more persons are entitled to the share capital on the issue of which the stock dividend income arises, this Chapter applies as if the company issuing it had issued to each of those persons a proportionate part of the share capital.
- (6) In subsection (5) “proportionate part” means a part proportionate to the person's interest on the earliest date on which the company is required to issue the share capital.

**Textual Amendments**

**F511** S. 413(4)(b) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), [Sch. 1 para. 630](#) (with [Sch. 2 Pts. 1, 2](#))

<sup>[F512]</sup>**413A Temporary non-residents**

- (1) This section applies if—
  - (a) an individual is temporarily non-resident,
  - (b) relevant stock dividend income is treated under this Chapter as arising to the individual in the temporary period of non-residence,
  - (c) the tax year in which it is treated as arising (“the arising year”) is a tax year for which the individual is UK resident, and
  - (d) the amount of income tax charged on the relevant stock dividend income under this Chapter is less than it would have been if the existence of double taxation relief arrangements were disregarded.

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (2) Subsections (3) and (4) have effect in cases where the arising year is not the year of return.
- (3) The total income (see Step 1 of the calculation in section 23 of ITA 2007) on which the individual is charged to income tax for the year of return is to be increased by an amount equal to the amount on which tax would be charged under this Chapter in respect of the relevant stock dividend income disregarding any double taxation relief arrangements.
- (4) But the notional UK tax on that relevant stock dividend income is to be allowed as a credit against the individual's liability to income tax for the year of return under Step 6 of the calculation in section 23.
- (5) If the arising year is the year of return, the tax charged under this Chapter in respect of the relevant stock dividend income is to be charged and assessed without regard to the existence of double taxation relief arrangements.
- (6) Stock dividend income is “relevant stock dividend income” if—
  - (a) the UK resident company that issues the share capital or bonus share capital is a close company, and
  - (b) the individual is beneficially entitled to that share capital or bonus share capital by virtue of being at a relevant time—
    - (i) a material participator in the company, or
    - (ii) an associate of a material participator in the company.
- (7) But stock dividend income within subsection (6) is not “relevant stock dividend income” to the extent that the share capital or bonus share capital is issued in respect of post-departure trade profits.
- (8) “Post-departure trade profits” are—
  - (a) trade profits of the close company arising in an accounting period that begins after the start of the temporary period of non-residence, and
  - (b) so much of any trade profits of the close company arising in an accounting period that straddles the start of that temporary period as is attributable (on a just and reasonable basis) to a time after the start of that temporary period.
- (9) The extent to which share capital or bonus share capital is issued in respect of post-departure trade profits is to be determined on a just and reasonable basis.
- (10) The “notional UK tax” on the relevant stock dividend income is so much of the income tax paid by the individual for the arising year as is attributable on a just and reasonable basis to that income.
- (11) In this section—
  - “associate” and “participator” have the same meanings as in Part 10 of CTA 2010 (see sections 448 and 454);
  - “material participator” means a participator who has a material interest in the company, as defined in section 457 of that Act;
  - “relevant time” means—
    - (a) any time in the year of departure or, if the year of departure is a split year as respects the individual, the UK part of that year, or
    - (b) any time in one or more of the 3 tax years preceding that year;

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

“trade profits of the close company” means the profits of any trade carried on by the close company, as calculated in accordance with Part 3 of CTA 2009 (trading income).]

#### Textual Amendments

**F512** S. 413A inserted (with effect in accordance with Sch. 45 para. 153(3) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 135](#)

### 414 Income tax treated as paid

- (1) A person liable to tax under this Chapter is treated as having paid income tax at the dividend ordinary rate on the income charged, and where trustees are so liable (because a cash dividend paid to them in respect of the shares would have been to any extent [<sup>F513</sup>accumulated or discretionary income (as defined in section 480 of ITA 2007)]) the income is treated as if it had been chargeable to tax at that rate.
- (2) The income tax treated as paid under subsection (1) is not repayable.
- (3) The amount on which an individual is treated under subsection (1) as having paid income tax is reduced if subsection (4) applies.
- (4) This subsection applies if the individual's total income is reduced by any deductions which fall to be made [<sup>F514</sup>at Step 2 or 3 of the calculation in section 23 of ITA 2007 (calculation of income tax liability)] from the part of the income charged to tax under this Chapter.
- (5) The reduction under subsection (3) is equal to the amount of those deductions.

#### Textual Amendments

**F513** Words in s. 414(1) substituted (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), ss. 1027, 1034, [Sch. 1 para. 520\(2\)](#) (with transitional provisions and savings in [Sch. 2](#))

**F514** Words in s. 414(4) inserted (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), ss. 1027, 1034, [Sch. 1 para. 520\(3\)](#) (with transitional provisions and savings in [Sch. 2](#))

### [<sup>F515</sup>414A] Interpretation of Chapter

- (1) In this Chapter “bonus share capital” means—
  - (a) share capital issued otherwise than wholly for new consideration, or
  - (b) the part (if there is such a part) of any share capital so issued that is not properly referable to new consideration.
- (2) For the purposes of this Chapter share capital is issued by a company in lieu of a cash dividend if—
  - (a) it is issued in consequence of the exercise by any person of an option conferred on the person, and
  - (b) that option is an option to receive, in respect of shares in the company, either a dividend in cash or additional share capital.

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (3) For the purposes of subsection (2), an option to receive either a dividend in cash or additional share capital is conferred on a person not only—
  - (a) if the person is required to choose one or the other, but also
  - (b) if the person is offered the one subject to a right, however expressed, to choose the other instead.
- (4) The reference in subsection (2) to a person's exercise of an option includes a person's abandonment of, or failure to exercise, a right such as is mentioned in subsection (3) (b).
- (5) In this Chapter “share” includes stock, and any other interest of a member in a company.
- (6) If two or more companies enter into arrangements to make distributions to each other's members, all parties concerned (however many) may, for the purposes of this Chapter, be treated as if anything done by any one of those companies had been done by any one of the others.
- (7) The following apply in relation to this Chapter as they apply in relation to Part 23 of CTA 2010—
  - (a) section 1113 (“in respect of shares”) of CTA 2010,
  - (b) section 1115 (“new consideration”) of CTA 2010.]

#### **Textual Amendments**

**F515** S. 414A inserted (1.4.2010) (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), **Sch. 1 para. 461** (with **Sch. 2**)

#### **Modifications etc. (not altering text)**

**C60** Ss. 414A(2)-(4) applied (16.12.2010) by [Taxation of Chargeable Gains Act 1992 \(c. 12\)](#), s. 142A(4) (as inserted (with effect in accordance with Sch. 4 para. 12 to the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), **Sch. 4 para. 1**)

## **CHAPTER 6**

### RELEASE OF LOAN TO PARTICIPATOR IN CLOSE COMPANY

#### **415 Charge to tax under Chapter 6**

- (1) Income tax is charged if—
  - (a) a company [<sup>F516</sup>is or was chargeable to tax under section 455 of CTA 2010] (loans to participators in close companies etc.) in respect of a loan or advance, and
  - (b) the company releases or writes off the whole or part of the debt in respect of the loan or advance.
- (2) Subsection (1) is subject to section 418 (relief where borrowers liable as settlors).
- (3) Subsection (4) applies if [<sup>F517</sup>, as a result of section 460 of CTA 2010, sections 455 to 459 of that Act have effect] as if a loan or advance had been made by a company (“A”), rather than the company (“B”) which—

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (a) actually made it,
  - (b) is regarded as having made it under [<sup>F518</sup>section 455(4) of that Act] (deemed loans where debt incurred or assigned to close company), or
  - (c) would be so regarded if it were a close company.
- (4) If the whole or part of the debt is released or written off by B, for the purposes of subsection (1), A rather than B is treated as releasing it or writing it off.
- (5) Expressions used in this Chapter have the same meanings [<sup>F519</sup>as they have for the purposes of section 455 of CTA 2010] .

#### Textual Amendments

- F516** Words in s. 415(1)(a) substituted (1.4.2010) (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), s. 1184\(1\), Sch. 1 para. 462\(2\)](#) (with [Sch. 2](#))
- F517** Words in s. 415(3) substituted (1.4.2010) (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), s. 1184\(1\), Sch. 1 para. 462\(3\)\(a\)](#) (with [Sch. 2](#))
- F518** Words in s. 415(3) substituted (1.4.2010) (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), s. 1184\(1\), Sch. 1 para. 462\(3\)\(b\)](#) (with [Sch. 2](#))
- F519** Words in s. 415(5) substituted (with effect in accordance with art. 1(3) of the amending S.I.) by [The Tax Law Rewrite Acts \(Amendment\) Order 2013 \(S.I. 2013/463\), arts. 1\(2\), 8](#)

#### 416 Income charged

- (1) Tax is charged under this Chapter on the gross amount of the debt released or written off in the tax year.
- (2) The “gross amount” is the amount released or written off, grossed up by reference to the dividend ordinary rate for that year.
- (3) For the purposes of calculating the total income of the person liable for the tax, the amount charged is treated as income.
- (4) This section is subject to section 418 (relief where borrowers liable as settlors).

#### 417 Person liable

- [<sup>F520</sup>(1) The person liable for any tax charged under this Chapter is—
- (a) in the case of a loan or advance made to a partnership, any partner who is an individual, and
  - (b) in any other case, the person to whom the loan or advance was made.
- (1A) If more than one person is liable in a case within subsection (1)(a), the liability is to be apportioned between them in a just and reasonable manner.]
- (2) This is subject to—
- section 419 (loans and advances to persons who die), and
  - section 420 (loans and advances to trustees of trusts that have ended).

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

### Textual Amendments

**F520** S. 417(1)(1A) substituted for s. 417(1) (with effect in accordance with Sch. 30 para. 14(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), **Sch. 30 para. 14(1)**

## 418 Relief where borrowers liable as settlors

- (1) Relief is given under this section if the person to whom the loan or advance was made—
  - (a) is liable for the tax year for income tax on a sum in respect of it under Chapter 5 of Part 5 as a result of section 633 (capital sums paid to settlor by trustees of settlement), or
  - (b) has been so liable for any previous tax year.
- (2) If the total amount previously charged (see subsection (4)) equals or exceeds the total amount released (see subsection (6)), tax is not charged under this Chapter.
- (3) If the total amount released exceeds the total amount previously charged, tax is charged under this Chapter on the excess, grossed up by reference to the dividend ordinary rate.
- (4) In this section “the total amount previously charged” means the total of—
  - (a) the sums included in the person's income under section 633 in respect of the loan or advance for the tax year or for previous tax years, and
  - (b) the amounts charged under this Chapter in respect of the loan or advance for previous tax years.
- (5) For the purposes of subsection (4)(a), section 640(1) (which requires the grossing up of the sums treated as paid to the settlor by reference to the [<sup>F521</sup>trust rate]) is ignored.
- (6) In this section “the total amount released” means the total amount released or written off in respect of the loan or advance in the tax year and previous tax years.

### Textual Amendments

**F521** Words in s. 418(5) substituted (6.4.2007 with effect as stated in [s. 1034\(1\)](#) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), ss. 1027, 1034, **Sch. 1 para. 521** (with transitional provisions and savings in [Sch. 2](#))

## 419 Loans and advances to persons who die

- (1) This section applies if—
  - (a) a loan or advance is made to a person who dies,
  - (b) a company [<sup>F522</sup>is or was chargeable to tax under section 455 of CTA 2010 (charge to tax in case of loan to participant)] in respect of the loan or advance, and
  - (c) after the death the company releases or writes off the whole or part of the debt in respect of the loan or advance.
- (2) Tax is not charged under this Chapter if at the time of the release or writing off the debt is due from the person's personal representatives in that capacity, but see—



*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (a) section 664 (under which the amount that would be so charged is treated as part of the aggregate income of the estate for the purposes of Chapter 6 of Part 5), and
  - <sup>F523</sup>(b) section 947 of CTA 2009 (under which similar provision is made for the purposes of Chapter 3 of Part 10 of that Act)].
- (3) If subsection (2) does not apply, tax is charged under this Chapter on the person from whom the debt is due at the time of release or writing off.

#### Textual Amendments

**F522** Words in s. 419(1)(b) substituted (1.4.2010) (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), [Sch. 1 para. 463](#) (with [Sch. 2](#))

**F523** S. 419(2)(b) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), [Sch. 1 para. 631](#) (with [Sch. 2 Pts. 1, 2](#))

## 420 Loans and advances to trustees of trusts that have ended

- (1) This section applies if—
- (a) a loan or advance is made to trustees of a trust,
  - (b) a company <sup>F524</sup>is or was chargeable to tax under section 455 of CTA 2010 (charge to tax in case of loan to participator)] in respect of the loan or advance, and
  - (c) after the trust has ended the company releases or writes off the whole or part of the debt in respect of the loan or advance.
- (2) Tax is charged under this Chapter on the person from whom the debt is due at the time of release or writing off.

#### Textual Amendments

**F524** Words in s. 420(1)(b) substituted (1.4.2010) (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), [Sch. 1 para. 464](#) (with [Sch. 2](#))

## <sup>F525</sup>420A Temporary non-residents

- (1) This section applies if an individual is temporarily non-resident.
- (2) Debts within subsection (3) are to be treated for the purposes of this Chapter as if they had been released or written off in the period of return.
- (3) A debt is within this subsection if—
- (a) it is the debt, or a part of the debt, in respect of a loan or advance made by a company to the individual,
  - (b) it is released or written off in the temporary period of non-residence, and
  - (c) ignoring this section, the individual—
    - (i) is not liable for tax under this Chapter in respect of the release or write-off, but
    - (ii) would have been so liable, had the release or write-off taken place in the period of return.

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (4) Subsection (3)(c)(i) includes a case where the individual could be relieved of liability on the making of a claim under section 6 of TIOPA 2010 (double taxation relief), even if no claim is in fact made.]

#### Textual Amendments

**F525** S. 420A inserted (with effect in accordance with Sch. 45 para. 153(3) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 136](#)

## 421 Income tax treated as paid

- (1) A person liable to income tax under this Chapter is treated as having paid income tax at the dividend ordinary rate on the amount charged under this Chapter.
- (2) The income tax treated as paid under subsection (1) is not repayable.
- (3) The amount on which an individual is treated under subsection (1) as having paid income tax is reduced if subsection (4) applies.
- (4) This subsection applies if the individual's total income is reduced by any deductions which fall to be made [<sup>F526</sup>at Step 2 or 3 of the calculation in section 23 of ITA 2007 (calculation of income tax liability)] from the part of the income charged under this Chapter.
- (5) The reduction is equal to the total amount of those deductions.

#### Textual Amendments

**F526** Words in s. 421(4) inserted (6.4.2007 with effect as stated in [s. 1034\(1\)](#) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), [ss. 1027, 1034](#), [Sch. 1 para. 522](#) (with transitional provisions and savings in [Sch. 2](#))

## [<sup>F527</sup>421A] Power to obtain information

- (1) An officer of Revenue and Customs may, for the purposes of this Chapter, by notice require any person in whose name any shares or loan capital are registered—
  - (a) to state whether or not that person is the beneficial owner of the shares or loan capital, and
  - (b) if that person is not the beneficial owner of the shares or loan capital, to provide the name and address of the person on whose behalf the shares or loan capital are registered in that person's name.
- (2) Subsections (3) and (4) apply if a company (“the issuing company”) appears to an officer of Revenue and Customs to be a close company.
- (3) The officer may, for the purposes of this Chapter, by notice require the issuing company to provide the officer with—
  - (a) particulars of any bearer securities issued by the company,
  - (b) the names and addresses of the persons to whom the securities were issued, and
  - (c) details of the amounts issued to each person.

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (4) The officer may, for the purposes of this Chapter, by notice require—
- (a) any person to whom bearer securities were issued by the company, or
  - (b) any person to or through whom bearer securities issued by the company were subsequently sold or transferred,
- to provide any further information that the officer reasonably requires with a view to enabling the officer to find out the names and addresses of the persons beneficially interested in the securities.
- (5) In this section—
- “loan creditor” has the meaning given by section 453 of CTA 2010, and
  - “securities” includes—
- (a) shares, stocks, bonds, debentures and debenture stock, and
  - (b) any promissory note or other instrument evidencing indebtedness to a loan creditor of the company.]

#### Textual Amendments

**F527** S. 421A inserted (1.4.2010) (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 1 para. 465** (with **Sch. 2**)

## CHAPTER 7

### PURCHASED LIFE ANNUITY PAYMENTS

#### **422 Charge to tax on purchased life annuity payments**

- (1) Income tax is charged on annuity payments made under a purchased life annuity.
- (2) For exemptions, see in particular—
- (a) section 717 (exemption for part of purchased life annuity payments),
  - (b) section 725 (annual payments under immediate needs annuities),
  - (c) section 731 (periodical payments of personal injury damages), and
  - (d) section 732 (compensation awards).

#### **423 Meaning of “purchased life annuity”**

- (1) In this Chapter “purchased life annuity” means an annuity—
- (a) granted for consideration in money or money's worth in the ordinary course of a business of granting annuities on human life, and
  - (b) payable for a term ending at a time ascertainable only by reference to the end of a human life.
- (2) For this purpose it does not matter that the annuity may in some circumstances end before or after the life.

#### **424 Income charged**

- (1) Tax is charged under this Chapter on the full amount of the annuity payments arising in the tax year.

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

(2) Subsection (1) is subject to Part 8 (foreign income: special rules).

#### 425 Person liable

The person liable for any tax charged under this Chapter is the person receiving or entitled to the annuity payments.

#### 426 Annuity payments received after deduction of tax

<sup>F528</sup>In accordance with section 848 of ITA 2007 a sum representing income tax deducted under section 901 of that Act] from an annuity payment within this Chapter is treated as income tax paid by the recipient <sup>F529</sup> . . . .

#### Textual Amendments

**F528** Words in s. 426 substituted (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), ss. 1027, 1034, **Sch. 1 para. 523(2)** (with transitional provisions and savings in [Sch. 2](#))

**F529** Words in s. 426 repealed (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), ss. 1027, 1031, 1034, [Sch. 1 para. 523\(3\)](#), **Sch. 3 Pt. 1** (with transitional provisions and savings in [Sch. 2](#))

## CHAPTER 8

### PROFITS FROM DEEPLY DISCOUNTED SECURITIES

#### Modifications etc. (not altering text)

**C61** Pt. 4 Ch. 8 applied (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), ss. **406(4)**, 1329(1) (with [Sch. 2 Pts. 1, 2](#))

#### *Charge to tax under Chapter 8*

#### 427 Charge to tax on profits from deeply discounted securities

- (1) Income tax is charged on profits on the disposal of deeply discounted securities.
- (2) The profits are treated as income for income tax purposes if they would not otherwise be income.

#### 428 Income charged

- (1) Tax is charged under this Chapter on the full amount of profits arising in the tax year.
- (2) The profits on a disposal are to be taken to arise when the disposal occurs.
- (3) If the profits arise on a disposal of securities that are outside the United Kingdom—
  - (a) they are treated for the purposes of section 830 (meaning of “relevant foreign income”) as arising from a source outside the United Kingdom, and

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (b) subsection (1) is subject to Part 8 (foreign income: special rules).
- (4) Subsection (2) needs to be read with section 438 (timing of transfers and acquisitions).

#### 429 Person liable

- (1) The person liable for any tax charged under this Chapter is the person making the disposal.
- (2) See section 437 for who that person is.

#### *Deeply discounted securities*

#### 430 Meaning of “deeply discounted security”

- (1) The general rule is that a security is a “deeply discounted security” for the purposes of this Chapter if, as at the time it is issued, the amount payable on maturity or any other possible occasion of redemption (“A”) exceeds or may exceed the issue price by more than—

$$A \times 0.5 \% \times Y.$$

where Y is the number of years in the redemption period or 30, whichever is the lower.

- (2) If the redemption period is not a number of complete years, for the purposes of subsection (1) the incomplete year is expressed as twelfths, treating each complete month and any remaining part of a month as one-twelfth.
- (3) In this section “redemption period” means the period between the date of issue and the date of the occasion of redemption in question.
- (4) Interest payable on an occasion of redemption is ignored in determining for the purposes of this section the amount payable on that occasion.
- (5) For the purposes of this section, in the case of an issue to which section 442 applies (securities issued in accordance with qualifying earn-out right), the issue price of the security is to be taken as the amount paid to acquire it (see section 442(2)).
- (6) The general rule in subsection (1) is subject to—  
section 431 (excluded occasions of redemption),  
section 432 (securities which are not deeply discounted securities),  
sections 434 to 436 (securities issued in separate tranches),<sup>F530</sup> . . .  
section 443(1) (strips of government securities) [<sup>F531</sup>, and  
section 452A(1) (corporate strips).]

#### Textual Amendments

**F530** Word in s. 430(6) repealed (retrospectively) by Finance (No. 2) Act 2005 (c. 22), ss. 39, 70, Sch. 7 para. 25(2)(10), Sch. 11 Pt. 2(8)

**F531** Words in s. 430(6) added (retrospectively) by Finance (No. 2) Act 2005 (c. 22), s. 39, Sch. 7 para. 25(2)(10)

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

### 431 Excluded occasions of redemption

- (1) An occasion of redemption of a security other than maturity is ignored for the purposes of section 430(1) if the third-party option conditions or the commercial protection conditions are met.
- (2) The third-party option conditions are that—
  - (a) the security may be redeemed on the occasion at the option of a person other than its holder,
  - (b) the security is issued to a person who is not connected with the issuer, and
  - (c) the obtaining of a tax advantage by any person is not the main benefit, or one of the main benefits, that might have been expected to accrue from the provision in accordance with which the security may be redeemed on the occasion.
- (3) The commercial protection conditions are that—
  - (a) the security may be redeemed on the occasion as the result of an exercise of an option that is exercisable only on the occurrence of—
    - (i) an event adversely affecting the holder (see subsection (8)), or
    - (ii) a default by any person, and
  - (b) as at the time of the security's issue it appears unlikely that the option will be exercisable on the occasion.
- (4) Subsection (1) does not apply to an occasion just because the occasion coincides or may coincide with an occasion meeting the third-party option conditions or the commercial protection conditions.
- (5) If—
  - (a) the only reason that a security is not a deeply discounted security is that an occasion on which it may be redeemed is ignored because the third-party option conditions are met, and
  - (b) at some time after its issue the security is acquired by, or its holder becomes, a person connected with the issuer,
 in relation to that time and later this Chapter applies as if the security were a deeply discounted security.
- (6) If a person (“P”) who is not connected with the issuer acquires—
  - (a) a security which is only a deeply discounted security because it was issued to a person connected with the issuer and so fails to meet the condition specified in subsection (2)(b), or
  - (b) a security within subsection (5),
 this Chapter applies in relation to P as if the security ceased to be a deeply discounted security on the acquisition.
- (7) For the purposes of the application of this section to a security, the question whether persons are connected is determined without regard to the security or any other security issued under the same prospectus.
- (8) In this section “event adversely affecting the holder”, in relation to a security, means an event the occurrence of which appears, as at the time of the security's issue, likely to have an adverse effect on the interests of its holder at the time of the event if there were no provision for redemption on its occurrence.

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

### **432 Securities which are not deeply discounted securities**

- (1) The following are not deeply discounted securities—
  - (a) shares in a company,
  - (b) gilt-edged securities that are not strips,
  - (c) life assurance policies, and
  - (d) capital redemption policies.
- (2) An excluded indexed security (see section 433) is only a deeply discounted security if treated as such under section 431(5) (acquisition by a person connected with the issuer or holder becoming such a person).
- (3) In this section “capital redemption policies” has the same meaning as in Chapter 9 of this Part (see section 473(2)).
- (4) See also sections 434 to 436 (rules under which securities issued under the same prospectus on separate occasions may be treated as being, or as not being, deeply discounted securities).

### **433 Meaning of “excluded indexed security”**

- (1) In this Chapter “excluded indexed security” means a security under the terms of which the amount payable on redemption is determined by applying to the amount for which the security was issued the percentage change (if any) over the security's redemption period in—
  - (a) the value of chargeable assets of a particular description, or
  - (b) an index of the value of such assets.
- (2) The fact that the terms under which the security is issued include a provision to the effect that the amount payable on its redemption must be at least a specified percentage of the amount for which it was issued only prevents it from falling within the definition in subsection (1) if that percentage exceeds 10%.
- (3) Interest payable on redemption is ignored in determining for the purposes of this section the amount payable on redemption.
- (4) In subsection (1) “redemption period” means—
  - (a) the period beginning with the date of issue and ending with the date of redemption, or
  - (b) a period which is or includes almost all that period and only differs from it for purposes connected with giving effect to a valuation in relation to rights or liabilities under the security.
- (5) An asset is a chargeable asset for the purposes of subsection (1) if a gain accruing to a person on its disposal would be a chargeable gain for the purposes of TCGA 1992 on the assumptions specified in subsection (6).
- (6) The assumptions are that—
  - (a) the asset is an asset of the person,
  - (b) the person is not entitled to the exemption conferred by section 100 of TCGA 1992 (exemption for authorised unit trusts etc.),
  - (c) disposal of the asset by the person would not be treated for income tax purposes as a disposal in the course of a trade, profession or vocation, and

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

(d) section 116(10) of TCGA 1992 is ignored (chargeable gains on subsequent disposals of qualifying corporate bonds acquired in reorganisations, conversions and reconstructions).

(7) For the purposes of this section—

- (a) neither the retail prices index nor any similar general index of prices published by the government of a territory or by an agent of such a government is an index of the value of chargeable assets, and
- (b) “redemption”, in relation to a security, does not include its redemption on an occasion which is to be ignored under section 431(1) (excluded occasions of redemption).

#### **434 Securities issued in separate tranches: preliminary**

- (1) Sections 435 and 436 set out rules under which securities issued under the same prospectus on separate occasions may be treated as being, or as not being, deeply discounted securities.
- (2) If any of the securities in the original issue under the prospectus is a deeply discounted security—
  - (a) the rule in section 435 applies to securities in later issues under it, and
  - (b) the rule in section 436 does not apply to any securities issued under it.
- (3) If none of the securities in the original issue under the prospectus is a deeply discounted security, the rule in section 435 applies to securities in a later issue except where the rule in section 436 applies.

#### **435 Securities issued in separate tranches: basic rule**

- (1) The rule in this section is that if securities in any of the issues made on separate occasions under the same prospectus are not deeply discounted securities, securities in any later issue under it are not deeply discounted securities, unless they are treated as such for one of the reasons specified in subsection (2).
- (2) The reasons are—
  - (a) that the securities were issued to a person connected with the issuer and so fail to meet the condition specified in section 431(2)(b), and
  - (b) that such a person has acquired or become the holder of the securities and so section 431(5) applies to them.

#### **436 Deeply discounted securities issued in separate tranches: nominal value rule**

- (1) This section only applies if some of the securities in one or more later issues under the same prospectus are deeply discounted securities (or are such securities if the rule in section 435 is ignored).
- (2) The rule in this section applies for any disposal or acquisition after the time when the condition specified in subsection (3) is first met.
- (3) The condition is that the aggregate nominal value as at a particular time of the securities within subsection (1) exceeds the aggregate nominal value as at that time of all the other securities issued under the prospectus at any time.



*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (4) The rule is that all securities issued under the prospectus (including those issued after the time when the condition specified in subsection (3) is first met) are to be treated as deeply discounted securities and as having been acquired as such (whenever actually issued or acquired).
- (5) Subsection (6) applies where the question is whether a security held by a person who is not connected with the issuer is a deeply discounted security as a result of the rule in this section.
- (6) For the purpose of determining whether the rule in this section applies, securities that are only within subsection (1) for one of the reasons specified in section 435(2) are treated as not being within it.

### *Disposals*

#### **437 Transactions which are disposals**

- (1) References in this Chapter to the disposal of a deeply discounted security are—
  - (a) to its redemption,
  - (b) to its transfer by sale, exchange, gift or otherwise, including a transfer treated as made by subsection (3), and
  - (c) so far as not covered by paragraph (a) or (b), to its conversion under its terms into shares in a company or other securities (including other deeply discounted securities).
- (2) The person treated as making a disposal is—
  - (a) in the case of a disposal within subsection (1)(a), the person entitled as the security's holder to any payment on the disposal,
  - (b) in the case of a disposal within subsection (1)(b), the transferor, and
  - (c) in the case of a disposal within subsection (1)(c), the person who would be entitled as the security's holder to any payment on the disposal, if such a payment were made.
- (3) A person who dies while entitled to a deeply discounted security is treated as transferring it immediately before death to the personal representatives.
- (4) In the case of strips, further provision about occasions counting as disposals is made by section 445(2) and (6)(a).
- [<sup>F532</sup>(5) In the case of interest-bearing corporate securities, further provision about occasions counting as disposals is made by section 452F(2)(a).
- (6) In the case of corporate strips, further provision about occasions counting as disposals is made by section 452F(2)(a) and (3)(a).]

#### **Textual Amendments**

**F532** S. 437(5)(6) inserted (retrospectively) by Finance (No. 2) Act 2005 (c. 22), s. 39, Sch. 7 para. 25(3) (10)

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

### 438 Timing of transfers and acquisitions

- (1) This section applies if—
  - (a) a transfer or acquisition of a deeply discounted security is made under an agreement, and
  - (b) the transferee or the person making the acquisition becomes entitled to the security at the time the agreement is made.
- (2) The transfer or acquisition is treated as occurring at that time.
- (3) For this purpose a conditional agreement is taken to be made when the condition is met.
- [<sup>F533</sup>(4) This section is subject to—
  - section 445(7) (exchanges for and consolidations of strips);
  - section 452F(4) (conversion into and consolidations of corporate strips).]

#### Textual Amendments

**F533** S. 438(4) substituted (retrospectively) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), s. 39, [Sch. 7 para. 25\(4\)](#) (10)

### Calculating profits

### 439 Calculating the profit from disposals

- (1) A person's profit on a disposal is the amount by which the amount payable on the disposal exceeds the amount paid by the person to acquire the security.
- (2) No account is to be taken of any incidental expenses incurred in connection with the disposal or acquisition.
- (3) Subsection (2) is subject to subsection (4) and section 455 (listed securities held since 26th March 2003: calculating the profit or loss on disposals).
- (4) Incidental expenses incurred before 27th March 2003 by the person making the disposal in connection with the acquisition or disposal of the security are deducted from the person's profit.
- (5) Where a person re-acquires a security, any previous acquisition of it is ignored in determining on a subsequent disposal—
  - (a) the amount the person paid to acquire the security, and
  - (b) incidental expenses within subsection (4).

### 440 Market value disposals

- (1) On the disposal of a deeply discounted security by a transfer of a kind specified in subsection (2), for the purposes of this Chapter an amount equal to the market value at the time of the disposal is treated as payable.
- (2) The transfers are—
  - (a) a transfer made otherwise than by a bargain at arm's length,
  - (b) a transfer between connected persons,

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (c) a transfer for a consideration which is not wholly in money or money's worth,
  - (d) a transfer treated as made by section 437(3) (death), and
  - (e) a transfer by personal representatives to a legatee.
- (3) Subsection (1) is subject to subsection (4).
- (4) On a conversion of a deeply discounted security into shares or other securities which counts as its disposal under section 437(1), an amount equal to the market value of the shares or other securities at the time of the conversion is treated as the amount payable.
- [<sup>F534</sup>(5) Subsection (4) is subject to—  
section 445(8) (exchanges for and consolidations of strips);  
section 452F(5) (conversion into and consolidations of corporate strips).]
- (6) In this section “legatee” includes any person taking (whether beneficially or as trustee)  
—  
(a) on a testamentary disposition, or  
(b) on an intestacy or partial intestacy.
- (7) Such a person includes a person taking as a result of an appropriation by personal representatives in or towards the satisfaction of a legacy or other interest or share in the deceased's property.

#### Textual Amendments

**F534** S. 440(5) substituted (retrospectively) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), s. 39, [Sch. 7 para. 25\(5\)](#) (10)

#### 441 Market value acquisitions

- (1) A person who acquires a deeply discounted security on a disposal of a kind specified in subsection (2) is treated for the purposes of this Chapter as acquiring it by the payment of an amount equal to its market value at the time of the disposal.
- (2) The disposals are—  
(a) a transfer within section 440(2), and  
(b) a conversion of a deeply discounted security into other deeply discounted securities which counts as its disposal under section 437(1).

[<sup>F535</sup>(3) Subsection (2) is subject to—  
section 445(8) (exchanges for and consolidations of strips);  
section 452F(5) (conversion into and consolidations of corporate strips).]

#### Textual Amendments

**F535** S. 441(3) substituted (retrospectively) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), s. 39, [Sch. 7 para. 25\(6\)](#) (10)

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

#### **442 Securities issued in accordance with qualifying earn-out right**

- (1) This section applies if a security is issued to a person in accordance with the terms of a qualifying earn-out right.
- (2) The amount paid by the person to acquire the security is to be taken for the purposes of this Chapter to be the total of—
  - (a) the market value, immediately before the issue, of the right to be issued with the security in accordance with the terms of the qualifying earn-out right, and
  - (b) any amount payable for the issue in accordance with those terms.
- (3) In this section “qualifying earn-out right” means a right that meets conditions A to C, or so much of a right as does so.
- (4) Condition A is that the right constitutes the whole or part of the consideration for—
  - (a) the transfer by the person on whom the right is conferred of shares in or debentures of a company, or
  - (b) the transfer of the whole or part of—
    - (i) a business carried on by that person, or by that person and others in partnership, or
    - (ii) an interest in such a business.
- (5) Condition B is that the right is either—
  - (a) a right to be issued with securities of another company, or
  - (b) a right which is capable of being discharged in accordance with its terms by the issue of such securities.
- (6) Condition C is that the right is such that the value of the consideration mentioned in condition A is unascertainable at the time when the right is conferred.

#### *Special rules for strips of government securities*

#### **443 Application of this Chapter to strips of government securities**

- (1) All strips are treated as deeply discounted securities for the purposes of this Chapter, whether or not they would otherwise be so.
- (2) This Chapter applies to strips subject to the rules in—
  - (a) section 445 (strips of government securities: acquisitions and disposals),
  - (b) section 446 (strips of government securities: relief for losses),
  - (c) section 447 (restriction of profits on strips by reference to original acquisition cost),
  - (d) section 448 (restriction of losses on strips by reference to original acquisition cost),
  - (e) section 449 (strips of government securities: manipulation of acquisition, transfer or redemption payments), [<sup>F536</sup>and]
  - (f) section 450 (market value of strips etc.), and
  - (g) <sup>F537</sup> .....

#### **Textual Amendments**

**F536** Word in s. 443(2)(e) inserted (19.7.2007) by Finance Act 2007 (c. 11), s. 109, Sch. 26 para. 11(2)(a)

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

**F537** S. 443(2)(g) repealed (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), ss. 109, 114, Sch. 26 para. 11(2)(b), [Sch. 27 Pt. 6\(5\)](#)

#### 444 Meaning of “strip” in Chapter 8

- (1) In this Chapter “strip”, in relation to any stock or bond (“the underlying security”), means a security which—
  - (a) meets conditions A to C,
  - (b) if it was acquired after 26th March 2003, was issued by or on behalf of the government of any territory, and
  - (c) if it was acquired on or before that date, was issued under the National Loans Act 1968 (c. 13) in a case where the underlying security was itself a gilt-edged security.
- (2) Condition A is that the security is issued for the purpose of representing the right to or of securing—
  - (a) a payment corresponding to a payment of interest or principal remaining to be made under the underlying security, or
  - (b) two or more payments each corresponding to a payment to be so made.
- (3) Condition B is that the security is issued in conjunction with the issue of one or more other securities which, together with that security—
  - (a) represent the right to, or
  - (b) secure,payments corresponding to every payment remaining to be made under the underlying security.
- (4) Condition C is that the security is not itself a security which—
  - (a) represents the right to, or
  - (b) secures,payments corresponding to a part of every payment remaining to be made under the underlying security.
- (5) After the balance has been struck for a dividend on any underlying security, a payment to be made in respect of that dividend is treated for the purposes of conditions A to C as not being a payment remaining to be made under the underlying security.
- [<sup>F538</sup>(6) Nothing in this section affects the meaning of the expression “corporate strip” in this Chapter (see section 452E).]

#### Textual Amendments

**F538** S. 444(6) inserted (retrospectively) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), s. 39, [Sch. 7 para. 25\(7\)\(10\)](#)

#### 445 Strips of government securities: acquisitions and disposals

- (1) A person who receives strips of a security (“the underlying security”) in exchange for the underlying security is treated as having acquired each strip by the payment of an amount equal to—

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

$$A \times \frac{B}{C}$$

where—

A is the market value of the underlying security at the time of the exchange,

B is the market value of the strip at that time, and

C is the total of the market values at that time of all the strips received in the exchange.

- (2) For the purposes of this Chapter—
  - (a) a person who holds a strip of a security on 5th April in any tax year is treated as having transferred the strip on that day, and
  - (b) an amount equal to its market value on that day is treated as payable on the transfer.
- (3) For the purposes of this Chapter that person is also treated as having immediately re-acquired the strip for the same amount.
- (4) Subsections (2) and (3) do not apply if there is any other disposal of the strip on that day.
- (5) Section 439(4) (deduction of incidental expenses incurred before 27th March 2003) does not apply to transfers and reacquisitions within subsections (2) and (3).
- (6) For the purposes of this Chapter—
  - (a) the consolidation of a strip of a security with other such strips into a single security is a disposal of the strip by the person consolidating it (whether or not it would be apart from this subsection), and
  - (b) an amount equal to the market value of the strip at the consolidation is treated as payable on the disposal.
- (7) Section 438 (timing of transfers and acquisitions) does not apply to an exchange within subsection (1) or a consolidation within subsection (6).
- (8) Subsections (1) and (6) apply instead of sections 440(4) (market value on general conversions of deeply discounted securities) and 441 (market value acquisitions).

#### **446 Strips of government securities: relief for losses**

- (1) Relief from income tax may be claimed under this section for any loss made on the disposal of a strip of a security.

[<sup>F539</sup>(2) If a person makes a claim under this section, the relief is given by deducting the loss in calculating the person's net income for the tax year in which the disposal occurs (see Step 2 of the calculation in section 23 of ITA 2007).]

- (3) For this purpose a person makes a loss on the disposal of a strip if—
  - (a) the person disposes of the strip, and
  - (b) the amount the person paid for the strip, ignoring any incidental expenses incurred in connection with the acquisition, exceeds the amount payable on the disposal, ignoring any incidental expenses incurred in connection with the disposal.

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (4) The loss is an amount equal to the excess.
- (5) A claim under this section must be made on or before the first anniversary of the normal self-assessment filing date for the tax year in which the disposal occurs.
- (6) The relief may be claimed by the person making the disposal.
- (7) Relief for a loss on a disposal may not be claimed under this section if section 454 (listed securities held since 26th March 2003: relief for losses) applies in respect of the disposal.
- (8) This section is subject to—
  - (a) section 448 (restriction of losses on strips by reference to original acquisition cost),
  - (b) section 449 (strips of government securities: manipulation of acquisition, sale or redemption payments), and
  - (c) section 458(2) (strips held by non-UK resident trustees).

#### Textual Amendments

**F539** S. 446(2) substituted (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), ss. 1027, 1034, [Sch. 1 para. 524](#) (with transitional provisions and savings in [Sch. 2](#))

#### **447 Restriction of profits on strips by reference to original acquisition cost**

- (1) This section applies if—
  - (a) a person makes a profit on the disposal of a strip (apart from this section), and
  - (b) the person's original acquisition cost for the strip (see subsection (4)) exceeds the amount that falls to be brought into account as the amount paid by the person to acquire the strip in determining the amount of the profit.
- (2) If the amount that falls to be brought into account as the amount payable on the disposal in determining the amount of the profit exceeds the person's original acquisition cost for the strip, the amount of the profit is restricted to that excess.
- (3) Otherwise the person is treated as not making a profit on the disposal.
- (4) For the purposes of this section and section 448, a person's original acquisition cost for a strip is the amount that falls to be taken into account as the amount paid by the person to acquire the strip in determining whether the person makes a profit or loss on its disposal if 5th April disposals and acquisitions are ignored.
- (5) In subsection (4) “5th April disposals and acquisitions” means—
  - (a) disposals under section 445(2) (other than the disposal in question), and
  - (b) acquisitions under section 445(3).

#### **448 Restriction of losses on strips by reference to original acquisition cost**

- (1) This section applies if—
  - (a) a person makes a loss on the disposal of a strip (apart from this section), and

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

- (b) the person's original acquisition cost for the strip exceeds the amount that falls to be brought into account as the amount payable on the disposal of the strip in determining the amount of the loss.
- (2) If the amount that falls to be brought into account as the amount paid by the person to acquire the strip in determining the amount of the loss exceeds the person's original acquisition cost for the strip, the amount of the loss is reduced.
- (3) The amount of the reduction is  $A - B$  where—
  - A is the person's original acquisition cost for the strip, and
  - B is the amount that falls to be brought into account as the amount payable on the disposal of the strip in determining the amount of the loss.
- (4) If subsection (2) does not apply, the person is treated as not making a loss on the disposal.
- (5) In this section any reference to making a loss on the disposal of a strip has the meaning given in section 446(3) and (4).

**449 Strips of government securities: manipulation of acquisition, transfer or redemption payments**

- (1) This section applies if—
  - (a) as a result of a scheme or arrangement an amount referred to in subsection (2) (a), (b) or (c) differs from the market value of a strip in a way specified in that subsection, and
  - (b) the obtaining of a tax advantage by any person is the main benefit, or one of the main benefits, that might have been expected to accrue from, or from any provision of, the scheme or arrangement.
- (2) The ways are that—
  - (a) the amount paid by a person in respect of the acquisition of the strip is or was more than the market value at the time of the acquisition,
  - (b) the amount payable to a person on transferring the strip is less than the market value at the time of the transfer, or
  - (c) on redemption of the strip the amount payable to a person, as the person holding the strip, is less than the market value on the day before redemption.
- (3) In a case within subsection (2)(a), for the purposes of sections 439(1) and 446(3) on transferring the strip the person is treated as if the person had paid to acquire the strip an amount equal to the market value of the strip at the time of the acquisition.
- (4) In a case within subsection (2)(b), for those purposes the person is treated as if the amount payable to the person on the transfer were an amount equal to the market value of the strip at the time of the transfer.
- (5) In a case within subsection (2)(c), for those purposes the person is treated as if the amount payable to the person on redemption were an amount equal to the market value of the strip on the day before redemption.
- (6) For the purposes of this section, no account is to be taken of any incidental expenses incurred in connection with any disposal or acquisition of a strip.



*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

## **[<sup>F540</sup>450 Market value of strips etc.**

- (1) The Treasury may make regulations as to the manner for determining—
  - (a) the market value at any time of a strip for the purposes of this Chapter, and
  - (b) the market value at any time of a security exchanged for strips of that security for the purposes of section 445(1).
- (2) The regulations may—
  - (a) make different provision for different cases, and
  - (b) contain incidental, supplemental, consequential and transitional provision and savings.]

### **Textual Amendments**

**F540** S. 450 substituted for ss. 450, 451 (19.7.2007 with effect as stated in [Sch. 26 para. 5\(2\)](#) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), s. 109, [Sch. 26 para. 5\(1\)](#); S.I. 2015/635, art. 2

## **452 Power to modify this Chapter for strips**

- (1) The Treasury may by regulations provide that this Chapter is to apply to a strip with such modifications as they consider appropriate.
- (2) This section is without prejudice to the general power to make regulations under section 202 of FA 1996 (gilt stripping).

*[<sup>F542</sup>Special rules for corporate strips*

### **Textual Amendments**

**F542** Ss. 452A-452G and preceding cross-heading inserted (retrospectively) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), s. 39, [Sch. 7 para. 25\(8\)\(10\)](#)

## **[<sup>F543</sup>452A Application of this Chapter to corporate strips**

- (1) All corporate strips are treated as deeply discounted securities for the purposes of this Chapter, whether or not they would otherwise be so.
- (2) This Chapter applies to corporate strips subject to the rules in—
  - (a) section 452F (corporate strips: acquisitions and disposals), and
  - (b) section 452G (corporate strips: manipulation of acquisition, transfer or redemption payments).]

### **Textual Amendments**

**F543** Ss. 452A-452G and preceding cross-heading inserted (retrospectively) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), s. 39, [Sch. 7 para. 25\(8\)\(10\)](#)

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

## **Meaning of “interest-bearing corporate security” in Chapter 8**

**F544 452B**

- (1) In this Chapter “interest-bearing corporate security” means any interest-bearing security other than—
  - (a) a security issued by the government of a territory, or
  - (b) a share in a company.
- (2) In this section “interest-bearing security” includes any loan stock or similar security.
- (3) Section 452D(4)(a) gives an extended meaning to references to converting an interest-bearing corporate security into corporate strips (and related expressions).]

### **Textual Amendments**

**F544** Ss. 452A-452G and preceding cross-heading inserted (retrospectively) by [Finance \(No. 2\) Act 2005](#) (c. 22), s. 39, [Sch. 7 para. 25\(8\)\(10\)](#)

## **Conversion of interest-bearing corporate securities into corporate strips**

**F545 452C**

- (1) For the purposes of this Chapter a person converts an interest-bearing corporate security into corporate strips of the security if he has an interest-bearing corporate security (“the converted corporate security”) but—
  - (a) as a result of any scheme or arrangements, he acquires two or more separate assets in place of the converted corporate security,
  - (b) each of those separate assets satisfies condition A,
  - (c) those separate assets, taken together, satisfy condition B, and
  - (d) at least one of those separate assets is not prevented from being a corporate strip by section 452E(2) or (3),
 and related expressions shall be construed accordingly.
- (2) Condition A is that the asset—
  - (a) represents the right to, or
  - (b) secures,
 one or more stripped payments.
- (3) For the purposes of this section, a “stripped payment” is—
  - (a) the payment of, or
  - (b) a payment corresponding to,
 the whole or a part of one or more payments (whether of interest or principal) remaining to be made under the converted corporate security.
- (4) Condition B is that the assets, taken together,—
  - (a) represent the right to, or
  - (b) secure,
 every payment (whether of interest or principal) remaining to be made under the converted corporate security (or payments corresponding to every such payment).
- (5) Where a person—
  - (a) has an interest-bearing corporate security, but

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (b) sells or transfers the right to one or more payments remaining to be made under it (so that, as a result, there are two or more separate assets which, taken together, satisfy condition B),

this Chapter has effect as if, as a result of a scheme or arrangements, the person had acquired the separate assets in place of the security immediately before the sale or transfer.

- (6) After a balance has been struck for a dividend on an interest-bearing corporate security, any payment to be made in respect of that dividend shall, at times falling after that balance has been struck, be treated for the purposes of this paragraph as not being a payment remaining to be made under the security.]

#### Textual Amendments

**F545** Ss. 452A-452G and preceding cross-heading inserted (retrospectively) by [Finance \(No. 2\) Act 2005](#) (c. 22), s. 39, [Sch. 7 para. 25\(8\)\(10\)](#)

#### **Conversion into corporate strips: lower level conversions**

**F546** **452D**

- (1) For the purposes of this Chapter, section 452C also has effect in relation to each of the separate assets mentioned in subsection (1) of that section as if that separate asset were itself an interest-bearing corporate security (if that is not in fact the case).
- (2) In subsection (1), the reference to section 452C includes a reference to that section as it has effect by virtue of this section.
- (3) In the application of section 452C by virtue of this section, references to payments the right to which a separate asset represents or secures shall be construed in accordance with subsection (6) of that section.
- (4) Where section 452C has effect by virtue of subsection (1)—
- (a) any reference in this Chapter to converting an interest-bearing corporate security into corporate strips of the security shall be construed accordingly, and
- (b) section 452E (meaning of “corporate strip”) has effect accordingly.]

#### Textual Amendments

**F546** Ss. 452A-452G and preceding cross-heading inserted (retrospectively) by [Finance \(No. 2\) Act 2005](#) (c. 22), s. 39, [Sch. 7 para. 25\(8\)\(10\)](#)

#### **Meaning of “corporate strip” in Chapter 8**

**F547** **452E**

- (1) In this Chapter “corporate strip” means any asset—
- (a) which is, or has at any time been, one of the separate assets mentioned in section 452C(1), and
- (b) which is not prevented from being a corporate strip by subsection (2) or (3).
- (2) An asset is not a corporate strip if it—
- (a) represents the right to, or
- (b) secures,

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

payments of, or corresponding to, a part of every payment remaining to be made under an interest-bearing corporate security or a corporate strip.

- (3) An asset is a corporate strip in the case of any person only if he acquired it—
- (a) on or after 2nd December 2004, and
  - (b) otherwise than in pursuance of an agreement entered into before that date.]

#### Textual Amendments

**F547** Ss. 452A-452G and preceding cross-heading inserted (retrospectively) by [Finance \(No. 2\) Act 2005](#) (c. 22), s. 39, [Sch. 7 para. 25\(8\)\(10\)](#)

### **Corporate strips: acquisitions and disposals**

**F548** **452F**

- (1) A person who converts an interest-bearing corporate security into corporate strips of the security is treated as having acquired each corporate strip by the payment of an amount equal to—
- $$A \times BC$$
- where—
- A is the acquisition cost of the converted corporate security;
- B is the market value of the corporate strip;
- C is the total of the market values of all the separate assets resulting from the conversion.
- (2) If the converted corporate security is a deeply discounted security—
- (a) its conversion into corporate strips is to be treated for the purposes of this Chapter as a transfer of the security, but
  - (b) the amount payable on the transfer is taken to be an amount equal to the acquisition cost of the converted corporate security.
- (3) For the purposes of this Chapter—
- (a) the consolidation of a corporate strip with other corporate strips into a single security is a disposal of the corporate strip by the person consolidating it (whether or not it would be apart from this subsection), and
  - (b) an amount equal to the market value of the corporate strip at the consolidation is treated as payable on the disposal.
- (4) Section 438 (timing of transfers and acquisitions) does not apply to a conversion within subsection (1) or a consolidation within subsection (3).
- (5) Subsections (1) to (3) apply instead of sections 440(4) (market value on general conversions of deeply discounted securities) and 441 (market value acquisitions).
- (6) For the purposes of this section, the acquisition cost of the converted corporate security is the amount paid in respect of his acquisition of the security by the person who has it immediately before the conversion (no account being taken of any costs incurred in connection with that acquisition).

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (7) References in this section to the market value of a security given or received in exchange for, or otherwise converted into, another are references to its market value at the time of the exchange or conversion.]

#### Textual Amendments

**F548** Ss. 452A-452G and preceding cross-heading inserted (retrospectively) by [Finance \(No. 2\) Act 2005](#) (c. 22), s. 39, [Sch. 7 para. 25\(8\)\(10\)](#)

### **[<sup>F549</sup> 452G Corporate strips: manipulation of acquisition, transfer or redemption payments**

- (1) This section applies if—
- (a) as a result of any scheme or arrangement, an amount referred to in subsection (2)(a), (b) or (c) differs from the market value of the corporate strip in a way specified in that subsection, and
  - (b) the obtaining of a tax advantage by any person is the main benefit, or one of the main benefits, that might have been expected to accrue from, or from any provision of, the scheme or arrangement.
- (2) The ways are that—
- (a) the amount paid by a person in respect of the acquisition of the corporate strip is or was more than the market value of the corporate strip at the time of that acquisition,
  - (b) the amount payable to a person on transferring the corporate strip is less than the market value at the time of the transfer, or
  - (c) on redemption of the corporate strip the amount payable to a person, as the person holding the corporate strip, is less than the market value on the day before redemption.
- (3) In a case within subsection (2)(a), for the purposes of section 439(1) on transferring the corporate strip the person is treated as if the person had paid to acquire the corporate strip an amount equal to the market value of the corporate strip at the time of the acquisition.
- (4) In a case falling within subsection (2)(b), for those purposes the person is treated as if the amount payable to the person on the transfer were an amount equal to the market value of the corporate strip at the time of the transfer.
- (5) In a case falling within subsection (2)(c), for those purposes the person is treated as if the amount payable to the person on redemption were an amount equal to the market value of the corporate strip on the day before redemption.
- (6) The market value of a corporate strip at any time is to be determined for the purposes of this section without regard to any increase or diminution in the value of the corporate strip as a result of the scheme or arrangement mentioned in subsection (1).
- (7) For the purposes of this section, no account is to be taken of any incidental expenses incurred in connection with any disposal or acquisition of a corporate strip.]]

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

#### Textual Amendments

**F549** Ss. 452A-452G and preceding cross-heading inserted (retrospectively) by [Finance \(No. 2\) Act 2005](#) (c. 22), s. 39, [Sch. 7 para. 25\(8\)\(10\)](#)

### *Special rules for listed securities held since 26th March 2003*

#### **453 Application of sections 454 to 456**

- (1) In the case of a disposal of a deeply discounted security that meets conditions A and B, the rules in sections 454 to 456 apply for—
  - (a) providing for relief for losses on the disposal, and
  - (b) calculating the amount of profits chargeable under this Chapter on the disposal or the losses for which such relief may be given.
- (2) Condition A is that the person making the disposal has held the security continuously since a time before 27th March 2003.
- (3) Condition B is that the security was listed on a recognised stock exchange at any time before 27th March 2003.

#### **454 Listed securities held since 26th March 2003: relief for losses**

- (1) A person may claim relief from income tax under this section for a loss the person has made on disposing of deeply discounted securities.
- (2) For this purpose a person makes such a loss only if A exceeds B, where—
  - A is the amount the person paid for the securities, excluding any incidental expenses incurred in connection with the acquisition, and
  - B is the amount payable on the disposal, excluding any incidental expenses incurred in connection with the disposal.
- (3) For the calculation of the amount of the loss, see section 455(2) to (4) (under which those expenses are taken into account).
- <sup>F550</sup>(4) If a claim under this section is made by a person other than a trustee, the relief is given by deducting the loss in calculating the person's net income for the tax year in which the disposal occurs (see Step 2 of the calculation in section 23 of ITA 2007).]
- (5) If such a claim is made by a trustee, the amount of profits arising in the tax year in which the disposal occurs that is charged under this Chapter is reduced by the amount of the loss.
- (6) A claim under this section must be made on or before the first anniversary of the normal self-assessment filing date for the tax year in which the disposal occurs.
- (7) This section is subject to section 458(2) (securities held by non-UK resident trustees).

#### Textual Amendments

**F550** S. 454(4) substituted (6.4.2007 with effect as stated in [s. 1034\(1\)](#) of the amending Act) by [Income Tax Act 2007](#) (c. 3), [ss. 1027, 1034](#), [Sch. 1 para. 525](#) (with transitional provisions and savings in [Sch. 2](#))

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

#### **455 Listed securities held since 26th March 2003: calculating the profit or loss on disposals**

- (1) A person's profit on a disposal, as calculated under section 439, is reduced by any incidental expenses incurred [<sup>F551</sup> before 6 April 2015 ] by that person in connection with the disposal or the acquisition of the security that have not been deducted under section 439(4).
- (2) A person's loss on a disposal for the purposes of section 454 (relief for losses) is the amount by which the deductible costs exceed the amount payable on the disposal.
- (3) In this section the “deductible costs” means—
  - (a) the amount paid by the person to acquire the security, and
  - (b) the incidental expenses incurred [<sup>F552</sup> before 6 April 2015 ] by that person in connection with the disposal or the acquisition.
- (4) Where a person re-acquires a security, any previous acquisition of it is ignored in determining the person's incidental expenses within subsection (1) or deductible costs on a subsequent disposal.
- (5) For the purposes of this section, no incidental expenses are treated as incurred in connection with transfers and reacquisitions within section 445(2) and (3) (transfer and immediate reacquisition of strips on 5th April).

##### **Textual Amendments**

**F551** Words in s. 455(1) inserted (with effect in accordance with Sch. 39 para. 48(2) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 39 para. 48\(1\)\(a\)](#)

**F552** Words in s. 455(3)(b) inserted (with effect in accordance with Sch. 39 para. 48(2) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 39 para. 48\(1\)\(b\)](#)

#### **456 Securities issued to connected persons etc. at excessive price: subsequent transfers to connected persons**

- (1) No loss is taken to occur for the purposes of section 454 on a transfer of a deeply discounted security to a person connected with the transferor if conditions A and B and either condition C or conditions D and E are met.
  - (2) Condition A is that the transferor acquired the security on its issue.
  - (3) Condition B is that the amount paid by the transferor to acquire the security exceeded the market value of the security at the time of its issue.
  - (4) Condition C is that at that time the transferor was connected with the issuer.
  - (5) Condition D is that at that time the issuer was a close company.
  - (6) Condition E is that at that time the transferor controlled that company with other persons to whom securities of the same kind were also issued.
- [<sup>F553</sup>(7) Chapter 2 of Part 10 of CTA 2010 (meaning of “close company”) applies for the purposes of this section but with the omission of section 442(a) (exclusion of non-UK resident companies).]

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (8) In this section “control” has the meaning given by [<sup>F554</sup>sections 450 and 451 of CTA 2010].

#### Textual Amendments

- F553** S. 456(7) substituted (1.4.2010) (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), s. 1184\(1\), Sch. 1 para. 466\(2\)](#) (with [Sch. 2](#))
- F554** Words in s. 456(8) substituted (1.4.2010) (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), s. 1184\(1\), Sch. 1 para. 466\(3\)](#) (with [Sch. 2](#))

### Trustees

#### 457 Trustees

- (1) This section applies if profits are taken to arise on a disposal of a deeply discounted security by trustees.
- (2) For the purposes of Chapter 5 of Part 5 (settlements: amounts treated as income of settlor), the profits are to be taken to be income arising under the settlement from the security.

<sup>F555</sup>(3) . . . . .

<sup>F556</sup>(4) . . . . .

- [<sup>F557</sup>(5) If the trustees are trustees of a scheme in relation to which section 504 of ITA 2007 applies, subsection (2) does not apply to profits which are shown in the scheme's accounts as income available for payment to unit holders or for investment.]

#### Textual Amendments

- F555** S. 457(3) repealed (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\), ss. 1027, 1031, 1034, Sch. 1 para. 526\(2\), Sch. 3 Pt. 1](#) (with transitional provisions and savings in [Sch. 2](#))
- F556** S. 457(4) repealed (with effect in accordance with [Sch. 13 para. 32\(4\)](#) of the amending Act) by [Finance Act 2006 \(c. 25\), Sch. 13 para. 32\(1\)\(a\), Sch. 26 Pt. 3\(15\)](#)
- F557** S. 457(5) substituted (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\), ss. 1027, 1034, Sch. 1 para. 526\(3\)](#) (with transitional provisions and savings in [Sch. 2](#))

#### 458 Non-UK resident trustees

- (1) Tax is not charged under this Chapter if the disposal is made by the trustees of a settlement and they are non-UK resident.
- (2) The following provisions do not apply if the disposal falls within subsection (1)—  
section 446 (strips of government securities: relief for losses), and  
section 454 (listed securities held since 26th March 2003: relief for losses).
- (3) In this section “settlement” has the same meaning as in Chapter 5 of Part 5 (see section 620).



*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

### Miscellaneous and supplementary

#### 459 Transfer of assets abroad

- (1) This section applies if profits are taken to arise on the disposal of a deeply discounted security by a person resident or domiciled outside the United Kingdom (“A”).
- (2) For the purpose of determining whether [<sup>F558</sup>a UK resident individual] is liable for income tax in respect of the profits, [<sup>F559</sup>Chapter 2 of Part 13 of ITA 2007 (transfer of assets abroad) has] effect as if the profits, when arising, constituted income becoming payable to A.
- (3) For this purpose it does not matter if A is not liable to income tax under this Chapter because of section 458 (non-UK resident trustees).

#### Textual Amendments

**F558** Words in s. 459(2) substituted (with effect in accordance with Sch. 46 para. 72 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 45](#)

**F559** Words in s. 459(2) substituted (with effect as stated in s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), ss. 1027, 1034, [Sch. 1 para. 527](#) (with transitional provisions and savings in [Sch. 2](#))

#### 460 Minor definitions

- (1) In this Chapter “share”, in the case of a share in a company, means any share under which an entitlement to receive distributions may arise, but does not include a share in a building society.
- (2) In this Chapter “tax advantage” has the meaning given by [<sup>F560</sup>section 1139 of CTA 2010].
- (3) In this Chapter “market value” has the same meaning as in TCGA 1992 (see sections 272 to 274 of that Act), except as provided in section 450 <sup>F561</sup>. . . (market value of strips etc.).

#### Textual Amendments

**F560** Words in s. 460(2) substituted (1.4.2010) (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), [Sch. 1 para. 467](#) (with [Sch. 2](#))

**F561** Words in s. 460(3) repealed (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), ss. 109, 114, [Sch. 26 para. 11\(3\)](#), [Sch. 27 Pt. 6\(5\)](#)

## CHAPTER 9

### GAINS FROM CONTRACTS FOR LIFE INSURANCE ETC.

#### Modifications etc. (not altering text)

**C62** Pt. 4 Ch. 9 applied (with modifications) by The Individual Savings Account Regulations 1998 (S.I. 1998/1870), reg. 36 (as added by S.I. 1998/3174, reg. 12 and as amended (6.4.2008) by [S.I. 2008/704](#), regs. 1, [17\(4\)](#))

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- C63** Pt. 4 Ch. 9 applied (with modifications) by The Child Trust Funds Regulations 2004 (S.I. 2004/1450), reg. 38 (as amended (6.4.2010) by S.I. 2010/582, regs. 1, 18)
- C64** Pt. 4 Ch. 9: power to exclude conferred (with effect in accordance with s. 148 of the amending Act) by Finance Act 2012 (c. 14), s. 61(4) (with s. 147, Sch. 17)

### *Charge to tax under Chapter 9*

#### **461 Charge to tax under Chapter 9**

- (1) Income tax is charged on gains treated as arising from policies and contracts to which this Chapter applies.
- (2) For the policies and contracts to which this Chapter applies, see sections 473 to 483.
- (3) See also sections 530 to 538 (provisions relating to tax treated as paid on gains and to reliefs).
- (4) For exemptions, see in particular Chapter 3 of Part 6 (income from individual investment plans).
- (5) For the application of this Chapter where corresponding provision for corporation tax purposes is also relevant, see section 544 (application of Chapter to policies and contracts in which companies interested).

#### **462 When gains arise from policies and contracts**

- (1) For the purposes of this Chapter, a gain from a policy or contract arises when a chargeable event occurs in relation to the policy or contract (see section 484).
- (2) But certain chargeable events are only treated as occurring because a calculation required to be made as at a particular time shows that the gain has arisen.
- (3) See, in particular—
  - (a) section 509(1) (under which a chargeable event is treated as occurring where a periodic calculation following a part surrender or assignment shows a gain),
  - (b) section 514(1) (under which a part surrender or assignment is treated as a chargeable event where a calculation related to it shows a gain), and
  - (c) section 525(2) (under which a chargeable event is treated as occurring where an annual personal portfolio bond calculation shows a gain).

#### **463 Income charged**

- (1) Tax is charged under this Chapter on the amount of the gains arising in the tax year.
- (2) Subsection (1) is subject to section 514(4) (under which certain gains are charged for a later tax year).
- (3) See section 469(3) for the apportionment of gains where two or more persons are interested in a policy or contract.
- (4) See sections 491 to 497, 507, 508, 511 to 513, 522 to 524 and 527 to 529 for the rules as to how the gains are calculated.

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

### **[<sup>F562</sup>463A] Restricted relief qualifying policies: disapplication of section 485 etc**

- (1) This section applies for the purpose of determining if an individual is liable for tax charged under this Chapter.
- (2) In relation to an event occurring on or after 6 April 2013, section 485 (disregard of certain events in relation to qualifying policies) does not apply in relation to a policy (“policy X”) which is a restricted relief qualifying policy (see paragraph A2 of Schedule 15 to ICTA).
- (3) If an individual is liable for tax charged under this Chapter as a result of subsection (2), the gain on which the tax is charged in the case of the individual is reduced by the following amount—

$$G \times \text{TAP TP}$$

where—

G is the amount of the gain (apart from this subsection),

TAP is the total amount of premiums payable under policy X during the policy X period so far as they are allowable premiums as determined in accordance with section 463B, and

TP is the total amount of premiums payable under policy X during the policy X period.

- (4) If section 528 also applies in the case of the individual in relation to the gain, subsection (3) is to be applied to the gain before section 528 and, accordingly, the reduction to be made under section 528 is to be determined by reference to the gain as reduced by subsection (3).
- (5) The following subsections apply for the purposes of this section (except subsection (2)) and section 463B.
- (6) “The policy X period” means the period for which policy X has run before the chargeable event occurs.
- (7) Subsections (8) and (9) apply if policy X is a new policy in relation to another policy.
- (8) For the purposes of subsection (6) policy X is to be taken to have run—
  - (a) from the issue of the other policy, or
  - (b) if the other policy was also a new policy in relation to an earlier policy, from the issue of the earlier policy,and so on.
- (9) References to premiums payable under policy X are to be read as including references to premiums payable under any earlier policy taken into account under subsection (8).
- (10) The following are to be left out of account in determining the premiums payable under a policy—
  - (a) so much of a premium as is charged on the grounds that an exceptional risk of death or disability is involved;
  - (b) subject to subsection (11), so much of the first premium payable the liability for the payment of which—
    - (i) is discharged in accordance with paragraph 15(2) of Schedule 15 to ICTA, or

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (ii) in the case of a policy in relation to which paragraph 3 of that Schedule applies, is discharged under a provision of the policy falling within paragraph 3(4)(c) of that Schedule.
- (11) The maximum amount that may be left out of account under subsection (10)(b) in the case of a policy is—
- $£ 3,600 \times N$
- where N is the number of complete years for which ran—
- a the other policy involved, or
  - b if there is more than one other policy involved, the policy which ran for the most number of complete years.
- (12) In determining the premiums payable under a policy any provision for the waiver of premiums by reason of a person's disability is to be ignored.
- (13) “New policy” has the meaning given in paragraph 17 of Schedule 15 to ICTA.

#### **Textual Amendments**

**F562** Ss. 463A-463E inserted (17.7.2013) by [Finance Act 2013 \(c. 29\)](#), [Sch. 9 para. 8](#)

### **463B Restricted relief qualifying policies: allowable premiums**

- (1) This section sets out how to determine the extent to which premiums payable under policy X during the policy X period are allowable premiums for the purposes of section 463A(3).
- (2) A premium payable under policy X is allowable if it is payable before the restricted relief date.
- (3) In this section “the restricted relief date” means—
  - (a) 6 April 2013, or
  - (b) if later, the date on which policy X became a restricted relief qualifying policy.
- (4) Premiums payable under policy X in a relevant premium period are allowable so far as they do not exceed in total the premium limit for the period.
- (5) In subsection (4) “relevant premium period” means—
  - (a) any period of one year which—
    - (i) begins with a relevant date, and
    - (ii) ends in the policy X period, and
  - (b) if it is not covered by paragraph (a), the period which—
    - (i) begins with the last relevant date to fall within the policy X period, and
    - (ii) ends at the end of the policy X period.
- (6) In subsection (5) “relevant date” means—
  - (a) the restricted relief date, or
  - (b) any anniversary of the restricted relief date.

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

- (7) For the purposes of subsection (4) “the premium limit” for a relevant premium period is determined in accordance with subsections (8) to (10).
- (8) Determine the premiums payable in the relevant premium period under policies related to policy X.
- (9) If the total of those premiums is £3,600 or more, the premium limit is nil (and, accordingly, no premiums payable under policy X in the relevant premium period are allowable).
- (10) If the total of those premiums is less than £3,600, the premium limit is the difference between that total and £3,600.
- (11) Subsection (4) does not apply if, at the time policy X became a restricted relief qualifying policy, any policy related to policy X was itself a restricted relief qualifying policy.
- (12) For the purposes of this section a policy is “related” to policy X if it met the following requirements at the time policy X became a restricted relief qualifying policy—
  - (a) the policy is a qualifying policy under which the individual is a beneficiary (as determined in accordance with paragraph A5 of Schedule 15 to ICTA);
  - (b) the policy is neither a protected policy nor a pure protection policy.
- (13) In subsection (12)(b)—

“protected policy” is to be read in accordance with paragraph A4 of Schedule 15 to ICTA, and

“pure protection policy” has the meaning given by paragraph A6(1)(c) of that Schedule.
- (14) A policy which is a new policy in relation to a policy “related” to policy X (whether by virtue of subsection (12) or this subsection) is also “related” to policy X if it meets the requirements of subsection (12)(a) and (b) when issued.
- (15) A policy ceases to be “related” to policy X if it ceases to meet those requirements.
- (16) If policy X is a restricted relief qualifying policy as provided for by paragraph A2(14) of Schedule 15 to ICTA, references in this section to policy X becoming a restricted relief qualifying policy are to be read as references to the policy determined under subsection (17) becoming a restricted relief qualifying policy.
- (17) The policy is—
  - (a) the policy (“policy Y”) in relation to which policy X was the new policy, or
  - (b) if policy Y was also a restricted relief qualifying policy as provided for by paragraph A2(14) of Schedule 15 to ICTA, the policy in relation to which policy Y was the new policy,and so on.
- (18) The following subsections apply for the purposes of this section if—
  - (a) a premium (“premium A”) is payable under policy X on a day (“day A”) which is on or after 21 March 2012 but before 6 April 2013, and
  - (b) the next premium payable under policy X is payable on a day (“day B”) which is—
    - (i) on or after 6 April 2013, and
    - (ii) more than one month after day A.

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (19) Premium A is to be treated as if, instead of being one premium payable on day A, it were a series of premiums payable at monthly intervals with the first premium in the series payable on day A.
- (20) The number of premiums in the series is equal to the number of complete months falling within the period beginning with day A and ending with day B.
- (21) The amount of each premium in the series is the amount of premium A divided by the number of premiums in the series.

#### Textual Amendments

**F562** Ss. 463A-463E inserted (17.7.2013) by [Finance Act 2013 \(c. 29\)](#), [Sch. 9 para. 8](#)

### **463C Restricted relief qualifying policies: personal representatives and trustees with deceased settlors**

- (1) This section applies for the purpose of determining if personal representatives are liable for tax charged under this Chapter as provided for by section 466.
- (2) This section also applies for the purpose of determining if trustees are liable for tax charged under this Chapter as provided for by section 467 where—
  - (a) condition B in that section is met, and
  - (b) the person who created the trusts has died.
- (3) In relation to an event occurring on or after 6 April 2013, section 485 (disregard of certain events in relation to qualifying policies) does not apply in relation to a policy if the policy is a restricted relief qualifying policy (see paragraph A2 of Schedule 15 to ICTA).
- (4) If any personal representatives or trustees are liable for tax charged under this Chapter as a result of subsection (3), section 463A(3) is to apply in the case of the personal representatives or the trustees—
  - (a) as if the reference to the individual were to the personal representatives or to the trustees, and
  - (b) as if the restricted relief qualifying policy were policy X.
- (5) For this purpose—
  - (a) in section 463B(12)(a) the reference to the individual is to be read as a reference to the deceased, and
  - (b) a policy—
    - (i) which would otherwise have ceased to be “related” to policy X for the purposes of section 463B on the deceased's death, but
    - (ii) which continues to run after the deceased's death,
 is to be treated as “related” to policy X after the deceased's death.
- (6) A policy which is a new policy (as defined in paragraph 17 of Schedule 15 to ICTA) in relation to a policy treated as “related” to policy X under subsection (5)(b) or this subsection is also to be treated as “related” to policy X if, apart from the deceased's death, it would meet the requirements of section 463B(12)(a) and (b) on its issue.

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (7) A policy treated as “related” to policy X under subsection (5)(b) or (6) ceases to be so treated if, apart from the deceased's death, it would cease to meet the requirements of section 463B(12)(a) and (b).
- (8) If section 528A also applies in the case of the personal representatives or the trustees in relation to the gain, section 463A(3) is to be applied to the gain before section 528A and, accordingly, the reduction to be made under section 528A is to be determined by reference to the gain as reduced by section 463A(3).

#### Textual Amendments

**F562** Ss. 463A-463E inserted (17.7.2013) by [Finance Act 2013 \(c. 29\)](#), [Sch. 9 para. 8](#)

### **463D Restricted relief qualifying policies: assignments and events following assignments etc**

- (1) This section applies if—
  - (a) paragraph A1 of Schedule 15 to ICTA applies in relation to a policy by virtue of paragraph A1(8) in consequence of an event relating to the policy (“the relevant event”),
  - (b) after the relevant event, the policy is not a qualifying policy by virtue of paragraph A1(2), and
  - (c) in relation to an event occurring after the relevant event—
    - (i) an individual is liable for tax charged under this Chapter on a gain from the policy, and
    - (ii) but for the application of paragraph A1 in relation to the policy, section 463A(3) would have applied in the case of the individual so as to reduce the gain.
- (2) Section 463A(3) is to apply in the case of the individual in relation to the gain as if the policy were policy X.
- (3) But, for this purpose, section 463B(5) has effect as if the references to the policy X period were to the part of that period falling before the relevant event.
- (4) If section 528 also applies in the case of the individual in relation to the gain, section 463A(3) is to be applied to the gain before section 528 and, accordingly, the reduction to be made under section 528 is to be determined by reference to the gain as reduced by section 463A(3).

#### Textual Amendments

**F562** Ss. 463A-463E inserted (17.7.2013) by [Finance Act 2013 \(c. 29\)](#), [Sch. 9 para. 8](#)

### **463E Transitional protection for policies issued in respect of insurances made on or after 21 March 2012 but before 6 April 2013**

- (1) This section applies if—
  - (a) a policy (“policy Z”) is issued,

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (b) the issue of policy Z is an event falling within paragraph A2(3) of Schedule 15 to ICTA by virtue of paragraph (e),
- (c) after its issue, policy Z is a qualifying policy but not a restricted relief qualifying policy,
- (d) policy Z is varied on or after 6 April 2013 and the variation is an event falling within paragraph A1(3) of Schedule 15,
- (e) after the variation, policy Z is not a qualifying policy by virtue of paragraph A1(2) of that Schedule,
- (f) in relation to an event occurring after the variation, an individual is liable for tax charged under this Chapter on a gain from policy Z, and
- (g) but for the application of paragraph A1 of Schedule 15 in relation to policy Z, the individual would not have been liable because of section 485.

- (2) The gain on which the tax is charged in the case of the individual is reduced by the following amount—

$$G \times \frac{TPV}{TP}$$

where—

G is the amount of the gain (apart from this subsection),

TPV is the total amount of premiums payable under policy Z before the variation, and

TP is the total amount of premiums payable under policy Z before the chargeable event.

- (3) If section 528 also applies in the case of the individual in relation to the gain, subsection (2) is to be applied to the gain before section 528 and, accordingly, the reduction to be made under section 528 is to be determined by reference to the gain as reduced by subsection (2).
- (4) Section 463A(10) to (12) applies for the purposes of subsection (2).]

#### Textual Amendments

**F562** Ss. 463A-463E inserted (17.7.2013) by [Finance Act 2013 \(c. 29\)](#), [Sch. 9 para. 8](#)

*Person liable etc.*

#### 464 Person liable for tax: introduction

- (1) The person liable for any tax charged under this Chapter is the person indicated by—  
 section 465 (person liable: individuals),  
 section 466 (person liable: personal representatives), and  
 section 467 (person liable: UK resident trustees),  
 according to how the rights under the policy or contract are owned or held immediately before the chargeable event in question occurs.
- (2) References in those sections to the ownership or holding of those rights are references to their ownership or holding at that time.



*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (3) If there has been a surrender or assignment of only a part of or share in rights under the policy or contract, the references in this section and those sections to the rights are references to that part or share.
- (4) For cases where such surrenders or assignments are taken to occur, see—  
section 500 (events treated as part surrenders), and  
section 505 (assignments etc. involving co-ownership).
- (5) This section and sections 470 to 472 are subject to section 469(4) (application of this section and those sections where two or more persons are interested in the policy or contract in question).
- (6) See also—  
section 468 (non-UK resident trustees and foreign institutions),  
section 471 (determination of shares etc.), and  
section 472 (trusts created by two or more persons).

#### **465 Person liable: individuals**

- (1) An individual is liable for tax under this Chapter if the individual is UK resident [<sup>F563</sup>for the tax year] in which the gain arises and condition A, B or C is met.  
[<sup>F564</sup>(1A) But if the tax year is a split year as respects the individual, the individual is not liable for tax under this Chapter in respect of gains arising in the overseas part of that year (subject to section 465B).]
- (2) Condition A is that the individual beneficially owns the rights under the policy or contract in question.
- (3) Condition B is that those rights are held on non-charitable trusts which the individual created.
- (4) Condition C is that those rights are held as security for the individual's debt.
- (5) For the purposes of calculating the total income of an individual liable for tax under this Chapter, the amount charged is treated as income.
- (6) References in this Chapter to trusts which an individual created include references to trusts arising under any of the following provisions (and references to a settlor or to a person creating trusts are to be read accordingly)—
  - (a) section 11 of the Married Women's Property Act 1882 (c. 75),
  - (b) section 2 of the Married Women's Policies of Assurance (Scotland) Act 1880 (c. 26), and
  - (c) section 4 of the Law Reform (Husband and Wife) Act (Northern Ireland) 1964 (c. 23 (N.I.)).
- (7) For the right of an individual to recover certain amounts from the trustees of non-charitable trusts, see section 538 (recovery of tax from trustees).

#### **Textual Amendments**

**F563** Words in s. 465(1) substituted (17.7.2013) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 150](#)

**F564** S. 465(1A) inserted (with effect in accordance with Sch. 45 para. 153(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 84](#)

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

**Modifications etc. (not altering text)**

- C65** S. 465(6) applied by 1988 c. 1, Sch. 15 Pt. A1 para. A5(4)(a) (as inserted (17.7.2013) by [Finance Act 2013 \(c. 29\)](#), [Sch. 9 para. 2](#))
- C66** S. 465(6) applied by 1988 c. 1, Sch. 15 Pt. 1 para. B2(4) (as inserted (17.7.2013) by [Finance Act 2013 \(c. 29\)](#), [Sch. 9 para. 3](#))

**[<sup>F565</sup>465A] Amounts for which individuals liable to be treated as highest part of total income**

- (1) This section applies if—
- (a) an individual is liable for tax under this Chapter in respect of an amount, and
  - (b) the individual is treated by section 530 as having paid income tax at the [<sup>F566</sup> basic rate ] on the amount.
- (2) The amount is treated as the highest part of the individual's total income.
- (3) Subsection (2) has effect for all income tax purposes except the purposes of sections 535 to 537 (gains from contracts for life insurance etc: top slicing relief).
- (4) See section 1012 of ITA 2007 (relationship between highest part rules) for the relationship between—
- (a) the rule in subsection (2), and
  - (b) other rules requiring particular income to be treated as the highest part of a person's total income.]

**Textual Amendments**

- F565** S. 465A inserted (6.4.2007 with effect as stated in [s. 1034\(1\)](#) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), [ss. 1027, 1034](#), [Sch. 1 para. 529](#) (with transitional provisions and savings in [Sch. 2](#))
- F566** Words in [s. 465A\(1\)\(b\)](#) substituted (with effect in accordance with [Sch. 1 para. 65](#) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 1 para. 51](#)

**[<sup>F567</sup>465B] Temporary non-residents**

- (1) This section applies if an individual is temporarily non-resident.
- (2) The individual is liable for tax under this Chapter for the year of return in respect of any gain that meets the conditions in subsection (3).
- (3) The conditions are—
- (a) the gain arose in the temporary period of non-residence,
  - (b) it arose from a policy issued in respect of an insurance made, or from a contract made, before the start of that period,
  - (c) the chargeable event giving rise to it was neither a death nor a chargeable event treated as occurring under [section 525\(2\)](#),
  - (d) no-one is liable under [section 466](#) or [section 467](#) in respect of the gain,
  - (e) no-one is liable by virtue of [section 468](#) for either the year of return or an earlier tax year as a result of the gain, and
  - (f) the individual would have been liable under [section 465](#) in respect of the gain, applying the assumptions in subsection (4).

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (4) The assumptions are—
- (a) the individual was UK resident for the tax year in which the gain arose, and
  - (b) that tax year was not a split year as respects the individual.
- (5) If the individual is liable by virtue of subsection (2) in respect of a gain—
- (a) the amount of the gain in respect of which he or she is liable is the amount on which tax would have been charged under this Chapter applying the assumptions in subsection (4), but
  - (b) in determining that amount, section 528 must be applied ignoring those assumptions.
- (6) That amount is treated as income of the individual for the year of return.
- (7) If the gain arises from a policy or contract treated under section 473A as a single policy or contract, the date, for the purposes of subsection (3)(b), on which the insurance or contract is made is the date on which the first insurance is made in respect of which the connected policies were issued or, as the case may be, the date on which the first of the connected contracts is made.
- (8) This section does not apply to a gain if—
- (a) in relation to the policy or contract from which the gain arises, a terminal event occurs in the temporary period of non-residence or in the period of return,
  - (b) the chargeable event giving rise to the gain occurred before that terminal event,
  - (c) the chargeable event giving rise to the gain is one that is treated as occurring under section 509(1) as a result of the application of section 498(1)(a),
  - (d) section 498(1)(a) applies other than by virtue of section 500, and
  - (e) a person (whether or not the individual) is liable for tax under this Chapter (including by virtue of this section) in respect of any gain resulting from the terminal event.
- (9) Nothing in any double taxation relief arrangements is to be read as preventing the individual from being liable for tax under this Chapter in respect of any gain in respect of which the individual is liable for tax by virtue of subsection (2) (or as preventing a charge to tax on that gain from arising under this Chapter).
- (10) Part 4 of Schedule 45 to FA 2013 (statutory residence test: anti-avoidance) explains—
- (a) when an individual is to be regarded as “temporarily non-resident”, and
  - (b) what “the temporary period of non-residence” and “the period of return” mean.
- (11) In this section—
- “terminal event” means an event mentioned in section 499(3);
- “year of return” means the tax year that consists of or includes the period of return.”]

#### Textual Amendments

**F567** S. 465B inserted (with effect in accordance with Sch. 45 para. 153(3) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 140](#)

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

#### 466 Person liable: personal representatives

- (1) Personal representatives are liable for tax under this Chapter if the rights under the policy or contract are held by them and the condition in subsection (2) is met (and accordingly the gain is treated for income tax purposes as income of the personal representatives in that capacity).
- (2) The condition is that if an individual were liable for tax on a gain in respect of the policy or contract, section 530(1) (individual treated as having paid tax at the [<sup>F568</sup>basic rate]) would be disappplied as a result of—
  - (a) section 531(1) (exceptions from section 530 for policies and contracts specified in section 531(3)), or
  - (b) paragraph 109(2) of Schedule 2 (contracts in accounting periods beginning before 1st January 1992).
- (3) For cases where the condition in subsection (2) is not met, see section 664 of this Act and [<sup>F569</sup>section 947 of CTA 2009] (under which the gain is treated as part of the aggregate income of the estate for the purposes of Chapter 6 of Part 5 of this Act and [<sup>F569</sup>Chapter 3 of Part 10 of CTA 2009] respectively).

#### Textual Amendments

**F568** Words in s. 466(2) substituted (with effect in accordance with Sch. 1 para. 65 of the amending Act) by *Finance Act 2008 (c. 9), Sch. 1 para. 52*

**F569** Words in s. 466(3) substituted (with effect in accordance with s. 1329(1) of the amending Act) by *Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 1 para. 632 (with Sch. 2 Pts. 1, 2)*

#### 467 Person liable: UK resident trustees

- (1) Trustees are liable for tax under this Chapter if immediately before the chargeable event in question occurs they are UK resident and condition A, B, C or D is met.
- [<sup>F570</sup>(1A) If trustees are liable for tax under this Chapter, the gain is treated for income tax purposes as income of the trustees.]
- (2) Condition A is that the rights under the policy or contract are held by the trustees on charitable trusts.
- (3) Condition B is that—
  - (a) those rights are held by the trustees on non-charitable trusts, and
  - (b) one or more of the absent settlor conditions is met.
- (4) The absent settlor conditions are that the person who created the trusts—
  - (a) is non-UK resident,
  - [<sup>F571</sup>(aa) is UK resident but the gain arises in the overseas part of a tax year that is, as respects the person who created the trusts, a split year,]
  - (b) has died, or
  - (c) in the case of a company or foreign institution (see section 468(5)), has been dissolved or wound up or has otherwise come to an end.
- (5) Condition C is that—
  - (a) the rights under the policy or contract are held by the trustees on non-charitable trusts,

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (b) condition B does not apply, and
  - <sup>F572</sup>(c) neither section 465 nor section 466 applies.]
- (6) Condition D is that the rights under the policy or contract are held as security for a debt owed by the trustees.
- <sup>F573</sup>(7) If trustees are liable for tax under this Chapter, it is charged at the <sup>F574</sup>basic rate] if—
- (a) condition A is met, or
  - (b) condition D is met and the trustees are trustees of a charitable trust.]

#### Textual Amendments

- F570** S. 467(1A) inserted (with effect as stated in s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), ss. 1027, 1034, [Sch. 1 para. 531\(2\)](#) (with transitional provisions and savings in [Sch. 2](#))
- F571** S. 467(4)(aa) inserted (with effect in accordance with Sch. 45 para. 153(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 85](#)
- F572** S. 467(5)(c) substituted (with effect in accordance with Sch. 14 para. 18 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 14 para. 11](#)
- F573** S. 467(7) substituted (with effect as stated in s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), ss. 1027, 1034, [Sch. 1 para. 531\(3\)](#) (with transitional provisions and savings in [Sch. 2](#))
- F574** Words in s. 467(7) substituted (with effect in accordance with Sch. 1 para. 65 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 1 para. 53](#)

#### 468 Non-UK resident trustees and foreign institutions

- (1) This section applies if a gain is treated as arising under this Chapter and either—
- (a) trustees who are non-UK resident would be liable for tax in respect of the gain as a result of section 467 if the trustees were UK resident immediately before the chargeable event in question occurs, or
  - (b) immediately before that event occurs—
    - (i) a foreign institution beneficially owns a share in the rights,
    - (ii) the rights are held for the purposes of a foreign institution, or
    - (iii) a share in them is held as security for a foreign institution's debt.
- <sup>F575</sup>(2) Chapter 2 of Part 13 of ITA 2007 (which prevents avoidance of tax where a UK resident individual benefits from a transfer of assets) applies with the modifications specified in subsection (3) or (4).]
- (3) In a case within subsection (1)(a), <sup>F576</sup>Chapter 2 of Part 13 of ITA 2007 applies] as if—
- (a) the gain were income becoming payable to the trustees, and
  - (b) that income arose to the trustees in the tax year in which the gain arises.
- (4) In a case within subsection (1)(b), <sup>F576</sup>Chapter 2 of Part 13 of ITA 2007 applies] as if—
- (a) the gain were income becoming payable to the institution, and
  - (b) that income arose to the institution in the tax year in which the gain arises.
- (5) In this Chapter “foreign institution” means a company or other institution resident or domiciled outside the United Kingdom.
- (6) If there has been a surrender or assignment of only a part of or share in rights under the policy or contract, the references in this section to those rights are references to that part or share.

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

[<sup>F577</sup>(7) This section does not apply if someone is liable under section 465B in respect of the gain.]

#### Textual Amendments

- F575** S. 468(2) substituted (with effect in accordance with Sch. 46 para. 72 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 46](#)
- F576** Words in s. 468(3)(4) substituted (with effect as stated in [s. 1034\(1\)](#) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), [ss. 1027, 1034](#), [Sch. 1 para. 532\(b\)](#) (with transitional provisions and savings in [Sch. 2](#))
- F577** S. 468(7) inserted (with effect in accordance with Sch. 45 para. 153(3) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 141](#)

### 469 Two or more persons interested in policy or contract

- (1) This section applies if immediately before a chargeable event two or more persons have material interests in the rights under the policy or contract.
- (2) Section 470 sets out the circumstances in which persons have such interests for the purposes of this section (which correspond to the circumstances referred to in sections 465 to 468 <sup>F578</sup>...).
- (3) Section 463 (income charged) applies in the case of any of the persons with such interests as if the amount of the gain arising when the event occurs were such part of it as is proportionate to the share of the rights to which the person's interest relates.
- (4) Sections 464 to 468 (persons liable for tax etc.) apply in relation to each of those persons as if that person were the only person with such an interest at that time.
- (5) Section 539(1) (relief for deficiencies) applies in relation to each of those persons as if the amount of deficiency arising when that event occurs were such part of it as is proportionate to the share of the rights to which that person's interest relates.
- (6) If a person (“A”) has two or more material interests in the rights under a policy or contract, this section applies in the same way as where two or more persons have separate such interests, unless A—
  - (a) is the only person with such interests, and
  - (b) has all those interests in the same capacity.
- (7) If there has been a surrender or assignment of only a part of or share in rights under the policy or contract, the references to those rights in this section and sections 470 to 472 are references to that part or share.

#### Textual Amendments

- F578** Words in s. 469(2) omitted (with effect in accordance with Sch. 14 para. 18 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 14 para. 12](#)

### 470 Interests in rights under a policy or contract for section 469

- (1) This section sets out the circumstances in which a person has a material interest in the rights under a policy or contract for the purposes of section 469.

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

- (2) An individual has such an interest if—
  - (a) the individual beneficially owns a share in the rights,
  - (b) a share in them is held on non-charitable trusts which the individual created, or
  - (c) a share in them is held as security for the individual's debt.
- (3) A company has such an interest if—
  - (a) the company beneficially owns a share in the rights,
  - (b) a share in them is held on non-charitable trusts which the company created, or
  - (c) a share in them is held as security for the company's debt.
- (4) Personal representatives have such an interest if they hold a share in the rights.
- (5) Trustees of a charitable trust have such an interest if a share in the rights—
  - (a) is held by them, or
  - (b) is held as security for a debt owed by them.
- (6) Trustees of a non-charitable trust have such an interest if—
  - (a) a share in the rights is held by the trustees and one of the absent settlor conditions specified in section 467(4) is met,
  - (b) a share in the rights is held by them, none of those conditions is met and no individual, company or personal representatives have an interest in the share, or
  - (c) a share in them is held as security for a debt owed by the trustees.
- (7) A foreign institution has such an interest if—
  - (a) the institution beneficially owns a share in the rights,
  - (b) the rights are held for the institution's purposes, or
  - (c) a share in them is held as security for the institution's debt.

#### **471 Determination of shares etc.**

- (1) For the purposes of this Chapter—
  - (a) rights under a policy or contract which are beneficially owned by two or more persons jointly, and
  - (b) an interest in such rights which is so owned,are treated as if they were beneficially owned by those persons in equal shares.
- (2) Subsections (3) and (4) apply if immediately before a chargeable event the rights under the policy or contract are, or a share in those rights is, held as security for one or more debts owed by two or more persons.
- (3) Each of those persons is treated for the purposes of this Chapter as the sole debtor for a separate debt.
- (4) The appropriate share of the security for the actual debt or debts, so far as it consists of the rights under the policy or contract or a share in them, is treated for the purposes of this Chapter as the security for each separate debt.
- (5) In subsection (4) “the appropriate share” means—
  - (a) if there is only one actual debt for which the person is liable as between the debtors, a share proportionate to the share of that debt for which the person is so liable, and

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

- (b) if there are two or more such actual debts, a share proportionate to the share of the total such debts for which the person is so liable.
- (6) For the purposes of this section, property held for the purposes of a foreign institution is treated as being beneficially owned by the institution.
- (7) An interest in some or all of the rights under a policy or contract which is not a share in all those rights is treated for the purposes of this Chapter as such a share in those rights as may, on a just and reasonable apportionment, be regarded as representing the interest.

#### **472 Trusts created by two or more persons**

- (1) For the purposes of this Chapter, if immediately before a chargeable event—
  - (a) the rights under a policy or contract are held on non-charitable trusts created by two or more persons, or
  - (b) a share in those rights is so held,
 each of the persons is treated as the sole settlor of a separate share of the rights or share held on trusts.
- (2) Each settlor's separate share is proportionate to the share originating from that settlor of the whole of the property subject to the trusts immediately before the event.
- (3) If immediately before a chargeable event non-charitable trusts apply to property originating from different persons (for example, where property is added by different persons to an existing settlement)—
  - (a) as respects that event the trusts are taken to have been created by them all, and
  - (b) accordingly, each of them is treated as a sole settlor under subsection (1).
- (4) Property originates from a person for the purposes of subsections (2) and (3) if—
  - (a) it is property provided by the person for the purposes of the trusts,
  - (b) it is property representing such property, or
  - (c) in a case where property represents both property within paragraph (a) and other property, it is so much of that property as, on a just and reasonable apportionment, is to be taken to represent the property within paragraph (a).
- (5) References in subsection (4) to property representing other property include property representing accumulated income from other property.
- (6) For the purposes of this section, property is treated as provided by a person (“A”) if—
  - (a) it is provided by A directly or indirectly, or
  - (b) it is provided directly or indirectly by another person under reciprocal arrangements with A.
- (7) Property is not treated as provided by A if it is provided by A directly or indirectly under reciprocal arrangements with another person.

*Policies and contracts to which Chapter 9 applies*

#### **473 Policies and contracts to which Chapter 9 applies: general**

- (1) This Chapter applies to—
  - (a) policies of life insurance,



*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (b) contracts for life annuities, and
- (c) capital redemption policies.

(2) In this Chapter—

“capital redemption policy” means a contract made in the course of a capital redemption business, [<sup>F579</sup> within the meaning given by section 56(3) of FA 2012 ], and

“life annuity” means—

- (a) an annuity that—
  - (i) is a purchased life annuity for the purposes of Chapter 7 of this Part (see section 423), and
  - (ii) is not specified in section 718 (annuities excluded from the exemption for part of purchased life annuity payments under section 717), or
- (b) <sup>F580</sup> ...

(3) Subsection (1) is subject to—

- section 478 (exclusion of mortgage repayment policies),
- section 479 (exclusion of pension policies),
- section 480 (exclusion of excepted group life policies), and
- section 483 (exclusion of credit union group life policies).

#### Textual Amendments

**F579** Words in s. 473(2) substituted (17.7.2012) by [Finance Act 2012 \(c. 14\)](#), [Sch. 16 para. 127](#)

**F580** S. 473(2)(b) omitted (with effect in accordance with Sch. 14 para. 18 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 14 para. 17\(n\)](#)

#### [<sup>F581</sup> 473A] **Connected policies or contracts treated as single policy or contract**

- (1) Policies or contracts which are connected with each other are treated as a single policy or contract for the purposes of this Chapter.
- (2) A policy or contract is “connected” with another policy or contract if—
  - (a) they meet the condition in subsection (3) in relation to each other, and
  - (b) the terms on which either of them is issued are significantly more or less favourable than would reasonably be expected if the other were ignored or any policy or contract meeting the condition in that subsection in relation to either of them were ignored.
- (3) A policy or contract meets the condition in this subsection in relation to another policy or contract if—
  - (a) they are at any time simultaneously in force, and
  - (b) either of them is issued with reference to the other or with a view to enabling the other to be issued on particular terms or facilitating its being issued on those terms.
- (4) If—
  - (a) there is a policy or contract (“A”) with which two or more other policies or contracts are connected as a result of subsection (2), but

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

(b) the other policies or contracts are not connected with each other as a result of that subsection,

A and the other policies or contracts are (as a result of this subsection) to be regarded as “connected” with each other.]

#### Textual Amendments

**F581** S. 473A inserted (with effect in accordance with s. 11(4)-(6) of the amending Act) by [Finance Act 2012 \(c. 14\), s. 11\(1\)](#)

#### 474 Special rules: qualifying policies

- (1) In the application of this Chapter to policies of insurance that are qualifying policies for the purposes of Chapter 1 of Part 7 of ICTA (policies within the conditions in Schedule 15 to that Act that qualify for special tax treatment) special rules apply.
- (2) See, in particular—
  - section 485 (disregard of certain events in relation to qualifying policies),
  - section 503 (exception from section 501 for certain loans under qualifying policies),
  - section 542 (replacement of qualifying policies), and
  - section 543 (issue time of qualifying policy replacing foreign policy).
- (3) Policies within the definition of “foreign policy of life insurance” in section 476(3) that would otherwise be qualifying policies are treated for the purposes of this Chapter as not being qualifying policies in the cases specified in subsections (4) and (5).
- (4) Policies within paragraph (a) of that definition are so treated once the conditions in paragraph 24(3) of Schedule 15 to ICTA have ceased to be met with respect to them (conditions that are required to be met for certain policies issued by non-UK resident companies to be qualifying policies).
- (5) Policies within paragraph (b) of that definition immediately before an event do not count as qualifying policies in relation to that event.

#### 475 Special rules: personal portfolio bonds

- (1) In the application of this Chapter to personal portfolio bonds, certain special rules apply.
- (2) See, in particular—
  - section 515 (requirement for annual calculations in relation to personal portfolio bonds), and
  - sections 522 to 525 (method for making calculations and chargeable events where calculations show gains).
- (3) For the meaning of “personal portfolio bond” see section 516.

#### 476 Special rules: foreign policies

- (1) In the application of this Chapter to foreign policies of life insurance and foreign capital redemption policies, certain special rules apply.

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (2) See, in particular—  
section 474(3) to (5) (certain foreign policies treated as not being qualifying policies), [<sup>F582</sup> and]  
<sup>F583</sup> ...  
sections 531 to 534 (under which foreign policies are excepted from section 530 (income tax treated as paid etc.) subject to certain reliefs), <sup>F584</sup> ...  
<sup>F585</sup> ...
- (3) In this Chapter—  
“foreign policy of life insurance” means—  
(a) a policy of life insurance issued by a non-UK resident company, and  
(b) a policy of life insurance which forms part of the overseas life assurance business of an insurance company or friendly society <sup>F586</sup> ...,  
“foreign capital redemption policy” means—  
(a) a capital redemption policy issued by a non-UK resident company, and  
(b) a capital redemption policy which forms part of the overseas life assurance business of an insurance company <sup>F587</sup> ..., and  
“overseas life assurance business” has the [<sup>F588</sup> meaning given by section 61 of FA 2012].

#### Textual Amendments

- F582** Word in s. 476(2) inserted (with effect in accordance with Sch. 8 para. 7 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 8 para. 2\(a\)](#)
- F583** Words in s. 476(2) omitted (with effect in accordance with Sch. 8 para. 7 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 8 para. 2\(b\)](#)
- F584** Word in s. 476(2) omitted (with effect in accordance with Sch. 8 para. 7 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 8 para. 2\(c\)](#)
- F585** Words in s. 476(2) omitted (with effect in accordance with Sch. 8 para. 7 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 8 para. 2\(d\)](#)
- F586** Words in s. 476(3) omitted (with effect in accordance with Sch. 17 para. 27(3) of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 17 para. 27\(1\)\(a\)](#)
- F587** Words in s. 476(3) omitted (with effect in accordance with Sch. 17 para. 27(3) of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 17 para. 27\(1\)\(b\)](#)
- F588** Words in s. 476(3) substituted (17.7.2012) by [Finance Act 2012 \(c. 14\)](#), [Sch. 16 para. 128](#)

#### 477 Special rules: certain older policies and contracts

- (1) In the case of—  
(a) certain contracts made before particular dates, and  
(b) certain policies issued, or issued in respect of insurances made, before particular dates,  
this Chapter applies subject to Parts 6 and 7 of Schedule 2 (special provisions for older policies and contracts).
- (2) See the table in section 546 for the provisions affected.

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

#### **478 Exclusion of mortgage repayment policies**

- (1) This Chapter does not apply to a mortgage repayment policy.
- (2) In this section “mortgage repayment policy” means a policy of life insurance with the sole object of providing, on an individual's death or disability, a sum substantially the same as any amount then outstanding under a repayment mortgage—
  - (a) of the individual's residence, or
  - (b) of any premises occupied by the individual for the purposes of a business.
- (3) In this section “repayment mortgage” means a mortgage securing a principal amount which is repayable by instalments payable annually or at shorter regular intervals.

#### **479 Exclusion of pension policies**

This Chapter does not apply to a policy of insurance which—

- (a) constitutes a registered pension scheme, or
- (b) is issued or held in connection with such a scheme.

#### **480 Exclusion of excepted group life policies**

- (1) This Chapter does not apply to an excepted group life policy.
- (2) In this Chapter “group life policy” means a policy of life insurance whose terms provide—
  - (a) for the payment of benefits on the death of more than one individual, and
  - (b) for those benefits to be paid on the death of each of those individuals.
- (3) In this section “excepted group life policy” means a group life policy with respect to which the conditions specified in the following sections are met—
  - (a) section 481 (conditions about benefits), and
  - (b) section 482 (conditions about persons intended to benefit).

#### **481 Excepted group life policies: conditions about benefits**

- (1) Conditions A to D are the conditions referred to in section 480(3)(a) (definition of “excepted group life policy”).
- (2) Condition A is that under the terms of the policy a sum or other benefit of a capital nature is payable or arises—
  - (a) on the death in any circumstances of each of the individuals insured under the policy who dies under an age specified in the policy that does not exceed 75, or
  - (b) on the death, except in the same specified circumstances, of each of those individuals who dies under such an age.
- (3) Condition B is that under the terms of the policy—
  - (a) the same method is to be used for calculating the sums or other benefits of a capital nature payable or arising on each death, and
  - (b) any limitation on those sums or other benefits is the same in the case of any death.
- (4) Condition C is that the policy does not have, and is not capable of having, on any day—

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (a) a surrender value that exceeds the proportion of the amount of premiums paid which, on a time apportionment, is referable to the unexpired paid-up period beginning with the day, or
  - (b) if there is no such period, any surrender value.
- (5) In subsection (4) “the unexpired paid-up period”, in relation to a period beginning with a day, means the period beginning then and ending with the earliest subsequent day on which a payment of premium falls due under the policy or the term of the policy ends.
- (6) Condition D is that no sums or other benefits may be paid or conferred under the policy, except as mentioned in condition A or C.

#### **482 Excepted group life policies: conditions about persons intended to benefit**

- (1) Conditions A to C are the conditions referred to in section 480(3)(b) (definition of “excepted group life policy”).
- (2) Condition A is that any sums payable or other benefits arising under the policy must (whether directly or indirectly) be paid to or for, or conferred on, or applied at the direction of—
- (a) an individual or charity beneficially entitled to them, or
  - (b) a trustee or other person acting in a fiduciary capacity who will secure that the sums or other benefits are paid to or for, or conferred on, or applied in favour of, an individual or charity beneficially.
- (3) Condition B is that no person who is, or is connected with, an individual whose life is insured under the policy may, as a result of a group membership right relating to that individual, receive (directly or indirectly) any death benefit in respect of another individual whose life is so insured.
- (4) In subsection (3)—
- “death benefit in respect of an individual” means any sums or other benefits payable or arising under the policy on the individual's death or anything representing any such sums or benefits, and
- “group membership right”, in relation to an individual insured by a group life policy, means any right (including the right of any person to be considered by trustees in their exercise of a discretion) that is referable to that individual being one of the individuals whose lives are insured by the policy.
- (5) Condition C is that a tax avoidance purpose is not the main purpose, or one of the main purposes, for which a person is at any time—
- (a) the holder, or one of the holders, of the policy, or
  - (b) the person, or one of the persons, beneficially entitled under the policy.
- (6) In subsection (5)—
- <sup>F589</sup> .....
- “tax avoidance purpose” means any purpose that consists in securing a tax advantage (whether for the holder of the policy or any other person).

[<sup>F590</sup>(7) In this section “tax advantage” has the meaning given by [<sup>F591</sup>section 1139 of CTA 2010].]

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

### Textual Amendments

- F589** S. 482(6): definition of 'tax advantage' repealed (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), ss. 1027, 1031, 1034, [Sch. 1 para. 533\(a\)](#), [Sch. 3 Pt. 1](#) (with transitional provisions and savings in [Sch. 2](#))
- F590** S. 482(7) inserted (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), ss. 1027, 1034, [Sch. 1 para. 533\(b\)](#), (with transitional provisions and savings in [Sch. 2](#))
- F591** Words in s. 482(7) substituted (1.4.2010) (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), [Sch. 1 para. 468](#) (with [Sch. 2](#))

## 483 Exclusion of credit union group life policies

- (1) This Chapter does not apply to a credit union group life policy.
- (2) In this section “credit union group life policy” means a group life policy with the sole object of providing, on the death or disability of any of the individuals insured under it, a sum substantially the same as any amount then outstanding under a loan made to that individual by a credit union.
- (3) In this section “credit union” means a society registered as a credit union under—
  - (a) the Industrial and Provident Societies Act 1965 (c. 12), or
  - (b) the Credit Unions (Northern Ireland) Order 1985 (S.I. 1985/1205 (N.I. 12)).

*When chargeable events occur: general*

## 484 When chargeable events occur

- (1) The following are chargeable events—
  - (a) in the case of any kind of policy or contract—
    - (i) the surrender of all rights under the policy or contract,
    - (ii) the assignment of all those rights for money or money's worth,
    - (iii) the falling due of a sum payable as a result of a right under a policy or contract to participate in profits, if there are no remaining rights under it,
    - (iv) a chargeable event treated as occurring under section 509(1) (chargeable events in certain cases where periodic calculations show gains),
    - (v) a surrender or assignment treated as a chargeable event under section 514(1) (chargeable events where transaction-related calculations show gains), and
    - (vi) a chargeable event treated as occurring under section 525(2) (chargeable events where annual personal portfolio bond calculations show gains),
  - (b) in the case of a policy of life insurance, a death giving rise to benefits under it,
  - (c) in the case of a policy of life insurance or a capital redemption policy, its maturity,
  - (d) in the case of a contract for a life annuity which provides for the payment of a capital sum on death, the death, and

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

- (e) in the case of a contract for a life annuity which provides for a capital sum to be taken as a complete alternative to the annuity payments (or any further annuity payments), taking the capital sum.
- (2) Subsection (1) is subject to—
- section 485 (disregard of certain events in relation to qualifying policies),
  - section 486 (exclusion of maturity of capital redemption policies in certain circumstances),
  - section 487 (disregard of certain assignments), and
  - section 488 (disregard of certain events following alterations of life insurance policy terms).
- (3) See also section 490 (last payment under guaranteed income bonds etc. treated as total surrender).

#### **485 Disregard of certain events in relation to qualifying policies**

- (1) In relation to a qualifying policy, the events that count as chargeable events are restricted as follows.
- (2) Death or the maturity of the policy is only a chargeable event if—
- (a) the policy has been converted into a paid-up policy before the end of whichever of the following periods ends sooner—
    - (i) 10 years from the making of the insurance, and
    - (ii) three-quarters of the term for which the policy is to run (assuming it is not ended by death or disability), or
  - (b) there is a company interest in the rights under the policy immediately before the event occurs.
- (3) An event specified in section 484(1)(a)(i) to (iv) (surrender or assignment of all rights, final participation in profits and chargeable event where periodic calculation shows gain) is only a chargeable event if—
- (a) the event occurs or the policy has been converted into a paid-up policy before the end of whichever of the periods specified in subsection (2)(a)(i) and (ii) ends sooner, or
  - (b) there is a company interest in the rights under the policy immediately before the event occurs.
- (4) For the purposes of subsections (2)(b) and (3)(b) there is a company interest in the rights under a policy if—
- (a) a company beneficially owns them,
  - (b) they are held on trusts created by a company, or
  - (c) they are held as security for a company's debt.
- (5) An event specified in section 484(1)(a)(v) (part surrenders and assignments: chargeable events where transaction-related calculations show gains) is only a chargeable event if—
- (a) the time as at which the calculation showing the gain is required to be made under section 498(2) is before the end of whichever of the periods specified in subsection (2)(a)(i) and (ii) ends sooner, or
  - (b) the policy has been converted into a paid-up policy before that time.

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (6) If the policy has been varied so as to increase the premiums payable under it, subsections (2), (3) and (5) apply as if they referred instead to the following periods—
- (a) 10 years from the variation taking effect, and
  - (b) three-quarters of the term for which the policy is to run from the variation (assuming it is not ended by death or disability).
- (7) If a qualifying policy is substituted for another policy in circumstances where paragraph 25(1) or (3) of Schedule 15 to ICTA applies (replacement of a policy issued by a non-UK resident company by a policy which is not so issued), the surrender of the rights conferred by the other policy is not a chargeable event.

[<sup>F592</sup>(8) This section is subject to sections 463A and 463C.]

#### Textual Amendments

**F592** S. 485(8) inserted (17.7.2013) by [Finance Act 2013 \(c. 29\)](#), [Sch. 9 para. 9](#)

### <sup>F593</sup>**486 Exclusion of maturity of capital redemption policies in certain circumstances**

.....

#### Textual Amendments

**F593** S. 486 omitted (with effect in accordance with Sch. 14 para. 18 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 14 para. 13](#)

### **487 Disregard of certain assignments**

For the purposes of this Chapter, an assignment of rights under a policy or contract or a share in such rights is ignored if it is—

- (a) by way of security for a debt,
- (b) on the discharge of a debt secured by the rights or share, or
- (c) between spouses [<sup>F594</sup>or civil partners] living together.

#### Textual Amendments

**F594** Words in s. 487 inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), [reg. 185](#)

### **488 Disregard of some events after alterations of life insurance policy terms**

- (1) This section applies if—
  - (a) the terms of a policy of life insurance are altered,
  - (b) the alteration is not itself a chargeable event, and
  - (c) the conditions specified in section 489 are met.
- (2) After the alteration a chargeable event is only treated as occurring in relation to the policy if one would have been treated as occurring had the alteration not occurred.



---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

- (3) If the alteration results in the policy being regarded as replaced by another, this section and section 489 apply as if they were a single policy.

#### **489 Conditions applicable to alterations of life insurance policy terms**

- (1) Conditions A to E are the conditions referred to in section 488.
- (2) Condition A is that the policy was issued in respect of an insurance made at least 20 years before the alteration.
- (3) Condition B is that the alteration results from a decision by the insurance company that it will not collect further premiums due from any of the holders under a number of policies of the same description if a particular period of time has elapsed since the contracts were made.
- (4) Condition C is that no premiums are payable or paid after the date of the alteration.
- (5) Condition D is that the benefits to be provided under the policy after the alteration are the same or substantially the same as those before the alteration.
- (6) A deduction from the benefits is ignored for the purposes of subsection (5) if it does not exceed the total net premiums which, apart from the alteration, would have been payable under the policy between—
- (a) the date of the alteration, and
  - (b) the date on which the benefits become payable.
- (7) In subsection (6) “net premiums” means the premiums reduced by any tax relief which would have been due on the premiums had they been paid.
- (8) Condition E is that the premiums payable under the policy before the alteration—
- (a) have not been reduced to a nominal amount on the exercise of an option, in circumstances where the reduction is connected with a right to surrender in part the rights conferred by the policy after the date of the reduction, and
  - (b) are not capable of being so reduced in such circumstances.

#### **490 Last payment under guaranteed income bonds etc. treated as total surrender**

- (1) This section applies to a payment that would fall within section 500(d) (payments under guaranteed income bonds etc. treated as surrenders of part of the rights under the contract) apart from section 504(5) (which prevents payments comprising the whole of the last benefit to be paid under such contracts from being so treated).
- (2) The payment is treated for the purposes of this Chapter as the surrender of all the rights under the contract.
- (3) A payment to which this section applies is not regarded as interest or as an annual payment for any income tax purposes.

#### *Calculating gains: general*

#### **491 Calculating gains: general rules**

- (1) This section deals with calculating—

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (a) whether a gain has arisen on a chargeable event within section 484(1)(a)(i) to (iii) or (b) to (e) (surrender or assignment of all rights, final participation in profits, death, maturity, or taking a capital sum as a complete alternative to annuity payments), and
- (b) if so, the amount of the gain.
- (2) There is a gain if TB exceeds the sum of TD and PG where—
- TB is the total benefit value of the policy or contract (see section 492),
- TD is the total allowable deductions for the policy or contract (see section 494), and
- PG is the total amount of gains treated as arising on calculation events occurring in relation to the policy or contract before the chargeable event in question <sup>F595</sup> but only in so far as those gains have been, or fall to be, taken into account in calculating the total income of a person as a result of this Chapter or Chapter 2 of Part 13 of ITA 2007 ] .
- (3) The gain is equal to the excess.
- (4) In this Chapter—
- “calculation event” means an excess event, a part surrender or assignment event or a personal portfolio bond event,
- “excess event” means a chargeable event within section 509(1),
- “part surrender or assignment event” means a chargeable event within section 514(1), and
- “personal portfolio bond event” means a chargeable event within section 525(2).
- (5) The reference to the policy in the definition of “PG” in subsection (2) includes any related policy.
- (6) For the purposes of this Chapter, a policy (“policy A”) is a related policy as respects another (“policy B”) if—
- (a) policy B is a new policy (as defined in paragraph 17 of Schedule 15 to ICTA (substitutions and variations)) in relation to policy A, or
- (b) policy B is a new policy (as so defined) in relation to another policy (“policy C”) and policy C is a new policy (as so defined) in relation to policy A,
- and so on.
- (7) See section 539 (relief for deficiencies) if there is no gain under subsection (2), but a gain arose on a calculation event occurring in relation to the policy or contract before the chargeable event in question.
- (8) For the rules about calculating gains on calculation events, see—
- section 507 (method for making periodic calculations under section 498),
- section 511 (method for making transaction-related calculations under section 510), and
- section 522 (method for making annual calculations under section 515).

#### Textual Amendments

**F595** Words in s. 491(2) inserted (with effect in accordance with s. 11(4)-(6) of the amending Act) by Finance Act 2012 (c. 14), s. 11(2)

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

## **492 The total benefit value of a policy or contract**

- (1) To calculate the total benefit value of a policy or contract for the purposes of section 491, add together—
  - (a) its value in accordance with section 493,
  - (b) any capital sum paid under the policy or contract before the event,
  - (c) the value of any other benefit of a capital nature conferred by the policy or contract before the event,
  - (d) the amount of any loan made before the event, the making of which is treated as the surrender of a part of the rights under the policy or contract under section 500(c) (loans by insurers to which section 501 applies),
  - (e) in the case of a guaranteed income bond contract, as defined in section 504(7), any amount paid before the event, the payment of which is treated as a surrender of a part of the rights under the contract under section 500(d) of this Act (payments by insurers under such contracts), and
  - (f) in the case of an assignment, the amount or value of any share in the rights under the policy or contract that was assigned before the event.
- (2) References to the policy in subsection (1)(b) to (e) include any related policy.
- (3) This section is subject to—
  - section 495 (disregard of certain amounts in calculating gains under section 491),
  - and
  - section 497 (disregard of trivial inducement benefits).

## **493 The value of a policy or contract**

- (1) In the case of a chargeable event within section 484(1)(a) (i) or (iii), (c), (d) or (e) (surrender of all rights, final participation in profits, maturity or, in the case of a contract for a life annuity that provides for taking a capital sum on death, death or taking a capital sum as a complete alternative to annuity payments), the value of the policy or contract is the total of—
  - (a) any sum payable because of the event, and
  - (b) in the case of a policy of life insurance or a capital redemption policy, any value or amount specified in subsection (2).
- (2) The value or amount is—
  - (a) if a right to periodical payments arises because of the event, an amount equal to the capital value of those payments at the time the right arises, and
  - (b) the amount or value of any other benefits arising because of the event.
- (3) Subsection (1) does not apply to a surrender treated as made under section 490 (last payment under guaranteed income bond contracts etc. treated as total surrender).
- (4) In that case the value of the rights treated as surrendered is treated as being equal to the amount of the payment treated as the surrender.
- (5) In the case of a chargeable event within section 484(1)(a)(ii) (assignment of all rights), the value of the policy or contract is the amount or value of the consideration for the assignment.

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

- (6) But an assignment of a policy of life insurance or a contract for a life annuity between connected persons is treated as made for a consideration equal to the market value of the policy or contract.
- (7) In the case of a chargeable event within section 484(1)(b) (death), the value of the policy is its surrender value immediately before the death.
- (8) This section is subject to—
  - section 495 (disregard of certain amounts in calculating gains under section 491),
  - and
  - section 497 (disregard of trivial inducement benefits).

#### **494 The total allowable deductions for a policy or contract**

- (1) To calculate the total allowable deductions for a policy or contract for the purposes of section 491—

##### *Step 1*

Add together—

- (a) the total amount of premiums paid under the policy or contract before the event, and
- (b) if the event occurs at the end of the final insurance year (see section 499), the amount of any repayment or partial repayment of a loan treated under section 500(c) as a surrender of a part of the rights under the policy or contract.

##### *Step 2*

In the case of a contract for a life annuity under which any annuity payments have been made, reduce the result of step 1 by so much of those payments as is—

- (a) exempt under section 717 (exemption for part of purchased life annuity payments), or
- (b) determined to be the capital element in those payments under section 658 of ICTA.

- (2) In the case of a capital redemption policy which has been assigned for money or money's worth before the event, the reference in paragraph (a) of step 1 in subsection (1) to the total amount of premiums paid under the policy or contract before the event is a reference to the total of—
  - (a) the amount or value of the consideration given for the last such assignment, and
  - (b) the total amount of premiums paid under the policy or contract after that assignment and before the event.
- (3) References to the policy in paragraphs (a) and (b) of step 1 in subsection (1) and in subsection (2) include any related policy.
- (4) Subsection (1) is subject to—
  - section 495 (disregard of certain amounts in calculating gains under section 491),
  - and
  - section 496 (modification of this section: qualifying endowment policies held as security for company debts).

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

#### **495 Disregard of certain amounts in calculating gains under section 491**

- (1) A retained replacement policy premium is ignored in calculating—
  - (a) the total benefit value of a policy under section 492(1), or
  - (b) the total allowable deductions for a policy under section 494(1).
- (2) In subsection (1) “retained replacement policy premium” means a sum which—
  - (a) has been payable under a policy which is one of two or more policies treated as a single policy under section 542(1) (qualifying policies and policies replacing them), and
  - (b) is such a sum as is mentioned in section 542(4) and meets the condition in that section.
- (3) For the purposes of section 492(1)(b) and (c) (total benefit value: capital sums and benefits paid or conferred before the event in question), any sum paid or benefit conferred under a policy is ignored if it is attributable to a person's disability.
- (4) For the purposes of section 492(1)(f) (total benefit value: assignments), a share assigned before the event is ignored if—
  - (a) it was assigned in an insurance year (see section 499) that began on or after 6th April 2001, and
  - (b) it was not assigned for money or money's worth.
- (5) The reference to the policy in subsection (3) includes any related policy.

#### **496 Modification of section 494: qualifying endowment policies held as security for company debts**

- (1) This section applies if—
  - (a) a chargeable event within section 484(1)(a)(i), (b) or (c) (surrender of all rights, death or maturity) occurs in relation to a qualifying endowment policy (see subsection (7)),
  - (b) immediately before the event occurs the rights under the policy are held as security for a debt owed by a company, and
  - (c) the company debt conditions are met (see subsection (4)).
- (2) If—
  - (a) the amount of the debt exceeds the amounts referred to in paragraph (a) of step 1 in section 494(1) (the total amount of premiums paid before the event), and
  - (b) the company makes a claim within two years after the end of the accounting period in which the chargeable event occurs,section 494 applies as if that paragraph referred instead to the amount of the debt.
- (3) If the amount of the debt varied during the policy period, it is to be taken for the purposes of subsection (2) as the lowest amount at which it stood during that period.
- (4) The company debt conditions are that—
  - (a) throughout the policy period, the rights conferred by the policy have been held as security for a debt owed by the company referred to in subsection (1)(b),
  - (b) the capital sum payable under the policy in the event of death during the term of the policy is not less than the amount of the debt when the insurance was made,

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (c) any sum payable under the policy as a result of the event is applied in repayment of the debt (except so far as it exceeds the debt), and
  - (d) the debt was incurred to pay money applied for the purposes of the company's trade premises.
- (5) Money is applied for the purposes of a company's trade premises if it is applied—
- (a) in purchasing an estate or interest in land to be occupied by the company for the purposes of a trade carried on by it, or
  - (b) for the purpose of the construction, extension or improvement (but not the repair or maintenance) of buildings which are or are to be so occupied.
- (6) If during the policy period the company incurs a debt by borrowing in order to repay another debt, references to a debt in subsections (3) and (4) include both debts where appropriate.
- (7) In this section—
- “accounting period” is to be read in accordance with [<sup>F596</sup>Chapter 2 of Part 2 of CTA 2009],
  - “the policy period” means the period beginning with the making of the insurance and ending immediately before the chargeable event, and
  - “qualifying endowment policy” means a policy which is a qualifying policy as a result of paragraph 2 of Schedule 15 to ICTA.

#### Textual Amendments

**F596** Words in s. 496(7) substituted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 633** (with Sch. 2 Pts. 1, 2)

#### 497 Disregard of trivial inducement benefits

- (1) A benefit other than a payment of money is ignored for the purposes of calculating any gain under this Chapter if—
- (a) it is provided by an insurance company for any person as an inducement for the person to enter into—
    - (i) a policy or contract to which this Chapter applies, or
    - (ii) a later transaction in relation to such a policy or contract, and
  - (b) the condition specified in subsection (2) is met.
- (2) The condition is that the total cost to the insurance company of providing the benefit and any other such benefits provided by it at any time in connection with the policy or contract, or any linked policy or contract, does not exceed £30.
- (3) The Treasury may by order amend the sum for the time being specified in subsection (2) so as to increase it.
- (4) For the purposes of this section, a policy or contract is linked to another policy or contract if—
- (a) their terms are substantially identical, and
  - (b) when one of them is issued or made the issue or making of the other is contemplated.

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

*Part surrenders and assignments: periodic calculations and excess events*

**498 Requirement for periodic calculations in part surrender or assignment cases**

- (1) This section applies if—
  - (a) a part of, or share in, the rights under a policy or contract is surrendered, or
  - (b) such a part or share is assigned for money or money's worth.
- (2) A calculation is to be made in accordance with section 507 in relation to the policy or contract as at the end of the insurance year in which the surrender or assignment occurs (see section 499) to determine—
  - (a) whether a gain has arisen on the policy or contract, and
  - (b) if so, the amount of the gain.
- (3) For cases where surrenders and assignments of a part of the rights under a policy or contract are treated as occurring where they would not otherwise do so, see sections 500 to 506.

**499 Meaning of “insurance year” and “final insurance year”**

- (1) In this Chapter “insurance year”, in relation to a policy or contract, means the 12 months beginning with—
  - (a) the date on which the insurance or contract is made, or
  - (b) any anniversary of that date.
- (2) Subsection (1) is subject to subsections (3) and (5).
- (3) An event referred to in section 484(1)(a)(i) or (iii) or (b) to (e) (surrender of all rights, final participation in profits, death, maturity, or taking a capital sum as a complete alternative to annuity payments) is treated as ending the insurance year in which it occurs.
- (4) In this Chapter “final insurance year” means an insurance year that is ended as a result of subsection (3).
- (5) But if, as a result of subsection (3), an insurance year would begin and end in the same tax year—
  - (a) that insurance year and the previous insurance year are treated as one insurance year, and
  - (b) “final insurance year” needs to be read accordingly.

**500 Events treated as part surrenders**

The following events are treated for the purposes of this Chapter as a surrender of a part of the rights under the policy or contract in question—

- (a) the falling due of a sum payable as a result of a right under a policy or contract to participate in profits where further rights remain under it,
- (b) in the case of a contract for a life annuity which provides for a capital sum to be taken as an alternative in part to the annuity payments, taking the capital sum,
- (c) the making of a loan to which section 501 applies, and
- (d) the making of a payment to which section 504 applies (payments by insurers under guaranteed income bonds etc.).

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

## 501 Part surrenders: loans

- (1) This section applies to a loan (and so it falls within section 500(c)) if it is made by the insurer under a policy or contract—
  - (a) to an individual falling within subsection (2), [<sup>F597</sup> or ]
  - (b) to trustees falling within subsection (3), or
  - <sup>F598</sup>(c) .....
- (2) An individual falls within this subsection at any time if, were a gain to arise in respect of the policy or contract at that time, the individual would be liable for tax under this Chapter as a result of section 465 (person liable: individuals).
- (3) Trustees fall within this subsection at any time if, were a gain to arise in respect of the policy or contract at that time, they would be liable for tax under this Chapter as a result of section 467 (person liable: UK resident trustees).
- <sup>F599</sup>(4) .....
- (5) For the purposes of subsection (1), a loan—
  - (a) is treated as made by an insurer if it is made by arrangement with it, and
  - (b) is treated as made to an individual, trustees or a company if it is made at the individual's, trustees' or company's direction.
- (6) In this section “insurer”, in relation to a policy or contract, means the body issuing the policy or with which the contract is made.
- (7) This section is subject to—
  - (a) section 502 (exception for loans to buy life annuities), and
  - (b) section 503 (exception for certain loans under qualifying policies).

### Textual Amendments

**F597** Word in s. 501(1)(a) inserted (with effect in accordance with Sch. 14 para. 18 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 14 para. 14\(a\)](#)

**F598** S. 501(1)(c) omitted (with effect in accordance with Sch. 14 para. 18 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 14 para. 14\(a\)](#)

**F599** S. 501(4) omitted (with effect in accordance with Sch. 14 para. 18 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 14 para. 14\(b\)](#)

## 502 Exception from section 501 for loans to buy life annuities

- (1) Section 501 does not apply to a loan made under a contract for a life annuity if all the interest on the loan is eligible for tax relief.
- (2) If part of the interest is eligible for tax relief, section 501 only applies to the part of the loan carrying ineligible interest.
- (3) For the purposes of this section, interest is eligible for tax relief if it is eligible for relief under section 353 of ICTA (general provision for relief for interest) as a result of section 365 of ICTA (loan to buy life annuity).



---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

### **503 Exception from section 501 for certain loans under qualifying policies**

- (1) Section 501 does not apply to a loan made by the body issuing a qualifying policy if either or both of conditions A and B are met.
- (2) Condition A is that interest is payable on the loan at a commercial rate.
- (3) Condition B is that the loan was made—
  - (a) before 6th April 2000,
  - (b) to a full-time employee of the body issuing the policy, and
  - (c) to assist the employee in purchasing or improving a dwelling to be used as the employee's only or main residence.

### **504 Part surrenders: payments under guaranteed income bonds etc.**

- (1) This section applies to so much of any payment of an amount by an insurer under a guaranteed income bond contract as meets conditions A to C (and so it falls within section 500(d)).
- (2) Condition A is that it is a sum which, but for subsection (6), would be treated for income tax purposes as interest or an annual payment.
- (3) Condition B is that it is not a sum paid or falling to be paid because of provisions of the guaranteed income bond contract which, taken alone, would constitute a contract of insurance—
  - (a) within Part 1 or 2 of Schedule 1 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544), but
  - (b) not within paragraph 1 or 3 of Part 2 of that Schedule (life and annuity contracts including certain linked long-term contracts).
- (4) Condition C is that it does not represent late payment interest.
- (5) This section does not apply if the payment comprises the whole of the last benefit to be paid under the contract (ignoring late payment interest).
- (6) A sum to which this section applies is not regarded as interest or as an annual payment for any income tax purposes.
- (7) In this section—

“guaranteed income bond contract” means a policy of life insurance that is a contract of insurance which—

  - (a) is within paragraph 1 or 3 of Part 2 of Schedule 1 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, and
  - (b) is neither an annuity contract nor a contract effected in the course of a company's pension business,

“late payment interest”, in relation to a contract, means interest on an amount payable under the contract which is paid for a period beginning on or after the date of the occurrence as a result of which the amount is payable, and

“pension business” has the meaning given by [F600 section 58 of FA 2012 ] (or the corresponding enactment in force when the contract was effected).

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

### Textual Amendments

**F600** Words in s. 504(7) substituted (17.7.2012) by [Finance Act 2012 \(c. 14\)](#), [Sch. 16 para. 129](#)

## 505 Assignments etc. involving co-ownership

- (1) For the purposes of this Chapter (except this section and section 506)—
  - (a) a transaction to which this section applies is taken to be one or more assignments of part only of the rights under the policy or contract in respect of which the transaction occurs, and
  - (b) those assignments are the ones specified in section 506.
- (2) If subsection (1) applies to a transaction that is an assignment—
  - (a) of the whole of the rights under a policy or contract, or
  - (b) of a part of or a share in those rights,
 any reference to the assignment in this Chapter (except this section and section 506) is to be read as a reference to the assignment or assignments that the transaction is taken to be under subsection (1).
- (3) This section applies to a transaction in respect of which conditions A and B and either condition C or D or E are met.
- (4) Condition A is that—
  - (a) immediately before the transaction the whole or part of, or a share in, the rights under the policy or contract (“the ownership interest”) was in the beneficial ownership of one person or of two or more persons jointly (“the old ownership”), and
  - (b) as a result of the transaction the ownership interest becomes beneficially owned by one person or by two or more persons jointly or in common (“the new ownership”).
- (5) Condition B is that at least one person who is a member of the old ownership is also a member of the new ownership.
- (6) Condition C is that there is only one member of the old ownership and there are two or more members of the new ownership.
- (7) Condition D is that there are two or more members of the old ownership and at least one of them is not a member of the new ownership.
- (8) Condition E is that there are two or more members of the old ownership and the share in the ownership interest of at least one of those members (see section 506(5)) exceeds that member's share in the ownership interest as a member of the new ownership (see section 506(6)).

## 506 Assignments occurring when there is a co-ownership transaction

- (1) This section sets out the assignment or assignments that are taken to occur under section 505 when there is a transaction to which that section applies (“a co-ownership transaction”).
- (2) If there is only one member of the old ownership, that member is to be treated as if the co-ownership transaction had been the assignment by that member of so much of

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

the ownership interest as exceeds that member's share in the ownership interest as a member of the new ownership.

- (3) If there are two or more members of the old ownership, each such member who is not a member of the new ownership is to be treated as if the co-ownership transaction had been the assignment by that member of that member's share in the ownership interest.
- (4) If there are two or more members of the old ownership, each such member whose share in the ownership interest as a member of the old ownership exceeds that member's share in the ownership interest as a member of the new ownership is to be treated as if the co-ownership transaction had been the assignment by that member of that excess.
- (5) If the old ownership consists of two or more persons beneficially entitled jointly, the members of the old ownership are to be treated as if the ownership interest had been in their beneficial ownership in equal shares instead of jointly.
- (6) If the new ownership consists of two or more persons beneficially entitled jointly, the members of the old ownership are to be treated as if the result of the co-ownership transaction had been that the ownership interest was in the beneficial ownership of the members of the new ownership in equal shares instead of jointly.
- (7) In this section “the ownership interest”, “the old ownership” and “the new ownership” are to be read as indicated in section 505(4).

## **507 Method for making periodic calculations under section 498**

- (1) This section deals with the calculation required to be made in relation to a policy or contract as at the end of an insurance year under section 498(2) (requirement for periodic calculations in part surrender and assignment cases) to determine—
  - (a) whether a gain has arisen, and
  - (b) if so, the amount of the gain.
- (2) There is a gain if the net total value of rights surrendered or assigned exceeds the net total allowable payments (see subsections (4) and (5)).
- (3) The gain is equal to the excess.
- (4) To calculate the net total value of rights surrendered or assigned—

*Step 1*

Find—

- (a) the value, as at the time of its surrender or assignment, of any part of or share in the rights under the policy or contract which has been surrendered at any time or assigned at any time for money or money's worth, and
- (b) the value, as at the time of its assignment, of any part of or share in the rights under the policy or contract which has been assigned otherwise than for money or money's worth in an insurance year beginning on or before 5th April 2001,

in each case determining the value in accordance with section 508.

*Step 2*

Add together those values.

*Step 3*

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

If any previous calculation events (other than personal portfolio bond events) have occurred in relation to the policy or contract—

- (a) add together each such value which has been brought into account under this subsection on those events, and
- (b) subtract the result of paragraph (a) from the result of step 2.

(5) To calculate the net total allowable payments—

*Step 1*

Find the allowable element in each allowable payment by multiplying the amount of the payment by—

$$\frac{X}{20}$$

where X is the number of insurance years in the period beginning with the year in which the payment is made and ending with the insurance year as at the end of which the calculation under this section is required to be made or, if it is less, 20.

*Step 2*

Add together the allowable elements for all allowable payments.

*Step 3*

Add together all the allowable elements brought into account under this subsection on a previous calculation event.

*Step 4*

Subtract the result of step 3 from the result of step 2.

(6) In this section—

“allowable payment” means a premium, other than a retained replacement policy premium, and

“retained replacement policy premium” has the meaning given in section 495(2).

## **508 The value of rights partially surrendered or assigned**

- (1) For the purposes of sections 507, 511 and 512, where any part of or share in rights conferred by a policy or contract is surrendered, the value of the part of or share in the rights surrendered is the amount or value of the sum payable or other benefits arising because of the surrender, except where subsection (2) or (3) applies.
- (2) In the case of a surrender within section 500(c) (loans by insurers to which section 501 applies), the value for those purposes is an amount equal to the loan.
- (3) In the case of a surrender within section 500(d) (payments by insurers under guaranteed income bonds etc.), the value for those purposes is the amount to which section 504 applies.

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

- (4) For the purposes of sections 507, 511 and 512, where any part of or share in rights conferred by a policy or contract is assigned, the value of the part or share as at the time of the assignment is its surrender value at that time.
- (5) For the requirement to ignore certain benefits, see section 497 (disregard of trivial inducement benefits).

### **509 Chargeable events in certain cases where periodic calculations show gains**

- (1) If the calculation in section 507 shows that a gain has arisen as at the end of the insurance year, the gain is treated as arising on the occurrence of a chargeable event at the end of that year, unless condition A, B or C is met.
- (2) Subsection (1) is subject to section 485(3) (which restricts the circumstances in which such events occur in relation to qualifying policies).
- (3) Condition A is that during the insurance year there has been an assignment for money or money's worth of part of or a share in the rights conferred by the policy or contract.
- (4) Condition B is that during the insurance year there has been both—
  - (a) a surrender of part of or a share in the rights conferred by the policy or contract, and
  - (b) a later assignment, otherwise than for money or money's worth, of the whole or part of or a share in the rights conferred by the policy or contract.
- (5) Condition C is that the insurance year is the final insurance year.
- (6) See section 510 (transaction-related calculations in certain part surrender and assignment cases) if one or both of conditions A and B are met.

*Transaction-related calculations and part surrender or assignment events*

### **510 Requirement for transaction-related calculations in certain part surrender and assignment cases**

- (1) This section applies if—
  - (a) the calculation in section 507 shows that a gain has arisen as at the end of the insurance year, but
  - (b) one or both of the conditions specified in section 509(3) and (4) are met (and so no chargeable event is treated as occurring at the end of the year under section 509).
- (2) A calculation is to be made in accordance with section 511 in relation to each relevant transaction during the insurance year to determine—
  - (a) whether the transaction resulted in a gain arising on the policy or contract, and
  - (b) if so, the amount of the gain.
- (3) In this section and sections 511 to 514 “relevant transaction” means—
  - (a) a surrender of part of or a share in the rights under the policy or contract, or
  - (b) an assignment of such a part or share for money or money's worth.

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

- (4) If two or more relevant transactions occurred during the insurance year, a calculation in accordance with section 511 is to be made in relation to each of them successively in the order in which they occurred.
- (5) A calculation falling to be made in accordance with section 511 in relation to a relevant transaction occurring in the final insurance year is to be made before any calculation under section 491 for the chargeable event that ends that year.
- (6) But, in the case of a relevant transaction so occurring, subsections (2) and (4) are subject to section 513(5) (under which those subsections do not apply to some such relevant transactions).

## **511 Method for making transaction-related calculations under section 510**

- (1) This section deals with the calculation required to be made under section 510 to determine—
  - (a) whether a relevant transaction which has occurred during an insurance year resulted in a gain arising on the policy or contract, and
  - (b) if so, the amount of the gain.
- (2) There is a gain if the transaction value for the relevant transaction (see subsection (4)) exceeds the amount of available premium left for the relevant transaction as calculated in accordance with section 512.
- (3) The gain is equal to the excess.
- (4) The transaction value for the relevant transaction is the value in accordance with section 508, as at the time of its surrender or assignment, of the part of or share in the rights under the policy or contract which has been surrendered or assigned in the transaction.
- (5) Subsections (2) and (4) are subject to section 513(4) (under which the transaction value is to be reduced in certain cases where the relevant transaction occurs in the final insurance year).

## **512 Available premium left for relevant transaction**

- (1) For the purposes of section 511(2), the amount of available premium left for a relevant transaction is the amount, if any, by which the available net allowable payments (see subsection (3)) exceed the available net total values for the year (see subsection (4)).
- (2) But the amount of available premium left for the relevant transaction is nil if—
  - (a) one or more other relevant transactions have occurred in respect of the relevant contract earlier in the insurance year, and
  - (b) for the latest of them the calculation in section 511(2) produced a gain.
- (3) To calculate the available net allowable payments—

### *Step 1*

Calculate the net total allowable payments as at the end of the insurance year in accordance with section 507(5).

### *Step 2*

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

If—

- (a) one or more other relevant transactions (“the earlier transactions”) have occurred in respect of the policy or contract earlier in the insurance year, and
- (b) for the latest of them the calculation in section 511(2) produced no gain,

subtract the sum of the transaction values for the earlier transactions from the result of step 1.

- (4) To calculate the available net total values for the year—

*Step 1*

Calculate the net total value of rights surrendered or assigned, as at the end of the insurance year, in accordance with section 507(4), ignoring for the purposes of step 3 in that section any relevant transactions in that year that are treated as chargeable events under section 514.

*Step 2*

Subtract from the result of step 1 the value, as at the time of its surrender or assignment, of any part of or share in the rights under the policy or contract which has been surrendered in the insurance year or assigned in that year for money or money's worth, determining the value in accordance with section 508.

### **513 Special rules for part surrenders and assignments in final insurance year**

- (1) This section applies if—
- (a) the calculation in section 511 falls to be made in relation to a relevant transaction occurring in the final insurance year,
  - (b) the total transaction value for that transaction exceeds the gains limit (see subsections (2) and (3)), and
  - (c) paragraph (b) has not applied to a relevant transaction occurring earlier in the final insurance year in respect of the policy or contract in question.
- (2) The total transaction value is the total of—
- (a) the transaction value for the transaction in question in accordance with section 511(4), and
  - (b) the transaction values for any relevant transactions occurring earlier in the final insurance year in respect of the policy or contract in accordance with that section.
- (3) The gains limit is the amount calculated, as at the end of the final insurance year, as the amount of the gain that would have been treated as arising on the occurrence of the chargeable event that ends that year if in relation to that year—
- (a) section 509(1) did not refer to condition C, and
  - (b) sections 510(2) and (4) and 514(1) did not apply.
- (4) The transaction value for the relevant transaction used for the calculation in section 511(2) is reduced by the excess mentioned in subsection (1)(b).
- (5) No calculations are required to be made under section 510(2) and (4) in relation to any subsequent relevant transaction in respect of the policy or contract.

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

## 514 Chargeable events where transaction-related calculations show gains

- (1) If the calculation in section 511 shows that a relevant transaction resulted in a gain arising on the policy or contract, the relevant transaction is treated as a chargeable event.
- (2) Subsection (1) is subject to section 485(5) (which restricts the circumstances in which such events occur in relation to qualifying policies).
- (3) Subsection (4) applies if—
  - (a) a relevant transaction that is a chargeable event occurs in a different tax year from that in which the insurance year ends, and
  - (b) apart from subsection (4), a person would be liable to tax on the gain under this Chapter for the tax year in which the transaction occurs.
- (4) The gain is charged to tax under this Chapter for the tax year in which the insurance year ends instead.
- [<sup>F601</sup>(4A) Subsection (3)(b) includes a case where a person would be liable to tax on the gain under section 465B for the tax year in which the transaction occurs (because the transaction occurs in the year of return, as defined in that section).]
- (5) If the relevant transaction occurs in the final insurance year, the chargeable event within subsection (1) is treated as occurring before the chargeable event that ends that year.

### Textual Amendments

**F601** S. 514(4A) inserted (with effect in accordance with Sch. 45 para. 153(3) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 142](#)

## *Personal portfolio bonds*

### 515 Requirement for annual calculations in relation to personal portfolio bonds 9

- (1) This section applies if a policy or contract to which this Chapter applies is a personal portfolio bond at the end of an insurance year.
- (2) But this section does not apply if the insurance year is the final insurance year.
- (3) A calculation is to be made in accordance with section 522 in relation to the policy or contract as at the end of the insurance year to determine—
  - (a) whether a gain has arisen on the policy or contract in relation to that year, and
  - (b) if so, the amount of the gain.
- (4) The calculation is in addition to any other calculation which is required to be made under this Chapter in relation to the policy or contract.

### 516 Meaning of “personal portfolio bond”

- (1) In this Chapter “personal portfolio bond” means a policy of life insurance, contract for a life annuity or capital redemption policy which meets conditions A and B.

This is subject to section 517.



---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

- (2) Condition A is that, under the terms of the policy or contract, some or all of the benefits are determined by reference to—
  - (a) fluctuations in, or in an index of, the value of property of any description, or
  - (b) the value of, or the income from, property of any description.
- (3) For this purpose it does not matter whether or not the index or property is specified in the policy or contract.
- (4) Condition B is that the terms of the policy or contract permit the selection of the index or some or all of the property by—
  - (a) the holder of the policy or contract,
  - (b) a person connected with the holder,
  - (c) the holder and such a connected person acting together,
  - (d) a person acting on behalf of the holder,
  - (e) a person acting on behalf of a person connected with the holder, or
  - (f) a person acting on behalf of the holder and such a connected person acting together.
- (5) In subsection (4) “holder”, in the case of a policy or contract held by two or more persons, means any of them.

#### **517 Policies and contracts which are not personal portfolio bonds**

- (1) A policy or contract is not a personal portfolio bond merely because its terms permit the selection of an index as described in section 516(4) if that index—
  - (a) falls within one of the categories listed in section 518, and
  - (b) meets one of the index selection conditions (see section 519).
- (2) A policy or contract is not a personal portfolio bond merely because its terms permit the selection of property as described in section 516(4) if all of the property which may be so selected—
  - (a) falls within one or more of the categories listed in section 520, and
  - (b) meets one or both of the property selection conditions (see section 521).

#### **518 The index categories**

- (1) This section sets out the categories of index referred to in section 517(1).
- (2) Category 1 is the retail prices index.
- (3) Category 2 is any general index which—
  - (a) is similar to the retail prices index, and
  - (b) is published by the government of any foreign state or an agent of such a government.
- (4) Category 3 is any published index of prices of shares listed on a recognised stock exchange.

#### **519 The index selection conditions**

- (1) The index selection conditions are—

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (a) the general selection condition (see subsection (2)), and
  - (b) the class selection condition (see subsection (3)).
- (2) An index meets the general selection condition if, at the time when it may be selected, the opportunity to select the same index is available to—
- (a) all policy holders of the insurance company, or
  - (b) persons acting on behalf of those policy holders.
- (3) An index meets the class selection condition if, at the time when it may be selected, the opportunity to select the same index is available to—
- (a) a particular class or classes of policy holders of the insurance company, or
  - (b) persons acting on behalf of the members of that class or those classes.
- (4) A group of policy holders to whom the opportunity to select an index is available is a “class” for the purposes of subsection (3) if—
- (a) neither membership of the class nor the opportunity are limited to connected persons,
  - (b) the question whether a policy holder is a member of the class, or has the opportunity, is determined solely by the insurance company, and
  - (c) the opportunity is clearly identified in marketing or other promotional material published by the insurance company to members of the public, or members of the public who are intending investors, as available generally to any person falling within its terms.
- (5) In this section—
- “holder” has the meaning given by section 516(5), and
  - “policy holder” includes a holder of a life annuity contract.

## 520 The property categories

- (1) The table in subsection (2) sets out the categories of property referred to in section 517(2).
- (2) This is the table—

<i>Category</i>	<i>Property</i>
Category 1	property which the insurance company has appropriated to an internal linked fund
Category 2	units in an authorised unit trust
Category 3	shares in an investment trust
Category 4	shares in an open-ended investment company
Category 5	cash
Category 6	a policy or contract to which this Chapter applies, other than an excluded policy or contract (see subsection (3))
Category 7	an interest in a collective investment scheme constituted by—

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (a) a company which is resident outside the United Kingdom (other than an open-ended investment company),
- (b) a unit trust scheme the trustees of which are non-UK resident, or
- (c) any other arrangement which takes effect by virtue of the law of a territory outside the United Kingdom, and which under that law creates rights in the nature of co-ownership (without restricting that term to its legal meaning in any part of the United Kingdom)

(3) A policy or contract is “excluded” if—

- (a) the policy or contract is itself a personal portfolio bond,
- (b) the value of any benefits under the policy or contract is or has at any time been capable of being determined directly or indirectly by reference to a personal portfolio bond, or
- (c) a personal portfolio bond is related property in relation to the policy or contract.

(4) In this section—

“cash”—

- (a) includes any sum which is deposited—
  - (i) in a building society account (including a share account) or similar account, or
  - (ii) in a bank account or similar account, but
- (b) does not include cash which is acquired wholly or partly for the purpose of realising a gain from its disposal,

“collective investment scheme” has the meaning given by section 235 of FISMA 2000, and “interest”, in relation to such a scheme, means the beneficial entitlement of a participant in such a scheme,

“internal linked fund” has the meaning given by—

- (a) the Interim Prudential Sourcebook for Insurers made by the [<sup>F602</sup>Prudential Regulation Authority] under FISMA 2000, or
- (b) rules made by the [<sup>F603</sup>Prudential Regulation Authority] under FISMA 2000 and having effect for the time being in place of the Sourcebook, [<sup>F604</sup>“investment trust” has the meaning given by [<sup>F605</sup>section 1158 of CTA 2010].]

“open-ended investment company” has the meaning given by section 236 of FISMA 2000, and

“related property” has the same meaning as in section 625 (see subsection (5)).

#### Textual Amendments

**F602** Words in s. 520(4) substituted (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments\) Order 2013 \(S.I. 2013/636\)](#), art. 1(2), [Sch. para. 8\(a\)](#)

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- F603** Words in s. 520(4) substituted (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments\) Order 2013 \(S.I. 2013/636\)](#), art. 1(2), **Sch. para. 8(b)**
- F604** S. 520(4): definition of 'investment trust' inserted (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), ss. 1027, 1034, **Sch. 1 para. 534** (with transitional provisions and savings in [Sch. 2](#))
- F605** Words in s. 520(4) substituted (1.4.2010) (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), **Sch. 1 para. 469** (with [Sch. 2](#))

## 521 The property selection conditions

- (1) The property selection conditions are—
  - (a) the general selection condition (see subsection (2)), and
  - (b) the class selection condition (see subsection (3)).
- (2) Property meets the general selection condition if, at the time when it may be selected, the opportunity to select property falling within the same category is available to—
  - (a) all policy holders of the insurance company, or
  - (b) persons acting on behalf of those policy holders.
- (3) Property meets the class selection condition if, at the time when it may be selected, the opportunity to select property falling within the same category is available to—
  - (a) a particular class or classes of policy holders of the insurance company, or
  - (b) persons acting on behalf of the members of that class or those classes.
- (4) A group of policy holders to whom the opportunity to select property falling within a particular category is available is a “class” for the purposes of subsection (3) if—
  - (a) neither membership of the class nor the opportunity are limited to connected persons,
  - (b) the question whether a policy holder is a member of a class, or has the opportunity, is determined solely by the insurance company, and
  - (c) the opportunity is clearly identified in marketing or other promotional material published by the insurance company to members of the public, or members of the public who are intending investors, as available generally to any person falling within its terms.
- (5) In this section—
 

“holder” has the meaning given by section 516(5), and

“policy holder” includes a holder of a life annuity contract.

## 522 Method for making annual calculations under section 515

- (1) This section deals with the calculation required to be made in relation to a policy or contract as at the end of an insurance year under section 515 to determine—
  - (a) whether a gain has arisen in relation to that year, and
  - (b) if so, the amount of the gain.
- (2) There is a gain if, as at the end of the insurance year, the sum of PP and TPE exceeds TSG.
- (3) In subsection (2)—
 

PP is the total amount of premiums paid up to the end of the insurance year,

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

TPE is the total amount of personal portfolio bond excesses (see section 523), and

TSG is the total amount of part surrender gains (see section 524).

- (4) The gain is equal to 15% of the excess.

### **523 The total amount of personal portfolio bond excesses**

- (1) To calculate the total amount of personal portfolio bond excesses—

*Step 1*

Apply the calculation in section 522 in relation to the policy or contract as at the end of each previous insurance year during its existence in succession starting with the first such year.

*Step 2*

Determine whether in each case the calculation produces a gain and, if so, its amount.

*Step 3*

Add together all the amounts produced by step 2.

- (2) But if there is no previous insurance year during the existence of the policy or contract, the total amount of personal portfolio bond excesses is nil.

### **524 The total amount of part surrender gains**

- (1) To calculate the total amount of part surrender gains—

*Step 1*

Apply the provisions of this Chapter mentioned in subsection (3) as modified by subsections (4) and (5) in relation to the policy or contract as at the end of each previous insurance year during its existence.

*Step 2*

Determine whether in each case those provisions produce a gain and, if so, its amount.

*Step 3*

Add together all of the amounts produced by step 2.

- (2) But if there is no previous insurance year during the existence of the policy or contract, the total amount of part surrender gains is nil.

- (3) The provisions of this Chapter which apply for the purposes of the calculation in subsection (1) are—

- (a) subsections (2) to (6) of section 507 (method for making periodic calculations), and
- (b) subsections (1) to (3) and (5) of section 508 (the value of rights partially surrendered).

- (4) The provisions of section 507 mentioned in subsection (3) apply for the purposes of this section with the omission of all references in that section—

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

- (a) to the assignment of any part of or share in the rights under the policy or contract, or
  - (b) to the value of any part of or share in the rights under the policy or contract so assigned.
- (5) In the application of step 3 in subsection (4) of section 507 for the purposes of this section, the reference in that step to previous calculation events does not include a reference to an excess event consisting of the assignment of a part of or share in the rights under the policy or contract.

### **525 Chargeable events where annual calculations show gains**

- (1) This section applies if the calculation in section 522 shows that a gain has arisen in relation to an insurance year.
- (2) The gain is treated as arising at the end of the insurance year on the occurrence of a chargeable event at that time.

### **526 Power to make regulations about personal portfolio bonds**

- (1) The Treasury may by regulations make provision about the administration of the charge to tax on personal portfolio bonds.
- (2) The regulations may modify—
  - (a) any provision of this Chapter, or
  - (b) any provision of Chapter 2 of Part 13 of ICTA.
- (3) The regulations may—
  - (a) make different provision for different cases, different circumstances or different periods, and
  - (b) make incidental, supplemental, consequential or transitional provision or savings.
- (4) In this section “modify” includes amend or repeal.

#### *Reductions from gains*

### **527 Reduction for sums taken into account otherwise than under Chapter 9**

- (1) This section applies if the whole or part of any receipt or other credit item is taken into account in calculating both—
  - (a) the amount of a gain treated as arising under this Chapter, and
  - (b) an amount on which income tax is charged otherwise than under this Chapter or on which corporation tax is charged.
- (2) The amount of the gain on which tax is charged under this Chapter is reduced by so much of the amount of that receipt or other credit item as is taken into account in both those calculations.

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

## **[<sup>F606</sup>528 Reduction in amount charged on basis of non-UK residence where individual liable for tax**

- (1) Subsection (2) applies if—
- (a) an individual is liable for tax charged on a gain from a policy of life insurance or a capital redemption policy, and
  - (b) there are one or more days in the material interest period [<sup>F607</sup>that are foreign days].

[<sup>F608</sup>(1A) Foreign days” are—

- (a) days falling within any tax year for which the individual is not UK resident, and
- (b) days falling within the overseas part of any tax year that is a split year as respects the individual.]

- (2) In determining the individual's liability for tax, the gain on which the tax is charged in the case of the individual is to be reduced by the appropriate fraction.

- (3) The appropriate fraction is—

A B

where—

A is the number of days in the material interest period which are [<sup>F609</sup>foreign days], and

B is the number of days in the material interest period.

- (4) In subsection (2) the reference to the gain is to be read in accordance with section 463A(4), 463D(4) or 463E(3) (which relates to restricted relief qualifying policies etc) if applicable.

- (5) In this section “the material interest period” means so much of the policy period as during which the individual meets condition A, B or C in section 465 in relation to the policy (subject to subsection (7)).

- (6) Subsections (7) and (8) apply if, before the chargeable event, there is an assignment falling within section 487(c) in relation to the policy where the individual is the assignee.

- (7) There is to be added to the material interest period any part of the policy period falling before the assignment—

- (a) during which the assignor meets condition A, B or C in section 465 in relation to the policy, and
- (b) which is not included in the material interest period under subsection (5).

- (8) In relation to any period added to the material interest period under subsection (7), in [<sup>F610</sup>subsection (1A)(a) and (b)] the reference to the individual is to be read as a reference to the assignor.

- (9) For the purposes of subsections (5) and (7), in section 465(2) to (4) references to the rights under the policy are to be read as including references to a share of those rights.

- (10) In this section “the policy period” means the period for which the policy has run before the chargeable event occurs.

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (11) If the policy is a policy of life insurance which is a new policy in relation to another policy, for the purposes of subsection (10) the new policy is to be taken to have run—
- (a) from the issue of the other policy, or
  - (b) if it also was a new policy in relation to an earlier policy, from the issue of the earlier policy,
- and so on; and in subsections (5) to (9) references to the policy are to be read accordingly as including any relevant earlier policy.
- (12) In subsection (11) “new policy” has the meaning given in paragraph 17 of Schedule 15 to ICTA.

#### Textual Amendments

- F606** Ss. 528, 528A substituted for s. 528 (with effect in accordance with Sch. 8 para. 7 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 8 para. 3](#)
- F607** Words in s. 528(1)(b) substituted (with effect in accordance with Sch. 45 paras. 86(2), 153(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 86\(3\)](#)
- F608** S. 528(1A) inserted (with effect in accordance with Sch. 45 paras. 86(2), 153(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 86\(4\)](#)
- F609** Words in s. 528(3) substituted (with effect in accordance with Sch. 45 paras. 86(2), 153(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 86\(5\)](#)
- F610** Words in s. 528(8) substituted (with effect in accordance with Sch. 45 paras. 86(2), 153(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 86\(6\)](#)

#### Modifications etc. (not altering text)

- C67** S. 528 (as in force immediately before its substitution by [Finance Act 2013 \(c. 29\)](#), [Sch. 8 para. 3](#), so far as that section as so in force continues to have effect after the substitution) amended (with effect in accordance with [Sch. 45 para. 153\(2\)](#) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 86\(7\)–\(10\)](#)
- C68** Ss. 528, 528A excluded by 1988 c. 1, s. 552(14) (as inserted (with effect in accordance with Sch. 8 para. 7 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 8 para. 6](#))

### 528A Reduction in amount charged on basis of non-UK residence of deceased person

- (1) Subsection (3) applies if—
- (a) personal representatives are liable for tax charged on a gain from a policy of life insurance or a capital redemption policy under section 466, and
  - (b) there were one or more days in the material interest period [<sup>F611</sup>that were foreign days].
- (2) Subsection (3) also applies if—
- (a) trustees are liable for tax charged on a gain from a policy of life insurance or a capital redemption policy under section 467 where—
    - (i) of conditions A to D in that section, only condition B is met, and
    - (ii) the absent settlor condition which is met is the one in subsection (4) (b) of that section (deceased settlor),
  - (b) there were one or more days in the material interest period [<sup>F612</sup>that were foreign days, and]
  - [<sup>F613</sup>(c) the deceased died—



*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (i) in a tax year for which the deceased was UK resident but not one that was a split year as respects the deceased, or
- (ii) in the UK part of a tax year that was a split year as respects the deceased.]

[<sup>F614</sup>(2A) Foreign days” are—

- (a) days falling within any tax year for which the deceased was not UK resident, and
- (b) days falling within the overseas part of any tax year that was a split year as respects the deceased.]

(3) In determining the liability for tax of the personal representatives or trustees, the gain on which the tax is charged in the case of the personal representatives or trustees is to be reduced by the appropriate fraction.

(4) The appropriate fraction is—

$\frac{A}{B}$

where—

A is the number of days in the material interest period which [<sup>F615</sup>were foreign days, and]

B is the number of days in the material interest period.

(5) In subsection (3) the reference to the gain is to be read in accordance with section 463C(8) (which relates to restricted relief qualifying policies) if applicable.

(6) In this section “the material interest period” means so much of the policy period falling before the deceased’s death as during which the deceased met condition A, B or C in section 465 in relation to the policy (subject to subsection (8)).

(7) Subsections (8) and (9) apply if, before the deceased’s death, there was an assignment falling within section 487(c) in relation to the policy where the deceased was the assignee.

(8) There is to be added to the material interest period any part of the policy period falling before the assignment—

- (a) during which the assignor met condition A, B or C in section 465 in relation to the policy, and
- (b) which is not included in the material interest period under subsection (6).

(9) In relation to any period added to the material interest period under subsection (8), in [<sup>F616</sup>subsection (2A)(a) and (b)] the reference to the deceased is to be read as a reference to the assignor.

(10) For the purposes of subsections (6) and (8), in section 465(2) to (4) references to the rights under the policy are to be read as including references to a share of those rights.

(11) In this section “the policy period” means the period for which the policy has run before the chargeable event occurs.

(12) If the policy is a policy of life insurance which is a new policy in relation to another policy, for the purposes of subsection (11) the new policy is to be taken to have run—

- (a) from the issue of the other policy, or

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

(b) if it also was a new policy in relation to an earlier policy, from the issue of the earlier policy,  
 and so on; and in subsections (6) to (10) references to the policy are to be read accordingly as including any relevant earlier policy.

(13) In subsection (12) “new policy” has the meaning given in paragraph 17 of Schedule 15 to ICTA.]

#### **Textual Amendments**

- F606** Ss. 528, 528A substituted for s. 528 (with effect in accordance with Sch. 8 para. 7 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), **Sch. 8 para. 3**
- F611** Words in s. 528A(1)(b) substituted (with effect in accordance with Sch. 45 para. 153(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), **Sch. 45 para. 87(1)(2)**
- F612** Words in s. 528A(2)(b) substituted (with effect in accordance with Sch. 45 para. 153(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), **Sch. 45 para. 87(1)(3)(a)**
- F613** S. 528A(2)(c) substituted (with effect in accordance with Sch. 45 para. 153(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), **Sch. 45 para. 87(1)(3)(b)**
- F614** S. 528A(2A) inserted (with effect in accordance with Sch. 45 para. 153(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), **Sch. 45 para. 87(1)(4)**
- F615** Words in s. 528A(4) substituted (with effect in accordance with Sch. 45 para. 153(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), **Sch. 45 para. 87(1)(5)**
- F616** Words in s. 528A(8) substituted (with effect in accordance with Sch. 45 para. 153(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), **Sch. 45 para. 87(1)(6)**

#### **Modifications etc. (not altering text)**

- C68** Ss. 528, 528A excluded by 1988 c. 1, s. 552(14) (as inserted (with effect in accordance with Sch. 8 para. 7 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), **Sch. 8 para. 6**)

### **<sup>F617</sup>529 Exceptions to section 528**

.....

#### **Textual Amendments**

- F617** S. 529 omitted (with effect in accordance with Sch. 8 para. 7 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), **Sch. 8 para. 4**

### *Income tax treated as paid and reliefs*

#### **530 Income tax treated as paid etc.**

- (1) An individual or trustees who are liable for tax on an amount under this Chapter are treated as having paid income tax at the [<sup>F618</sup>basic rate] on that amount.
- (2) The income tax treated as paid under subsection (1) is not repayable.
- (3) The amount on which an individual is treated under subsection (1) as having paid income tax is reduced if subsection (4) applies.

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (4) This subsection applies if the individual's total income is reduced by any deductions which fall to be made [<sup>F619</sup>at Step 2 or 3 of the calculation in section 23 of ITA 2007 (calculation of income tax liability)] from the part of the income charged to tax under this Chapter.
- (5) The reduction under subsection (3) is equal to the amount of those deductions.
- <sup>F620</sup>(6) .....
- (7) This section is subject to section 531.

#### Textual Amendments

- F618** Words in s. 530(1) substituted (with effect in accordance with Sch. 1 para. 65 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 1 para. 54\(2\)](#)
- F619** Words in s. 530(4) inserted (6.4.2007 with effect as stated in [s. 1034\(1\)](#) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), ss. 1027, 1034, [Sch. 1 para. 535\(3\)](#), (with transitional provisions and savings in Sch. 2)
- F620** S. 530(6) omitted (with effect in accordance with Sch. 1 para. 65 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 1 para. 54\(3\)](#)

### 531 Exceptions to section 530

- (1) Section 530 does not apply to gains from the kinds of policies and contracts specified in subsection (3), except for the purposes of calculating relief under section 535 (top slicing relief).
- (2) Subsection (1) is subject to—  
section 532 (relief for policies and contracts with European Economic Area insurers), and  
section 534 (regulations providing for relief in other cases where foreign tax chargeable).
- (3) The policies and contracts are—  
(a) a policy of life insurance issued or a contract for a life annuity made by a friendly society in the course of [<sup>F621</sup>exempt BLAGAB or eligible PHI business ],  
(b) a foreign policy of life insurance that does not meet conditions A and B,  
(c) a contract for a life annuity (other than one within paragraph (a)) which has at any time not formed part of any insurance company's or friendly society's basic life assurance and general annuity business the income and gains of which are subject to corporation tax, and  
(d) a foreign capital redemption policy.
- (4) In this section and section 532—  
“basic life assurance and general annuity business” has the same meaning as in [<sup>F622</sup>Part 2 of FA 2012 (see sections 57 and 67(5)) ], and  
[<sup>F623</sup>“exempt BLAGAB or eligible PHI business” has the same meaning as in Part 3 of FA 2012 (see sections 154 and 155).]

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (5) Condition A is that the policy falls within paragraph (a) of the definition of “foreign policy of life insurance” in section 476(3) (policy issued by a non-UK resident company).
- (6) Condition B is that the conditions in paragraph 24(3) of Schedule 15 to ICTA (conditions that are required to be met for certain policies issued by non-UK resident companies to be qualifying policies) are met throughout the period between—
- (a) the date on which the policy was issued, and
  - (b) the date on which the gain arises.

#### Textual Amendments

**F621** Words in s. 531(3)(a) substituted (17.7.2012) by [Finance Act 2012 \(c. 14\)](#), [Sch. 18 para. 18\(2\)](#)

**F622** Words in s. 531(4) substituted (17.7.2012) by [Finance Act 2012 \(c. 14\)](#), [Sch. 16 para. 130\(3\)](#)

**F623** Words in s. 531(4) substituted (17.7.2012) by [Finance Act 2012 \(c. 14\)](#), [Sch. 18 para. 18\(3\)](#)

### 532 Relief for policies and contracts with European Economic Area insurers

- (1) Section 530 applies to a gain from a foreign policy of life insurance or a foreign capital redemption policy or to a gain from a contract for a life annuity (and accordingly section 531 and paragraph 109(2) of Schedule 2 do not apply) if a claim is made that conditions A to C have been met throughout the policy period.
- (2) Condition A is that the company liable to make payments under the policy or contract (“the insurer”) has not been UK resident.
- (3) Condition B is that a comparable EEA tax charge has applied to the insurer (see section 533).
- (4) Condition C is that no excluded reinsurance contract has been made in relation to the policy or contract.
- (5) In this section—
- “excluded reinsurance contract”, in relation to a policy or contract, means any reinsurance contract—
- (a) wholly or partly covering any of the insurer's obligations to pay any sum or to meet any other liability arising under the policy or contract, and
  - (b) relating to risk other than that the individual whose life is insured by the policy or the annuitant will die or suffer any sickness or accident,
- “policy period”—
- (a) in relation to a policy, means the period between—
    - (i) the making of the insurance or contract, and
    - (ii) the date on which the gain arises,
 but excluding any period when the conditions in paragraph 24(3) of Schedule 15 to ICTA are met (conditions that are required to be met for certain policies issued by non-UK resident companies to be qualifying policies), and
  - (b) in relation to a contract for a life annuity, means the period between—
    - (i) the date the insurer entered into the contract, and
    - (ii) the date on which the gain arises,

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

but excluding any period when the contract fell to be regarded as forming part of a basic life assurance and general annuity business the income and gains of which were subject to corporation tax.

### **533 Meaning of “comparable EEA tax charge”**

- (1) In section 532 “comparable EEA tax charge” in relation to the company liable to make payments under the policy or contract under which the gain has arisen (“the insurer”) means a charge that meets conditions A to F.
- (2) Condition A is that the charge is imposed on the insurer under the laws of a territory outside the United Kingdom that is within the European Economic Area when the gain arises.
- (3) Condition B is that the charge has applied to the insurer—
  - (a) as a body deriving its status as a company from those laws,
  - (b) as a company with its place of management there, or
  - (c) as a company falling under those laws to be regarded for any other reason as resident or domiciled there.
- (4) Condition C is that the charge applies at a rate of at least 20% in relation to the amounts subject to tax in the insurer's hands, other than amounts arising or accruing in respect of investments of a description for which a special relief or exemption is generally available.
- (5) Condition D is that the charge is made otherwise than by reference to the insurer's profits.
- (6) Condition E is that the charge requires sums payable and other liabilities arising under policies or contracts of the same class as the policy or contract in question to be treated as falling to be met out of amounts subject to tax in the insurer's hands.
- (7) Condition F is that the charge so requires them by disallowing their deduction in calculating the amount chargeable.

### **534 Regulations providing for relief in other cases where foreign tax chargeable**

- (1) This section applies if—
  - (a) apart from this section, as a result of section 531 or paragraph 109(2) of Schedule 2, section 530 would not apply to gains from a policy or contract (except for the purposes of section 535 (top slicing relief)), and
  - (b) the Board of Inland Revenue consider it appropriate to disapply section 531 and paragraph 109(2) of Schedule 2 in relation to such gains by reference to tax chargeable under the laws of a territory outside the United Kingdom in cases other than those where they are disapplied as a result of section 532.
- (2) The Board of Inland Revenue may by regulations provide for section 530 to apply to those gains (and accordingly section 531 and paragraph 109(2) of Schedule 2 not to apply to them) if a claim is made that the conditions specified in the regulations are met in relation to any time.
- (3) That time may be a time before the regulations are made or a later time.

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

### 535 Top slicing relief

- (1) An individual is entitled to relief under this section for a tax year if—
  - (a) the individual's liability for the tax year, as calculated under subsection (3), exceeds
  - (b) the individual's relieved liability for the tax year, as calculated under—
    - section 536 (top slicing relieved liability: one chargeable event), or
    - section 537 (top slicing relieved liability: two or more chargeable events).
- (2) The relief is given by a reduction in or repayment of income tax equal to the excess.
- [<sup>F624</sup>(2A) If the relief is given by a reduction in income tax, it is given effect at Step 6 of the calculation in section 23 of ITA 2007.]
- (3) An individual's liability for a tax year for the purposes of subsection (1)(a) equals  $TL - [^{F625}BRL]$ , where—
  - TL is the amount of the individual's total liability to income tax on income charged to tax under this Chapter for the tax year, calculated on the basis that no relief is available under this section and the highest part assumptions apply, and
  - [<sup>F625</sup>BRL] is the amount of income tax at the [<sup>F626</sup>basic rate] that the individual is treated as having paid under section 530(1) for the tax year.
- (4) For the purposes of subsection (3) and sections 536 and 537, the highest part assumptions, in calculating liability to income tax on an amount, are that—
  - (a) the amount is the highest part of the individual's total income for the tax year, and
  - (b) any provision directing any other amount to be treated as the highest part is ignored.
- (5) For the purposes of this section and sections 536 and 537, an individual's total income is treated as not including any amount which—
  - (a) is charged to tax under Chapter 4 of Part 3 (profits of property businesses: lease premiums etc.) as the profits of a UK property business, or
  - (b) counts as employment income under section 403 of ITEPA 2003 (payments and benefits on termination of employment etc.).
- (6) For the purposes of this section and sections 536 and 537—
  - (a) any chargeable event under section 525(2) (chargeable events where annual personal portfolio bond calculations show gains),
  - (b) any gain treated as arising on the occurrence of such an event, and
  - (c) the amount of any liability to income tax arising on such a gain,
 are ignored.
- [<sup>F627</sup>(7) For the purposes of the calculations mentioned in subsection (1) any relief under Chapter 2 or 3 of Part 8 of ITA 2007 (which relate to gift aid and other gifts to charities) is ignored.]

#### Textual Amendments

**F624** S. 535(2A) inserted (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), ss. 1027, 1034, [Sch. 1 para. 536\(2\)](#) (with transitional provisions and savings in [Sch. 2](#))

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- F625** Words in s. 535(3) substituted (with effect in accordance with Sch. 1 para. 65 of the amending Act) by [Finance Act 2008 \(c. 9\), Sch. 1 para. 55\(a\)](#)
- F626** Words in s. 535(3) substituted (with effect in accordance with Sch. 1 para. 65 of the amending Act) by [Finance Act 2008 \(c. 9\), Sch. 1 para. 55\(b\)](#)
- F627** S. 535(7) inserted (6.4.2007 with effect as stated in [s. 1034\(1\)](#) of the amending Act) by [Income Tax Act 2007 \(c. 3\), ss. 1027, 1034, Sch. 1 para. 536\(4\)](#) (with transitional provisions and savings in [Sch. 2](#))

### **536 Top slicing relieved liability: one chargeable event**

- (1) To calculate an individual's relieved liability for the purposes of section 535(1) for a tax year for which the individual is only liable for tax on a gain from one chargeable event—

#### *Step 1*

Find the annual equivalent of the amount of that gain (“the annual equivalent”) by dividing that amount by the number of complete years for which the policy or contract has run before the chargeable event (“N”).

See subsections (2) to (8) for further provisions about calculating N.

#### *Step 2*

Find the relieved liability on the annual equivalent by—

- (a) calculating the individual's liability (if any) to income tax on the annual equivalent, on the basis that—
- (i) the gain from the chargeable event is limited to the amount of the annual equivalent, and
  - (ii) the highest part assumptions apply, and
- (b) subtracting the amount of income tax at the [<sup>F628</sup>basic rate] on the annual equivalent which the individual is treated as having paid under section 530(1).

#### *Step 3*

Multiply the relieved liability on the annual equivalent by N.

- (2) In the case of a calculation event that is not the first calculation event in relation to the policy or contract, for steps 1 and 3 in subsection (1) N is the number of complete years since the previous such event (but see subsection (6)).
- (3) For the purposes of subsection (2), part surrender or assignment events are taken to occur at the end of the insurance year in which the surrender or assignment occurs.
- (4) If, in a case where subsection (2) does not apply, the gain is from a policy of life insurance which is a new policy in relation to another policy, for steps 1 and 3 N is calculated from—
- (a) the issue of the other policy, or
  - (b) if it also was a new policy in relation to an earlier policy, the issue of the earlier policy,
- and so on.
- (5) In subsection (4) “new policy” has the meaning given in paragraph 17 of Schedule 15 to ICTA.

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

(6) Subsection (2) does not apply if the gain is [<sup>F629</sup>reduced under section 528 in the case of the individual.]

[<sup>F630</sup>(7) If in the case of the individual the gain is reduced under section 528—

- (a) divide the number of foreign days in the material interest period (as determined in accordance with that section, including subsections (7) and (8)) by 365,
- (b) if the result is not a whole number, round it down to the nearest whole number, and
- (c) reduce N, for steps 1 and 3 in subsection (1), by the number found by applying paragraphs (a) and (b).]

(8) If subsections (4) and (7) both apply, subsection (7) applies to N as calculated under subsection (4).

#### Textual Amendments

**F628** Words in s. 536(1) substituted (with effect in accordance with Sch. 1 para. 65 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), **Sch. 1 para. 56**

**F629** Words in s. 536(6) substituted (with effect in accordance with Sch. 8 para. 7 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), **Sch. 8 para. 5(2)**

**F630** S. 536(7) substituted (with effect in accordance with Sch. 45 paras. 88(2), 153(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), **Sch. 45 para. 88(3)**

#### Modifications etc. (not altering text)

**C69** S. 536 (as in force immediately before its amendment by [Finance Act 2013 \(c. 29\)](#), **Sch. 8 para. 5**, so far as that section as so in force continues to have effect after the amendment) amended (with effect in accordance with Sch. 45 paras. 88(4), 153(2)) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), **Sch. 45 para. 88(5)**

### 537 Top slicing relieved liability: two or more chargeable events

To calculate an individual's relieved liability for the purposes of section 535(1) for a tax year for which the individual is liable for tax on gains from two or more chargeable events—

#### Step 1

Calculate the total annual equivalent by adding together the annual equivalents for each of the chargeable events, found as specified in step 1 in section 536(1).

#### Step 2

Find the total relieved liability on the total annual equivalent by—

- (a) calculating the individual's liability to income tax (if any) on the total annual equivalent, on the basis that—
  - (i) the total gains from the chargeable events are limited to the amount of the total annual equivalent, and
  - (ii) the highest part assumptions apply, and
- (b) subtracting the amount of income tax at the [<sup>F631</sup>basic rate] on the total annual equivalent which the individual is treated as having paid under section 530(1).



*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

### Step 3

Multiply the total relieved liability on the total annual equivalent by the total gains charged to tax under this Chapter for the tax year in respect of all the events.

### Step 4

Divide the result of step 3 by the total annual equivalent.

#### Textual Amendments

**F631** Words in s. 537 substituted (with effect in accordance with Sch. 1 para. 65) by [Finance Act 2008 \(c. 9\)](#), [Sch. 1 para. 57](#)

## 538 Recovery of tax from trustees

- (1) This section applies if—
  - (a) immediately before a chargeable event the rights under the policy or contract, or the part of or share in them in question, were held on non-charitable trusts,
  - (b) an individual is liable for tax under this Chapter for the tax year on the gain from the event, and
  - (c) the income tax for which the individual is liable for the tax year, after any relief available in respect of the gain under section 535 (top slicing relief), exceeds that for which the individual would have been liable apart from the event.
- (2) The individual is entitled to recover that excess from the trustees, subject to the restriction specified in subsection (3).
- (3) The amount recovered must not exceed the total of—
  - (a) any sums received by the trustees because of the chargeable event, and
  - (b) the value of any benefits so received.
- (4) If the individual's relief under section 535 for the tax year does not relate only to the gain from the event in question, for the purposes of subsection (1)(c) a proportionate part of that relief is taken to be relief in respect of that gain.
- (5) An individual may require the Inland Revenue to certify an amount recoverable by the individual under this section.
- (6) Such a certificate is conclusive evidence of the amount.

### Deficiencies

#### <sup>F632</sup>539 Relief for deficiencies

- (1) An individual is entitled to a tax reduction for a tax year in which a deficiency arises from a policy or contract on a chargeable event if—
  - (a) the condition in subsection (2) is met,
  - (b) the individual would (apart from this section) be liable to income tax at the higher rate or the dividend upper rate (or both) for the tax year, and
  - (c) the individual makes a claim.

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

- (2) The condition is that, if a gain had arisen instead on the chargeable event—
- (a) the individual would have been liable to income tax on the gain for the year, or
  - (b) the individual would have been so liable apart from the requirement in section 465(1) that the individual must be UK resident in the tax year in which the gain arises.
- (3) The tax reduction is given effect at Step 6 of the calculation in section 23 of ITA 2007.
- (4) See section 540 for the cases in which a deficiency is treated as arising from a policy or contract on a chargeable event, section 541 for how the deficiency is calculated and section 469(5) for the apportionment of deficiencies in cases where two or more persons are interested in a policy or contract.
- (5) The amount of the tax reduction is calculated as follows.

*Step 1*

Attribute to the amount of the deficiency an amount of the individual's income for the tax year which is liable at the dividend upper rate, so far as is possible.

<sup>F633</sup> ...

*Step 3*

If there is an amount of the deficiency remaining after Step [<sup>F634</sup> 1 ], attribute to the remaining amount of the deficiency an amount of the individual's <sup>F635</sup> ... income for the tax year which is liable at the higher rate, so far as is possible.

*Step 4*

Calculate the amount of the individual's preliminary income tax liability for the tax year (see subsection (6)).

*Step 5*

Calculate the amount of the individual's preliminary income tax liability for the tax year again, on these assumptions—

Assume that any income attributed to the deficiency at Step 1 is liable at the dividend ordinary rate.

<sup>F636</sup> ...

Assume that any income attributed to the deficiency at Step 3 is liable at the basic rate.

*Step 6*

Deduct the amount found at Step 5 from the amount found at Step 4.

The result is the amount of the tax reduction.

- (6) The individual's preliminary income tax liability is the amount found by calculating the individual's income tax liability in accordance with section 23 of ITA 2007, ignoring Steps 6 and 7 of that calculation.]

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

### Textual Amendments

- F632** S. 539 substituted (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), ss. 1027, 1034, [Sch. 1 para. 539](#) (with transitional provisions and savings in [Sch. 2](#))
- F633** Words in s. 539(5) omitted (with effect in accordance with Sch. 1 para. 65 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 1 para. 58\(a\)](#)
- F634** Word in s. 539(5) substituted (with effect in accordance with Sch. 1 para. 65 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 1 para. 58\(b\)](#)
- F635** Word in s. 539(5) omitted (with effect in accordance with Sch. 1 para. 65 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 1 para. 58\(b\)](#)
- F636** Words in s. 539(5) omitted (with effect in accordance with Sch. 1 para. 65 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 1 para. 58\(c\)](#)

## 540 When deficiencies arise: events following calculation events

- (1) A deficiency is treated as arising from a policy or contract on a chargeable event (“the later event”) if conditions A to C are met.
- (2) Condition A is that the later event is an event within section 484(1)(a)(i) or (iii) or (b) to (e) (surrender of all rights, final participation in profits, death, maturity, or taking a capital sum as a complete alternative to annuity payments).
- (3) Condition B is that a gain from the policy or contract has arisen on a calculation event other than a personal portfolio bond event, occurring in relation to the policy or contract in question before the later event.
- (4) Condition C is that on the later event no gain is shown by the calculation in section 491(2) (calculation of gains for such events).

## 541 Calculation of deficiencies

- (1) This section sets out how the amount of a deficiency treated as arising under section 540(1) on a chargeable event (“the later event”) is calculated.
- (2) If, when the calculation in section 491(2) is made for the later event, the total allowable deductions equal or exceed the total benefit value, the amount of the deficiency is equal to the total previous gains.
- (3) If, when that calculation is made, the total benefit value exceeds the total allowable deductions, the amount of the deficiency is equal to the total previous gains, less that excess.
- (4) In this section “the total previous gains” means the total amount of gains that—
  - (a) were treated as arising on calculation events (other than personal portfolio bond events) occurring in relation to the policy or contract in question before the later event, and
  - (b) formed part of the total income of the individual mentioned in section 539(1) for a tax year earlier than the tax year mentioned in that section [<sup>F637</sup> or formed part of the total income of that individual by virtue of section 465B for the tax year mentioned in section 539(1)].

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

#### Textual Amendments

**F637** Words in s. 541(4)(b) inserted (with effect in accordance with Sch. 45 para. 153(3) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), **Sch. 45 para. 143**

### *<sup>F638</sup>Rebated or reinvested commission*

#### Textual Amendments

**F638** Ss. 541A, 541B and cross-heading inserted (19.7.2007 with effect as stated in s. 29(4) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), **s. 29(3)**

#### **541A Effect of rebated or reinvested commission in certain cases**

- (1) This section applies if—
  - (a) a chargeable event within section 484(1)(a)(i) to (iii), (c) or (e) occurs in respect of a policy or contract,
  - (b) commission in respect of the policy or contract has at any time been rebated or reinvested, and
  - (c) condition A or B is met.
- (2) For the purposes of performing the calculation in section 494 (total allowable deductions) for the chargeable event, the total amount of premiums under the policy or contract paid in the period mentioned in section 494(1) or (2)(b) is to be reduced by the total amount of commission attributable to those premiums that has been rebated or reinvested.
- (3) Condition A is that the total amount of premiums under the policy or contract paid in a relevant period exceeds £100,000.
- (4) Condition B is that—
  - (a) at a time when the policy or contract was the taxable person's, the taxable person's policies and contracts exceeded the relevant threshold as respects a relevant period, and
  - (b) premiums under the policy or contract were paid in that relevant period.
- (5) In subsection (4)(a) “taxable person” means the person whose policy or contract the policy or contract is, immediately before the chargeable event.
- (6) For the purposes of subsection (4)(a) a person's policies and contracts “exceed the relevant threshold” as respects a relevant period if the total amount of premiums under them paid in that relevant period exceeds the sum specified in subsection (3).
- (7) In this section “relevant period” means—
  - (a) the period beginning with the beginning of the tax year in which the chargeable event occurs and ending with the chargeable event, or
  - (b) any of the 3 preceding tax years.
- (8) The Treasury may by order—
  - (a) substitute another sum for the sum for the time being specified in subsection (3);

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (b) amend the definition of “relevant period”.

#### **541B Section 541A: further definitions**

- (1) This section supplements section 541A.
- (2) “Commission”, in relation to a policy or contract, includes any passing of value to or for the benefit of an intermediary, or a person connected with an intermediary, that can reasonably be taken to represent a reward in respect of the policy or contract.
- (3) Commission in respect of a policy or contract is “reinvested” if, as a result of a waiver of an entitlement to it, there is an increase in the total value of a relevant person's policies and contracts.
- (4) The amount of commission reinvested is the amount of the increase.
- (5) Commission in respect of a policy or contract is “rebated” if—
  - (a) value passes (directly or indirectly) from an intermediary, or a person connected with an intermediary, to or for the benefit of a relevant person (and the passing of value does not amount to the reinvestment of the commission), and
  - (b) the passing of value can reasonably be taken to be in respect of the commission.
- (6) The amount of commission rebated is the amount of value passed.
- (7) A policy or contract is a person's policy or contract if a gain arising in connection with it would be—
  - (a) a gain for which the person, or (if the person is an individual) the person's spouse or civil partner, would be liable to tax under this Chapter, or
  - <sup>F639</sup>(b) .....
- (8) Any necessary apportionment is to be made (on a just and reasonable basis) as regards—
  - (a) commission which is attributable to two or more premiums, and
  - (b) any part of such commission that has been rebated or reinvested.
- (9) Commission which is in respect of one or more policies or contracts (but is not attributable to particular premiums) is to be attributed to such premiums as is just and reasonable.
- (10) In subsections (3) and (5), “relevant person” means—
  - (a) any of the policyholders (including any of the persons who hold the contract),
  - (b) a person who beneficially owns the rights under the policy or contract,
  - (c) if those rights are held on trust, any of the trustees, or
  - (d) a person connected with a person within any of paragraphs (a) to (c).]

#### **Textual Amendments**

**F639** S. 541B(7)(b) omitted (with effect in accordance with Sch. 14 para. 18 of the amending Act) by virtue of Finance Act 2008 (c. 9), **Sch. 14 para. 15**

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

### *Supplementary*

#### **542 Replacement of qualifying policies**

- (1) A qualifying policy (“the replaced policy”) and a policy of life insurance (“the replacement policy”) which replaces the replaced policy are treated as a single policy for the purposes of sections 484 to 497 if conditions A to D are met.
- (2) Condition A is that the replacement policy is also a qualifying policy under the rules in paragraph 17 of Schedule 15 to ICTA.
- (3) Condition B is that the replacement results from a change in the life or lives insured.
- (4) Condition C is that any sum becoming payable by the insurance company on or in connection with the termination of the replaced policy is retained by it and applied in the discharge of some or all of the liability for any premium becoming due under the replacement policy.
- (5) Condition D is that no consideration in money or money's worth (other than the benefits for which provision is made by the replacement policy) is receivable by any person on or in connection with—
  - (a) the termination of the replaced policy, or
  - (b) the coming into existence of the replacement policy.
- (6) The single policy is treated for the purposes of sections 484 to 497 as issued in respect of an insurance made at the time of the making of the insurance in respect of which the replaced policy was issued.
- (7) So long as the replacement policy continues to be a qualifying policy, the single policy is also treated as a qualifying policy for those purposes.
- (8) This section applies equally to a second or subsequent replacement policy.
- (9) References in Schedule 2 (transitionals and savings) to—
  - (a) a policy of life insurance,
  - (b) the time of the making of the insurance in respect of which a policy of life insurance is issued, and
  - (c) a qualifying policy,
 are to be read in accordance with this section.

#### **543 Issue time of qualifying policy replacing foreign policy**

- (1) This section applies if—
  - (a) there has been a substitution of policies falling within paragraph 25(1) or (3) of Schedule 15 of ICTA (replacement of a policy issued by a non-UK resident company by a policy which is not so issued), and
  - (b) the new policy is a qualifying policy.
- (2) The new policy is treated for the purposes of sections 484 to 497 as having been issued in respect of an insurance made on the day on which the insurance was made in respect of which the old policy was issued.

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

- (3) References in Schedule 2 (transitionals and savings) to the time of the making of the insurance in respect of which a policy of life insurance is issued are to be read in accordance with this section.

#### **544 Application of Chapter to policies and contracts in which companies interested**

- (1) This section applies where, for the purposes of determining the application of this Chapter in relation to a policy or contract at any time, it is necessary to have regard to its application at another time.
- (2) It makes no difference to the application of this Chapter at that other time whether liability in respect of a gain arising at that time would have arisen or (as the case may be) would arise because of the application of this Chapter or the corporation tax provisions.
- (3) In subsection (2) “the corporation tax provisions” means—
- (a) Chapter 2 of Part 13 of ICTA (which makes provision for corporation tax purposes corresponding to that made by this Chapter),
  - (b) paragraph 20 of Schedule 15 to that Act (replacement of qualifying policies), and
  - (c) section 79 of FA 1997 (payments under certain life insurance policies).

#### **545 Minor definitions**

- (1) In this Chapter—
- F640  
...
- “contract of insurance” has the meaning given by Article 3(1) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544),
- “friendly society” has the meaning given in the Friendly Societies Act 1992 (c. 40) and includes a society which under section 96(2) of that Act is to be treated as a registered friendly society,
- “insurance company” means an undertaking carrying on the business of effecting or carrying out contracts of insurance,
- “market value” has the meaning given by sections 272 and 273 of TCGA 1992,
- “non-charitable trust” means a trust other than a charitable trust, and
- “policy” means a policy of life insurance or a capital redemption policy.
- (2) References in this Chapter to a premium include a reference to—
- (a) lump sum consideration, and
  - (b) property other than cash transferred to the insurance company in satisfaction of a premium.
- (3) References in this Chapter to the amount of premiums paid include a reference to—
- (a) the amount of lump sum consideration paid by way of premium, and
  - (b) the market value at the date of transfer of property other than cash transferred to the insurance company in satisfaction of any premium.

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

### Textual Amendments

**F640** Words in s. 545(1) omitted (with effect in accordance with art. 15 of the commencing S.I.) by virtue of [Finance Act 2010 \(c. 13\)](#), [Sch. 6 paras. 21\(3\)](#), 34(2); S.I. 2012/736, art. 15

### Modifications etc. (not altering text)

**C70** S. 545(1) applied by 1988 c. 1, Sch. 15 Pt. A1 para. A5(4)(b) (as inserted (17.7.2013) by [Finance Act 2013 \(c. 29\)](#), [Sch. 9 para. 2](#))

## 546 Table of provisions subject to special rules for older policies and contracts

- (1) Column 1 of the table in subsection (4) specifies provisions of this Chapter which are subject to Part 6 or 7 of Schedule 2 (transitionals and savings), and column 2 of the table specifies the provisions of that Schedule to which they are subject.
- (2) See also paragraphs 85 to 91 of that Schedule.
- (3) The provisions of that Schedule referred to in subsections (1) and (2) are to be read as if they were in this Chapter.
- (4) This is the table—

### *Provisions of Chapter 9*

Section 467

Section 473

Section 476(3)

Section 480

Section 484

Section 485(2) and (3)

Section 494(1)

### *Provisions of Schedule 2*

paragraph 112 (pre-17th March 1998 policies and contracts) and paragraph 114 (pre-9th April 2003 policies and contracts)

paragraph 96 (exclusion of pre-20th March 1968 policies and contracts) and paragraph 102 (exclusion of certain pre-26th June 1982 policies and contracts)

paragraphs 103 and 111 (certain pre-18th November 1983 and pre-17th March 1998 policies not foreign policies of life insurance) and paragraphs 104 and 113 (certain pre-23rd February 1984 and pre-23rd March 1999 policies not foreign capital redemption policies)

paragraph 116 (pre-9th April 2003 policies)

paragraph 99 (pre-10th December 1974 contracts for a life annuity: disregard of death)

paragraph 107 (pre-14th March 1989 qualifying policies)

paragraph 105(a) (pre-14th March 1984 policies: disregard of amounts deducted



---

**Status:** Point in time view as at 06/05/2014.

**Changes to legislation:** There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

---

	and repaid after tax relief by deduction from premiums abolished)
Section 500(c)	paragraph 97 (disapplication in relation to pre-27th March 1974 policies and contracts) and paragraph 102(9) (exclusion of certain pre-26th June 1982 policies and contracts)
Section 501	paragraph 102(9) (exclusion of certain pre-26th June 1982 policies and contracts), paragraph 108 (pre-14th March 1989 policies and contracts) and paragraph 115 (pre-9th April 2003 policies and contracts: loans to trustees)
Section 507	paragraph 100 (pre-14th March 1975 policies and contracts) and paragraph 105(b) (pre-14th March 1984 policies: disregard of amounts deducted and repaid after tax relief by deduction from premiums abolished)
Section 516	paragraph 119 (pre-17th March 1998 policies and contracts)
Section 525	paragraph 124(3) (pre-17th March 1998 policies and contracts) and paragraph 125(3) (pre-17th March 1998 policies and contracts)
Section 529	paragraph 106 (disapplication of section 529(1)(a) and (b) for certain pre-20th March 1985 policies) and paragraph 110 (disapplication of section 529(1)(c) for certain pre-17th March 1998 policies)
Section 530	paragraph 109(2) (disapplication for contracts for life annuities made in accounting periods beginning before 1st January 1992)
Section 531	paragraph 98 (pre-27th March 1974 policies and contracts: disapplication of section 531(3)(c)) and paragraph 118 (pre-1st January 2005 contracts for immediate needs annuities: income tax treated as paid)
[ <sup>F641</sup> Section 539]	paragraph 109(4) (contracts made in accounting periods beginning before 1st January 1992)
Section 541(4)	paragraph 117 (pre-3rd March 2004 contract or policy: calculation of deficiencies)

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

Section 542

paragraph 101 (disapplication in the case of pre-25th March 1982 replacement policies)

**Textual Amendments**

**F641** Words in table in s. 546(4) substituted (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), ss. 1027, 1034, **Sch. 1 para. 540** (with transitional provisions and savings in [Sch. 2](#))

**CHAPTER 10**

**DISTRIBUTIONS FROM UNAUTHORISED UNIT TRUSTS**

F642 F642 ...

**Textual Amendments**

**F642** Pt. 4 Ch. 10 omitted (6.4.2014) by virtue of [The Unauthorised Unit Trusts \(Tax\) Regulations 2013 \(S.I. 2013/2819\)](#), regs. 1(3), **36(8)** (with reg. 32)

F642

**Textual Amendments**

**F642** Pt. 4 Ch. 10 omitted (6.4.2014) by virtue of [The Unauthorised Unit Trusts \(Tax\) Regulations 2013 \(S.I. 2013/2819\)](#), regs. 1(3), **36(8)** (with reg. 32)

F642

**Textual Amendments**

**F642** Pt. 4 Ch. 10 omitted (6.4.2014) by virtue of [The Unauthorised Unit Trusts \(Tax\) Regulations 2013 \(S.I. 2013/2819\)](#), regs. 1(3), **36(8)** (with reg. 32)

F642

**Textual Amendments**

**F642** Pt. 4 Ch. 10 omitted (6.4.2014) by virtue of [The Unauthorised Unit Trusts \(Tax\) Regulations 2013 \(S.I. 2013/2819\)](#), regs. 1(3), **36(8)** (with reg. 32)

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

## CHAPTER 11

### TRANSACTIONS IN DEPOSITS

#### 551 Charge to tax on profits from disposal of deposit rights

- (1) Income tax is charged on profits and gains from the disposal of deposit rights.
- (2) For the purposes of this section, the exercise of a deposit right is a disposal of it<sup>F643</sup>....

#### Textual Amendments

**F643** Words in s. 551(2) omitted (with effect in accordance with Sch. 25 para. 10 of the amending Act) by virtue of [Finance Act 2009 \(c. 10\)](#), [Sch. 25 para. 9\(2\)\(a\)\(i\)](#)

#### 552 Meaning of “deposit rights”

- (1) In this Chapter “deposit rights” means—
  - (a) a right to receive, with or without interest, a principal amount stated in, or determined in accordance with, the current terms of issue of an eligible debt security, where in accordance with those terms the issue of uncertificated units of the eligible debt security corresponds to the issue of a certificate of deposit,
  - (b) a right to receive the principal amount stated in a certificate of deposit, with or without interest,
  - (c) an uncertificated right to receive a principal amount, with or without interest, as a result of a deposit of money,
  - (d) a right which—
    - (i) is not within paragraph (c),
    - (ii) is acquired in a transaction in which no certificate of deposit or security or uncertificated eligible debt security units are issued, and
    - (iii) is a right to receive a principal amount payable with interest by a bank or similar institution or a person regularly engaging in similar transactions,<sup>F644</sup>...
  - <sup>F644</sup>(e) .....

- (2) In this section—

“certificate of deposit” means a document—

  - (a) relating to the deposit of money in any currency,
  - (b) recognising an obligation to pay a stated principal amount to bearer or to order, with or without interest, and
  - (c) by the delivery of which, with or without endorsement, the right to receive that stated amount, with or without interest, is transferable,

“eligible debt security” has the meaning given in regulation 3(1) of the Uncertificated Securities Regulations 2001 (S.I. 2001/3755),

“security” (except in relation to an eligible debt security) includes any loan stock or similar security, whether secured or unsecured and whether issued by—

  - (a) the Government of the United Kingdom or another government,
  - (b) any local or other public authority in the United Kingdom or elsewhere,

or

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

(c) any company,

“uncertificated”, in relation to a unit, has the meaning given in regulation 3(1) of the Uncertificated Securities Regulations 2001,

“uncertificated eligible debt security units” means uncertificated units of an eligible debt security where the issue of the units corresponds, in accordance with the current terms of issue of the eligible debt security, to the issue of a certificate of deposit,

“uncertificated right” means a right in respect of which no certificate of deposit has been issued, although the person for the time being entitled to it is entitled to call for the issue of such a certificate, and

“unit” has the meaning given in regulation 3(1) of the Uncertificated Securities Regulations 2001.

**Textual Amendments**

**F644** S. 552(1)(e) and word omitted (with effect in accordance with Sch. 25 para. 10 of the amending Act) by virtue of [Finance Act 2009 \(c. 10\)](#), [Sch. 25 para. 9\(2\)\(a\)\(ii\)](#)

**553 Income charged**

Tax is charged under this Chapter on the full amount of profits or gains arising in the tax year.

**554 Person liable**

The person liable for any tax charged under this Chapter is the person receiving or entitled to the profits or gains.

<sup>F645</sup>**CHAPTER 12**

DISPOSALS OF FUTURES AND OPTIONS INVOLVING GUARANTEED RETURNS

**Textual Amendments**

**F645** Pt. 4 Ch. 12 omitted (with effect in accordance with Sch. 12 para. 18(1) of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 12 para. 13\(2\)](#)

*Charge to tax under Chapter 12*

.....

*When disposals involve guaranteed returns*

.....

*When disposals of futures and options occur*

.....

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

*Losses*

.....

*Trustees*

.....

*Transfer of assets abroad*

.....

**CHAPTER 13**

**SALES OF FOREIGN DIVIDEND COUPONS**

**F646 570 Charge to tax under Chapter 13**

.....

**Textual Amendments**

**F646** Pt. 4 Ch. 13 omitted (with effect in accordance with Sch. 25 para. 10 of the amending Act) by virtue of Finance Act 2009 (c. 10), **Sch. 25 para. 9(2)(b)**

**F646 571 Meaning of “foreign holdings” etc.**

.....

**Textual Amendments**

**F646** Pt. 4 Ch. 13 omitted (with effect in accordance with Sch. 25 para. 10 of the amending Act) by virtue of Finance Act 2009 (c. 10), **Sch. 25 para. 9(2)(b)**

**F646 572 Income charged**

.....

**Textual Amendments**

**F646** Pt. 4 Ch. 13 omitted (with effect in accordance with Sch. 25 para. 10 of the amending Act) by virtue of Finance Act 2009 (c. 10), **Sch. 25 para. 9(2)(b)**

**F646 573 Person liable**

.....

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

### Textual Amendments

**F646** Pt. 4 Ch. 13 omitted (with effect in accordance with Sch. 25 para. 10 of the amending Act) by virtue of Finance Act 2009 (c. 10), **Sch. 25 para. 9(2)(b)**

## PART 5

### MISCELLANEOUS INCOME

## CHAPTER 1

### INTRODUCTION

#### 574 Overview of Part 5

- (1) This Part imposes charges to income tax under—
  - (a) Chapter 2 (receipts from intellectual property),
  - (b) Chapter 3 (films and sound recordings: non-trade businesses),
  - (c) Chapter 4 (certain telecommunication rights: non-trading income),
  - (d) Chapter 5 (settlements: amounts treated as income of settlor),
  - (e) Chapter 6 (beneficiaries' income from estates in administration),
  - (f) Chapter 7 (annual payments not otherwise charged), and
  - (g) Chapter 8 (income not otherwise charged).
- (2) Part 6 deals with exemptions from the charges under this Part.
- (3) See, in particular, any exemptions mentioned in the Chapters of this Part.
- (4) The charges under this Part apply to non-UK residents as well as UK residents but this is subject to section 577(2) (charges on non-UK residents only on UK source income).
- (5) This section needs to be read with the relevant priority rules (see sections 2, 575 and 576).

#### 575 Provisions which must be given priority over Part 5

- (1) Any income, so far as it falls within—
  - (a) any Chapter of this Part, and
  - (b) Chapter 2 of Part 2 (receipts of a trade, profession or vocation),
 is dealt with under Part 2.
- (2) Any income, so far as it falls within—
  - (a) any Chapter of this Part, and
  - (b) Chapter 3 of Part 3 so far as the Chapter relates to a UK property business,
 is dealt with under Part 3.
- (3) Any income, so far as it falls within—
  - (a) any Chapter of this Part, and

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

(b) Chapter 2 or 3 of Part 4 (interest and dividends etc. from UK resident companies etc.),  
is dealt with under the relevant Chapter of Part 4.

- (4) Any income, so far as it falls within—
- (a) any Chapter of this Part, and
  - (b) Part 2, 9 or 10 of ITEPA 2003 (employment income, pension income or social security income),
- is dealt with under the relevant Part of ITEPA 2003.

### **576 Priority between Chapters within Part 5**

Any income, so far as it falls within Chapter 2 (receipts from intellectual property) and Chapter 3 (films and sound recordings: non-trade businesses), is dealt with under Chapter 3.

### **577 Territorial scope of Part 5 charges**

- (1) Income arising to a UK resident is chargeable to tax under this Part whether or not it is from a source in the United Kingdom.
  - (2) Income arising to a non-UK resident is chargeable to tax under this Part only if it is from a source in the United Kingdom.
- [<sup>F647</sup>(2A) If income arising to an individual who is UK resident arises in the overseas part of a split year, it is to be treated for the purposes of this section as arising to a non-UK resident.]
- (3) References in this section to income which is from a source in the United Kingdom include, in the case of any income which does not have a source, references to income which has a comparable connection to the United Kingdom.
  - (4) This section is subject to any express or implied provision to the contrary in this Part (or elsewhere in the Income Tax Acts).

#### **Textual Amendments**

**F647** S. 577(2A) inserted (with effect in accordance with Sch. 45 para. 153(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 89](#)

## **CHAPTER 2**

### RECEIPTS FROM INTELLECTUAL PROPERTY

#### *Introduction*

### **578 Contents of Chapter**

- (1) This Chapter imposes charges to income tax under—
  - (a) section 579 (royalties and other income from intellectual property),

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

- (b) section 583 (income from disposals of know-how), and
  - (c) section 587 (income from sales of patent rights).
- (2) For exemptions from the charge under section 579, see, in particular, sections 727 (certain annual payments by individuals) and 758 (certain interest and royalty payments).
- (3) This Chapter also provides for relief from income tax on patent income (see section 600).

*Charge to tax on non-trading income from intellectual property*

**579 Charge to tax on royalties and other income from intellectual property**

- (1) Income tax is charged on royalties and other income from intellectual property.
- (2) In this section “intellectual property” means—
- (a) any patent, trade mark, registered design, copyright, design right, performer's right or plant breeder's right,
  - (b) any rights under the law of any part of the United Kingdom which are similar to rights within paragraph (a),
  - (c) any rights under the law of any territory outside the United Kingdom which correspond or are similar to rights within paragraph (a), and
  - (d) any idea, information or technique not protected by a right within paragraph (a), (b) or (c).

**580 Income charged under section 579**

- (1) Tax is charged under section 579 on the full amount of the income arising in the tax year.
- (2) Subsection (1) is subject to Part 8 (foreign income: special rules).
- (3) See section 582 for provision about the calculation of the amount of income charged under section 579.
- (4) This section needs to be read with section 527 of ICTA (spreading of patent royalties etc. over several years).

**581 Person liable for tax under section 579**

The person liable for any tax charged under section 579 is the person receiving or entitled to the income.

**582 Deductions in calculating certain income charged under section 579**

- (1) This section applies for calculating the amount of income charged under section 579 other than annual payments.
- (2) Expenses wholly and exclusively incurred for the purpose of generating the income are deductible.



---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

- (3) If an expense is incurred for more than one purpose, a deduction may be made for any identifiable part or identifiable proportion of the expense which is incurred wholly and exclusively for the purpose of generating the income.
- (4) Expenses which would not have been allowable as a deduction in calculating the profits of a trade, if they had been incurred for its purposes, are not deductible under this section.
- (5) Expenses for which any kind of relief is given under any other provision of the Income Tax Acts are not deductible under this section.
- (6) The relief given under section 600 (relief for expenses: patent income) is additional to the relief under this section.
- (7) The frequency with which payments are made is ignored in determining whether they are annual payments for the purposes of subsection (1).

#### *Disposals of know-how*

### **583 Charge to tax on income from disposals of know-how**

- (1) Income tax is charged on profits arising where consideration is received by a person—
  - (a) for the disposal of know-how, or
  - (b) for giving, or wholly or partly fulfilling, an undertaking which—
    - (i) is given in connection with a disposal of know-how, and
    - (ii) restricts or is designed to restrict any person's activities in any way.
- (2) For the purposes of subsection (1)(b), it does not matter whether or not the undertaking is legally enforceable.
- (3) Subsection (1) is subject to the exceptions in section 584.
- (4) In this Chapter “know-how” means any industrial information or techniques likely to assist in—
  - (a) manufacturing or processing goods or materials,
  - (b) working a source of mineral deposits (including searching for, discovering or testing mineral deposits or obtaining access to them), or
  - (c) carrying out any agricultural, forestry or fishing operations.
- (5) In subsection (4)—
  - (a) “mineral deposits” includes any natural deposits capable of being lifted or extracted from the earth and for this purpose geothermal energy is treated as a natural deposit, and
  - (b) “source of mineral deposits” includes a mine, an oil well and a source of geothermal energy.

### **584 Exceptions to charge under section 583**

- (1) Section 583 does not apply in the following cases.
- (2) Case A is if the consideration is brought into account under—
  - (a) section 579 (charge to tax on royalties etc.), or

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

- (b) section 462 of CAA 2001 (disposal values).
- (3) Case B is if the consideration is dealt with in relation to the person receiving it as a capital receipt for goodwill under section 194(2) (disposal of know-how as part of disposal of all or part of a trade).
- (4) Case C is if the disposal of the know-how is by way of a sale and—
  - (a) the buyer is a body of persons over which the seller has control,
  - (b) the seller is a body of persons over which the buyer has control, or
  - (c) the buyer and the seller are both bodies of persons and another person has control over both of them.
- (5) In subsection (4) “body of persons” includes a firm.
- (6) See also Chapter 14 of Part 2 and section 575 (disposals of know-how used in a trade dealt with by Part 2).

#### **585 Income charged under section 583**

- (1) Tax is charged under section 583 on the full amount of the profits arising in the tax year.
- (2) The profits charged under section 583 are—
  - (a) the amount of the consideration, less
  - (b) any expenditure incurred by the recipient wholly and exclusively in the acquisition or disposal of the know-how.
- (3) Such expenditure may not be taken into account more than once, whether under this section or otherwise.
- (4) This section needs to be read with section 603 (contributions to expenditure).

#### **586 Person liable for tax under section 583**

The person liable for any tax charged under section 583 is the person receiving the consideration.

#### *Sales of patent rights*

#### **587 Charge to tax on income from sales of patent rights**

- (1) Income tax is charged on profits from sales of the whole or part of any patent rights.
- (2) The tax is charged if—
  - (a) the seller is a UK resident, or
  - (b) the seller is a non-UK resident and the patent is granted under the laws of the United Kingdom.
- (3) Where the seller is a non-UK resident company, tax is not charged if the seller is chargeable to corporation tax in respect of the proceeds of the sale.
- (4) In this Chapter “patent rights” means the right to do or authorise the doing of anything which, but for the right, would be an infringement of a patent.

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

## **588 Income charged under section 587**

- (1) A seller's profits from the sale of the whole or part of patent rights are—
  - (a) any capital sum comprised in the proceeds of the sale, less
  - (b) the deductible costs.
- (2) The deductible costs are—
  - (a) the capital cost (if any) of the rights sold, and
  - (b) any incidental expenses incurred by the seller in connection with the sale.
- (3) If—
  - (a) the seller acquired the rights sold, or the rights out of which they were granted, by purchase,
  - (b) the seller has previously sold part of the purchased rights, and
  - (c) the proceeds of that sale, after deducting any incidental expenses, consisted wholly or partly of a capital sum,the capital cost is reduced by that capital sum.
- (4) References in this Chapter to the capital cost of patent rights are to any capital sum included in any price paid by the seller to purchase—
  - (a) the rights, or
  - (b) the rights out of which they were granted.
- (5) This section needs to be read with sections 600 (relief for expenses: patent income) and 603 (contributions to expenditure).

## **589 Person liable for tax under section 587**

The person liable for any tax charged under section 587 is the seller of the patent rights.

## **590 UK resident sellers: spreading rules**

- (1) This section applies if the person liable under section 587 is a UK resident.
- (2) If the person does not receive the proceeds of sale in instalments, one-sixth of the amount chargeable is taxed in the tax year in which the person receives the proceeds of the sale and in each of the next 5 tax years.
- (3) The person may elect to be taxed instead on the whole of the amount chargeable under section 587 in the tax year in which the person receives the proceeds of sale.
- (4) If the person receives the proceeds of sale in instalments, one-sixth of the amount chargeable in respect of each instalment is taxed in the tax year in which the person receives the instalment and in each of the next 5 tax years.
- (5) The person may elect to be taxed instead on the whole of any instalment in the tax year in which the person receives it.
- (6) An election under subsection (3) or (5) must be made on or before the first anniversary of the normal self-assessment filing date for that tax year.

## **591 Non-UK resident sellers: election for spreading**

- (1) If the person liable under section 587—

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

- (a) is a non-UK resident, and
  - (b) does not receive the proceeds of sale in instalments,
- the whole amount chargeable is taxed in the tax year in which the person receives the proceeds.
- (2) The person may elect to be taxed instead on one-sixth of the amount chargeable in the tax year in which the person receives the proceeds of sale and in each of the next 5 tax years.
  - (3) An election under subsection (2) must be made on or before the first anniversary of the normal self-assessment filing date for the tax year in which the proceeds of sale are received.
  - (4) Such repayments and assessments are to be made for each of the tax years affected as are necessary to give effect to the election.
  - (5) Subsection (4) is subject to the qualifications in section 596 (adjustments where tax has been deducted).

## **592 Further provision about elections for spreading: instalments**

- (1) If the person liable under section 587—
  - (a) is a non-UK resident, and
  - (b) receives the proceeds of sale in instalments,
 the amount chargeable in respect of each instalment is taxed in the tax year in which the person receives the instalment.
- (2) The person may, for any instalment, elect to be taxed instead on one-sixth of the amount chargeable in respect of the instalment in the tax year in which the person receives it and in each of the next 5 tax years.
- (3) An election under subsection (2) must be made on or before the first anniversary of the normal self-assessment filing date for the tax year in which the instalment is received.
- (4) Such repayments and assessments are to be made for each of the tax years affected as are necessary to give effect to the election.
- (5) Subsection (4) is subject to the qualifications in section 596 (adjustments where tax has been deducted).

## **593 Death of seller**

- (1) If a seller who is liable to income tax under section 587 dies, any amounts which would have been chargeable in later tax years under—
  - (a) section 590(2) or (4) (UK resident sellers: spreading rules), or
  - (b) section 591(2) or 592(2) (non-UK resident sellers: elections for spreading),
 are taxed in the tax year in which the seller dies.
- (2) The personal representatives may elect that the tax payable by reason of subsection (1) be reduced to the total amount of income tax that the seller and the estate would have been liable to pay if the amounts chargeable by reason of that subsection had been taxed in equal parts in each of the lifetime tax years.
- (3) In subsection (2) “the lifetime tax years” means—

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (a) the tax year in which the seller received the proceeds or, as the case may be, the instalment, and
  - (b) each of the next tax years up to and including that in which the seller died.
- (4) An election under subsection (2) must be made on or before the first anniversary of the normal self-assessment filing date for the tax year in which the death occurs.

#### **594 Winding up of a body corporate**

- (1) If a body corporate which is liable to income tax under section 587 commences to be wound up, any amounts falling within subsection (2) are taxed in the year in which the winding up commences.
- (2) The amounts are—
- (a) any amounts which would have been chargeable in later tax years under section 591(2) or 592(2), and
  - (b) any amounts (arising to the body in a fiduciary or representative capacity) which would have been chargeable in later tax years under section 590(2) or (4).

#### **595 Deduction of tax from payments to non-UK residents**

- (1) This section applies if a person who is a non-UK resident is liable to tax under section 587 on profits from the sale of the whole or part of any patent rights.
- (2) The rules in section 588 allowing the capital cost (if any) of the rights sold to be deducted in calculating the profits from the sale do not affect the amount of income tax which [<sup>F648</sup>is to be deducted under section 910 of ITA 2007]
- (3) No election made by the seller under section 591(2) or 592(2) (election for spreading) in relation to the proceeds of sale or any instalment affects the amount of income tax which [<sup>F649</sup>is to be deducted under section 910 of ITA 2007]
- (a) deducted from the proceeds of sale or instalment under section 349(1) of ICTA, and
  - (b) assessed under section 350 of that Act.

#### **Textual Amendments**

**F648** Words in s. 595(2) substituted (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), ss. 1027, 1034, [Sch. 1 para. 546\(2\)](#) (with transitional provisions and savings in [Sch. 2](#))

**F649** Words in s. 595(3) substituted (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), ss. 1027, 1034, [Sch. 1 para. 546\(3\)](#) (with transitional provisions and savings in [Sch. 2](#))

#### **596 Adjustments where tax has been deducted**

- (1) Where any sum has been deducted from a payment by virtue of section 595(2), any adjustment necessary—
- (a) because of section 595(2), or
  - (b) because of an election under section 591(2) or 592(2),

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

must be made by way of repayment of tax.

- (2) Adjustments necessary to give effect to an election under section 591(2) or 592(2) must be made year by year, treating one-sixth of the sum deducted from the proceeds of sale or instalment as income tax paid for each of the 6 years.
- (3) No repayment is to be made of any tax treated under subsection (2) as income tax paid for a particular year unless and until it is ascertained that the income tax ultimately falling to be paid for that year is less than the amount which was paid for that year.

### 597 Licences connected with patents

- (1) The acquisition of a licence in respect of a patent is treated for the purposes of sections 587 to 596 as a purchase of patent rights.
- (2) The grant of a licence in respect of a patent is treated for the purposes of sections 587 to 596 as a sale of part of patent rights.
- (3) But the grant by a person entitled to patent rights of an exclusive licence is treated for the purposes of sections 587 to 596 as a sale of the whole of those rights.
- (4) In subsection (3) “exclusive licence” means a licence to exercise the rights to the exclusion of the grantor and all other persons for the period remaining until the rights come to an end.

#### Modifications etc. (not altering text)

- C71** Ss. 597-599 applied (6.4.2005) by 1988 c. 1, s. 349ZA(4) (as inserted by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), ss. 882, 883(1), [Sch. 1 para. 149](#) (with [Sch. 2](#)))
- Ss. 597-599 applied (6.4.2007 with effect as mentioned in [s. 1034\(1\)](#) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), [ss. 910\(4\)](#), 1034 (with transitional provisions and savings in [Sch. 2](#))

### 598 Rights to acquire future patent rights

- (1) If a sum is paid to obtain a right to acquire future patent rights, then for the purposes of sections 587 to 596—
  - (a) the payer is treated as purchasing patent rights for that sum, and
  - (b) the recipient is treated as selling patent rights for that sum.
- (2) If a person—
  - (a) pays a sum to obtain a right to acquire future patent rights, and
  - (b) subsequently acquires those rights,
 the expenditure is to be treated for the purposes of sections 587 to 596 as having been expenditure on the purchase of those rights.
- (3) In this section “a right to acquire future patent rights” means a right to acquire in the future patent rights relating to an invention in respect of which the patent has not yet been granted.

#### Modifications etc. (not altering text)

- C72** Ss. 597-599 applied (6.4.2005) by 1988 c. 1, s. 349ZA(4) (as inserted by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), ss. 882, 883(1), [Sch. 1 para. 149](#) (with [Sch. 2](#)))

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

Ss. 597-599 applied (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), [ss. 910\(4\)](#), 1034 (with transitional provisions and savings in [Sch. 2](#))

## 599 Sums paid for Crown use etc. treated as paid under licence

- (1) This section applies if an invention which is the subject of a patent is used by or for the service of—
  - (a) the Crown under sections 55 to 59 of the Patents Act 1977 (c. 37), or
  - (b) the government of a country outside the United Kingdom under corresponding provisions of the law of that country.
- (2) The use is treated for the purposes of sections 587 to 596 as having taken place under a licence.
- (3) Sums paid in respect of the use are treated for the purposes of sections 587 to 596 as having been paid under a licence.

### Modifications etc. (not altering text)

- C73** Ss. 597-599 applied (6.4.2005) by 1988 c. 1, s. 349ZA(4) (as inserted by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), [ss. 882](#), 883(1), [Sch. 1 para. 149](#) (with [Sch. 2](#)))
- Ss. 597-599 applied (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), [ss. 910\(4\)](#), 1034 (with transitional provisions and savings in [Sch. 2](#))

### *Relief from income tax on patent income*

## 600 Relief for expenses: patent income

- (1) Relief may be claimed under this section for—
  - (a) inventor's expenses, and
  - (b) patent application and maintenance expenses.
- (2) In this section “inventor's expenses” means expenses which—
  - (a) have been incurred by an individual who, alone or jointly, devised an invention for which a patent has been granted, and
  - (b) are attributable to devising it.
- (3) In this section “patent application and maintenance expenses” means expenses incurred by a person in connection with—
  - (a) the grant or maintenance of a patent,
  - (b) the extension of the term of a patent, or
  - (c) a rejected or abandoned application for a patent,but not incurred for the purposes of any trade carried on by the person.
- (4) Relief may not be claimed under this section for patent application and maintenance expenses unless they are expenses which would, if incurred for the purposes of a trade, have been allowable as a deduction in calculating the profits of the trade.
- (5) Relief may not be claimed under this section for any expenses if relief for them is given under—

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (a) section 582 (calculation of income for the purposes of the charge to tax on royalties etc.), or
  - (b) any other provision of the Tax Acts.
- (6) This section needs to be read with section 603 (contributions to expenditure).

## 601 How relief is given under section 600

- (1) This section sets out how relief for expenses is given where a person makes a claim under section 600.
- (2) The amount of the expenses must be deducted from or set off against the person's income from patents for the tax year in which the expenses were incurred.
- [<sup>F650</sup>(2A) The deduction or set-off is given effect at Step 2 of the calculation in section 23 of ITA 2007.]
- (3) If the amount to be allowed is greater than the amount of the person's income from patents for that tax year, the excess must be deducted from or set off against the person's income from patents for the next tax year, and so on for subsequent tax years, without the need for a further claim.
- (4) In this section “income from patents” means—
- (a) royalties or other sums paid in respect of the use of a patent (whether chargeable under this Chapter or otherwise),
  - (b) amounts on which tax is payable under section 587, 593 or 594, and
  - (c) amounts on which tax is payable under—
    - (i) section 472(5) of CAA 2001 (patent allowances: balancing charges), or
    - (ii) paragraph 100 of Schedule 3 to that Act (balancing charges in respect of pre-1st April 1986 expenditure on the purchase of patent rights).
- (5) In this section references to a person's income from patents are to the income after any allowance has been deducted from or set off against it under section 479 of CAA 2001 (certain allowances against income from patents).

### Textual Amendments

**F650** S. 601(2A) inserted (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by *Income Tax Act 2007* (c. 3), ss. 1027, 1034, **Sch. 1 para. 547** (with transitional provisions and savings in **Sch. 2**)

### *Payments received after deduction of tax*

## 602 Payments received after deduction of tax

[<sup>F651</sup>In accordance with section 848 of ITA 2007, a sum representing income tax deducted under either of the following Chapters] from a payment of royalties or other income within this Chapter is treated as income tax paid by the recipient [<sup>F652</sup>—

Chapter 6 of Part 15 of ITA 2007 (deduction from annual payments and patent royalties), and

Chapter 7 of that Part (deduction from other payments connected with intellectual property).]



*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

### Textual Amendments

- F651** Words in s. 602 substituted (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), ss. 1027, 1034, [Sch. 1 para. 548\(2\)](#) (with transitional provisions and savings in [Sch. 2](#))
- F652** Words in s. 602 substituted (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), ss. 1027, 1034, [Sch. 1 para. 548\(3\)](#) (with transitional provisions and savings in [Sch. 2](#))

## Supplementary

### 603 Contributions to expenditure

- (1) For the purposes of sections 585, 588 and 600, the general rule is that a person (“A”) is to be regarded as not having incurred expenditure so far as it has been, or is to be, met (directly or indirectly) by—
  - (a) a public body, or
  - (b) a person other than A.
- (2) In this Chapter “public body” means the Crown or any government, local authority or other public authority (whether in the United Kingdom or elsewhere).
- (3) The general rule does not apply to the expenses mentioned in section 588(2)(b) (incidental expenses incurred by a seller of patent rights).
- (4) The general rule is subject to the exception in section 604.

### 604 Contributions not made by public bodies nor eligible for tax relief

- (1) A person (“A”) is to be regarded as having incurred expenditure (despite section 603(1)) so far as the requirements in subsections (2) and (3) are met in relation to the expenditure.
- (2) The first requirement is that the person meeting A's expenditure (“B”) is not a public body.
- (3) The second requirement is that—
  - (a) no allowance can be made under Chapter 2 of Part 11 of CAA 2001 (contribution allowances) in respect of B's expenditure, and
  - (b) the expenditure is not allowed to be deducted in calculating the profits of a trade, profession or vocation carried on by B.
- (4) When determining for the purposes of subsection (3)(a) whether such an allowance can be made, assume that B is within the charge to tax.

### 605 Exchanges

- (1) In this Chapter references to the sale of property include the exchange of property.
- (2) In this section—

references to property include know-how, and  
references to the sale of property include the disposal of know-how.

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

- (3) For the purposes of subsection (1), any provision of this Chapter referring to a sale has effect with the necessary modifications, including, in particular, those in subsections (4) and (5).
- (4) References to the proceeds of sale and to the price include the consideration for the exchange.
- (5) References to capital sums included in the proceeds of sale include references to so much of the consideration for the exchange as would have been a capital sum if it had been a money payment.

### **606 Apportionment where property sold together**

- (1) Any reference in this Chapter to the sale of property includes the sale of that property together with other property.
- (2) In this section—
  - references to property include know-how, and
  - references to the sale of property include the disposal of know-how.
- (3) For the purposes of subsection (1), all property sold as a result of one bargain is to be treated as sold together even though—
  - (a) separate prices are, or purport to be, agreed for separate items of that property, or
  - (b) there are, or purport to be, separate sales of separate items of that property.
- (4) If an item of property is sold together with other property, then, for the purposes of the charges under sections 583 and 587—
  - (a) the net proceeds of the sale of that item are treated as being so much of the net proceeds of the sale of all the property as, on a just and reasonable apportionment, is attributable to that item, and
  - (b) the expenditure incurred on the provision or purchase of that item is treated as being so much of the consideration given for all the property as, on a just and reasonable apportionment, is attributable to that item.

### **607 Questions about apportionments affecting two or more persons**

- (1) Any question about the way in which a sum is to be apportioned under section 606 must be determined in accordance with section 563(2) to (6) of CAA 2001 (procedure for determining certain questions affecting two or more persons) if it materially affects two or more taxpayers.
- (2) For the purposes of subsection (1) a question materially affects two or more taxpayers if at the time when the question falls to be determined it appears that the determination is material to the liability to tax (for whatever period) of two or more persons.

### **608 Meaning of “capital sums” etc.**

Section 4 of CAA 2001 (meaning of “capital sums” etc.) applies in relation to this Chapter as it applies in relation to that Act.

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

### CHAPTER 3

#### FILMS AND SOUND RECORDINGS: NON-TRADE BUSINESSES

##### **609 Charge to tax on films and sound recordings businesses**

- (1) Income tax is charged on income from a business involving the exploitation of films or sound recordings where the activities carried on do not amount to a trade.

Such a business is referred to in this Chapter as a “non-trade business”.

- (2) Expressions which are used in this Chapter and in Chapter 9 of Part 2 (trade profits: films and sound recordings) have the same meaning in this Chapter as they do in that Chapter.

##### **610 Income charged**

- (1) Tax is charged under this Chapter on the full amount of the income arising in the tax year.
- (2) See sections 612 and 613 for provision about the calculation of the amount of income charged under this Chapter.
- (3) This section is subject to Part 8 (foreign income: special rules).

##### **611 Person liable**

The person liable for any tax charged under this Chapter is the person receiving or entitled to the income.

##### **612 Calculation of income**

- (1) This section applies for calculating the amount of income charged under this Chapter.
- (2) Expenses wholly and exclusively incurred for the purpose of generating the income are deductible.
- (3) If an expense is incurred for more than one purpose, a deduction may be made for any identifiable part or identifiable proportion of the expense which is incurred wholly and exclusively for the purpose of generating the income.
- (4) Expenses which would not have been allowable as a deduction in calculating the profits of a trade, if they had been incurred for its purposes, are not deductible under this section.
- (5) Expenses for which any kind of relief is given under any other provision of the Income Tax Acts are not deductible under this section.
- (6) Any relief given as a result of section 613 is additional to the relief under this section.

##### **613 Application of trading income rules to non-trade businesses**

The provisions of Chapter 9 of Part 2 apply in relation to non-trade businesses as they apply in relation to trades but as if—

- (a) references to a basis period were to a tax year, and

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

- (b) references to anything not constituting trading stock of a trade were omitted.

## CHAPTER 4

### CERTAIN TELECOMMUNICATION RIGHTS: NON-TRADING INCOME

#### **614 Charge to tax on certain telecommunication rights of a non-trader**

- (1) Income tax is charged on income derived from a relevant telecommunication right that is not used or held for the purposes of a trade, profession or vocation.
- (2) “Relevant telecommunication right” has the same meaning as in Chapter 10 of Part 2 (see section 146).

#### **615 Income charged**

- (1) Tax is charged under this Chapter on the full amount of the income arising in the tax year.
- (2) See section 617 for provision about the calculation of the amount of certain income charged under this Chapter.
- (3) This section is subject to Part 8 (foreign income: special rules).

#### **616 Person liable**

The person liable for any tax charged under this Chapter is the person receiving or entitled to the income.

#### **617 Deductions in calculating certain income charged**

- (1) This section applies for calculating the amount of income charged under this Chapter other than annual payments.
- (2) The following sections apply as they apply for the purpose of calculating the profits of a trade, profession or vocation—
  - (a) section 147 (expenditure and receipts in respect of relevant telecommunication rights treated as revenue in nature), and
  - (b) section 148 (credits or debits arising from revaluation in respect of relevant telecommunication rights).
- (3) Expenses wholly and exclusively incurred for the purpose of generating the income are deductible.
- (4) If an expense is incurred for more than one purpose, a deduction may be made for any identifiable part or identifiable proportion of the expense which is incurred wholly and exclusively for the purpose of generating the income.
- (5) Expenses which would not have been allowable as a deduction in calculating the profits of a trade, if they had been incurred for its purposes, are not deductible under this section.

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (6) Expenses for which any kind of relief is given under any other provision of the Income Tax Acts are not deductible under this section.
- (7) The frequency with which payments are made is ignored in determining whether they are annual payments for the purposes of this Chapter.

## 618 Payments received after deduction of tax

[<sup>F653</sup>In accordance with section 848 of ITA 2007, a sum representing income tax deducted under Chapter 6 of Part 15 of that Act] from an annual payment within this Chapter is treated as income tax paid by the recipient.

<sup>F654</sup> .....

### Textual Amendments

**F653** Words in s. 618 substituted (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), ss. 1027, 1034, [Sch. 1 para. 549\(2\)](#) (with transitional provisions and savings in [Sch. 2](#))

**F654** Words in s. 618 repealed (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), ss. 1027, 1031, 1034, [Sch. 1 para. 549\(3\)](#) {Sch. 3 Pt. 1} (with transitional provisions and savings in [Sch. 2](#))

## CHAPTER 5

### SETTLEMENTS: AMOUNTS TREATED AS INCOME OF SETTLOR

#### *Charge to tax under Chapter 5*

## 619 Charge to tax under Chapter 5

- (1) Income tax is charged on—
  - (a) income which is treated as income of a settlor as a result of section 624 (income where settlor retains an interest),
  - (b) income which is treated as income of a settlor as a result of section 629 (income paid to [<sup>F655</sup>relevant] children of settlor),
  - (c) capital sums which are treated as income of a settlor as a result of section 633 (capital sums paid to settlor by trustees of settlement), and
  - (d) capital sums which are treated as income of a settlor as a result of section 641 (capital sums paid to settlor by body connected with settlement).

[<sup>F656</sup>(2) For the purposes of [<sup>F657</sup>Chapter 2 of Part 2 of ITA 2007 (rates at which income tax is charged)], where income of another person is treated as income of the settlor and is charged to tax under subsection (1)(a) or (b) above, it shall be charged in accordance with whichever provisions of the [<sup>F658</sup>Income Tax Acts] would have been applied in charging it if it had arisen directly to the settlor.]

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

#### Textual Amendments

- F655** Word in s. 619(1)(b) substituted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), [reg. 186](#)
- F656** S. 619(2) substituted (19.7.2006 with effect as mentioned in [Sch. 13 para. 5\(2\)](#) of the amending Act) for s. 619(2)-(4) by [Finance Act 2006 \(c. 25\)](#), s. 89, [Sch. 13 para. 5\(1\)](#)
- F657** Words in s. 619(2) substituted (6.4.2007 with effect as stated in [s. 1034\(1\)](#) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), ss. 1027, 1034, [Sch. 1 para. 550\(a\)](#) (with transitional provisions and savings in [Sch. 2](#))
- F658** Words in s. 619(2) substituted (6.4.2007 with effect as stated in [s. 1034\(1\)](#) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), ss. 1027, 1034, [Sch. 1 para. 550\(b\)](#) (with transitional provisions and savings in [Sch. 2](#))

### [<sup>F659</sup>619A] **Income treated as highest part of settlor's total income**

- (1) This section applies to income which is treated as income of a settlor as a result of section 624 (income where settlor retains an interest) or 629 (income paid to unmarried minor children of settlor).
- (2) The income is treated as the highest part of the settlor's total income for the purposes of section 619 (so far as it relates to the income).
- (3) See section 1012 of ITA 2007 (relationship between highest part rules) for the relationship between—
  - (a) the rule in subsection (2), and
  - (b) other rules requiring particular income to be treated as the highest part of a person's total income.]

#### Textual Amendments

- F659** S. 619A inserted (6.4.2007 with effect as stated in [s. 1034\(1\)](#) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), ss. 1027, 1034, [Sch. 1 para. 551](#) (with transitional provisions and savings in [Sch. 2](#))

### **620 Meaning of “settlement” and “settlor”**

- (1) In this Chapter—
 

“settlement” includes any disposition, trust, covenant, agreement, arrangement or transfer of assets (except that it does not include a charitable loan arrangement), and

“settlor”, in relation to a settlement, means any person by whom the settlement was made.
- (2) A person is treated for the purposes of this Chapter as having made a settlement if the person has made or entered into the settlement directly or indirectly.
- (3) A person is, in particular, treated as having made a settlement if the person—
  - (a) has provided funds directly or indirectly for the purpose of the settlement,
  - (b) has undertaken to provide funds directly or indirectly for the purpose of the settlement, or
  - (c) has made a reciprocal arrangement with another person for the other person to make or enter into the settlement.

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

(4) This Chapter applies to settlements wherever made.

(5) In this section—

“charitable loan arrangement” means any arrangement so far as it consists of a loan of money made by an individual to a charity either—

- (a) for no consideration, or
- (b) for a consideration which consists only of interest, and

“charity” includes

- (a) <sup>F660</sup>the Trustees of the National Heritage Memorial Fund, <sup>F661</sup>and]
- (b) the Historic Buildings and Monuments Commission for England<sup>F662</sup> ...
- (c) <sup>F662</sup> ...]

#### Textual Amendments

**F660** Words in s. 620(5) substituted (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), ss. 1027, 1034, **Sch. 1 para. 552** (with transitional provisions and savings in [Sch. 2](#))

**F661** Word in s. 620(5) inserted (1.4.2012) by [The Public Bodies \(Abolition of the National Endowment for Science, Technology and the Arts\) Order 2012 \(S.I. 2012/964\)](#), arts. 1(2), 3(1), **Sch.**

**F662** Words in s. 620(5) omitted (1.4.2012) by virtue of [The Public Bodies \(Abolition of the National Endowment for Science, Technology and the Arts\) Order 2012 \(S.I. 2012/964\)](#), arts. 1(2), 3(1), **Sch.**

#### Modifications etc. (not altering text)

**C74** S. 620 applied (with effect in accordance with Sch. 23 para. 65 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), **Sch. 23 paras. 26(2)65(1)(a)** (with [Sch. 23 paras. 5065\(1\)\(b\)](#))

### *Income charged and person liable*

#### **621 Income charged**

Tax is charged under this Chapter on all income and capital sums to which section 619(1) applies.

#### **622 Person liable**

The person liable for any tax charged under this Chapter is the settlor.

### *Rules for calculating income*

#### **623 Calculation of income**

- (1) This section applies for the purpose of calculating the liability to tax of a settlor charged under this Chapter.
- (2) The same deductions and reliefs are allowed as would have been allowed if the amount treated as the settlor's income as a result of this Chapter had been received by the settlor as income.

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

### *Income treated as income of settlor: retained interests*

#### **624 Income where settlor retains an interest**

- (1) Income which arises under a settlement is treated for income tax purposes as the income of the settlor and of the settlor alone if it arises—
- (a) during the life of the settlor, and
  - (b) from property in which the settlor has an interest.

[<sup>F663</sup>(1A) If the settlement is a trust, expenses of the trustees are not to be used to reduce the income of the settlor.]

- (2) For more on a settlor having an interest in property, see section 625.
- (3) For exceptions to the rule in subsection (1), see—  
 section 626 (exception for outright gifts between spouses [<sup>F664</sup>or civil partners]),  
 section 627 (exceptions for certain types of income), and  
 section 628 (exception for gifts to charities).

#### **Textual Amendments**

**F663** S. 624(1A) inserted (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), ss. 1027, 1034, [Sch. 1 para. 553](#) (with transitional provisions and savings in [Sch. 2](#))

**F664** Words in s. 624(3) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), [reg. 187](#)

#### **625 Settlor's retained interest**

- (1) A settlor is treated for the purposes of section 624 as having an interest in property if there are any circumstances in which the property or any related property—
- (a) is payable to the settlor or the settlor's spouse [<sup>F665</sup>or civil partner] ,
  - (b) is applicable for the benefit of the settlor or the settlor's spouse [<sup>F665</sup>or civil partner] , or
  - (c) will, or may, become so payable or applicable.

- (2) Subsection (1) does not apply if the only circumstances are one or more of—
- (a) the bankruptcy of a person who is, or may become, beneficially entitled to the property or any related property,
  - (b) the assignment of the property or any related property by such a person,
  - (c) the charging of (or, in Scotland, the granting of a right in security over) the property or any related property by such a person,
  - [<sup>F666</sup>(d) in the case of a marriage settlement or civil partnership settlement, the death of both parties to the marriage or civil partnership and of all or any of the children of the family of the parties to the marriage or civil partnership, and]
  - (e) the death of a child of the settlor who had become beneficially entitled to the property or any related property at not more than 25 years old.

[<sup>F667</sup>(2A) In subsection (2) “child of the family”, in relation to parties to a marriage or civil partnership, means a child of one or both of them.]

- (3) Subsection (1) does not apply if—



*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (a) there are no circumstances in which the property or any related property can become payable or applicable as mentioned in that subsection during the life of a person other than—
    - (i) the bankruptcy of the person, or
    - (ii) the assignment or charging of the person's interest in the property or any related property, and
  - (b) the person is alive and under 25 years old.
- (4) In subsection (1) “the settlor's spouse [<sup>F668</sup>or civil partner]” does not include—
- (a) a spouse [<sup>F668</sup>or civil partner] from whom the settlor is separated under an order of a court or a separation agreement,
  - (b) a spouse [<sup>F668</sup>or civil partner] from whom the settlor is separated where the separation is likely to be permanent,
  - (c) the widow or widower [<sup>F669</sup>or surviving civil partner] of the settlor, or
  - (d) a person to whom the settlor is not married but may later marry [<sup>F670</sup>or a person of whom the settlor is not a civil partner but of whom the settlor may later be a civil partner] .
- (5) In this section “related property”, in relation to any property, means income from that property or any other property directly or indirectly representing proceeds of, or of income from, that property or income from it.

#### Textual Amendments

- F665** Words in s. 625(1) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1, **188(2)**
- F666** S. 625(2)(d) substituted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1, **188(3)**
- F667** S. 625(2A) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1, **188(4)**
- F668** Words in s. 625(4) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1, **188(5)(a)**
- F669** Words in s. 625(4)(c) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1, **188(5)(b)**
- F670** Words in s. 625(4)(d) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1, **188(5)(c)**

#### 626 Exception for outright gifts between spouses [<sup>F671</sup>or civil partners]

- (1) The rule in section 624(1) does not apply in respect of an outright gift—
  - (a) of property from which income arises,
  - (b) made by one spouse to the other [<sup>F672</sup>or one civil partner to the other] , and
  - (c) meeting conditions A and B.
- (2) Condition A is that the gift carries a right to the whole of the income.
- (3) Condition B is that the property is not wholly or substantially a right to income.
- (4) A gift is not an outright gift for the purposes of this section if—
  - (a) it is subject to conditions, or
  - (b) there are any circumstances in which the property, or any related property—

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (i) is payable to the giver,
- (ii) is applicable for the benefit of the giver, or
- (iii) will, or may become, so payable or applicable.

(5) “Related property” has the same meaning in this section as in section 625.

#### Textual Amendments

- F671** Words in s. 626 heading inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1, **189(3)**
- F672** Words in s. 626(1)(b) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1, **189(2)**

### 627 Exceptions for certain types of income

- (1) The rule in section 624(1) does not apply to income which—
- (a) arises under a settlement made by one party to a marriage [<sup>F673</sup>or civil partnership] by way of provision for the other—
    - (i) after the dissolution or annulment of the marriage [<sup>F673</sup>or civil partnership] , or
    - (ii) while they are separated under an order of a court, or under a separation agreement, or where the separation is likely to be permanent, and
  - (b) is payable to, or applicable for the benefit of, the other party.
- (2) The rule in section 624(1) does not apply to income which consists of—
- (a) annual payments made by an individual for commercial reasons in connection with the individual's trade, profession or vocation,
  - (b) qualifying donations for the purposes of [<sup>F674</sup>Chapter 2 of Part 8 of ITA 2007 (gift aid)] , or
  - (c) a benefit under a relevant pension scheme.
- (3) In subsection (2)(c) “relevant pension scheme” means—
- (a) a registered pension scheme,
  - (b) a pension scheme established by a government outside the United Kingdom for the benefit, or primarily for the benefit, of its employees (or an annuity acquired using funds held for the purposes of such a pension scheme), or
  - (c) any pension arrangements of any description prescribed by regulations made under section 11(2)(h) of the Welfare Reform and Pensions Act 1999 (c. 30) or Article 12(2)(h) of the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147 (N.I. 11)).
- [<sup>F675</sup>(4) The rule in section 624(1) does not apply in relation to income which—
- (a) arises under a settlement, and
  - (b) originates from any settlor who was not an individual.]

#### Textual Amendments

- F673** Words in s. 627(1)(a) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1, **190**

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- F674** Words in s. 627(2)(b) substituted (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by Income Tax Act 2007 (c. 3), ss. 1027, 1034, **Sch. 1 para. 554** (with transitional provisions and savings in Sch. 2)
- F675** S. 627(4) inserted (with effect in accordance with s. 12(4) of the amending Act) by Finance Act 2012 (c. 14), s. 12(2)

## 628 Exception for gifts to charities

- (1) The rule in section 624(1) does not apply to any qualifying income which arises under a <sup>F676</sup>UK settlement] if—
- it is given by the trustees to a charity in the tax year in which it arises, or
  - it is income to which a charity is entitled under the terms of the trust.
- (2) In this section “qualifying income” means—
- income which <sup>F677</sup>must] be accumulated,
  - income which is payable at the discretion of the trustees or any other person <sup>F678</sup> . . .
  - income which (before being distributed) is income of any person other than the trustees.
- <sup>F679</sup>(2A) The cases covered by subsection (2)(b) include cases where the trustees have, or any other person has, any discretion over one or more of the following matters—
- whether, or the extent to which, the income is to be accumulated,
  - the persons to whom the income is to be paid, and
  - how much of the income is to be paid to any person.]
- (3) Subsection (4) applies if in any tax year qualifying income which arises under a <sup>F676</sup>UK settlement] from different sources exceeds the total of—
- the amount of that income which falls within subsection (1), and
  - the amount of that income which falls within section 630(1) (comparable exception for income of <sup>F680</sup>relevant] children of settlor).
- (4) The amount of the qualifying income from different sources which falls within subsection (1) above is rateably apportioned between those sources.
- (5) This does not affect the operation of any requirement that the whole, or any specified part, of the income from a particular source is to be given to a charity.
- (6) In this section—
- “charity” includes
- <sup>F681</sup>the Trustees of the National Heritage Memorial Fund, <sup>F682</sup>and]
  - the Historic Buildings and Monuments Commission for England<sup>F683</sup> ...
  - <sup>F683</sup> ...]
- <sup>F684</sup> . . . . .
- <sup>F685</sup>“UK settlement” means a settlement the trustees of which are resident and ordinarily resident in the United Kingdom.]

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

### Textual Amendments

- F676** Words in s. 628 substituted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), **Sch. 13 para. 33(1)(5)**
- F677** Words in s. 628(2)(a) substituted (6.4.2007 with effect as stated in [s. 1034\(1\)](#) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), ss. 1027, 1034, **Sch. 1 para. 555(2)(a)** (with transitional provisions and savings in [Sch. 2](#))
- F678** Words in s. 628(2)(b) repealed (6.4.2007 with effect as stated in [s. 1034\(1\)](#) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), ss. 1027, 1031, 1034, [Sch. 1 para. 555\(2\)\(b\)](#), **Sch. 3 Pt. 1** (with transitional provisions and savings in [Sch. 2](#))
- F679** S. 628(2A) inserted (6.4.2007 with effect as stated in [s. 1034\(1\)](#) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), ss. 1027, 1034, **Sch. 1 para. 555(3)** (with transitional provisions and savings in [Sch. 2](#))
- F680** Word in s. 628(3)(b) substituted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), **regs. 1, 191**
- F681** S. 628(6): words in definition of 'charity' substituted (6.4.2007 with effect as stated in [s. 1034\(1\)](#) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), **ss. 1027, 1034** {[Sch. 1 para. 555\(4\)\(a\)](#)} (with transitional provisions and savings in [Sch. 2](#))
- F682** Word in s. 628(6) inserted (1.4.2012) by [The Public Bodies \(Abolition of the National Endowment for Science, Technology and the Arts\) Order 2012 \(S.I. 2012/964\)](#), arts. 1(2), 3(1), **Sch.**
- F683** Words in s. 628(6) omitted (1.4.2012) by virtue of [The Public Bodies \(Abolition of the National Endowment for Science, Technology and the Arts\) Order 2012 \(S.I. 2012/964\)](#), arts. 1(2), 3(1), **Sch.**
- F684** S. 628(6): definition of 'resident' and subsequent word repealed (6.4.2007 with effect as stated in [s. 1034\(1\)](#) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), ss. 1027, 1031, 1034, [Sch. 1 para. 555\(4\)\(b\)](#), **Sch. 3 Pt. 1** (with transitional provisions and savings in [Sch. 2](#))
- F685** Words in s. 628(6) substituted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), **Sch. 13 para. 33(2)(5)**

*Income treated as income of settlor: [<sup>F686</sup>relevant] children*

### Textual Amendments

- F686** Word in cross-heading substituted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), **regs. 1, 192(5)**

## 629 Income paid to [<sup>F687</sup>relevant] children of settlor

- (1) Income which arises under a settlement is treated for income tax purposes as the income of the settlor and of the settlor alone for a tax year if, in that year and during the life of the settlor, it—
  - (a) is paid to, or for the benefit of, [<sup>F688</sup>a relevant] child of the settlor, or
  - (b) would otherwise be treated (apart from this section) as income of [<sup>F688a</sup>relevant] child of the settlor.
- (2) Subsection (1) does not apply to income which is treated as income of the settlor under section 624.
- (3) Subsection (1) does not apply in relation to a child's relevant settlement income in any tax year if, in that year, the total amount of that income does not exceed £100.
- (4) In subsection (3) a child's "relevant settlement income" means income—

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (a) which is paid to or for the benefit of, or otherwise treated as income of, the child, and
  - (b) which (apart from subsection (3)) would be treated as income of the settlor under subsection (1).
- (5) Subsection (1) does not apply so far as provided by section 630 (exception for gifts to charities).
- (6) See—
- section 631 for the treatment for the purposes of subsection (1) of retained or accumulated income, and
  - section 632 for the treatment for the purposes of this section and section 631 of certain deemed income connected to offshore income gains.
- (7) In this section and sections 631 and 632—
- (a) “child” includes a stepchild,
  - (b) “minor” means a person under the age of 18 years, and “minor child” is to be read accordingly,<sup>F689</sup> . . .
  - (c) references to payments include payments in money's worth [<sup>F690</sup>, and]
  - [<sup>F691</sup>(d) “relevant child” means a minor child who is unmarried or not in a civil partnership.]
- [<sup>F692</sup>(8) Subsection (1) is subject to section 28A of FA 2005.]

#### Textual Amendments

- F687** Word in s. 629 heading substituted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1, **192(4)**
- F688** Words in s. 629(1)(a)(b) substituted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1, **192(2)**
- F689** Word in s. 629(7)(b) omitted (5.12.2005) by virtue of [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1, **192(3)(a)**
- F690** Word in s. 629(7)(c) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1, **192(3)(b)**
- F691** S. 629(7)(d) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1, **192(3)(c)**
- F692** S. 629(8) inserted (with effect in accordance with [Sch. 13 para. 34\(2\)](#) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), **Sch. 13 para. 34(1)**

### 630 Exception for gifts to charities

- (1) The rule in section 629(1) does not apply to any qualifying income which arises under a UK trust if—
- (a) it is given by the trustees to a charity in the tax year in which it arises, or
  - (b) it is income to which a charity is entitled under the terms of the trust.
- (2) Subsection (3) applies if in any tax year qualifying income which arises under a UK trust from different sources exceeds the total of—
- (a) the amount of that income which falls within subsection (1), and
  - (b) the amount of that income which falls within section 628(1) (comparable exception for income where settlor retains an interest).

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (3) The amount of the qualifying income from different sources which falls within subsection (1) above is rateably apportioned between those sources.
- (4) This does not affect the operation of any requirement that the whole, or any specified part, of the income from a particular source is to be given to a charity.
- (5) In this section “charity”, “qualifying income” and “UK trust” have the same meaning as in section 628.

### **631 Retained and accumulated income**

- (1) This section applies if—
  - (a) the trustees of a settlement retain or accumulate income arising under the settlement, and
  - (b) a payment is subsequently made in connection with the settlement to, or for the benefit of, [<sup>F693</sup>a child of the settlor who is unmarried or not in a civil partnership].
- (2) The payment is treated for the purposes of section 629(1) as a payment of income, but only so far as there is retained or accumulated income available.
- (3) For the purposes of subsection (1) a payment is made in connection with a settlement if it is made by virtue of or in consequence of—
  - (a) the settlement, or
  - (b) any enactment relating to the settlement.
- (4) For the purposes of subsection (2) retained or accumulated income is available at any time when—

$$A > B$$

where—

A is the total amount of the income which has arisen under the settlement since it was made, and

B is the total amount of disregarded income.

- (5) In subsection (4) “disregarded income” means any income arising under the settlement since it was made which has been—
  - (a) treated as income of the settlor,
  - (b) paid (whether as income or capital) to, or for the benefit of, a beneficiary other than [<sup>F694</sup>a relevant] child of the settlor,
  - (c) otherwise treated as the income of such a beneficiary,
  - (d) treated as income of an unmarried minor child of the settlor, and subject to income tax, in any of the tax years 1995-96, 1996-97 and 1997-98, or
  - (e) applied in meeting expenses of the trustees which—
    - (i) were properly chargeable to income, or
    - (ii) would have been so chargeable but for any express [<sup>F695</sup>terms of the settlement].

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (6) For the purposes of subsection (5)(d), income arising under the settlement that is treated as income of the child is subject to income tax so far as it does not exceed the taxable amount.
- (7) In subsection (6) “the taxable amount”, in relation to a tax year, means the amount by which—

$$TI > TAD$$

where—

TI is the child's total income for income tax purposes, and

TAD is the total amount of allowances and deductions that may be set against the [<sup>F696</sup>the child's total income or net income at Step 2 or 3 of the calculation in section 23 of ITA 2007].

#### Textual Amendments

- F693** Words in s. 631(1)(b) substituted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1, **193(2)**
- F694** Words in s. 631(5)(b) substituted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1, **193(3)**
- F695** Words in s. 631(5)(e)(ii) substituted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), **Sch. 13 para. 33(4)(5)**
- F696** Words in s. 631(7) substituted (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), ss. 1027, 1034, **Sch. 1 para. 556** (with transitional provisions and savings in Sch. 2)

## 632 Offshore income gains

- (1) This section applies if—
- an offshore income gain accrues in respect of a disposal by a trustee of assets held by the trustee for a minor, and
  - the minor would be absolutely entitled as against the trustee but for being a minor.
- (2) The income which, under [<sup>F697</sup>regulation 17 of the Offshore Funds (Tax) Regulations 2009 (S.I. 2009/3001) (charge to tax)], is treated as arising by reference to that gain is treated for the purposes of sections 629 and 631 as paid to the minor.
- (3) In this section “offshore income gain” has the same meaning as in [<sup>F698</sup>Chapter 5 of Part 2 of those Regulations].

#### Textual Amendments

- F697** Words in s. 632(2) substituted (1.12.2009) (with effect in accordance with art. 1(2)(3) of, Sch. 1 to the amending S.I.) by [The Offshore Funds \(Tax\) Regulations 2009 \(S.I. 2009/3001\)](#), regs. 1(1), **128(3)(a)**
- F698** Words in s. 632(3) substituted (1.12.2009) (with effect in accordance with art. 1(2)(3) of, Sch. 1 to the amending S.I.) by [The Offshore Funds \(Tax\) Regulations 2009 \(S.I. 2009/3001\)](#), regs. 1(1), **128(3)(b)**

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

### *Capital sums treated as income of settlor: trustees' payments*

#### **633 Capital sums paid to settlor by trustees of settlement**

- (1) Any capital sum paid directly or indirectly in any tax year by the trustees of a settlement to the settlor is treated for income tax purposes as follows.
- (2) The sum is treated as the income of the settlor for the tax year so far as the amount of the sum falls within the amount of income available up to the end of the year.
- (3) The sum is treated as the income of the settlor for the following year so far as the amount of the sum—
  - (a) is not treated under subsection (2) as the settlor's income for the tax year in which it is paid, and
  - (b) falls within the amount of the income available up to the end of the following year.
- (4) Subsection (3) also applies for each subsequent year up to a maximum of 10 years subsequent to the tax year in which the sum is paid.
- (5) For this purpose the reference in subsection (3)(a) to being treated under subsection (2) as the settlor's income for the tax year in which the capital sum is paid is a reference to being treated under subsection (2) or (3) as the settlor's income for that year and any other year before the subsequent year in question.
- (6) For the meaning of certain expressions used in this section, see—
  - section 634 (meaning of “capital sum” and “sums paid to settlor”),
  - section 635 (amount of available income),
  - section 636 (calculation of undistributed income), and
  - section 637 (qualifications to section 636).
- (7) For other provisions, see—
  - section 638 (capital sums paid by way of loan or repayment of loan),
  - section 639 (loans to participators in close companies), and
  - section 640 (grossing-up of deemed income).

#### **634 Meaning of “capital sum” and “sums paid to settlor”**

- (1) In this Chapter “capital sum” means—
  - (a) any sum paid by way of loan or repayment of a loan, and
  - (b) any other sum which—
    - (i) is paid otherwise than as income, and
    - (ii) is not paid for full consideration in money or money's worth.
- (2) But this is subject to subsections (3) to (6).
- (3) It does not include any sum which could not have become payable to the settlor except—
  - (a) in one of the circumstances mentioned in subsection (2) of section 625, or
  - (b) on the death under the age of 25 of any person of the kind mentioned in subsection (3) of that section.
- (4) It does include a sum treated as a capital sum by subsection (5) below.



*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (5) Any sum which—
- (a) is paid by the trustees of a settlement to a third party—
    - (i) at the settlor's direction, or
    - (ii) as a result of the assignment by the settlor of the settlor's right to receive the sum, or
  - (b) is otherwise paid, or applied by, the trustees for the benefit of the settlor, is treated as a capital sum paid to the settlor by the trustees.
- (6) Subsection (5) does not apply to any sum which would, apart from that subsection, be treated as a capital sum paid to the settlor.
- (7) References in sections 633 to 638 to sums paid to the settlor include references to sums paid to—
- (a) the spouse [<sup>F699</sup>or civil partner] of the settlor, or
  - (b) the settlor (or the spouse [<sup>F699</sup>or civil partner] of the settlor) jointly with another person.

#### Textual Amendments

**F699** Words in s. 634(7) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1, **194**

### 635 Amount of available income

- (1) For the purposes of section 633 the amount of income available up to the end of any tax year is, in relation to any capital sum paid as mentioned in subsection (1) of that section by the trustees of a settlement, calculated as follows.
- (2) Add together the amount of income arising under the settlement in that year and any previous year which has not been distributed.
- (3) Deduct from that figure—
- (a) the amount of that income taken into account under section 633 in relation to that sum in any previous year or years,
  - (b) the amount of that income taken into account under section 633 in relation to any other capital sums paid to the settlor in any year before that sum was paid,
  - (c) any income arising under the settlement in that year or any previous year which has been treated as income of the settlor under section 624 or 629, and
  - (d) an amount equal to the sum of tax at the [<sup>F700</sup>trust rate] on—
    - (i) the total amount of income arising under the settlement in that year and any previous year which has not been distributed, less
    - (ii) any income of the kind mentioned in paragraph (c).
- (4) See sections 636 and 637 for how to calculate amounts of undistributed income.

#### Textual Amendments

**F700** Words in s. 635(3)(d) substituted (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), ss. 1027, 1034, [Sch. 1 para. 557](#) (with transitional provisions and savings in [Sch. 2](#))

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

## 636 Calculation of undistributed income

- (1) For the purposes of section 635, income arising under a settlement in any tax year is treated as income which has not been distributed so far as it exceeds the total amount of—
  - (a) the sums to which subsection (2) applies,
  - (b) the expenses to which subsection (4) applies, and
  - (c) if the trustees of the settlement are trustees for charitable purposes, the amount to which subsection (6) applies.
- (2) This subsection applies to such sums paid in the tax year to any persons by the trustees of the settlement as—
  - (a) are treated in that year (otherwise than under section 633) as the income of those persons for income tax purposes, or
  - (b) would be so treated if those persons were domiciled [<sup>F701</sup>and resident] in the United Kingdom and the sums had been paid to them there.
- (3) Subsection (2) is subject to section 637(1).
- (4) This subsection applies to any expenses of the trustees of the settlement paid in the tax year which, in the absence of any express provision of the settlement, would be properly chargeable to income.
- (5) Subsection (4)—
  - (a) does not apply to expenses so far as they are included in the sums mentioned in subsection (2), and
  - (b) is subject to section 637(2) to (7).
- (6) This subsection applies to the amount by which—

$$A > B$$

where—

A is any income arising under the settlement in the tax year in respect of which exemption from tax may be granted under [<sup>F702</sup>any provision to which subsection (7) applies], and

B is the total amount of any such sums or expenses as are mentioned in subsections (2) and (4) paid in that year which are properly chargeable to the income.

- [<sup>F703</sup>(7) This subsection applies to the following provisions of ITA 2007—
- section 521(4) (gifts entitling donor to gift-aid relief),
  - section 522(5) (gifts of money from companies),
  - section 523(5) (payments from other charities),
  - section 524 (profits etc of charitable trades),
  - section 529 (profits from fund-raising events),
  - section 530 (profits from lotteries),
  - section 531 (property income etc),
  - section 532 (savings and investment income),
  - section 533 (public revenue dividends),
  - section 536 (miscellaneous income), and

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

section 537 (income from estates in administration).]

#### Textual Amendments

- F701** Words in s. 636(2)(b) substituted (with effect in accordance with Sch. 46 para. 72 of the amending Act) by **Finance Act 2013 (c. 29), Sch. 46 para. 48(1)** (with Sch. 46 para. 48(2))
- F702** Words in s. 636(6) substituted (with effect as stated in s. 1034(1) of the amending Act) by **Income Tax Act 2007 (c. 3), ss. 1027, 1034, Sch. 1 para. 558(2)** (with transitional provisions and savings in Sch. 2)
- F703** S. 636(7) inserted (with effect as stated in s. 1034(1) of the amending Act) by **Income Tax Act 2007 (c. 3), ss. 1027, 1034, Sch. 1 para. 558(3)** (with transitional provisions and savings in Sch. 2)

### 637 Qualifications to section 636

- (1) Section 636(2) does not apply—
- (a) to any interest paid by the trustees of the settlement, or
  - (b) to any sums paid to—
    - (i) a body corporate connected with the settlement, or
    - (ii) the trustees of another settlement made by the settlor or by the trustees of the settlement.
- (2) Section 636(4) applies to any interest paid by the trustees of the settlement subject to subsections (3) to (7).
- (3) The whole of any interest paid by the trustees of the settlement is excluded from subsection (4) of section 636 if no sums within subsection (2) of that section were paid to any person other than the settlor or the spouse [<sup>F704</sup>or civil partner] of the settlor.
- (4) If any sum within section 636(2) was so paid, the relevant fraction of any interest paid by the trustees of the settlement is excluded from section 636(4).
- (5) The relevant fraction is—

$$\frac{A - B}{A}$$

where—

A is the whole of the income arising under the settlement in the tax year, less the sums referred to in subsection (4) of section 636 apart from subsections (2), (3) and (6) of this section, and

B is so much of the sums within subsection (2) of that section as is paid to persons other than the settlor or the spouse [<sup>F705</sup>or civil partner] of the settlor.

- (6) Subsections (2) to (5) do not apply to—
- (a) interest in respect of which relief from tax is allowable under any provision of the Income Tax Acts, or
  - (b) interest payable to the settlor or the spouse [<sup>F706</sup>or civil partner] of the settlor if living with the settlor.

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (7) Nothing in subsections (2) to (6) affects the liability to tax of the person receiving or entitled to the interest.
- (8) For the purposes of this Chapter, a body corporate is treated as connected with a settlement in any tax year if at any time in that year—
- (a) it is a close company (or only is not a close company because it is non-UK resident) and the participators then include the trustees of the settlement, or
  - (b) it is controlled by a company falling within paragraph (a).

#### **Textual Amendments**

- F704** Words in s. 637(3) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1, **195(2)**
- F705** Words in s. 637(5) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1, **195(3)**
- F706** Words in s. 637(6)(b) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1, **195(4)**

#### *Trustees' payments: further provisions*

### **638 Capital sums paid by way of loan or repayment of loan**

- (1) No part of a capital sum which is paid to a settlor by way of loan is treated under section 633 as the settlor's income for any tax year after the tax year in which the whole of the sum is repaid.
- (2) Subsection (3) applies if—
- (a) a capital sum is paid to the settlor by way of loan, and
  - (b) one or more capital sums have previously been paid to the settlor by way of loan and wholly repaid.
- (3) The amount of the capital sum mentioned in subsection (2)(a) is treated for the purposes of section 633 as equal to the amount (if any) by which it exceeds so much of the capital sum or sums previously paid as has already been treated as the settlor's income under that section.
- (4) Subsection (5) applies if—
- (a) a capital sum is paid to the settlor by way of complete repayment of a loan, and
  - (b) an amount not less than the capital sum is subsequently lent by the settlor to the trustees of the settlement.
- (5) No part of the capital sum is treated under section 633 as the settlor's income for any tax year after that in which the further loan is made.

### **639 Loans to participators in close companies**

- (1) This section applies if any amount has been included in a person's income under Chapter 6 of Part 4 (release of loan to participator in close company) in respect of any loan or advance.

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

- (2) There is a corresponding reduction in the amount (if any) afterwards falling to be so included under section 633 in respect of the loan or advance.

#### **640 Grossing-up of deemed income**

- (1) The whole or any part of a capital sum which is treated under section 633 as income of the settlor for any tax year is treated as income of an amount equal to the sum or the part of the sum, grossed up by reference to the [<sup>F707</sup>trust rate] for that year.
- (2) The deductible amount is to be set off against the amount of tax charged on any amount treated under section 633 as income of the settlor for any year.
- (3) In subsection (2) the “deductible amount” is an amount equal to—
- (a) tax at the [<sup>F707</sup>trust rate] for the year on the amount treated under section 633 as the settlor's income,
  - (b) so much of the amount of tax at that rate as is equal to the tax charged, or
  - (c) the amount of tax paid by the trustees on the grossed-up amount of so much of the amount of income available up to the end of the year, in relation to the capital sum, as is taken into account under section 633 in relation to that sum in that year (see subsections (4) to (7) below),
- whichever is the least.
- (4) For the purposes of subsection (3)(c)—
- (a) any reduction falling to be made under section 635(3)(d) is treated as made against income arising under the settlement in an earlier tax year before income arising under the settlement in a later tax year, and
  - (b) income arising under the settlement in an earlier tax year is treated as taken into account under section 633 before income arising under the settlement in a later tax year.
- (5) For the purposes of subsection (3)(c)—
- (a) the grossed-up amount of any sum is an amount equal to the sum, grossed up by reference to the appropriate rate for each part of the sum, and
  - (b) the amount of tax paid by the trustees on that grossed-up amount is the difference between the grossed-up amount and the sum in question.
- (6) For the purposes of subsection (5)—
- (a) the appropriate rate for any part of a sum is 0% if—
    - (i) the income that falls to be treated in accordance with subsection (4) as representing that part of the sum is income from a source outside the United Kingdom, and
    - (ii) the trustees were non-UK resident for the relevant tax year, and
  - (b) the appropriate rate for any part of a sum in relation to which paragraph (a) does not apply is—
    - (i) 34%, if the relevant tax year is the year 2003-04 or any earlier tax year, <sup>F708</sup> ...
    - (ii) 40%, if the relevant tax year is the year 2004-05 or any subsequent tax year [<sup>F709</sup>up to and including the year 2009-2010, <sup>F710</sup> ...
    - (iii) 50%, if the relevant tax year is the year 2010-2011 [<sup>F711</sup>, 2011-12 or 2012-13, and ] .

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

[<sup>F712</sup>(iv) 45%, if the relevant year is the year 2013-14 or any subsequent tax year.]

- (7) In subsection (6) “the relevant tax year”, in relation to any part of a sum, means the tax year in which the income treated in accordance with subsection (4) as representing that part of the sum arose under the settlement.

#### Textual Amendments

- F707** Words in s. 640(1)(3)(a) substituted (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), ss. 1027, 1034, [Sch. 1 para. 559](#) (with transitional provisions and savings in [Sch. 2](#))
- F708** Word in s. 640(6)(b)(i) omitted (with effect in accordance with Sch. 2 para. 25 of the amending Act) by virtue of [Finance Act 2009 \(c. 10\)](#), [Sch. 2 para. 20\(a\)](#)
- F709** Words in s. 640(6)(b) inserted (with effect in accordance with Sch. 2 para. 25 of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 2 para. 20\(b\)](#)
- F710** Word in s. 640(6)(b)(ii) omitted (with effect in accordance with s. 1(6) of the amending Act) by virtue of [Finance Act 2012 \(c. 14\)](#), [s. 1\(5\)\(a\)](#)
- F711** Words in s. 640(6)(b)(iii) substituted (with effect in accordance with s. 1(6) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [s. 1\(5\)\(b\)](#)
- F712** S. 640(6)(b)(iv) inserted (with effect in accordance with s. 1(6) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [s. 1\(5\)\(c\)](#)

#### *Capital sums treated as income of settlor: connected bodies*

### 641 Capital sums paid to settlor by body connected with settlement

- (1) This section applies if—
- (a) a capital sum is paid to the settlor in a tax year by any body corporate connected with the settlement in that year, and
  - (b) an associated payment has been, or is, made directly or indirectly to the body by the trustees of the settlement.
- (2) The capital sum is, in accordance with this section, treated for the purposes of section 633 as having been paid to the settlor by the trustees of the settlement.
- (3) A capital sum to which subsection (2) applies is treated as having been paid to the settlor in the tax year in which it is paid so far as the amount of the sum falls within the total of the associated payment or payments made up to the end of the year.
- (4) A capital sum to which subsection (2) applies is treated as having been paid to the settlor in the following year so far as the amount of the sum—
- (a) is not treated as paid to the settlor in the year mentioned in subsection (3), and
  - (b) falls within the total of the associated payment or payments made up to the end of the following year (less what was taken into account under subsection (3) in relation to the sum in the previous year).
- (5) Subsection (4) also applies for each subsequent year.
- (6) In its application to a subsequent year—
- (a) the references to the following year are to the subsequent year,

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

- (b) the reference to the year mentioned in subsection (3) is to that year and any other year before the subsequent year, and
  - (c) the reference to what was taken into account under subsection (3) in relation to the sum in the previous year is to what was taken into account under this section in relation to the sum in the previous years.
- (7) See also—
- section 642 (exception for certain loans or repayments of loans), and
  - section 643 (interpretation of sections 641 and 642).

#### **642 Exception for certain loans or repayments of loans**

- (1) Section 641 does not apply to any sum paid to the settlor by way of loan or repayment of a loan if conditions A and B are met.
- (2) Condition A is that the whole of the loan is repaid within 12 months of the date on which it was made.
- (3) Condition B is that the period for which amounts are outstanding in respect of relevant loans in any period of 5 years is not more than 12 months.
- (4) In subsection (3) “relevant loans” means loans made—
  - (a) to the settlor by the body corporate connected with the settlement or by any other body corporate so connected, or
  - (b) by the settlor to the body corporate connected with the settlement or to any other body corporate so connected.

#### **643 Interpretation of sections 641 and 642**

- (1) Any question in section 641 or 642 whether a capital sum has been paid—
  - (a) to the settlor by a body corporate, or
  - (b) to a body corporate by the trustees,is determined in the same way as any question under section 633 whether a capital sum has been paid to the settlor by the trustees.
- (2) For the circumstances in which a body corporate is treated for the purposes of this Chapter as connected with a settlement, see section 637(8).
- (3) In section 641 and this section “associated payment”, in relation to any capital sum paid to the settlor by a body corporate, means—
  - (a) any capital sum paid to the body by the trustees of the settlement, and
  - (b) any other sum paid, or asset transferred, to the body by the trustees which is not paid or transferred for full consideration in money or money's worth,being any sum paid, or asset transferred, in the 5 years ending or beginning with the date on which the capital sum is paid to the settlor.
- (4) For the purposes of sections 641 and 642 and this section any capital sum paid by a body corporate, and any associated payment made to a body corporate, at a time when it is (within the meaning of [F713 section 449 of CTA 2010]) associated with another body corporate may be treated as paid by, or made to, the other body corporate.

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

### Textual Amendments

**F713** Words in s. 643(4) substituted (1.4.2010) (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), [Sch. 1 para. 470](#) (with [Sch. 2](#))

## *Settlements by two or more settlors*

### **644 Application to settlements by two or more settlors**

- (1) In the case of a settlement where there is more than one settlor, this Chapter has effect in relation to each settlor as if that settlor were the only settlor.
- (2) This works as follows.
- (3) In this Chapter, in relation to a settlor—
  - (a) references to the property comprised in a settlement include only property originating from the settlor, and
  - (b) references to income arising under the settlement include only income originating from the settlor.
- (4) For the purposes of sections 629, 631 and 632 only the following are taken into account in relation to a child of the settlor—
  - (a) income originating from the settlor, and
  - (b) in a case in which section 631 applies, payments which under that section (as adapted by subsection (5) below) are treated as payments of income.
- (5) In applying section 631 to a settlor—
  - (a) the reference to income arising under the settlement includes only income originating from the settlor, and
  - (b) the reference to any payment made in connection with the settlement includes only a payment made out of property originating from the settlor or income originating from the settlor.
- (6) See section 645 for the meaning of references in this section to property or income originating from a settlor.

### **645 Property or income originating from settlor**

- (1) References in section 644 to property originating from a settlor are references to—
  - (a) property which the settlor has provided directly or indirectly for the purposes of the settlement,
  - (b) property representing property so provided, and
  - (c) so much of any property which represents both property so provided and other property as, on a just and reasonable apportionment, represents the property so provided.
- (2) References in [<sup>F714</sup> sections 627 and 644 ] to income originating from a settlor are references to—
  - (a) income from property originating from the settlor, and
  - (b) income provided directly or indirectly by the settlor.



*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (3) In this section references to property or income which a settlor has provided directly or indirectly—
- (a) include references to property or income which has been provided directly or indirectly by another person under reciprocal arrangements with the settlor, but
  - (b) do not include references to property or income which the settlor has provided directly or indirectly under reciprocal arrangements with another person.
- (4) In this section references to property which represents other property include references to property which represents accumulated income from the other property.

#### Textual Amendments

**F714** Words in s. 645(2) substituted (with effect in accordance with s. 12(4) of the amending Act) by Finance Act 2012 (c. 14), s. 12(3)

#### *Other supplementary provisions*

#### **646 Adjustments between settlor and trustees etc.**

- (1) A settlor is entitled to recover from—
- (a) any trustee, or
  - (b) any other person to whom the income is payable in connection with the settlement,
- the amount of any tax paid by the settlor which became chargeable on the settlor under section 624 or 629.
- (2) For this purpose, the settlor may require [<sup>F715</sup>an officer of Revenue and Customs] to provide the settlor with a certificate specifying—
- (a) the amount of income in respect of which the settlor has so paid tax, and
  - (b) the amount of tax so paid.
- (3) A certificate provided under subsection (2) is conclusive evidence of the facts stated in it.
- [<sup>F716</sup>(4) Subsection (5) applies if a settlor chargeable to tax under section 624 or 629 obtains a repayment by reason of the payment of the tax by—
- (a) any trustee, or
  - (b) any other person to whom the income is payable by virtue of or as a result of the settlement.]
- (5) The settlor must pay an amount equal to the [<sup>F717</sup>repayment] to—
- (a) the trustee, or
  - (b) the other person to whom the income is payable by virtue of or as a result of the settlement.
- (6) If there are two or more such persons, the amount must be apportioned among them as the case may require.
- [<sup>F718</sup>(6A) For the purpose of subsection (5), the settlor may require an officer of Revenue and Customs to provide the settlor with a certificate specifying—

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (a) that the settlor has obtained a repayment as mentioned in subsection (4), and
  - (b) the amount of the repayment.
- (6B) A certificate provided under subsection (6A) is conclusive evidence of the facts stated in it.]
- (7) [<sup>F719</sup>Subject to subsections (6A) and (6B), any] question as to—
- (a) the amount of a payment under subsection (5), or
  - (b) an apportionment to be made under subsection (6),
- is to be decided by the [<sup>F720</sup>tribunal and, notwithstanding the provisions of sections 11 and 13 of the Tribunals, Courts and Enforcement Act 2007, the decision of the tribunal is final].
- (8) Nothing in sections 624 to 632 is to be read as excluding a charge to tax on the trustees as persons by whom any income is received.

#### Textual Amendments

**F715** Words in s. 646(2) substituted (18.4.2005) by Commissioners for Revenue and Customs Act 2005 ss. 50, 53(1), {Sch. 4 para. 132(1)}; [S.I. 2005/1126, art. 2\(h\)](#)

**F716** S. 646(4) substituted (16.12.2010) (with effect in accordance with s. 7(6) of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\), s. 7\(2\)](#)

**F717** Word in s. 646(5) substituted (16.12.2010) (with effect in accordance with s. 7(6) of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\), s. 7\(3\)](#)

**F718** S. 646(6A)(6B) inserted (16.12.2010) (with effect in accordance with s. 7(6) of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\), s. 7\(4\)](#)

**F719** Words in s. 646(7) substituted (16.12.2010) (with effect in accordance with s. 7(6) of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\), s. 7\(5\)](#)

**F720** Words in s. 646(7) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\), art. 1\(2\), Sch. 1 para. 441](#)

#### [<sup>F721</sup>646A] Trustees' expenses to be rateably apportioned

- (1) This section applies if—
  - (a) in a tax year qualifying income arises under a UK settlement, and
  - (b) the qualifying income consists of charitable income and non-charitable income.
- (2) If expenses of the trustees are to be set against the charitable income by virtue of section 484 of ITA 2007, the amount of those expenses which can be used for that purpose is limited to the amount allocated to the charitable income.
- (3) If—
  - (a) Chapter 8 of Part 9 of ITA 2007 applies in relation to the charitable income, and
  - (b) expenses of the trustees are to be used to reduce the charitable income for income tax purposes,
 the amount of those expenses which can be used for that purpose is limited to the amount allocated to the charitable income.

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (4) For the purposes of subsections and (3) the amount of the expenses allocated to the charitable income is determined by apportioning them rateably between the charitable income and the non-charitable income.
- (5) In this section—
- “charitable income” means income within section 628(1) or 630(1),
  - “non-charitable income” means income which is not charitable income, and
  - “qualifying income” and “UK settlement” have the same meaning as in section 628.]

#### Textual Amendments

**F721** S. 646A inserted (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by **Income Tax Act 2007 (c. 3)**, ss. 1027, 1034, **Sch. 1 para. 560** (with transitional provisions and savings in **Sch. 2**)

#### <sup>F722</sup>647 Power to obtain information

#### Textual Amendments

**F722** S. 647 omitted (with effect in accordance with Sch. 23 para. 65 of the amending Act) by virtue of **Finance Act 2011 (c. 11)**, **Sch. 23 paras. 57(3), 65(1)(a)** (with **Sch. 23 paras. 50, 65(1)(b)**)

#### 648 Income arising under a settlement

- (1) References in this Chapter to income arising under a settlement include—
- (a) any income chargeable to income tax by deduction or otherwise, and
  - (b) any income which would have been so chargeable if it had been received in the United Kingdom by a person domiciled [<sup>F723</sup> and resident] there.
- [<sup>F724</sup>(2) But if, in a tax year, the settlor is not UK resident, references in this Chapter to income arising under a settlement do not include income arising under the settlement in that tax year in respect of which the settlor, if actually entitled to it, would not be chargeable to income tax by deduction or otherwise because of not being UK resident.
- (3) And if, for a tax year, section 809B, 809D or 809E of ITA 2007 (remittance basis) applies to the settlor, references in this Chapter to income arising under a settlement include in relation to any relevant foreign income arising under the settlement in that tax year only such of it as is remitted to the United Kingdom (in that tax year or any subsequent tax year) in circumstances such that, if the settlor remitted it, the settlor would be chargeable to income tax.
- (4) See Chapter A1 of Part 14 of ITA 2007 for the meaning of “remitted to the United Kingdom” etc.
- (5) Where subsection (3) applies the remitted income is treated for the purposes of this Chapter as arising under the settlement in the tax year in which it is remitted.]

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

### Textual Amendments

- F723** Words in s. 648(1)(b) substituted (with effect in accordance with Sch. 46 para. 72 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 49](#)
- F724** S. 648(2)-(5) substituted (retrospective to 21.7.2009) by [Finance Act 2009 \(c. 10\)](#), [Sch. 27 paras. 13, 15\(2\)](#)

## CHAPTER 6

### BENEFICIARIES' INCOME FROM ESTATES IN ADMINISTRATION

#### *Charge to tax on estate income*

#### **649 Charge to tax on estate income**

- (1) Income tax is charged on estate income.
- (2) In this Chapter—
  - “estate income” means the income treated under this Chapter as arising from an absolute, limited or discretionary interest in the whole or part of the residue of an estate, and
  - “estate” means the estate of a deceased person (whether a UK estate or a foreign estate).
- (3) Estate income is treated as income for income tax purposes.
- (4) If different parts of an estate are subject to different residuary dispositions, those parts are treated for the purposes of this Chapter as if they were separate estates.

#### **650 Absolute, limited and discretionary interests**

- (1) A person has an absolute interest in the whole or part of the residue of an estate for the purposes of this Chapter if—
  - (a) the capital of the residue or that part is properly payable to the person, or
  - (b) it would be so payable, if the residue had been ascertained.
- (2) A person has a limited interest in the whole or part of the residue of an estate during any period for the purposes of this Chapter if—
  - (a) the person does not have an absolute interest in it, and
  - (b) the income from it would be properly payable to the person if the residue had been ascertained at the beginning of that period.
- (3) A person has a discretionary interest in the whole or part of the residue of an estate for the purposes of this Chapter if—
  - (a) a discretion may be exercised in the person's favour, and
  - (b) on its exercise in the person's favour any of the income of the residue during the whole or part of the administration period (see section 653) would be properly payable to the person if the residue had been ascertained at the beginning of that period.

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (4) For the purposes of this section, an amount is only treated as properly payable to a person if it is properly payable to the person, or to another in the person's right, for the person's benefit, except where subsection (5) applies.
- (5) The personal representatives of a deceased person (“A”) are to be treated as having an absolute or limited interest in the whole or part of the residue of the estate of another deceased person (“B”) if—
  - (a) they have a right in their capacity as A's personal representatives, and
  - (b) were the right vested in them for their own benefit, they would have that interest in B's estate.
- (6) For the purposes of subsection (4), it does not matter whether the amount is payable directly by the personal representatives or through a trustee or other person.

**Modifications etc. (not altering text)**

**C75** S. 650(1) applied (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), [ss. 952\(6\), 1329\(1\)](#) (with [Sch. 2 Pts. 1, 2](#))

**651 Meaning of “UK estate” and “foreign estate”**

- (1) In this Chapter—

“UK estate”, in relation to a tax year, means an estate which meets conditions A and B, or condition C, for that year, and

“foreign estate”, in relation to a tax year, means an estate which is not a UK estate in relation to that year.
- (2) Condition A is that all the income of the estate either—
  - (a) has borne United Kingdom income tax by deduction, or
  - (b) is income in respect of which the personal representatives are directly assessable to United Kingdom income tax for the tax year.
- (3) Condition B is that none of the income of the estate is income for which the personal representatives are not liable to United Kingdom income tax for the tax year because they are not UK resident <sup>F725</sup>....
- (4) For the purposes of conditions A and B sums within section 680(3) or (4) (sums treated as bearing tax) are ignored.
- (5) Condition C is that the aggregate income of the estate for the tax year consists only of sums within section 680(3) or (4).

**Textual Amendments**

**F725** Words in s. 651(3) omitted (with effect in accordance with Sch. 46 para. 72 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 50](#)

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

### *Types of estate income*

#### **652 Estate income: absolute interests in residue**

- (1) Income is treated as arising in a tax year from a person's absolute interest in the whole or part of the residue of an estate if—
  - (a) the person has an assumed income entitlement for the tax year in respect of the interest (see sections 665 to 670), and
  - (b) condition A or B is met.
- (2) Condition A is that a payment is made in respect of the interest in the tax year and before the end of the administration period (see section 653).
- (3) Condition B is that the tax year is the final tax year (see section 653).
- (4) Income treated as arising as a result of this section is estate income for the purposes of this Chapter.

#### **653 Meaning of “the administration period” and “the final tax year”**

- (1) In this Chapter “the administration period”, in relation to the estate of a deceased person, means the period beginning with the deceased's death and ending with the completion of the administration of the estate.
- (2) In the application of subsection (1) to Scotland, the reference to the completion of the administration is to be taken as a reference to the date at which, after discharge of, or provision for, liabilities falling to be met out of the deceased's estate, the free balance held in trust for the residuary legatees or for the persons with the right to the intestate estate has been ascertained.
- (3) In this Chapter “the final tax year” means the tax year in which the administration period ends.

#### **654 Estate income: limited interests in residue**

- (1) Income is treated as arising in a tax year from a person's limited interest in the whole or part of the residue of an estate in cases A, B and C.
- (2) Case A is where—
  - (a) the interest has not ceased before the beginning of the tax year, and
  - (b) a sum is paid in respect of the interest in that year and before the end of the administration period.
- (3) Case B is where—
  - (a) the tax year is the final tax year,
  - (b) the interest has not ceased before the beginning of that year, and
  - (c) a sum remains payable in respect of the interest at the end of the administration period.
- (4) Case C is where—
  - (a) the tax year is a year before the final tax year,
  - (b) the interest ceases in the tax year, and

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

- (c) a sum is paid in respect of the interest in a later tax year but before the end of the administration period, or remains payable in respect of it at the end of that period.
- (5) This section does not apply to limited interests to which section 674 (successive interests: holders of limited interests) applies.
- (6) Income treated as arising as a result of this section or section 674 is estate income for the purposes of this Chapter.

#### **655 Estate income: discretionary interests in residue**

- (1) Income is treated as arising in a tax year from a person's discretionary interest in the whole or part of the residue of an estate if a payment is made in the tax year in exercise of the discretion in that person's favour.
- (2) Income treated as arising as a result of this section is estate income for the purposes of this Chapter.

#### *Income charged and person liable*

#### **656 Income charged: UK estates**

- (1) In the case of a UK estate, tax is charged under section 649 on the amount of estate income treated as arising in the tax year.
- (2) That amount is the basic amount of that income for the tax year (see subsection (4)) grossed up by reference to the applicable rate for that year (see section 663).
- (3) The gross amount is treated as having borne income tax at that rate.
- (4) In this Chapter “the basic amount”, in relation to estate income, has the meaning given by—
  - (a) section 660 (basic amount of estate income: absolute interests),
  - (b) section 661 (basic amount of estate income: limited interests),
  - (c) section 662 (basic amount of estate income: discretionary interests), and
  - (d) section 675 (basic amount of estate income: successive limited interests).

#### **657 Income charged: foreign estates**

- (1) In the case of a foreign estate, tax is charged under section 649 on the full amount of estate income treated as arising in the tax year.
- (2) That amount depends on whether the estate income arising in the tax year is paid from sums within section 680(3) or (4) (sums treated as bearing income tax).
- (3) So far as the estate income is paid from such sums, that amount is the basic amount of that income for the tax year grossed up by reference to the applicable rate for that year (see section 663).
- (4) That gross amount is treated as having borne income tax at that rate.

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (5) So far as the estate income is not paid from sums within section 680(3) or (4), the amount of estate income treated as arising in the tax year is the basic amount of that income for that year.

### **658 Special rules for foreign income**

- (1) The charge to tax under section 649 on the amount of income arising in a tax year is subject to Part 8 (foreign income: special rules).
- (2) For the purposes of section 830(1) (meaning of “relevant foreign income”) amounts charged to tax under section 649—
- (a) are treated as arising from a source outside the United Kingdom if the estate is a foreign estate, and
  - (b) are treated as not arising from such a source if the estate is a UK estate.

### **659 Person liable**

- (1) If the estate income is from a person's absolute interest or limited interest, that person is liable for any tax charged under section 649 unless subsection (3) or (4) provides that another person is liable.
- (2) If the estate income is from a discretionary interest, the person in whose favour the discretion is exercised in making the payment in question is liable for any tax charged under section 649.
- (3) If, in a case where the estate income is from an absolute interest—
- (a) section 671 (successive absolute interests) applies, or
  - (b) section 672 (successive interests: assumed income entitlement of holder of absolute interest following limited interest) applies and the income is treated as arising because of that section,
- the person by reference to whose assumed income entitlement the estate income is determined is liable for any tax charged under section 649.
- (4) If, in a case where the estate income is from a limited interest—
- (a) section 673(1) applies and the income is treated as arising because of section 673(2) (payment in respect of a previous limited interest), or
  - (b) section 674 (successive interests: holders of limited interests) applies,
- the person entitled to receive the payment in question is liable for any tax charged under section 649.

*Basic amount of estate income: general calculation rules*

### **660 Basic amount of estate income: absolute interests**

- (1) The basic amount of estate income relating to a person's absolute interest in the whole or part of the residue of an estate for a tax year before the final tax year is the lower of—
- (a) the total of all sums paid in the tax year in respect of that interest, and
  - (b) the amount of the person's assumed income entitlement for the tax year in respect of it.



---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

- (2) The basic amount for the final tax year is equal to the amount of the person's assumed income entitlement for that year in respect of that interest.
- (3) But if the residuary income of the estate for the final tax year is nil because the allowable estate deductions exceed the aggregate income of the estate, the basic amount for that year is reduced—
  - (a) where the person has an absolute interest in the whole of the residue of the estate, by an amount equal to the excess, and
  - (b) in any other case, by an amount equal to such part of the excess as is just and reasonable.
- (4) See sections 665 to 670 for the meaning of references to assumed income entitlement and residuary income of an estate.
- (5) See sections 664 and 666(2) for the meaning of aggregate income of an estate and allowable estate deductions respectively.
- (6) This section is subject to sections 671 to 673 (successive interests).

#### **661 Basic amount of estate income: limited interests**

- (1) The basic amount of estate income relating to a person's limited interest in the whole or part of the residue of an estate for a tax year is the total of the sums within section 654(2)(b), (3)(c) and (4)(c) for that year.
- (2) This does not apply, and section 675 applies instead, if the limited interest is one to which section 674 (successive interests: holders of limited interests) applies.

#### **662 Basic amount of estate income: discretionary interests**

The basic amount of estate income relating to a person's discretionary interest in the whole or part of the residue of an estate for a tax year is the total of the payments made in the tax year in exercise of the discretion in favour of the person.

#### **663 The applicable rate for grossing up basic amounts of estate income**

- (1) The applicable rate by reference to which a basic amount of estate income is grossed up for the purposes of sections 656 and 657 depends on the rate at which income tax is borne for the tax year by the aggregate income of the estate.
- (2) If the aggregate income of the estate all bears income tax at the same rate, the applicable rate is that rate.
- (3) If—
  - (a) different parts of the aggregate income of the estate bear income tax at different rates, and
  - (b) the same rate applies to all the income from which section 679 treats the basic amount as having been paid,the applicable rate is that rate.
- (4) If—
  - (a) different parts of the aggregate income of the estate bear income tax at different rates, and

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

(b) different rates apply to different parts of the income from which section 679 treats the basic amount as having been paid, each of those rates is the applicable rate by reference to which the corresponding part of the basic amount is grossed up.

## **664 The aggregate income of the estate**

- (1) For the purposes of this Chapter the aggregate income of the estate for a tax year is the total of the income and amounts specified in subsection (2), but excluding the income specified in subsection (5).
- (2) The income and amounts are—
  - (a) the income of the deceased's personal representatives in that capacity which is charged to United Kingdom income tax for the tax year,
  - (b) the income of the deceased's personal representatives in that capacity on which such tax would have been charged for the tax year if—
    - (i) it was income of a UK resident <sup>F726</sup>..., and
    - (ii) it was income from a source in the United Kingdom,
  - (c) any amount of income treated as arising to the personal representatives under section 410(4) (stock dividends) that would be charged to income tax under Chapter 5 of Part 4 if income arising to personal representatives were so charged (see section 411),
  - (d) in a case where section 419(2) applies (release of loans to participator in close company: loans and advances to persons who die), the amount that would be charged to income tax under Chapter 6 of Part 4 apart from that section, and
  - (e) any amount that would have been treated as income of the personal representatives in that capacity under section 466 if the condition in section 466(2) had been met (gains from contracts for life insurance).
- (3) In calculating the amount of the income within subsection (2)(a), any allowable deductions are to be taken into account.
- (4) In calculating the amount of the income within subsection (2)(b), any deductions which would be allowable if the income had been charged to United Kingdom income tax are to be deducted from the full amount of the income actually arising in the tax year.
- (5) The excluded income is—
  - (a) income to which any person is or may become entitled under a specific disposition, and
  - (b) income from property devolving on the personal representatives otherwise than as assets for payment of the deceased's debts.
- (6) In subsection (5)(a) “specific disposition” means a gift of specific property under a will, including—
  - (a) the disposition of personal chattels by section 46 of the Administration of Estates Act 1925 (c. 23) (succession on intestacy), and
  - (b) any disposition which under the law of another country has a similar effect to a gift of specific property by will under the law of England and Wales,
 but excluding real property included in a residuary gift made by will by a specific or general description of it or, in Scotland, heritable estate included in such a gift.

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

### Textual Amendments

**F726** Words in s. 664(2)(b)(i) omitted (with effect in accordance with Sch. 46 para. 72 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 51](#)

*Further provisions for calculating estate income relating to absolute interests*

## 665 Assumed income entitlement

- (1) Whether a person has an assumed income entitlement for a tax year in respect of an absolute interest in the whole or part of the residue of an estate depends on the results of the following steps.

### *Step 1*

Find the amount of the person's share of the residuary income of the estate that is attributable to that interest for that tax year and each previous tax year during which the person had that interest (see sections 666 to 669).

### *Step 2*

If the estate is a UK estate in relation to any tax year for which an amount has been found under step 1, deduct from that amount income tax on that amount at the applicable rate for that year (see section 670).

### *Step 3*

Add together the amounts found under step 1 after making any deductions necessary under step 2.

### *Step 4*

Add together the basic amounts relating to the person's absolute interest in respect of which the person was liable for income tax for all previous tax years (or would have been so liable if the person had been a person liable for income tax for those years).

- (2) For the purposes of this Chapter the person has an assumed income entitlement for the tax year if the amount resulting from step 3 exceeds the amount resulting from step 4.
- (3) The assumed income entitlement is equal to the excess.
- (4) This section is subject to—
  - section 671 (successive absolute interests), and
  - section 672 (successive interests: assumed income entitlement of holder of absolute interest following limited interest).

## 666 The residuary income of the estate

- (1) For the purposes of this Chapter the residuary income of an estate for a tax year is the aggregate income of the estate for that year, less the allowable estate deductions for that year.

This is subject to section 669 (reduction in residuary income: inheritance tax on accrued income).

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (2) The allowable estate deductions for a tax year are—
- (a) all interest paid in that year by the personal representatives in that capacity (but see section 233 of IHTA 1984: exclusion of interest on unpaid inheritance tax),
  - (b) all annual payments for that year which are properly payable out of residue,
  - (c) all payments made in that year in respect of expenses incurred by the personal representatives in that capacity in the management of the assets of the estate, and
  - (d) any excess deductions from the previous tax year.

This is subject to subsections (3) to (5).

- (3) No sum is to be treated as an allowable estate deduction if it is allowable in calculating the aggregate income of the estate.
- (4) No sum is to be counted twice as an allowable estate deduction.
- (5) Payments in respect of expenses are only allowable estate deductions if they are properly chargeable to income (ignoring any specific direction in a will).
- (6) In this section “excess deductions from the previous tax year” means so much of the allowable deductions for the previous tax year as exceeded the aggregate income of the estate for that year.

#### **667 Shares of residuary income of estate**

- (1) In the case of a person who has an absolute interest in the whole of the residue of an estate for a whole tax year, the person's share of the residuary income of the estate in respect of that interest for that year is equal to the whole of that income for that year.
- (2) In the case of a person who—
  - (a) has an absolute interest in the whole of the residue of an estate for part of the tax year, or
  - (b) an absolute interest in part of the residue of an estate for the whole or part of the tax year,
 the person's share of the residuary income of the estate is a proportionate part of that income for that year.
- (3) This section is subject to section 668 (reduction in share of residuary income of estate).

#### **668 Reduction in share of residuary income of estate**

- (1) This section applies if a person has an absolute interest in the whole or part of the residue of an estate at the end of the administration period and—
  - (a) the total of the person's shares of the residuary income of the estate in respect of that interest for all tax years (apart from this section), exceeds
  - (b) the total of all sums paid during or payable at the end of the administration period in respect of that interest to any person (grossed up where subsection (5) applies).
- (2) In the final tax year the person's share of the residuary income of the estate is to be reduced by that excess.

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (3) If that excess is greater than the person's share of that income for the final tax year, that person's share of that income for the previous tax year is to be reduced, and so on.
- (4) If subsection (3) applies all necessary adjustments and repayments of income tax are to be made.
- (5) For the purposes of calculating the total mentioned in subsection (1)(b)—
  - (a) if the estate is a UK estate in relation to a tax year in which a sum is paid, the sum is to be grossed up by reference to the basic rate for that year, and
  - (b) if the estate is a UK estate in relation to the final tax year, a sum payable at the end of the administration period is to be grossed up by reference to the basic rate for that year.
- (6) For the application of this section where two or more absolute interests in the whole or the same part of the residue are held successively by different persons, see section 671(5) and (6).

#### **669 Reduction in residuary income: inheritance tax on accrued income**

- (1) This section applies if on the death of a person (“D”) income which accrued before D's death (“pre-death income”) is taken into account both—
  - (a) in determining the value of D's estate for the purposes of inheritance tax charged on D's death, and
  - (b) in calculating the residuary income of D's estate for a tax year.
- (2) A reduction is made in the residuary income of D's estate for that tax year in ascertaining the extra liability, if any, of a person with an absolute interest in the whole or part of the residue of D's estate or any other estate to which that residuary income is relevant.
- (3) A person's extra liability is the amount by which the person's liability to income tax exceeds the amount it would be if—
  - (a) income charged at [<sup>F727</sup>the additional rate or] the higher rate were charged—
    - [<sup>F728</sup>(i) in the case of savings income [<sup>F729</sup>of an amount not exceeding the starting rate limit for savings, at the starting rate for savings], and]
    - (ii) in any other case, at the basic rate, and
  - (b) income charged at the dividend upper rate were charged at [<sup>F730</sup>the dividend additional rate or] the dividend ordinary rate.
- (4) The amount of the reduction under subsection (2) is calculated as follows:

##### *Step 1*

Calculate the net pre-death income by subtracting from the pre-death income any liabilities which have been taken account both—

- (a) in determining the value of D's estate for the purposes of inheritance tax, and
- (b) in calculating the residuary income of D's estate for the tax year.

##### *Step 2*

Calculate the inheritance tax attributable to net pre-death income by multiplying the inheritance tax to be charged by—

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

## NPDI --- VE

where—

NPDI is the net pre-death income, and

VE is the value of D's estate.

### *Step 3*

Gross up the inheritance tax attributable to net pre-death income by reference to the basic rate for the tax year.

- (5) The amount of pre-death income taken into account in determining the value of D's estate is taken to be the actual amount of income accruing before D's death, less income tax at the basic rate for the tax year in which D died.
- (6) Subsection (5) applies even if the income so accruing was not valued separately or its amount was not known at the date of D's death.
- (7) For the purposes of this section, the amounts agreed between the persons liable for inheritance tax and [<sup>F731</sup>an officer of Revenue and Customs] , or determined in proceedings between them, as the value of the estate and the amount of inheritance tax to be charged are conclusive.
- (8) Evidence of those amounts and of any facts relevant to their calculation may be given by the production of a document that appears to be a certificate from [<sup>F731</sup>an officer of Revenue and Customs]

#### **Textual Amendments**

**F727** Words in s. 669(3)(a) inserted (with effect in accordance with Sch. 2 para. 25 of the amending Act) by [Finance Act 2009 \(c. 10\)](#), **Sch. 2 para. 21(a)**

**F728** S. 669(3)(a)(i) substituted (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), ss. 1027, 1034, **Sch. 1 para. 561** (with transitional provisions and savings in [Sch. 2](#))

**F729** Words in s. 669(3)(a)(i) substituted (with effect in accordance with Sch. 1 para. 65 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), **Sch. 1 para. 59**

**F730** Words in s. 669(3)(b) inserted (with effect in accordance with Sch. 2 para. 25 of the amending Act) by [Finance Act 2009 \(c. 10\)](#), **Sch. 2 para. 21(b)**

**F731** Words in s. 669(7)(8) substituted (18.4.2005) by Commissioners for Revenue and Customs Act 2005 ss. 50, 53(1), Sch. 4 para. 132(1); [S.I. 2005/1126](#), **art. 2(h)**

### **670 Applicable rate for determining assumed income entitlement (UK estates)**

- (1) The applicable rate by reference to which income tax on a person's share of the residuary income of the estate for a tax year is calculated for the purposes of step 2 of the calculation in section 665(1) depends on the rate at which income tax is borne by the aggregate income of the estate for the year.
- (2) If the aggregate income of the estate all bears income tax at the same rate, the applicable rate is that rate.

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

- (3) If different parts of the aggregate income of the estate bear income tax at different rates, the applicable rate is the rate that applies to the income to which the person's share of the residuary income of the estate relates.
- (4) If different rates apply to different parts of that income, each of those rates is the applicable rate that applies to the corresponding part of the income to which the person's share of the residuary income of the estate relates.
- (5) For the purposes of this section, if there is more than one person with an absolute interest in the residue of the estate, such apportionments of parts of the aggregate income of the estate bearing income tax at different rates are to be made as are just and reasonable for their different interests.

### *Special rules for successive interests*

#### **671 Successive absolute interests**

- (1) This section applies if two or more absolute interests in the whole or the same part of the residue of an estate are held successively during the administration period by different persons.
- (2) In determining whether a person with a later such interest (“the later holder”) has an assumed income entitlement in respect of that interest and, if so, its amount—
  - (a) the later holder's share of the residuary income of the estate in respect of that interest for any tax year is to be treated as including the share of any person with a previous such interest (“a previous holder”), and
  - (b) the basic amounts relating to the later holder's interest are to be treated as including the basic amounts relating to any previous such interest.
- (3) In applying subsection (2), all determinations under that subsection or section 672(2) that fall to be made in relation to a person with an earlier interest are to be made before determinations under those provisions relating to a person with a later interest.
- (4) A person who is a previous holder in the final tax year is to be taxed in that year, in relation to the interest as to which that person is a previous holder, as if that year were not the final tax year, and the later holder's assumed income entitlement in that year is to be calculated accordingly [<sup>F732</sup>(or, where the previous holder is a company chargeable to corporation tax, having regard to the application of section 954(4) of CTA 2009 to the previous holder)].
- (5) The calculation under section 668(1)(a) and (b) (amount of reduction in the share of the residuary income of the person with an absolute interest at the end of the administration period) is to be made by reference to all the absolute interests taken together.
- (6) If the amount resulting from that calculation is greater than the total amount of the reductions which can be made under section 668(2) and (3), the share of the residuary income of the estate of the last previous holder of the interest for the last tax year in which that last holder had that interest is to be reduced, and so on [<sup>F733</sup>(but, in a case where the last previous holder or any earlier previous holder is a company chargeable to corporation tax, having regard to the application of section 954(6) of CTA 2009 to the previous holder)].
- (7) For the purposes of this section and sections 672 to 676, two interests are held successively even where one is not held immediately before or after the other.

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (8) It is assumed for those purposes that each of the persons holding the interests in question is a person liable to income tax.

#### **Textual Amendments**

- F732** Words in s. 671(4) added (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 634\(a\)](#) (with [Sch. 2 Pts. 1, 2](#))
- F733** Words in s. 671(6) added (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 634\(b\)](#) (with [Sch. 2 Pts. 1, 2](#))

### **672 Successive interests: assumed income entitlement of holder of absolute interest following limited interest**

- (1) This section applies if—
- (a) two or more interests in the whole or part of the residue of an estate are held successively during the administration period by different persons,
  - (b) each later interest arises or is created on the cessation of the previous interest otherwise than by death,
  - (c) at least one of the interests is an absolute interest, and
  - (d) at least one of the interests preceding that interest is a limited interest.
- (2) Rules A and B apply to determine in relation to such an absolute interest—
- (a) whether the person with the interest has an assumed income entitlement in respect of the interest, and
  - (b) if so, its amount.
- (3) Rule A is that the person's share of the residuary income of the estate in respect of the absolute interest for any tax year is treated as including any amount which would be included in it if—
- (a) the interest had subsisted throughout the period when any such limited interest subsisted, and
  - (b) no such limited interest had ever subsisted.
- (4) Rule B is that the basic amounts relating to the absolute interest are treated as including the basic amounts relating to any such limited interest.

### **673 Successive interests: payments in respect of limited interests followed by absolute interests**

- (1) This section applies if—
- (a) two or more interests in the whole or part of the residue of an estate are held successively during the administration period by different persons,
  - (b) each later interest arises or is created on the cessation of the previous interest otherwise than by death,
  - (c) at least one of the interests is an absolute interest, and
  - (d) at least one of the interests preceding that interest is a limited interest.
- (2) A sum to which a person (“P”) with such an absolute interest is entitled in respect of any such limited interest which is paid while P has the absolute interest is treated as paid in respect of the absolute interest (and not the limited interest).



---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

- (3) Subsection (4) applies if—
  - (a) P's absolute interest ceases during the administration period, and
  - (b) a sum to which P is entitled in respect of any such limited interest—
    - (i) is paid after the absolute interest ceases but before the end of the administration period, or
    - (ii) remains payable at the end of it.
- (4) This Chapter applies as respects any such sum as if the limited interest had continued to subsist while that absolute interest subsisted and had been held by P.
- (5) Subsection (4) is subject to subsection (6).
- (6) For the purposes only of section 668 (reduction in share of residuary income of estate), any such sum is treated as paid or payable in respect of the absolute interest.

#### **674 Successive interests: holders of limited interests**

- (1) This section applies if—
  - (a) two or more interests in the whole or part of the residue of an estate are held successively during the administration period by different persons,
  - (b) the earlier or, if there are more than two, the earliest of the interests is a limited interest, and
  - (c) each later interest arises or is created on the cessation of the previous interest otherwise than by death.
- (2) Income is treated as arising from a limited interest in the whole or part of the residue of the estate in a tax year in cases A, B and C.
- (3) Case A is where—
  - (a) one of the successive interests subsists at the beginning of the tax year,
  - (b) a sum is paid in respect of one of the interests in that year and before the end of the administration period, and
  - (c) a person who has or has had one of the interests which is a limited interest (“a limited holder”) is entitled to receive the payment.
- (4) Case B is where—
  - (a) the tax year is the final tax year,
  - (b) one of the successive interests subsists at the beginning of that year,
  - (c) a sum remains payable in respect of one of the interests at the end of the administration period, and
  - (d) a limited holder is entitled to receive the payment.
- (5) Case C is where—
  - (a) the tax year is a year before the final tax year,
  - (b) the last of the successive interests ceases in the tax year,
  - (c) a sum is either—
    - (i) paid in respect of one of the interests in a later tax year but before the end of the administration period, or
    - (ii) remains payable in respect of it at the end of that period, and
  - (d) a limited holder is entitled to receive the payment.

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

## **675 Basic amount of estate income: successive limited interests**

The basic amount of estate income relating to a limited interest within section 674 for a tax year is the total of the sums within section 674(3)(b), (4)(c) and (5)(c) for that year.

## **676 Apportionments**

- (1) Such apportionments as are just and reasonable are to be made for the purposes of this Chapter if—
- (a) the part of a residuary estate in which an interest within any of the provisions specified in subsection (2) subsists does not wholly correspond with the part in which another such interest held successively subsists, or
  - (b) one of those interests is in the whole of the residuary estate and the other is only in part of it.
- (2) The provisions are—
- section 671 (successive absolute interests),
  - section 672 (successive interests: assumed income entitlement of holder of absolute interest following limited interest),
  - section 673 (successive interests: payments in respect of limited interests followed by absolute interests),
  - section 674 (successive interests: holders of limited interest), and
  - section 675 (basic amount of estate income: successive limited interests).

*Relief where foreign estates have borne UK income tax*

## **677 Relief where UK income tax borne by foreign estate: absolute interests**

- (1) This section applies if—
- (a) an estate is a foreign estate in relation to a tax year,
  - (b) United Kingdom income tax has been charged on a person for the tax year on estate income treated as arising from the estate under section 652 (estate income: absolute interests in residue), and
  - (c) United Kingdom income tax has already been borne by part of the aggregate income of the estate for the tax year.
- (2) If the person makes a claim under this section, the income tax charged on the person on that estate income is to be reduced by an amount equal to—

$$T \times \frac{A}{B}$$

where—

T is the income tax charged on the person,

A is so much of the aggregate income of the estate as has already borne United Kingdom income tax for the tax year, and

B is the aggregate income of the estate for the tax year.

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

[<sup>F734</sup>(3) The tax reduction under this section is given effect at Step 6 of the calculation in section 23 of ITA 2007.]

#### Textual Amendments

**F734** S. 677(3) inserted (6.4.2007 with effect as stated in [s. 1034\(1\)](#) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), ss. 1027, 1034, [Sch. 1 para. 562](#) (with transitional provisions and savings in [Sch. 2](#))

### 678 Relief where UK income tax borne by foreign estate: limited and discretionary interests

- (1) This section applies if—
- an estate is a foreign estate in relation to a tax year,
  - United Kingdom income tax has been charged on a person for the tax year on estate income from the estate treated as arising under—
    - section 654 (estate income: limited interests in residue), or
    - section 655 (estate income: discretionary interests in residue), and
  - United Kingdom income tax has already been borne by part of the aggregate income of the estate for the tax year.
- (2) If the person makes a claim under this section, the income tax charged on the person on that estate income is to be reduced by an amount equal to—

$$T \times \frac{A - C}{B - C}$$

where—

T is the income tax charged on the person,

A is so much of the aggregate income of the estate as has already borne United Kingdom income tax for the tax year,

B is the aggregate income of the estate for the tax year, and

C is the amount of United Kingdom income tax already borne by the aggregate income of the estate for the tax year.

[<sup>F735</sup>(3) The tax reduction under this section is given effect at Step 6 of the calculation in section 23 of ITA 2007.]

#### Textual Amendments

**F735** S. 678(3) inserted (6.4.2007 with effect as stated in [s. 1034\(1\)](#) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), ss. 1027, 1034, [Sch. 1 para. 563](#) (with transitional provisions and savings in [Sch. 2](#))

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

### General

#### 679 Income from which basic amounts are treated as paid

- (1) The part of the aggregate income of the estate from which a basic amount is treated as paid is determined by applying assumptions A and B in that order.
- (2) Assumption A is that if there are different persons with interests in the residue of the estate, payments in respect of their basic amounts are paid out of the different parts of the aggregate income of the estate in such proportions as are just and reasonable for their different interests.
- (3) Assumption B is that payments are made from those parts in the following order—
  - (a) income bearing income tax at the basic rate,
  - <sup>F736</sup>(b) .....and
  - (c) income bearing income tax at the dividend ordinary rate.
- (4) If some, but not all, of the aggregate income of the estate is income treated under section 680 as bearing income tax, assumption C is applied before assumptions A and B.
- (5) Assumption C is that the basic amount is paid from income that is not within section 680 before it is paid from income within that section.
- (6) Assumptions A and B then apply—
  - (a) first to determine the part of the income not within that section from which the basic amount is paid, and
  - (b) then to determine the part of the income within that section from which the basic amount is paid.

#### Textual Amendments

**F736** S. 679(3)(b) omitted (with effect in accordance with Sch. 1 para. 65 of the amending Act) by virtue of Finance Act 2008 (c. 9), **Sch. 1 para. 60**

#### 680 Income treated as bearing income tax

- (1) This section has effect for the purposes of—
  - section 663 (the applicable rate for grossing up basic amounts of estate income),
  - section 670 (applicable rate for determining assumed income entitlement (UK estates)), and
  - section 679 (income from which basic amounts are treated as paid).
- (2) If the aggregate income of the estate includes a sum within subsection (3) or (4), the sum is treated as bearing income tax at the rate specified for it in that subsection.
- (3) The following sums are treated as bearing income tax at the dividend ordinary rate—
  - (a) a sum charged under Chapter 3 of Part 4 (dividends etc. from UK resident companies etc.), or
  - (b) a sum that is part of the aggregate income of the estate because of falling within—
    - (i) section 664(2)(c) (stock dividends), or

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (ii) section 664(2)(d) (release of loan to participator in close company where debt due from personal representatives).
- (4) A sum that is part of the aggregate income of the estate because of falling within section 664(2)(e) (gains from life insurance contracts etc.) is treated as bearing income tax at the [<sup>F737</sup> basic rate ] .
- (5) Income tax treated as borne under section 656(3) or 657(4) (gross amount of estate income treated as bearing tax at the applicable rate) is not repayable so far as the basic amount of the estate income in question is paid from sums within this section.

**Textual Amendments**

**F737** Words in s. 680(4) substituted (with effect in accordance with Sch. 1 para. 65 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 1 para. 61](#)

**[<sup>F738</sup> 680A Income treated as <sup>F739</sup> ... dividend income**

- (1) [<sup>F740</sup> Subsection (3) applies ] to income if it—
  - (a) is treated under section 656(3) or 657(4) (gross amount of estate income treated as bearing tax at the applicable rate) as bearing tax at <sup>F741</sup> ... the dividend ordinary rate, and
  - (b) is not paid through a trustee.
- <sup>F742</sup>(2) .....
- (3) [<sup>F743</sup> The income ] is treated as dividend income.
- (4) [<sup>F744</sup> Subsection (6) applies ] to income if it—
  - (a) is treated by section 662, read with section 656(3) or 657(4), as bearing tax at <sup>F745</sup> ... the dividend ordinary rate, and
  - (b) is paid through a trustee.
- <sup>F746</sup>(5) .....
- (6) [<sup>F747</sup> The income ] is treated as dividend income of the trustee.]

**Textual Amendments**

- F738** S. 680A inserted (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), ss. 1027, 1034, [Sch. 1 para. 566](#) (with transitional provisions and savings in [Sch. 2](#))
- F739** Words in s. 680A heading omitted (with effect in accordance with Sch. 1 para. 65 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 1 para. 62\(8\)](#)
- F740** Words in s. 680A(1) substituted (with effect in accordance with Sch. 1 para. 65 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 1 para. 62\(2\)\(a\)](#)
- F741** Words in s. 680A(1) omitted (with effect in accordance with Sch. 1 para. 65 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 1 para. 62\(2\)\(b\)](#)
- F742** S. 680A(2) omitted (with effect in accordance with Sch. 1 para. 65 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 1 para. 62\(3\)](#)
- F743** Words in s. 680A(3) substituted (with effect in accordance with Sch. 1 para. 65 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 1 para. 62\(4\)](#)
- F744** Words in s. 680A(4) substituted (with effect in accordance with Sch. 1 para. 65 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 1 para. 62\(5\)\(a\)](#)

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- F745** Words in s. 680A(4) omitted (with effect in accordance with Sch. 1 para. 65 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 1 para. 62\(5\)\(b\)](#)
- F746** S. 680A(5) omitted (with effect in accordance with Sch. 1 para. 65 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 1 para. 62\(6\)](#)
- F747** Words in s. 680A(6) substituted (with effect in accordance with Sch. 1 para. 65 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 1 para. 62\(7\)](#)

## **681 Transfers of assets etc. treated as payments**

- (1) For the purposes of this Chapter—
  - (a) a transfer of assets, or
  - (b) the appropriation of assets by personal representatives to themselves,
 is treated as the payment of an amount equal to the assets' value at the date of transfer or appropriation.
- (2) The set off or release of a debt is treated for the purposes of this Chapter as the payment of an amount equal to it.
- (3) If at the end of the administration period—
  - (a) there is an obligation to transfer assets to any person, or
  - (b) personal representatives are entitled to appropriate assets to themselves,
 an amount equal to the assets' value at that time is treated as payable then for the purposes of this Chapter.
- (4) If at the end of the administration period—
  - (a) there is an obligation to release or set off a debt owed by any person, or
  - (b) personal representatives are entitled to release or set off a debt in their own favour,
 a sum equal to the debt is treated as payable then for the purposes of this Chapter.

## **682 Assessments, adjustments and claims after the administration period**

- (1) This subsection applies if after the administration period ends it is apparent that a person is liable for income tax on estate income for any tax year who previously appeared not to be so liable or to be liable for tax on a lesser amount.
- (2) If subsection (1) applies—
  - (a) the person may be assessed and taxed for the tax year, and
  - (b) any relief or additional relief to which the person may be entitled for the tax year is to be allowed if a claim is made.
- (3) This subsection applies if after the administration period ends it is apparent that a person who previously appeared to be liable for income tax on estate income for any tax year is not so liable or is liable for tax on a lesser amount.
- (4) If subsection (3) applies—
  - (a) all necessary adjustments and repayments of income tax for the tax year are to be made, and
  - (b) if the person has been allowed relief which exceeds the relief that could have been given by reference to the amount actually charged for the tax year, income tax is charged on the person for that year under this subsection on the excess.

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

[<sup>F748</sup>(4A) The excess charged under subsection (4)(b) is treated as an amount of income for income tax purposes, except so far as it represents a tax reduction given effect at Step 6 of the calculation in section 23 of ITA 2007.]

- (5) An assessment or adjustment made for the purposes of this Chapter or a claim made as a result of this Chapter may be made after the end of the period otherwise allowed if it is made on or before the third anniversary of the normal self-assessment filing date for the tax year in which the administration period ends.

#### Textual Amendments

**F748** S. 682(4A) inserted (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), ss. 1027, 1034. {Sch. 1 para. 567} (with transitional provisions and savings in Sch. 2)

#### [<sup>F749</sup>682A] Statements relating to estate income

- (1) If a person within subsection (2) requests it in writing, a personal representative of a deceased person must provide the person with a statement showing—
- (a) the amount treated as estate income arising from the person's interest in the whole or part of the deceased person's estate for which the person is liable to income tax for a tax year, and
  - (b) the amount of any tax at the applicable rate which any such amount is treated as having borne.
- (2) A person is within this subsection if—
- (a) the person has or has had an absolute or limited interest in the whole or part of the residue of the estate, or
  - (b) estate income has arisen to the person from a discretionary interest the person has or has had in the whole or part of the residue of the estate.
- (3) A statement under subsection (1) must be in writing.
- (4) The duty to comply with a request under this section is enforceable by the person who made it.]

#### Textual Amendments

**F749** S. 682A inserted (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. 7 para. 47](#) (with [Sch. 9 paras. 1-9, 22](#))

## CHAPTER 7

### ANNUAL PAYMENTS NOT OTHERWISE CHARGED

#### 683 Charge to tax on annual payments not otherwise charged

- (1) Income tax is charged under this Chapter on annual payments that are not charged to income tax under or as a result of any other provision of this Act or any other Act.

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (2) Subsection (1) does not apply to annual payments that would be charged to income tax under or as a result of another provision but for an exemption.
- (3) The frequency with which payments are made is ignored in determining whether they are annual payments for the purposes of this Chapter.
- (4) For exemptions, see in particular—
  - (a) sections 727 to 730 (certain annual payments by individuals),
  - (b) section 731 (periodical payments of personal injury damages),
  - (c) section 732 (compensation awards),
  - (d) section 734 (payments from trusts for injured persons),
  - (e) sections 735 to 743 (health and employment insurance payments),
  - (f) sections 744 to 747 (payments to adopters),
  - <sup>F750</sup>(g) .....
  - (h) sections 757 to 767 (interest and royalty payments), and
  - (i) section 776 (scholarship income).

#### Textual Amendments

**F750** S. 683(4)(g) repealed (with effect in accordance with Sch. 39 para. 21(3) of the amending Act) by Finance Act 2012 (c. 14), **Sch. 39 para. 21(2)**

#### 684 Income charged

- (1) Tax is charged under this Chapter on the full amount of the annual payments arising in the tax year.
- (2) Subsection (1) is subject to Part 8 (foreign income: special rules).
- (3) The amount charged under this Chapter in the case of certain payments made by trustees in the exercise of a discretion is subject to [<sup>F751</sup>section 494 of ITA 2007](grossing up of discretionary payments from trusts).

#### Textual Amendments

**F751** Words in s. 684(3) substituted (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by Income Tax Act 2007 (c. 3), ss. 1027, 1034, **Sch. 1 para. 568** (with transitional provisions and savings in Sch. 2)

#### 685 Person liable

The person liable for any tax charged under this Chapter is the person receiving or entitled to the annual payments.

#### <sup>F752</sup>685A Settlor-interested settlements

- (1) This section applies if—
  - (a) a person receives an annual payment in respect of income from the trustees of a settlement,



*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (b) the payment is made in the exercise of a discretion (whether of the trustees of the settlement or any other person), and
  - (c) a settlor is charged to tax under section 619(1) on the income arising to the trustees of the settlement (whether in the current year of assessment or in a previous year of assessment) out of which the annual payment is made.
- (2) This section applies only in respect of that proportion of the annual payment which corresponds to the proportion of the total income arising to the trustees of the settlement in respect of which a settlor is chargeable to tax under section 619(1).
- (3) If and in so far as this section applies, the recipient of the annual payment shall be treated for the purposes of this Chapter as having paid income tax at the [<sup>F753</sup>additional rate] in respect of the annual payment.
- (4) But—
- (a) tax which the recipient is treated by virtue of this section as having paid is not repayable,
  - (b) tax which the recipient is treated by virtue of this section as having paid may not be taken into account in relation to a tax liability of the recipient in respect of any other income of his, <sup>F754</sup> . . .
  - (c) <sup>F754</sup> . . . . .
- (5) If the recipient of the annual payment is a settlor in relation to the settlement, if and in so far as this section applies the annual payment shall not be treated as his income for the purposes of the Income Tax Acts (and subsection (3) does not apply).
- [ If the recipient of the annual payment is treated by subsection (3) as having paid <sup>F755</sup>(5A) income tax in respect of the annual payment, the amount of the payment is treated as the highest part of the recipient's total income for all income tax purposes except the purposes of sections 535 to 537 (gains from contracts for life insurance etc: top slicing relief).
- (5B) See section 1012 of ITA 2007 (relationship between highest part rules) for the relationship between—
- (a) the rule in subsection (5A), and
  - (b) other rules requiring particular income to be treated as the highest part of a person's income.]

(6) [<sup>F756</sup>Sections 494 and 495 of ITA 2007] shall not apply in relation to an annual payment if and in so far as this section applies.]

#### Textual Amendments

- F752** S. 685A inserted (19.7.2006 with effect as mentioned in [Sch. 13 para. 6\(2\)](#) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), s. 89, [Sch. 13 para. 6\(1\)](#)
- F753** Words in s. 685A(3) substituted (with effect in accordance with [Sch. 2 para. 25](#) of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 2 para. 22](#)
- F754** S. 685A(4)(c) and preceding word repealed (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), ss. 1027, 1031, 1034, [Sch. 1 para. 569\(2\)](#), [Sch. 3 Pt. 1](#) (with transitional provisions and savings in [Sch. 2](#))
- F755** S. 685A(5A)(5B) inserted (with effect in accordance with s. 67(3) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), s. 67(1)

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

**F756** Words in s. 685A(6) substituted (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), ss. 1027, 1034, [Sch. 1 para. 569\(3\)](#) (with transitional provisions and savings in [Sch. 2](#))

## 686 Payments received after deduction of tax

- (1) [<sup>F757</sup>In accordance with section 848 of ITA 2007, a sum representing income tax deducted under Chapter 6 of Part 15 of that Act] from an annual payment within this Chapter is treated as income tax paid by the recipient <sup>F758</sup> . . .
- (2) See also [<sup>F759</sup>section 494(3) of ITA 2007](sum treated as deducted from payments made under a discretionary trust treated as income tax paid by the person to whom the payment is made or the settlor).

### Textual Amendments

- F757** Words in s. 686(1) substituted (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), ss. 1027, 1034, [Sch. 1 para. 570\(2\)\(a\)](#) (with transitional provisions and savings in [Sch. 2](#))
- F758** Words in s. 686(1) repealed (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), ss. 1027, 1031, 1034, [Sch. 1 para. 570\(2\)\(b\)](#), [Sch. 3 Pt. 1](#), (with transitional provisions and savings in [Sch. 2](#))
- F759** Words in s. 686(2) substituted (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), ss. 1027, 1031, [Sch. 1 para. 570\(3\)](#) (with transitional provisions and savings in [Sch. 2](#))

## CHAPTER 8

### INCOME NOT OTHERWISE CHARGED

#### Modifications etc. (not altering text)

- C76** Pt. 5 Ch. 8 applied in part (1.12.2009) (with effect in accordance with art. 1(2)(3) Sch. 1 of the amending S.I.) by [The Offshore Funds \(Tax\) Regulations 2009 \(S.I. 2009/3001\)](#), regs. 1(1), [97\(2\)](#)
- C77** Pt. 5 Ch. 8 applied in part (1.12.2009) (with effect in accordance with art. 1(2)(3) Sch. 1 of the amending S.I.) by [The Offshore Funds \(Tax\) Regulations 2009 \(S.I. 2009/3001\)](#), regs. 1(1), [96\(3\)\(b\)](#)

## 687 Charge to tax on income not otherwise charged

- (1) Income tax is charged under this Chapter on income from any source that is not charged to income tax under or as a result of any other provision of this Act or any other Act.
- (2) Subsection (1) does not apply to annual payments [<sup>F760</sup>or to income falling within Chapter 2A of Part 4].
- (3) Subsection (1) does not apply to income that would be charged to income tax under or as a result of another provision but for an exemption.
- (4) The definition of “income” in section 878(1) does not apply for the purposes of this section.

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (5) For exemptions from the charge under this Chapter, see in particular—  
section 768 (commercial occupation of woodlands), and  
section 779 (gains on commodity and financial futures).

#### Textual Amendments

**F760** Words in s. 687(2) inserted (with effect in accordance with Sch. 12 para. 18(1) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), **Sch. 12 para. 13(3)**

### 688 Income charged

- (1) Tax is charged under this Chapter on the <sup>F761</sup>... amount of the income arising in the tax year.
- (2) Subsection (1) is subject to—
- Chapter 1 of Part 7 (which provides relief on income from the use of furnished accommodation in an individual's only or main residence: see, in particular, sections 794 and 798),
  - Chapter 2 of that Part (which provides relief on income from the provision by an individual of [<sup>F762</sup>qualifying care]: see, in particular, sections 814 and 817), and
  - Part 8 (foreign income: special rules).

#### Textual Amendments

**F761** Word in s. 688(1) omitted (with effect in accordance with s. 34(2) of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), **Sch. 12 para. 22**

**F762** Words in s. 688(2)(b) substituted (16.12.2010) (with effect in accordance with Sch. 1 para. 36 of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), **Sch. 1 para. 33** (with [Sch. 1 para. 37](#))

#### Modifications etc. (not altering text)

**C78** S. 688(1) excluded (1.12.2009) (with effect in accordance with art. 1(2)(3) Sch. 1 of the amending S.I.) by [The Offshore Funds \(Tax\) Regulations 2009 \(S.I. 2009/3001\)](#), **regs. 1(1), 18(3)**

### 689 Person liable

The person liable for any tax charged under this Chapter is the person receiving or entitled to the income.

#### Modifications etc. (not altering text)

**C79** S. 689 excluded (1.12.2009) (with effect in accordance with art. 1(2)(3) Sch. 1 of the amending S.I.) by [The Offshore Funds \(Tax\) Regulations 2009 \(S.I. 2009/3001\)](#), **regs. 1(1), 18(3)**

### [<sup>F763</sup>689A] Temporary non-residents

- (1) This section applies if an individual is temporarily non-resident.

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

- (2) Distributions within subsection (3) are to be treated for the purposes of this Chapter as if they had been received by the individual, or as if the individual had become entitled to them, in the period of return.
- (3) A distribution is within this subsection if—
- (a) the individual receives or becomes entitled to it in the temporary period of non-residence,
  - (b) it is a distribution of a company that is a close company or that would be a close company if the company were UK resident,
  - (c) the individual receives or becomes entitled to the distribution by virtue of being at a relevant time—
    - (i) a material participator in the company, or
    - (ii) an associate of a material participator in the company, and
  - (d) ignoring this section, the individual—
    - (i) is not liable for tax under this Chapter in respect of the distribution, but
    - (ii) would have been so liable if the individual had received the distribution, or become entitled to it, in the period of return.
- (4) For the purposes of subsection (3)—
- (a) “associate” and “participator” have the same meanings as in Part 10 of CTA 2010 (see sections 448 and 454),
  - (b) a “material participator” is a participator who has a material interest in the company, as defined in section 457 of that Act,
  - (c) “relevant time” means—
    - (i) any time in the year of departure or, if the year of departure is a split year as respects the individual, the UK part of that year, or
    - (ii) any time in one or more of the 3 tax years preceding that year, and
  - (d) paragraph (d)(i) includes a case where the individual could be relieved of liability on the making of a claim under section 6 of TIOPA 2010 (double taxation relief), even if no claim is in fact made.
- (5) If section 809B, 809D or 809E of ITA 2007 (remittance basis) applies to the individual for the year of return, any distribution within subsection (3) that is relevant foreign income and is remitted to the United Kingdom in the temporary period of non-residence is to be treated as remitted to the United Kingdom in the period of return.
- (6) In this section, “remitted to the United Kingdom” has the meaning given in Chapter A1 of Part 14 of ITA 2007.]

---

#### **Textual Amendments**

**F763** S. 689A inserted (with effect in accordance with Sch. 45 para. 153(3) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 137](#)

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

## PART 6

### EXEMPT INCOME

#### CHAPTER 1

##### INTRODUCTION

### 690 Overview of Part 6

- (1) This Part provides for certain exemptions from charges to income tax under this Act.
- (2) The exemptions are dealt with in—
  - (a) Chapter 2 (national savings income),
  - (b) Chapter 3 (income from individual investment plans),
  - (c) Chapter 4 (SAYE interest),
  - (d) Chapter 5 (venture capital trust dividends),
  - (e) Chapter 6 (income from FOTRA securities),
  - (f) Chapter 7 (purchased life annuity payments),
  - (g) Chapter 8 (other annual payments), and
  - (h) Chapter 9 (other income).
- (3) Chapter 10 explains that, in general, the effect of the exemptions is that the exempt amounts are ignored for other income tax purposes.
- (4) Other exemptions, such as exemptions relating to particular categories of persons, may also be relevant to the charges to income tax under this Act.
- (5) And the exemptions dealt with in this Part may themselves be relevant to charges to income tax outside this Act.

#### CHAPTER 2

##### NATIONAL SAVINGS INCOME

### <sup>F764</sup>691 National Savings Bank ordinary account interest

.....

#### Textual Amendments

**F764** S. 691 repealed (19.7.2011) by [Finance Act 2011 \(c. 11\)](#), [Sch. 26 para. 4](#)

### 692 Income from savings certificates

- (1) No liability to income tax arises in respect of income from authorised savings certificates.
- (2) A savings certificate is authorised so far as its acquisition was not prohibited by regulations made by the Treasury limiting a person's holding.

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

- (3) In this section “savings certificates” means—
- (a) savings certificates issued under—
    - (i) section 12 of the National Loans Act 1968 (c. 13) (power of Treasury to borrow),
    - (ii) section 7 of the National Debt Act 1958 (c. 6) (power of Treasury to issue national savings certificates), or
    - (iii) section 59 of FA 1920 (power to borrow on national savings certificates),
  - (b) war savings certificates, as defined in section 9(3) of the National Debt Act 1972 (c. 65), or
  - (c) savings certificates issued under any enactment forming part of the law of Northern Ireland and corresponding to section 12 of the National Loans Act 1968.
- (4) But subsection (3)(c) does not include Ulster Savings Certificates (for which there are special rules in section 693).

### **693 Income from Ulster Savings Certificates**

- (1) No liability to income tax arises in respect of income from authorised Ulster Savings Certificates if condition A, B or C is met.
- (2) Condition A is that —
- (a) the holder purchased them, and
  - (b) at the time of the purchase the holder was resident and ordinarily resident in Northern Ireland.
- (3) Condition B is that the holder is so resident and ordinarily resident when they are repaid.
- (4) Condition C is that—
- (a) they are repaid after the holder's death, and
  - (b) at the time of the purchase the holder was so resident and ordinarily resident.
- (5) An Ulster Savings Certificate is authorised so far as its acquisition was not prohibited by regulations made by the Department of Finance and Personnel limiting a person's holding.
- (6) The exemption under this section requires a claim.
- (7) In this Act “Ulster Savings Certificates” means savings certificates issued or treated as issued under section 15 of the Exchequer and Financial Provisions Act (Northern Ireland) 1950 (c. 3 (N.I.)).

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

## CHAPTER 3

### INCOME FROM INDIVIDUAL INVESTMENT PLANS

#### 694 Income from individual investment plans

- (1) The Treasury may by regulations provide that income of an individual from investments under a plan—
  - (a) is exempt from income tax, or
  - (b) is exempt from income tax to such extent as is specified in the regulations.
- [<sup>F765</sup>(1A) In subsection (1) “income of an individual from investments under a plan” includes income from investments which is treated as the individual's income by virtue of section 629 (income paid to relevant children of settlor).]
- (2) In this Chapter such regulations are referred to as “investment plan regulations”.
- (3) Investment plan regulations may, in particular, specify—
  - (a) the description of individuals who may invest, and
  - (b) maximum investment limits.
- (4) They may provide for investment by an individual under more than one plan in the same tax year.
- (5) They must set out conditions subject to which plans are to operate.
- (6) The following provisions of this Chapter contain more particular provisions about the scope of investment plan regulations.

#### Textual Amendments

**F765** S. 694(1A) inserted (19.7.2011) by [Finance Act 2011 \(c. 11\), s. 40\(2\)](#)

#### 695 Investment plans

- (1) Investment plan regulations may specify the kind of investments which may be made under a plan or which may be made by particular descriptions of individuals under a plan.
- (2) They may—
  - (a) provide for a plan in the form of an account, and
  - (b) authorise the ways in which the subscriptions to an account are to be invested.
- (3) They may—
  - (a) provide that plans are to be such as are approved by the [<sup>F766</sup>the Commissioners for Her Majesty's Revenue and Customs], and
  - (b) specify the circumstances in which approval may be granted and withdrawn.
- (4) They may—
  - (a) provide for plans to be treated as being of different kinds, according to criteria set out in the regulations,
  - (b) provide for the [<sup>F767</sup>Commissioners] to register a plan as being of a particular kind, and

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (c) make different provision about different kinds of plan.

#### Textual Amendments

**F766** Words in s. 695(3) substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\), ss. 50, 53\(1\), Sch. 4 para. 132\(2\)](#); S.I. 2005/1126, [art. 2\(2\)\(h\)](#)

**F767** Word in s. 695(4) substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\), ss. 50, 53\(1\), Sch. 4 para. 132\(3\)\(b\)](#); S.I. 2005/1126, [art. 2\(2\)\(h\)](#)

#### [<sup>F768</sup>695A] Investment plans for children

- (1) This section applies where investment plan regulations provide that income of a child from investments under a plan (a “child plan”) is exempt from income tax (either wholly or to such extent as is specified in the regulations).
- (2) In addition to any provision which may be made by virtue of any other provision of this Chapter, investment plan regulations may—
  - (a) specify descriptions of persons by whom investments may be made for a child,
  - (b) provide that withdrawals may be made only in the circumstances specified in the regulations, and
  - (c) provide that, in the case of a child who is under 16, the plan managers may act only on the direction of a person of a description specified in the regulations.
- (3) They may also provide—
  - (a) that any assignment of, or agreement to assign, investments under a child plan, and any charge on or agreement to charge any such investments, is void,
  - (b) that, on the bankruptcy of a child with investments under a child plan, the entitlement to those investments does not pass to any trustee or other person acting on behalf of the child's creditors, and
  - (c) that, where a contract is entered into by or on behalf of a child who is 16 or over in connection with a child plan under which investments are held—
    - (i) by the child, or
    - (ii) by another child in relation to whom the child has parental responsibility,
 the contract has effect as if the child had been 18 or over when it was entered into.
- (4) Where, by virtue of provision made in investment plan regulations under subsection (2)(a), investments are made for a child under a child plan, for the purposes of this Chapter the child is treated as having made those investments.
- (5) In this section—
  - “assignment” includes assignation, and “assign” is to be construed accordingly;
  - “bankruptcy”, in relation to a child, includes the sequestration of the child's estate;
  - “charge on or agreement to charge” includes a right in security over or an agreement to create a right in security over;
  - “child” means an individual under 18;
  - “parental responsibility” means—



*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (a) parental responsibility within the meaning of the Children Act 1989 or the Children (Northern Ireland) Order 1995, or
- (b) parental responsibilities within the meaning of the Children (Scotland) Act 1995;

and any reference to investments being held by a child includes a reference to investments being held by plan managers on behalf of the child by virtue of section 696(1).]

#### Textual Amendments

**F768** S. 695A inserted (19.7.2011) by [Finance Act 2011 \(c. 11\), s. 40\(3\)](#)

### 696 Plan managers

- (1) Investment plan regulations may provide that investments are to be held by persons on behalf of investors.
- (2) In this Chapter those persons, including the managers of any such account as is specified in section 695(2), are referred to as “plan managers”, and references to “plan managers” in any other enactment are to be read accordingly.
- (3) Investment plan regulations may—
  - (a) provide that plan managers are to be such as are approved by [<sup>F769</sup>the Commissioners for Her Majesty’s Revenue and Customs], and
  - (b) specify the circumstances in which approval may be granted and withdrawn.

#### Textual Amendments

**F769** Words in s. 696(3) substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\), ss. 50, 53\(1\), Sch. 4 para. 132\(2\)](#); S.I. 2005/1126, [art. 2\(2\)\(h\)](#)

### 697 Special requirements for certain foreign managers

- (1) Investment plan regulations may provide that a foreign institution may only be a plan manager if one of the requirements set out in section 698(2), (3) and (4) about the discharge of such of the institution’s duties as are specified in the regulations is met.
- (2) In this section “foreign institution” means—
  - (a) an EEA firm of the kind mentioned in paragraph 5(a), (b) or (c) of Schedule 3 to FISMA 2000 which is an authorised person for the purposes of that Act as a result of qualifying for authorisation under paragraph 12 of that Schedule,
  - (b) a firm which is an authorised person for those purposes as a result of qualifying for authorisation under paragraph 2 of Schedule 4 to that Act, or
  - (c) an insurance company which is non-UK resident.
- (3) Different duties may be specified under subsection (1) for different institutions or different descriptions of institution.
- (4) In this section—

“insurance company” means an undertaking carrying on the business of effecting or carrying out contracts of insurance, and

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

“contract of insurance” has the meaning given by Article 3(1) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544).

## 698 Requirements for discharge of foreign institution's duties

- (1) The requirements about the discharge of an institution's duties which are referred to in section 697(1) (one of which may be imposed in the case of certain foreign managers) are requirements A, B and C.
- (2) Requirement A is that—
  - (a) a person is currently appointed by the institution to be responsible for securing the discharge of the duties,
  - (b) that person either—
    - (i) is an individual who is a UK resident, or
    - (ii) is not an individual and has a business establishment in the United Kingdom, and
  - (c) the institution has notified [<sup>F770</sup>the Commissioners for Her Majesty's Revenue and Customs] of that person's identity and appointment.
- (3) Requirement B is that there are other current arrangements with the [<sup>F771</sup>Commissioners] for a person other than the institution to secure the discharge of the duties.
- (4) Requirement C is that there are other current arrangements with the [<sup>F771</sup>Commissioners] designed to secure the discharge of the duties.
- (5) Investment plan regulations may provide—
  - (a) that requirement A or B is only met if the person concerned is of a description specified in the regulations as respects that requirement,
  - (b) that appointments made for the purposes of requirement A or arrangements made for the purposes of requirement B are treated as terminated in circumstances specified in the regulations as respects that requirement.
- (6) Investment plan regulations may provide that a person currently appointed as mentioned in subsection (2) or as to whom there is a current arrangement within subsection (3)—
  - (a) may act on the institution's behalf for any of the purposes of the provisions relating to the duties,
  - (b) is to secure the institution's compliance with, and discharge of, the duties, where appropriate by acting on its behalf,
  - (c) is personally liable for the institution's failure to comply with or discharge any of the duties, as if they were imposed on the person and the institution jointly and severally.

### Textual Amendments

**F770** Words in s. 698(2) substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005](#) (c. 11), ss. 50, 53(1), [Sch. 4 para. 132\(2\)](#); S.I. 2005/1126, [art. 2\(2\)\(h\)](#)

**F771** Word in s. 698(3)(4) substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005](#) (c. 11), ss. 50, 53(1), [Sch. 4 para. 132\(3\)\(e\)](#); S.I. 2005/1126, [art. 2\(2\)\(h\)](#)

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

## 699 Non-entitlement to exemption

- (1) Investment plan regulations may—
  - (a) provide that in circumstances specified in the regulations an investor ceases to be entitled to the exemption given by regulations made under section 694(1) and is treated as not having been entitled to it,
  - (b) adapt or modify the effect of any enactment relating to income tax for that purpose, and
  - (c) provide that in those circumstances the investor or the plan manager (depending on the terms of the regulations) is to account to [<sup>F772</sup>the Commissioners for Her Majesty's Revenue and Customs] for income tax from which exemption has already been given on the basis that the investor was entitled to the exemption.
- (2) They may provide that an investor or the plan manager (depending on the terms of the regulations) is to account to the [<sup>F773</sup>Commissioners]—
  - (a) for income tax from which the exemption has been given in circumstances where the investor was not entitled to it, or
  - (b) for an amount determined in accordance with the regulations to be the amount to be taken as representing that tax.
- (3) They may modify the effect of or adapt any enactment relating to income tax for the purposes of securing that investors or plan managers account for the tax and other amounts mentioned in subsections (1) and (2).
- (4) They may also modify the provisions of or adapt Chapter 9 of Part 4 of this Act (gains from contracts for life insurance etc.) or Chapter 2 of Part 13 of ICTA (life policies, life annuities and capital redemption policies) for cases where an investor—
  - (a) ceases to be entitled to the exemption given by regulations made under section 694(1) and is treated as not having been entitled to it, or
  - (b) has been given the exemption on the basis of an entitlement to it when there was no such entitlement.
- (5) They may provide for plan managers (as well as investors) to be liable to account for amounts becoming due from investors as a result of regulations made under subsection (4).
- (6) They may provide that, instead of having to account as mentioned in subsection (2) or (5), an investor or a plan manager is liable to a penalty of an amount specified in the regulations if—
  - (a) an exemption has been given to which there was no entitlement, and
  - (b) the circumstances are such as are specified in the regulations.
- (7) They may provide that liabilities are imposed in cases which—
  - (a) are not cases in which liabilities may be imposed under subsections (1) to (6) where relief has been given to which there was no entitlement, but
  - (b) are cases where—
    - (i) a contravention or failure to comply with investment plan regulations that is specified in the regulations, or
    - (ii) the existence of such other circumstances as are so specified,would have the effect of excluding or limiting an entitlement to exemption, apart from the regulations under this subsection.

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (8) Regulations under subsection (7)—
- (a) may only provide for the imposition of liabilities equivalent to those which may be imposed under subsections (1) to (6), and
  - (b) must provide for those liabilities to replace the liabilities to tax which would otherwise arise.

[<sup>F774</sup>(9) In this section references to an investor include an individual entitled to an exemption given by investment plan regulations by virtue of section 694(1A).]

#### Textual Amendments

- F772** Words in s. 699(1)(c) substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\), ss. 50, 53\(1\), Sch. 4 para. 132\(2\)](#); S.I. 2005/1126, [art. 2\(2\)\(h\)](#)
- F773** Word in s. 699(2) substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\), ss. 50, 53\(1\), Sch. 4 para. 132\(3\)\(d\)](#); S.I. 2005/1126, [art. 2\(2\)\(h\)](#)
- F774** S. 699(9) inserted (19.7.2011) by [Finance Act 2011 \(c. 11\), s. 40\(4\)](#)

#### <sup>F775</sup>700 Information

#### Textual Amendments

- F775** S. 700 omitted (1.4.2010) by virtue of [The Finance Act 2009, Section 96 and Schedule 48 \(Appointed Day, Savings and Consequential Amendments\) Order 2009 \(S.I. 2009/3054\), art. 1, Sch. para. 14](#)

#### 701 General and supplementary powers

- (1) Investment plan regulations may make provision generally for the purpose of—
- (a) the establishment and administration of plans, and
  - (b) the administration of income tax in relation to them.
- (2) They may adapt or modify the effect of any enactment relating to income tax for the purpose of securing that investors are entitled to exemption from income tax in respect of investments.
- (3) They may specify how exemption from tax is to be claimed by, and granted to, investors or plan managers on behalf of investors.

[<sup>F776</sup>(4) They may include provision having effect in relation to times before they are made if the provision does not impose or increase any liability to tax.

(5) They may make different provision for different cases or circumstances.]

[<sup>F777</sup>(6) In this section references to an investor include an individual entitled to an exemption given by investment plan regulations by virtue of section 694(1A).]

#### Textual Amendments

- F776** S. 701(4)(5) inserted (21.7.2008) by [Finance Act 2008 \(c. 9\), s. 40](#)
- F777** S. 701(6) inserted (19.7.2011) by [Finance Act 2011 \(c. 11\), s. 40\(5\)](#)

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

## CHAPTER 4

### SAYE INTEREST

#### 702 Interest under certified SAYE savings arrangements

- (1) No liability to income tax arises in respect of interest payable under a certified SAYE savings arrangement.
- (2) In this section “certified SAYE savings arrangement” has the meaning given in section 703(1).
- (3) Subsection (1) is subject to—
  - (a) section 707(1) (which requires the providers of certain arrangements to be authorised), and
  - (b) paragraph 7 of Schedule 12 to FA 1988 (application of exemption on change of status of building society).
- (4) In this Chapter “interest” includes any bonus.

#### 703 Meaning of “certified SAYE savings arrangement”

- (1) In this Chapter “certified SAYE savings arrangement” means a linked savings arrangement which is certified under section 705.
- (2) In this Chapter “linked savings arrangement” means an arrangement—
  - (a) which is of a kind specified in section 704(1), and
  - (b) under which an individual who is eligible to participate in [F778 a Schedule 3] SAYE option scheme enters into a contract to make periodical contributions for a specified period for the purpose of being able to participate in that scheme.
- (3) In subsection (2)—

“to participate” means to obtain and exercise rights under the scheme, and [F779 “Schedule 3 SAYE option scheme” has the meaning given in Schedule 3 to ITEPA 2003.]

#### Textual Amendments

**F778** Words in s. 703(2)(b) substituted (6.4.2014) by Finance Act 2014 (c. 26), Sch. 8 paras. 141(2), 146 (with Sch. 8 paras. 147-157)

**F779** Words in s. 703(3) substituted (6.4.2014) by Finance Act 2014 (c. 26), Sch. 8 paras. 141(3), 146 (with Sch. 8 paras. 147-157)

#### 704 Types of arrangements and providers

- (1) A linked savings arrangement may be—
  - (a) a national savings arrangement, or
  - (b) an institutional arrangement.
- (2) In this Chapter “national savings arrangement” means an arrangement which—

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (a) provides for contributions to be paid to raise money under section 12 of the National Loans Act 1968 (c. 13) (power of Treasury to borrow),
  - (b) is governed by regulations made under section 11 of the National Debt Act 1972 (c. 65) (power of Treasury to make regulations as to raising of money under auspices of Director of Savings), and
  - (c) provides for the repayment of those contributions, together with interest, in accordance with those regulations.
- (3) In this Chapter “institutional arrangement” means—
- (a) a bank arrangement,
  - (b) a building society arrangement, or
  - (c) a European authorised institution arrangement.
- (4) In this Chapter—
- (a) “bank arrangement” means an arrangement which provides for contributions to be paid to a person within [<sup>F780</sup>section 991(2)(b) of ITA 2007](banks), and
  - (b) “provider”, in relation to such an arrangement, means that person.
- (5) In this Chapter—
- (a) “building society arrangement” means an arrangement which provides for contributions to be paid by way of investment in shares in a building society, and
  - (b) “provider”, in relation to such an arrangement, means that society.
- (6) In this Chapter—
- “European authorised institution” means an EEA firm of the kind mentioned in paragraph 5(b) of Schedule 3 to FISMA 2000 which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12 of that Schedule) to accept deposits,
- “European authorised institution arrangement” means an arrangement which provides for contributions to be paid to such a firm, and
- “provider”, in relation to such an arrangement, means that firm.

#### Textual Amendments

**F780** Words in s. 704(4)(a) substituted (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), ss. 1027, 1034, [Sch. 1 para. 571](#) (with transitional provisions and savings in [Sch. 2](#))

## 705 Certification of arrangements

- (1) A linked savings arrangement is certified under this section if it is certified by the [<sup>F781</sup>Commissioners] —
- (a) as a linked savings arrangement, and
  - (b) in the case of an institutional arrangement, as meeting such requirements as the Treasury may specify for the purposes of this Chapter.
- (2) The requirements which may be specified under subsection (1)(b) are such requirements as the [<sup>F782</sup>Commissioners] consider appropriate.
- (3) They may, in particular, relate to—

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (a) the descriptions of individuals who may enter into contracts under an arrangement,
  - (b) the contributions to be paid by them, and
  - (c) the sums to be paid or repaid to them.
- (4) Different requirements may be specified for—
- (a) bank arrangements,
  - (b) building society arrangements, and
  - (c) European authorised institution arrangements.

[<sup>F783</sup>(5) In this Chapter “the Commissioners” means the Commissioners for Her Majesty's Revenue and Customs.]

#### Textual Amendments

- F781** Word in s. 705(1) substituted (retrospective to 29.4.2009) by [Finance Act 2009 \(c. 10\), s. 50\(2\), Sch. 26 para. 2\(2\)](#)
- F782** Word in s. 705(2) substituted (retrospective to 29.4.2009) by [Finance Act 2009 \(c. 10\), s. 50\(2\), Sch. 26 para. 2\(2\)](#)
- F783** S. 705(5) inserted (retrospective to 29.4.2009) by [Finance Act 2009 \(c. 10\), s. 50\(2\), Sch. 26 para. 2\(3\)](#)

## 706 Withdrawal and variation of certifications and connected requirements

- (1) The [<sup>F784</sup>Commissioners] may—
- (a) withdraw the requirements specified under section 705(1)(b) for any description of arrangements and any certification made by reference to those requirements, or
  - (b) vary those requirements and withdraw any certification made by reference to them.
- (2) The withdrawal, or variation and withdrawal, is only effective if the [<sup>F785</sup>Commissioners] —
- (a) specify the date on which it is to take effect, and
  - (b) give notice of it <sup>F786</sup>... at least [<sup>F787</sup>15 days] before that date to the provider authorised under section 707 to enter into contracts under the arrangement concerned.
- (3) The withdrawal, or variation and withdrawal, does not affect
- [<sup>F788</sup>(a) the operation of the arrangement concerned before that date,
  - (b) contracts made under that arrangement before that date, or
  - (c) where the notice so provides, contracts which are of a description specified in the notice and are made under that arrangement after that date.]

#### Textual Amendments

- F784** Word in s. 706(1) substituted (retrospective to 29.4.2009) by [Finance Act 2009 \(c. 10\), s. 50\(2\), Sch. 26 para. 3](#)
- F785** Word in s. 706(2) substituted (retrospective to 29.4.2009) by [Finance Act 2009 \(c. 10\), s. 50\(2\), Sch. 26 para. 3](#)

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- F786** Words in s. 706(2)(b) omitted (retrospective to 29.4.2009) by virtue of [Finance Act 2009 \(c. 10\), s. 50\(2\), Sch. 26 para. 6\(a\)](#)
- F787** Words in s. 706(2)(b) substituted (retrospective to 29.4.2009) by [Finance Act 2009 \(c. 10\), s. 50\(2\), Sch. 26 para. 7](#)
- F788** S. 706(3)(a)(b)(c) substituted for words (retrospective to 29.4.2009) by [Finance Act 2009 \(c. 10\), s. 50\(2\), Sch. 26 para. 8](#)

## 707 Authorisation of providers

- (1) In the case of an institutional arrangement, section 702(1) (exemption of interest payable under certified SAYE savings arrangements) only applies if, at the time the contract under the arrangement is made, the provider is authorised by the [<sup>F789</sup>Commissioners] to enter into contracts under it.
- (2) If the authorisation is conditional, the conditions must be met at that time.
- (3) Authorisation may be given for arrangements generally or a particular arrangement.
- (4) More than one authorisation may be given to the same provider.

### Textual Amendments

- F789** Word in s. 707(1) substituted (retrospective to 29.4.2009) by [Finance Act 2009 \(c. 10\), s. 50\(2\), Sch. 26 para. 4](#)

## 708 Withdrawal and variation of authorisations

- (1) The [<sup>F790</sup>Commissioners] may withdraw the authorisation of a provider or vary it by imposing, varying or removing conditions.
- (2) The withdrawal or variation is only effective if the [<sup>F791</sup>Commissioners] —
  - (a) specify the date on which it is to take effect, and
  - (b) except in the case of a variation removing all conditions, give notice of it <sup>F792</sup>... to the provider at least 28 days before that date.
- (3) The withdrawal or variation does not affect contracts made before that date.
- (4) The fact that a provider has had its authorisation withdrawn or varied does not affect the later exercise by the [<sup>F793</sup>Commissioners of their] powers under section 707 or this section as respects the provider.

### Textual Amendments

- F790** Word in s. 708(1) substituted (retrospective to 29.4.2009) by [Finance Act 2009 \(c. 10\), s. 50\(2\), Sch. 26 para. 5\(2\)](#)
- F791** Word in s. 708(2) substituted (retrospective to 29.4.2009) by [Finance Act 2009 \(c. 10\), s. 50\(2\), Sch. 26 para. 5\(2\)](#)
- F792** Words in s. 708(2)(b) omitted (retrospective to 29.4.2009) by virtue of [Finance Act 2009 \(c. 10\), s. 50\(2\), Sch. 26 para. 6\(b\)](#)
- F793** Words in s. 708(4) substituted (retrospective to 29.4.2009) by [Finance Act 2009 \(c. 10\), s. 50\(2\), Sch. 26 para. 5\(3\)](#)



---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

## CHAPTER 5

### VENTURE CAPITAL TRUST DIVIDENDS

#### 709 Venture capital trust dividends

- (1) No liability to income tax arises in respect of a venture capital trust dividend if—
  - (a) conditions A and B are met, and
  - (b) where the dividend is paid in respect of shares acquired after 8th March 1999, condition C is met.
- (2) In subsection (1) a “venture capital trust dividend” means a dividend paid in respect of ordinary shares in a company which—
  - (a) is a venture capital trust—
    - (i) at the end of the accounting period in which the profits or gains in respect of which it is paid arose or accrued, and
    - (ii) when the dividend is paid, and
  - (b) was such a trust when the person to whom it is paid acquired the shares.
- (3) Condition A is that the person beneficially entitled to the dividend—
  - (a) is an individual of at least 18 years, and
  - (b) is beneficially entitled to it as the holder of the shares or as the person for whom, or for whose benefit, they are held by a nominee.
- (4) Condition B is that—
  - (a) in the tax year in which the shares were acquired the market value of all the shares acquired by the individual or any nominee of the individual in companies which were venture capital trusts at the time of acquisition did not exceed £200,000, or
  - (b) in that year that market value exceeded £200,000, but the shares are treated under section 710 as having been acquired within that limit.
- (5) For the purposes of subsection (4), the market value of a share is determined as at the time of its acquisition.
- (6) Condition C is that the shares were acquired for genuine commercial reasons and not as part of a scheme or arrangement the main purpose of which, or one of the main purposes of which, was the avoidance of tax.
- (7) Shares that were not so acquired are ignored for the purposes of subsection (4) and section 710 (whether or not they were acquired after 8th March 1999).
- (8) In this section and in sections 710 and 711—
  - “market value” has the same meaning as in TCGA 1992 (see sections 272 and 273),
  - “nominee”, in relation to an individual, includes the trustees of a bare trust of which the individual is the only beneficiary, and
  - “ordinary shares” means shares forming part of the company's ordinary share capital.

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

## **710 Treatment of shares where annual acquisition limit exceeded**

- (1) This section sets out the rules for determining which shares whose market value is relevant for the limit in section 709(4) are treated as shares acquired within that limit (“exempt shares”) where that limit is exceeded in a tax year.
- (2) Shares are treated as exempt shares so far as their acquisition does not cause the limit to be exceeded at the time they are acquired.
- (3) Subsection (2) is subject to subsection (4).
- (4) If shares of different descriptions acquired on the same day cause the limit to be exceeded on that day, shares of each description are treated as exempt shares so far as their market value does not exceed the appropriate proportion of the available value.
- (5) In subsection (4)—
  - “the appropriate proportion”, in relation to shares of a particular description, means the proportion which their market value bears to the market value of all the shares acquired on that day, and
  - “available value” means the maximum value of shares which could be acquired on that day without exceeding the limit.

## **711 Identification of shares after disposals**

- (1) In determining whether a disposal relates to shares in a company which were acquired when it was a venture capital trust or others, it is assumed that the others are disposed of first.
- (2) In determining whether a disposal of shares in a company which were acquired when it was a venture capital trust relates to shares which meet the condition in section 709(4) (annual acquisition limit) or others (“excess shares”), assumptions A and B are to be made.
- (3) Assumption A is that shares acquired on an earlier day are disposed of before those acquired on a later day.
- (4) Assumption B is that where the shares were acquired on the same day, excess shares are disposed of first.
- (5) For the purposes of this section, acquisitions and disposals by an individual's nominee are treated as made by the individual, and acquisitions and disposals between them are ignored.

## **712 Identification of shares after reorganisations etc.**

- (1) This section applies if shares (“the new shares”) are treated under Chapter 2 of Part 4 of TCGA 1992 (reorganisations etc.) as the same assets as other shares (“the old shares”).
- (2) If all the old shares met—
  - (a) the condition in section 709(4) (annual acquisition limit), and
  - (b) if it applied to the old shares, the condition in section 709(6) (acquisition for genuine commercial reasons),the new shares are treated as doing so.

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

- (3) If only some of the old shares met those conditions, the corresponding proportion of the new shares are treated as meeting them and the remainder are treated as not doing so.
- (4) In the tax year in which the new shares are acquired the value of the new shares is ignored in determining whether other shares acquired in the same tax year meet the condition in section 709(4).

## CHAPTER 6

### INCOME FROM FOTRA SECURITIES

#### **713 Introduction: securities free of tax to residents abroad (“FOTRA securities”)**

- (1) This Chapter provides for exemptions from income tax in respect of FOTRA securities.
- (2) In this Chapter “FOTRA security” means—
  - (a) a security issued with a condition about exemption from taxation authorised by section 22 of F(No.2)A 1931,
  - (b) a gilt-edged security which was issued before 6th April 1998 and without any such condition (other than 3½% War Loan 1952 Or After), or
  - (c) 3½% War Loan 1952 Or After.
- (3) In this Chapter “the exemption condition” has the meaning given by subsections (4) to (6), according to the kind of FOTRA security involved.
- (4) In relation to a security within subsection (2)(a), it means the condition authorised by section 22 of F(No.2)A 1931.
- (5) In relation to a security within subsection (2)(b), it means a condition with which 7.25% Treasury Stock 2007 was first issued, being a condition treated by section 161(1) of FA 1998 (non-FOTRA securities)—
  - (a) as a condition with which the security within subsection (2)(b) was issued, and
  - (b) as a condition authorised in relation to its issue by section 22 of F(No.2)A 1931.
- (6) In relation to 3½% War Loan 1952 Or After, it means a condition of its issue authorised by section 47 of F(No.2)A 1915.

#### **714 Exemption of profits from FOTRA securities**

- (1) No liability to income tax arises in respect of profits from a FOTRA security if conditions A and B are met.
- (2) Subsection (1) is subject to subsection (5).
- (3) Condition A is that the profits are stated in the exemption condition to be exempt from income tax.
- (4) Condition B is that any requirements for obtaining the exemption imposed by the security's conditions of issue are met.

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (5) Whatever the exemption condition provides, amounts charged under the provisions specified in subsection (6) are not exempted by subsection (1).
- (6) The provisions are—  
 Chapter 5 of Part 5 (settlements: amounts treated as income of settlor) so far as it applies to income within section 619(1)(a) or (b), and  
<sup>F794</sup>Chapter 2 of Part 13 of ITA 2007](anti-avoidance provisions: transfer of assets abroad).
- (7) This section does not affect the need to claim repayment of tax within the time limit applicable for a claim.

#### Textual Amendments

**F794** Words in s. 714(6) substituted (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), ss. 1027, 1034, [Sch. 1 para. 572](#) (with transitional provisions and savings in [Sch. 2](#))

## 715 Interest from FOTRA securities held on trust

- (1) This section applies if—  
 (a) a FOTRA security is held on trust, and  
 (b) apart from this section, interest payable on the security would not be exempt from income tax under section 714 because of the security not being in the beneficial ownership of a <sup>F795</sup>non-UK resident person].
- (2) For the purposes of determining whether the interest is exempt under section 714 it is to be assumed that the security is in the beneficial ownership of a <sup>F796</sup>non-UK resident person] if none of the beneficiaries of the trust <sup>F797</sup>is UK resident for the tax year in which] the interest arises.
- (3) In subsection (2) “beneficiaries of the trust” includes any person known to the trustees as a person—  
 (a) who is, or will or may become, entitled under the terms of the trust to receive income under the trust, or  
 (b) to whom or for whose benefit such income may be paid or applied.
- (4) In subsection (3) “income under the trust” includes any property held on the terms of the trust and falling to be treated as capital so far as it is or represents amounts received by the trustees as income.

#### Textual Amendments

**F795** Words in s. 715(1)(b) substituted (with effect in accordance with [Sch. 46 para. 72](#) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 52\(2\)](#) (with [Sch. 46 para. 52\(4\)](#))

**F796** Words in s. 715(2) substituted (with effect in accordance with [Sch. 46 para. 72](#) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 52\(3\)\(a\)](#) (with [Sch. 46 para. 52\(4\)](#))

**F797** Words in s. 715(2) substituted (with effect in accordance with [Sch. 46 para. 72](#) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 52\(3\)\(b\)](#) (with [Sch. 46 para. 52\(4\)](#))

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

## 716 Restriction on deductions etc. relating to FOTRA securities

- (1) A person who meets conditions A and B may not bring into account for income tax purposes—
  - (a) any amount relating to changes in the value of a FOTRA security, or
  - (b) expenses related to holding it or to any transaction concerning it.
- (2) Condition A is that the person is the beneficial owner of the security.
- (3) Condition B is that the person is a person who would be exempt from tax on the security under this Chapter.

## CHAPTER 7

### PURCHASED LIFE ANNUITY PAYMENTS

#### *Partial exemption for purchased life annuity payments*

## 717 Exemption for part of purchased life annuity payments

- (1) No liability to income tax arises under Chapter 7 of Part 4 in respect of so much of an annuity payment made under a purchased life annuity as is within this subsection in accordance with section 719 (extent of exemption).
- (2) Subsection (1) is subject to section 718.
- <sup>F798</sup>(3) .....
- (4) In this Chapter “purchased life annuity” has the same meaning as in Chapter 7 of Part 4 (see section 423).

### Textual Amendments

**F798** S. 717(3) repealed (6.4.2008) by [Finance Act 2007 \(c. 11\)](#), s. 46(5)(9), [Sch. 27 Pt. 2\(13\)](#); S.I. 2008/561, art. 2

## 718 Excluded annuities

- (1) The exemption in section 717(1) does not apply to payments made under the annuities specified in subsection (2).
- (2) The annuities are—
  - (a) an annuity the whole or part of the consideration for which consisted of sums satisfying the conditions for relief under section 266 of ICTA (life assurance premiums),
  - (b) an annuity purchased following a direction in a will, and
  - (c) an annuity purchased to provide for an annuity payable as a result of a will or settlement out of income of property disposed of by the will or settlement.
- (3) For the purposes of subsection (2)(c), it does not matter whether or not capital could also be used to pay the annuity.

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

## 719 Extent of exemption under section 717

- (1) This section sets out the rules for determining the extent to which an annuity payment is within the exemption in section 717(1).
- (2) The rules depend on—
  - (a) whether or not the amount of the annuity payments under the annuity depends solely on the duration of a human life or lives (see subsections (3) to (5)), and
  - (b) whether or not the annuity's term depends solely on the duration of a human life or lives (see subsections (6) to (8)).
- (3) If the amount of the annuity payments depends solely on the duration of a human life or lives, the same proportion of each payment (“the exempt proportion”) is exempt.
- (4) But if the amount of the annuity payments also depends on another contingency, each payment is exempt so far as it does not exceed a fixed sum (“the exempt sum”).
- (5) If an annuity payment within subsection (4) is less than the exempt sum, the shortfall is added to the exempt sum for the next payment (and so on).
- (6) The ways to determine the exempt proportion and the exempt sum differ according to whether or not the annuity's term depends solely on the duration of a human life or lives.
- (7) If the annuity's term depends solely on the duration of a human life or lives—
  - (a) the exempt proportion is determined as set out in section 720, and
  - (b) the exempt sum is determined as set out in section 721.
- (8) If the annuity's term also depends on another contingency—
  - (a) the exempt proportion is the proportion which is just and reasonable, having regard to the contingencies affecting the annuity and to section 720, and
  - (b) the exempt sum is the amount which is just and reasonable, having regard to the contingencies affecting the annuity and to section 721.

## 720 Exempt proportion: term dependent solely on duration of life

- (1) In the case of an annuity within section 719(7) (term dependent solely on duration of life), the exempt proportion is —

$$AP \times \frac{PP}{AV}$$

where—

AP is the annuity payment,

PP is the purchase price of the annuity, and

AV is the actuarial value of the annuity payments.

- (2) The purchase price of the annuity is the total amount or value of the consideration given for the annuity.

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (3) The actuarial value of the annuity payments is their value at the date when the first of the payments starts to accrue.
- (4) That value is determined—
  - (a) by reference to tables of mortality prescribed under section 724,
  - (b) taking the age at that date of a person during whose life the annuity is payable as that person's age in whole years on that date, and
  - (c) without discounting any payment for the time to elapse before it is payable.
- (5) But if it is not possible to determine that actuarial value by reference to the tables mentioned in subsection (4)(a), it is such amount as may be certified by the Government Actuary or the Deputy Government Actuary.

## **721 Exempt sum: term dependent solely on duration of life**

- (1) In the case of an annuity within section 719(7) (term dependent solely on duration of life), the exempt sum is —

$$PP \times \frac{1}{TY} \times \frac{PM}{12}$$

where—

PP is the purchase price of the annuity,

TY is the expected term of the annuity in years (and any odd fraction of a year), and

PM is the period in months (and any odd fraction of a month) in respect of which the annuity payment is made.

- (2) The purchase price of the annuity is the total amount or value of the consideration given for the annuity.
- (3) The expected term of the annuity is the period from the date when the first annuity payment starts to accrue to the date when it is expected that the last payment will become payable.
- (4) The expected term of the annuity is determined—
  - (a) as at the date when the first annuity payment starts to accrue,
  - (b) by reference to tables of mortality prescribed under section 724, and
  - (c) taking the age at that date of a person during whose life the annuity is payable as that person's age in whole years on that date.
- (5) But if it is not possible to determine that term by reference to the tables mentioned in subsection (4)(b), it is such period as may be certified by the Government Actuary or the Deputy Government Actuary.

## **722 Consideration for the grant of annuities**

- (1) This section applies if the amount or value given for an annuity is to be determined for the purposes of sections 720(2) or 721(2) and either—
  - (a) consideration is not given solely for the annuity, or

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (b) it appears that the amount or value of the consideration nominally given for it affected, or was affected by, the consideration given for something else.
- (2) For the purposes of subsection (1), consideration given for a right to a return of premiums or of other consideration for an annuity is treated as given solely for the annuity.
- (3) If subsection (1)(a) applies, the consideration is to be apportioned in such way as is just and reasonable.
- (4) If subsection (1)(b) applies, the total amount or value of the considerations given is to be apportioned in such way as is just and reasonable.

**F799 723 Determinations**

.....

**Textual Amendments**  
**F799** S. 723 repealed (6.4.2008) by [Finance Act 2007 \(c. 11\), s. 46\(6\)\(9\)](#); S.I. 2008/561, art. 2

**724 Regulations**

- (1) [<sup>F800</sup>the Commissioners for Her Majesty’s Revenue and Customs] may by regulations—
  - (a) prescribe the procedure to be used in giving effect to sections 717 to [<sup>F801</sup>722] and this section where no provision is made in those provisions,
  - (b) apply any provision of the Income Tax Acts, with or without modifications, for the purposes of those provisions or the regulations,
  - (c) prescribe tables of mortality for the purposes of sections 720(4) and 721(4).

<sup>F802</sup>(2) .....

(3) <sup>F803</sup> .....

**Textual Amendments**

**F800** Words in s. 724(1) substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\), ss. 50, 53\(1\), Sch. 4 para. 132\(2\)](#); S.I. 2005/1126, art. 2(2)(h)

**F801** Word in s. 724(1)(a) substituted (6.4.2008) by [Finance Act 2007 \(c. 11\), s. 46\(7\)\(a\)\(9\)](#); S.I. 2008/561, art. 2

**F802** S. 724(2) repealed (6.4.2008) by [Finance Act 2007 \(c. 11\), s. 46\(7\)\(b\)\(9\), Sch. 27 Pt. 2\(13\)](#); S.I. 2008/561, art. 2

**F803** S. 724(3) repealed (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\), ss. 1027, 1031, 1034, Sch. 1 para. 573, Sch. 3 Pt. 1](#) (with transitional provisions and savings in Sch. 2)



---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

### *Immediate needs annuities*

#### **725 Annual payments under immediate needs annuities**

- (1) No liability to income tax arises under Chapter 7 of Part 4 in respect of so much of an annual payment made under an immediate needs annuity as is made—
  - (a) for the benefit of the person protected under that annuity, and
  - (b) to a care provider or a local authority in respect of the provision of care for that person.
- (2) In this section “immediate needs annuity” means a contract for a purchased life annuity—
  - (a) the purpose or one of the purposes of which is to protect a person against the consequences of the person being unable, at the time the contract is made, to live independently without assistance because of a condition to which subsection (3) applies, and
  - (b) under which benefits are payable in respect of the provision of care for the person protected.
- (3) This subsection applies to—
  - (a) mental or physical impairment, or
  - (b) injury, sickness or other infirmity,which is expected to be permanent.
- (4) In this section and section 726 “care” means accommodation, goods or services which it is necessary or desirable to provide to a person because of a condition to which subsection (3) applies.
- (5) In this section—

“care provider” has the meaning given in section 726, and  
“purchased life annuity” has the same meaning as in Chapter 7 of Part 4 (see section 423).
- (6) The Treasury may by order amend—
  - (a) subsection (2), and
  - (b) subsection (3), so far as it applies for the purposes of subsection (2).

#### **726 Meaning of “care provider”**

- (1) In section 725 “care provider” means a person who—
  - (a) carries on a trade, profession or vocation which consists of or includes the provision of care, and
  - (b) meets the care registration requirement.
- <sup>[F804]</sup>(2) A person meets the care registration requirement in relation to care provided in England if the person is registered under Part 2 of the Care Standards Act 2000 or Chapter 2 of Part 1 of the Health and Social Care Act 2008 in respect of the provision of care.
- (2A) A person meets the care registration requirement in relation to care provided in Wales if the person is registered under Part 2 of the Care Standards Act 2000 in respect of the provision of care.]

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- [<sup>F805</sup>(3) A person meets the care registration requirement in relation to care provided in Scotland if the person provides care as, or as part of, a service which is registered under—
- (a) Chapter 3 of Part 5 of the Public Services Reform (Scotland) Act 2010 (asp 8), or
  - (b) section 10Q of the National Health Service (Scotland) Act 1978 (c. 29).]
- (4) A person meets the care registration requirement in relation to care provided in Northern Ireland if the person is registered in respect of the provision of care under—
- (a) Part 2 or 3 of the Registered Homes (Northern Ireland) Order 1992 (S.I. 1992/3204 (N.I. 20)), or
  - (b) Part 3 of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003 (S.I. 2003/431 (N.I. 9)).
- (5) A person meets the care registration requirement in relation to care provided in a territory outside the United Kingdom if the person meets requirements under the law of that territory relating to the provision of care that are comparable to those mentioned in subsections (2) to (4).
- (6) The Treasury may by order amend this section.

#### Textual Amendments

**F804** S. 726(2)(2A) substituted for s. 726(2) (1.10.2010) by [The Health and Social Care Act 2008 \(Consequential Amendments No.2\) Order 2010 \(S.I. 2010/813\)](#), arts. 1(1), **16**

**F805** S. 726(3) substituted (28.10.2011) by [The Public Services Reform \(Scotland\) Act 2010 \(Consequential Modifications of Enactments\) Order 2011 \(S.I. 2011/2581\)](#), art. 1(2)(b), **Sch. 2 para. 9**

## CHAPTER 8

### OTHER ANNUAL PAYMENTS

#### *Certain annual payments by individuals*

#### **727 Certain annual payments by individuals**

- (1) No liability to income tax arises under Part 5 in respect of an annual payment if it—
  - (a) is made by an individual, and
  - (b) arises in the United Kingdom.
- (2) Subsection (1) is subject to—
  - section 728 (commercial payments), and
  - section 729 (payments for non-taxable consideration).
- (3) Subsection (1) also applies to a payment made by an individual's personal representatives if—
  - (a) the individual would have been liable to make it, and
  - (b) that subsection would have applied if the individual had made it.

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

- (4) For the purposes of subsection (1) and section 728, “individual” includes a Scottish partnership if at least one partner is an individual.

## 728 Commercial payments

A payment by an individual is not exempt from income tax under section 727(1) if it is made for commercial reasons in connection with the individual's trade, profession or vocation.

## 729 Payments for non-taxable consideration

- (1) A payment that meets condition A is only exempt from income tax under section 727(1) if condition B or C is met.
- (2) Condition A is that—
- the payment is made under a liability incurred at any time for consideration in money or money's worth, and
  - some or all of the consideration is not required to be brought into account in calculating the payer's income for income tax purposes.
- (3) Condition B is that the payment is income within section 627(1) (payments on [F806dissolution] or separation) in the recipient's hands.
- (4) Condition C is that the payment is made to an individual under a liability incurred at any time in consideration of the individual surrendering, assigning or releasing an interest in settled property to or in favour of a person with a subsequent interest.
- (5) In the application of subsection (4) to Scotland, the reference to settled property is to be read as a reference to property held in trust.

### Textual Amendments

**F806** Word in s. 729(3) substituted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1, 196

## 730 Foreign maintenance payments

- (1) No liability to income tax arises under Part 5 in respect of an annual payment if—
- it is a maintenance payment,
  - it arises outside the United Kingdom, and
  - had it arisen in the United Kingdom it would be exempt from income tax under section 727 (certain annual payments by individuals).
- (2) In subsection (1) “maintenance payment” means a periodical payment which meets conditions A and B.
- (3) Condition A is that the payment is made under a court order or a written or oral agreement.
- (4) Condition B is that the payment is made by a person—
- as one of the parties to a marriage [F807 or civil partnership] to, or for the benefit of, and for the maintenance of, the other party,

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (b) to any person under 21 for that person's own benefit, maintenance or education, or
  - (c) to any person for the benefit, maintenance or education of a person under 21.
- (5) In subsection (4) “marriage” includes a marriage that has been dissolved or annulled [<sup>F808</sup>, and “civil partnership” includes a civil partnership that has been dissolved or annulled] .
- (6) Subsection (1) also applies to a payment made by an individual's personal representatives if—
- (a) the individual would have been liable to make it, and
  - (b) that subsection would have applied if the individual had made it.

#### Textual Amendments

**F807** Words in s. 730(4)(a) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1, **197(2)**

**F808** Words in s. 730(5) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1, **197(3)**

#### *Periodical payments of personal injury damages etc.*

### **731 Periodical payments of personal injury damages**

- (1) No liability to income tax arises for the persons specified in section 733 in respect of periodical payments to which subsection (2) applies or annuity payments to which subsection (3) applies.
- (2) This subsection applies to periodical payments made pursuant to—
- (a) an order of the court, so far as it is made in reliance on section 2 of the Damages Act 1996 (c. 48) (periodical payments) (including an order as varied),
  - (b) an order of a court outside the United Kingdom which is similar to an order made in reliance on that section (including an order as varied),
  - (c) an agreement, so far as it settles a claim or action for damages in respect of personal injury (including an agreement as varied),
  - (d) an agreement, so far as it relates to making payments on account of damages that may be awarded in such a claim or action (including an agreement as varied), or
  - (e) a Motor Insurers' Bureau undertaking in relation to a claim or action in respect of personal injury (including an undertaking as varied).
- (3) This subsection applies to annuity payments made under an annuity purchased or provided—
- (a) by the person by whom payments to which subsection (2) applies would otherwise fall to be made, and
  - (b) in accordance with such an order, agreement or undertaking as is mentioned in subsection (2) or a varying order, agreement or undertaking.
- (4) In this section “damages in respect of personal injury” includes damages in respect of a person's death from personal injury.

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (5) In this section “personal injury” includes disease and impairment of physical or mental condition.
- (6) In this section “a Motor Insurers' Bureau undertaking” means an undertaking given by —
- (a) the Motor Insurers' Bureau (being the company of that name incorporated on 14th June 1946 under the Companies Act 1929 (c. 23)), or
  - (b) an Article 75 insurer under the Bureau's Articles of Association.

**Modifications etc. (not altering text)**

- C80** S. 731 modified (1.4.2010) by [The MFET Limited \(Application of Sections 731, 733 and 734 of the Income Tax \(Trading and Other Income\) Act 2005\) Order 2010 \(S.I. 2010/673\)](#), arts. 1(1), **2(1)(2)**
- C81** S. 731 applied (with modifications) (18.5.2011) by [The Skipton Fund Limited \(Application of Sections 731, 733 and 734 of the Income Tax \(Trading and Other Income\) Act 2005\) Order 2011 \(S.I. 2011/1157\)](#), arts. 1(1), **2**

**732 Compensation awards**

- (1) No liability to income tax arises for the persons specified in section 733 in respect of annuity payments if they are made under an annuity purchased or provided under an award of compensation made under the Criminal Injuries Compensation Scheme [<sup>F809</sup> or the Victims of Overseas Terrorism Compensation Scheme].
- (2) The Treasury may by order provide for sections 731, 733 and 734 to apply, with such modifications as they consider necessary, to periodical payments by way of compensation for personal injury for which provision is made under a scheme or arrangement other than the Criminal Injuries Compensation Scheme [<sup>F809</sup> or the Victims of Overseas Terrorism Compensation Scheme].
- (3) In this section—
- “the Criminal Injuries Compensation Scheme” means—
- (a) the schemes established by arrangements made under the Criminal Injuries Compensation Act 1995 (c. 53),
  - (b) arrangements made by the Secretary of State for compensation for criminal injuries in operation before the commencement of those schemes, or
  - (c) the scheme established under the Criminal Injuries (Northern Ireland) Order 2002 (S.I. 2002/796) (N.I.1), and
- “personal injury” includes disease and impairment of physical or mental condition.

**Textual Amendments**

- F809** Words in s. 732(1)(2) inserted (8.4.2010) by [Crime and Security Act 2010 \(c. 17\)](#), s. 59(2), **Sch. 2 para. 3**

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

### 733 Persons entitled to exemptions for personal injury payments etc.

The persons entitled to the exemptions given by sections 731(1) and 732(1) for payments are—

- (a) the person entitled to the damages under the order, agreement, undertaking or to the compensation under the award in question (“A”),
- (b) a person who receives the payment in question on behalf of A, and
- (c) a trustee who receives the payment in question on trust for the benefit of A under a trust under which A is, while alive, the only person who may benefit.

#### Modifications etc. (not altering text)

- C82** S. 733 modified (1.4.2010) by [The MFET Limited \(Application of Sections 731, 733 and 734 of the Income Tax \(Trading and Other Income\) Act 2005\) Order 2010 \(S.I. 2010/673\)](#), arts. 1(1), **2(1)(3)**
- C83** S. 733 applied (with modifications) (18.5.2011) by [The Skipton Fund Limited \(Application of Sections 731, 733 and 734 of the Income Tax \(Trading and Other Income\) Act 2005\) Order 2011 \(S.I. 2011/1157\)](#), arts. 1(1), **2**

### 734 Payments from trusts for injured persons

- (1) No liability to income tax arises for the persons specified in subsection (2) in respect of sums paid under a lifetime trust—
  - (a) to the person (“A”) who is entitled to—
    - (i) a payment under an order, agreement or undertaking within section 731(2) or an annuity purchased or provided as mentioned in section 731(3), or
    - (ii) compensation under an award within section 732(1), or
  - (b) for the benefit of A.
- (2) The persons are—
  - (a) A, and
  - (b) if subsection (1)(b) applies, a person who receives the sum on behalf of A.
- (3) For the purposes of subsection (1), sums are paid under a lifetime trust if they are paid—
  - (a) by the trustees of a trust under which A is, while alive, the only person who may benefit, and
  - (b) out of payments within section 731(2) or (3) or 732(1) which are received by them on trust for A.

#### Modifications etc. (not altering text)

- C84** S. 734 modified (1.4.2010) by [The MFET Limited \(Application of Sections 731, 733 and 734 of the Income Tax \(Trading and Other Income\) Act 2005\) Order 2010 \(S.I. 2010/673\)](#), arts. 1(1), **2(1)(4)**
- C85** S. 734 applied (with modifications) (18.5.2011) by [The Skipton Fund Limited \(Application of Sections 731, 733 and 734 of the Income Tax \(Trading and Other Income\) Act 2005\) Order 2011 \(S.I. 2011/1157\)](#), arts. 1(1), **2**

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

### *Health and employment insurance payments*

#### **735 Health and employment insurance payments**

- (1) No liability to income tax arises under this Act in respect of an annual payment under an insurance policy if—
  - (a) the payment is a benefit provided under so much of the policy as insures against a health or employment risk (see section 736),
  - (b) no part of any premiums under the policy has been deductible in calculating the income of the insured for income tax purposes, and
  - (c) the conditions in sections 737 and 738 and, so far as applicable, those in sections 739 and 740 are met in relation to the policy.
- (2) Subsection (1)(b) is subject to section 743.
- (3) For the meaning of “the insured”, see sections 742 and 743(2).

#### **736 Health and employment risks and benefits**

- (1) For the purposes of sections 735 and 737 to 743, a policy insures against a health risk if it insures against the insured becoming, or becoming in any specified way, subject—
  - (a) to any physical or mental illness, disability, infirmity or defect, or
  - (b) to any deterioration in a condition resulting from any such illness, disability, infirmity or defect.
- (2) For the purposes of sections 735 and 737 to 743, a policy insures against an employment risk if it insures against circumstances arising as a result of which the insured ceases—
  - (a) to be employed or hold office, or
  - (b) to carry on any trade, profession or vocation.
- (3) For the purposes of section 735, this section and sections 737 to 743, references to insurance against a risk include insurance providing for benefits payable otherwise than by way of indemnity if the circumstances insured against occur.

#### **737 Period for which payments may be made**

- (1) The condition in this section is that the only annual payments provided for by the policy which relate to the health or employment risk it insures against (“the insured risk”) are payments in respect of one or more of the following periods.
- (2) They are—
  - (a) a period throughout which an illness, disability, infirmity or defect insured against by the part of the policy relating to the insured risk continues,
  - (b) a period throughout which, in circumstances insured against by the part of the policy relating to the insured risk, the insured is unemployed, does not hold an office or is not carrying on a trade, profession or vocation,
  - (c) a period throughout which, in circumstances insured against by the part of the policy relating to the insured risk, the insured's income is less than it would otherwise have been, and
  - (d) where a period within paragraph (a), (b) or (c) ends with the death of the insured, a period immediately following that period.

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

- (3) For the purposes of subsection (2)(a), an illness, disability, infirmity or defect is treated as continuing during a period of convalescence or rehabilitation related to it.
- (4) For the purposes of subsection (2)(c), income from the policy is ignored.

### **738 Risk of significant loss**

- (1) The condition in this section is that throughout the period that the policy has contained provisions relating to the health or employment risk those provisions have been such that any policy of insurance which only contained those provisions would involve the possibility that the insurer would make a significant loss on the premiums.
- (2) In determining whether a policy would involve that possibility, any return on the investment of the premiums is to be taken into account.
- (3) For this purpose reinsurance is ignored.

### **739 Conditions to be met by policies also providing other benefits**

- (1) The conditions in this section only apply if the policy provides for the payment of benefits which do not all relate to the health or employment risk.
- (2) The conditions are that so far as the policy's terms relate to the health or employment risk—
  - (a) they do not differ significantly from what they would have been if the only benefits had been those relating to that risk, and
  - (b) the way in which they are given effect does not differ significantly from the way in which they would have been given effect in that case.
- (3) A difference relating only to the reduction of benefits payable to or in respect of a person because of other benefits being payable to or in respect of the person is to be ignored.
- (4) For the purposes of this section, all the persons for whose benefit the policy provides insurance against the health or employment risk are to be considered.

### **740 Conditions to be met where policies are linked**

- (1) The conditions in this section only apply if—
  - (a) the insured is or has been the insured under one or more other policies (“connected policies”), and
  - (b) each of the connected policies has been in force either—
    - (i) at a time when the policy in question was in force, or
    - (ii) at the time immediately before it was entered into.
- (2) The conditions are that so far as the terms of the policy relate to the health or employment risk—
  - (a) they do not differ significantly from what they would have been if no connected policies had been entered into, and
  - (b) the way in which they are given effect does not differ significantly from the way in which they would have been given effect in that case.



*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (3) A difference relating only to the reduction of benefits payable to or in respect of a person under the policy because of benefits being payable to or in respect of the person under any of the connected policies is to be ignored.
- (4) For the purposes of this section, all the persons for whose benefit the policy provides insurance against the health or employment risk are to be considered.

#### **741 Aggregation of policies where employment ends for health reasons**

- (1) This section applies if—
  - (a) payments are made to or in respect of a person who has left employment because of the occurrence of something insured against by an employment policy as a health risk,
  - (b) the payments are made under another policy (“the replacement policy”) which was entered into under, or in accordance with, provisions contained in the employment policy,
  - (c) the employment policy has ceased to apply to the person, and
  - (d) the rights in accordance with which the payments are made under the replacement policy superseded rights under the employment policy with effect from the time when that policy ceased to apply to the person.
- (2) The employment policy and the replacement policy are to be treated as a single policy for the purposes of sections 735 to 738, this section and section 743.
- (3) In this section—

“employment” includes an office, and “employees” and “employer” are to be read accordingly, and

“employment policy” means a policy entered into wholly or partly for the benefit of the employees of an employer against a health risk.

#### **742 Meaning of “the insured”**

In sections 735 to 737 “the insured” includes—

- (a) the insured's spouse [<sup>F810</sup>or civil partner] ,
- (b) any child under 21 of the insured or the insured's spouse [<sup>F810</sup>or civil partner] , and
- (c) any person on whom any liabilities arising from an actual or proposed transaction identified in the policy will fall jointly with the insured or the insured's spouse.

##### **Textual Amendments**

**F810** Words in s. 742 inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1, **198**

#### **743 Policies for the benefit of others who contribute to premiums**

- (1) This section applies if—
  - (a) a policy of insurance is taken out by one person (“A”) wholly or partly for the benefit of another (“B”),

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (b) B makes payments or contributions in respect of the premiums, and
  - (c) annual payments under the policy are wholly or partly attributable, on a just and reasonable basis, to the payments or contributions made by B.
- (2) So far as those benefits are so attributable, B is to be treated as the insured in relation to that policy for the purposes of sections 735 to 742.
- (3) So far as those benefits are so attributable, payments or contributions not made by B are ignored for the purposes of section 735(1)(b) (no part of the premiums to have been deductible in calculating the insured's income).

### *Payments to adopters*

#### **744 Payments to adopters<sup>[F811]</sup>, etc]: England and Wales**

<sup>[F812]</sup>(1) No liability to income tax arises in respect of the following payments—

- (a) any payment or reward falling within section 57(3) of the Adoption Act 1976 (c. 36) (payments authorised by the court) which is made to a person who has adopted or intends to adopt a child,
- (b) payments under section 57(3A)(a) of that Act (payments by adoption agencies of legal or medical expenses of persons seeking to adopt),
- (c) payments of allowances under regulations under section 57A of that Act (permitted allowances to persons who have adopted or intend to adopt children),
- (d) payments of financial support made in the course of providing adoption support services within the meaning of the Adoption and Children Act 2002 (c. 38) (see section 2(6) and (7) of that Act),<sup>F813</sup>...
- (e) payments made under regulations under paragraph 3(1) of Schedule 4 to that Act (transitional and transitory provisions: adoption support services),
- <sup>[F814]</sup>(f) payments made under regulations under section 14F of the Children Act 1989 (special guardianship support services) to a person appointed as a child's special guardian,
- (g) payments made to a person under section 17 of that Act (provision of services for children in need, their families and others) by reason of that person being a person <sup>[F815]</sup>named in a child arrangements order as a person with whom a child is to live],
- (h) payments made to a person, in respect of a child, under paragraph 15 of Schedule 1 to that Act (local authority contribution to child's maintenance to recipients <sup>[F816]</sup>with whom child is living, or is to live, as a result of a child arrangements order]), and
- (i) payments made in accordance with—
  - (i) an order under that Schedule (orders for financial relief against parents etc), or
  - (ii) a maintenance agreement,
 for the benefit of a child, to a person appointed as the child's special guardian or a person <sup>[F817]</sup>named in a child arrangements order as a person with whom the child is to live].]

<sup>[F818]</sup>(2) But a payment is not within subsection (1)(f), (g), (h) or (i) if—

- (a) it is made to an excluded relative of the child,

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (b) it is made to a person appointed as the child's special guardian and an excluded relative is also appointed as the child's special guardian, or
- <sup>F819</sup>(c) it is made to a person (“P”) named in a child arrangements order as a person with whom the child is to live and an excluded relative who lives in the same household as P is also named in that order as a person with whom the child is to live.]

(3) In this section—

“excluded relative”, in relation to a child, means—

- (a) a parent of the child, or
- (b) a person who is, or has been, the husband or wife or civil partner of a parent of the child;

“maintenance agreement” has the meaning given by paragraph 10(1) of Schedule 1 to the Children Act 1989;

“<sup>F820</sup>child arrangements]” has the meaning given by section 8 of that Act.]

#### Textual Amendments

- F811** Word in s. 744 heading inserted (16.12.2010) (with effect in accordance with s. 2(5) of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\), s. 2\(2\)\(d\)](#)
- F812** S. 744(1) renumbered (16.12.2010) (with effect in accordance with s. 2(5) of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\), s. 2\(2\)\(a\)](#)
- F813** Word in s. 744(1) omitted (16.12.2010) (with effect in accordance with s. 2(5) of the amending Act) by virtue of [Finance \(No. 3\) Act 2010 \(c. 33\), s. 2\(2\)\(b\)](#)
- F814** S. 744(1)(f)-(i) inserted (16.12.2010) (with effect in accordance with s. 2(5) of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\), s. 2\(2\)\(b\)](#)
- F815** Words in s. 744(1)(g) substituted (22.4.2014) by [Children and Families Act 2014 \(c. 6\), s. 139\(6\), Sch. 2 para. 68\(2\)](#); S.I. 2014/889, art. 4(f) (with transitional provisions in S.I. 2014/1042, arts. 3, 4, 6-10)
- F816** Words in s. 744(1)(h) substituted (22.4.2014) by [Children and Families Act 2014 \(c. 6\), s. 139\(6\), Sch. 2 para. 68\(3\)](#); S.I. 2014/889, art. 4(f) (with transitional provisions in S.I. 2014/1042, arts. 3, 4, 6-10)
- F817** Words in s. 744(1)(i) substituted (22.4.2014) by [Children and Families Act 2014 \(c. 6\), s. 139\(6\), Sch. 2 para. 68\(4\)](#); S.I. 2014/889, art. 4(f) (with transitional provisions in S.I. 2014/1042, arts. 3, 4, 6-10)
- F818** S. 744(2)(3) inserted (16.12.2010) (with effect in accordance with s. 2(5) of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\), s. 2\(2\)\(c\)](#)
- F819** S. 744(2)(c) substituted (22.4.2014) by [Children and Families Act 2014 \(c. 6\), s. 139\(6\), Sch. 2 para. 68\(5\)](#); S.I. 2014/889, art. 4(f) (with transitional provisions in S.I. 2014/1042, arts. 3, 4, 6-10)
- F820** Words in s. 744(3) substituted (22.4.2014) by [Children and Families Act 2014 \(c. 6\), s. 139\(6\), Sch. 2 para. 68\(6\)](#); S.I. 2014/889, art. 4(f) (with transitional provisions in S.I. 2014/1042, arts. 3, 4, 6-10)

#### 745 Payments to adopters<sup>F821</sup>, etc]: Scotland

<sup>F822</sup>(1) No liability to income tax arises in respect of the following payments—

- (a) any payment <sup>F823</sup>which is an excepted payment by virtue of paragraph (a) or (c) of subsection (2) of section 73 of the Adoption and Children (Scotland) Act 2007 (asp 4),] which is made to a person who has adopted or intends to adopt a child,
- (b) payments <sup>F824</sup>which are excepted payments by virtue of paragraph (b) of that subsection,]

<sup>F825</sup>(c) ..... <sup>F826</sup> .....

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (d) payments of allowances in accordance with an adoption allowances scheme under <sup>F827</sup>section 71] of that Act,
- <sup>F828</sup>(e) payments made to a person under section 50 of the Children Act 1975, or section 22 of the Children (Scotland) Act 1995, by reason of that person being a person with whom a child is to live by virtue of a residence order, and
- (f) payments of aliment made—
- (i) in accordance with an award of aliment under the Family Law (Scotland) Act 1985, or
  - (ii) under an agreement (within the meaning of section 7(5) of that Act), for the benefit of a child, to a person in whose favour a residence order with respect to the child is in force.]

<sup>F829</sup>(2) A payment is not within subsection (1)(e) or (f) if—

    - (a) it is made to an excluded relative of the child, or
    - (b) it is made to a person in whose favour a residence order is in force with respect to the child and that order is also in favour of an excluded relative.

(3) In this section—

“excluded relative”, in relation to a child, means—

    - (a) a parent of the child, or
    - (b) a person who is, or has been, the husband or wife or civil partner of a parent of the child;

“residence order” has the meaning given by section 11(2)(c) of the Children (Scotland) Act 1995.]

### Textual Amendments

- F821** Word in s. 745 heading inserted (16.12.2010) (with effect in accordance with s. 2(5) of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [s. 2\(3\)\(d\)](#)
- F822** S. 745(1): s. 745 renumbered as s. 745(1) (16.12.2010) (with effect in accordance with s. 2(5) of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [s. 2\(3\)\(a\)](#)
- F823** Words in s. 745(a) substituted (S.) (28.9.2009) by [Adoption and Children \(Scotland\) Act 2007 \(asp 4\)](#), s. 121(2), [Sch. 2 para. 13\(a\)](#); S.S.I. 2009/267, arts. 1(2), 2 (with arts. 3-21) (as amended (7.5.2012) by S.S.I. 2012/99, art. 2)
- Words in s. 745(a) substituted (E.W.N.I) (15.7.2011) by [The Adoption and Children \(Scotland\) Act 2007 \(Consequential Modifications\) Order 2011 \(S.I. 2011/1740\)](#), art. 1(2), [Sch. 2 para. 6\(a\)](#)
- F824** Words in s. 745(b) substituted (S.) (28.9.2009) by [Adoption and Children \(Scotland\) Act 2007 \(asp 4\)](#), s. 121(2), [Sch. 2 para. 13\(b\)](#); S.S.I. 2009/267, arts. 1(2), 2 (with arts. 3-21) (as amended (7.5.2012) by S.S.I. 2012/99, art. 2)
- Words in s. 745(b) substituted (E.W.N.I) (15.7.2011) by [The Adoption and Children \(Scotland\) Act 2007 \(Consequential Modifications\) Order 2011 \(S.I. 2011/1740\)](#), art. 1(2), [Sch. 2 para. 6\(b\)](#)
- F825** S. 745(c) repealed (S.) (28.9.2009) by [Adoption and Children \(Scotland\) Act 2007 \(asp 4\)](#), s. 121(2), [Sch. 3](#); S.S.I. 2009/267, arts. 1(2), 2 (with arts. 3-21) (as amended (7.5.2012) by S.S.I. 2012/99, art. 2)
- F826** Word in s. 745(1) omitted (with effect in accordance with s. 2(5) of the amending Act) by virtue of [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [s. 2\(3\)\(b\)](#)
- F827** Words in s. 745(d) substituted (S.) (28.9.2009) by [Adoption and Children \(Scotland\) Act 2007 \(asp 4\)](#), s. 121(2), [Sch. 2 para. 13\(c\)](#); S.S.I. 2009/267, arts. 1(2), 2 (with arts. 3-21) (as amended (7.5.2012) by S.S.I. 2012/99, art. 2)
- Words in s. 745(d) substituted (E.W.N.I) (15.7.2011) by [The Adoption and Children \(Scotland\) Act 2007 \(Consequential Modifications\) Order 2011 \(S.I. 2011/1740\)](#), art. 1(2), [Sch. 2 para. 6\(c\)](#)

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

**F828** S. 745(1)(e)(f) inserted (16.12.2010) (with effect in accordance with s. 2(5) of the amending Act) by Finance (No. 3) Act 2010 (c. 33), s. 2(3)(b)

**F829** S. 745(2)(3) inserted (16.12.2010) (with effect in accordance with s. 2(5) of the amending Act) by Finance (No. 3) Act 2010 (c. 33), s. 2(3)(c)

## 746 Payments to adopters<sup>F830</sup>, etc]: Northern Ireland

<sup>F831</sup>(1) No liability to income tax arises in respect of the following payments—

- (a) any payment or reward falling within Article 59(2)(b) of the Adoption (Northern Ireland) Order 1987 (S.I. 1987/2203 (N.I. 22)) (payments authorised by the court) which is made to a person who has adopted or intends to adopt a child,
- (b) any payment under Article 59(2)(c) of that Order (payments by registered adoption societies) which is made to a person who has adopted or intends to adopt a child,<sup>F832</sup> ...
- (c) payments of allowances under regulations under Article 59A of that Order (permitted allowances to persons who have adopted or intend to adopt children),
- <sup>F833</sup>(d) payments made to a person under Article 18 of the Children (Northern Ireland) Order 1995 (S.I. 1995/755 (NI 2)) (general duty of authority to provide personal social services) by reason of that person being a person in whose favour a residence order with respect to a child is in force,
- (e) payments made to a person, in respect of a child, under paragraph 17 of Schedule 1 to that Order (local authority contribution to child's maintenance to recipients in whose favour residence order is in force), and
- (f) payments made in accordance with—
  - (i) an order under that Schedule (orders for financial relief against parents etc), or
  - (ii) a maintenance agreement,

for the benefit of a child, to a person in whose favour a residence order with respect to the child is in force.]

<sup>F834</sup>(2) But a payment is not within subsection (1)(d), (e) or (f) if—

- (a) it is made to an excluded relative of the child, or
- (b) it is made to a person in whose favour a residence order is in force with respect to the child and that order is also in favour of an excluded relative.

(3) In this section—

“excluded relative”, in relation to a child, means—

- (a) a parent of the child, or
- (b) a person who is, or has been, the husband or wife or civil partner of a parent of the child;

“maintenance agreement” has the meaning given by paragraph 12 of Schedule 1 to the Children (Northern Ireland) Order 1995;

“residence order” has the meaning given by Article 8 of that Order.]

### Textual Amendments

**F830** Word in s. 746 heading inserted (16.12.2010) (with effect in accordance with s. 2(5) of the amending Act) by Finance (No. 3) Act 2010 (c. 33), s. 2(4)(d)

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- F831** S. 746(1): s. 746 renumbered as s. 746(1) (16.12.2010) (with effect in accordance with s. 2(5) of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\), s. 2\(4\)\(a\)](#)
- F832** Word in s. 746(1) omitted (16.12.2010) (with effect in accordance with s. 2(5) of the amending Act) by virtue of [Finance \(No. 3\) Act 2010 \(c. 33\), s. 2\(4\)\(b\)](#)
- F833** S. 746(1)(d)-(f) inserted (16.12.2010) (with effect in accordance with s. 2(5) of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\), s. 2\(4\)\(b\)](#)
- F834** S. 746(2)(3) inserted (16.12.2010) (with effect in accordance with s. 2(5) of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\), s. 2\(4\)\(c\)](#)

## 747 Power to amend sections 744 to 746

The Treasury may by order amend section 744, 745 or 746 for the purposes of—

- (a) adding a description of payment, or
- (b) removing a description of payment if the power to make a payment of that description has been repealed or revoked or has otherwise ceased to be exercisable.

*Payments by persons liable to pool betting duty*

## <sup>F835</sup>748 Payments by persons liable to pool betting duty

.....

### Textual Amendments

- F835** S. 748 repealed (with effect in accordance with Sch. 39 para. 21(3) of the amending Act) by [Finance Act 2012 \(c. 14\), Sch. 39 para. 21\(1\)\(b\)](#)

## CHAPTER 9

### OTHER INCOME

*Interest only income*

## 749 [<sup>F836</sup>Repayment interest, and interest] paid under repayment supplements

No liability to income tax arises in respect of interest paid under—

- (a) section 824 of ICTA (repayment supplements: individuals and others), <sup>F837</sup>...
- (b) section 283 of TCGA 1992 (repayment supplements)[<sup>F838</sup>, or
- (c) section 102 of FA 2009 (repayment interest).]

### Textual Amendments

- F836** Words in s. 749 heading substituted (with effect in accordance with art. 1(2) of the amending S.I.) by [The Finance Act 2009, Sections 101 and 102 \(Interest on Late Payments and Repayments\), Appointed Days and Consequential Provisions Order 2014 \(S.I. 2014/992\), arts. 1\(1\), 8\(1\)\(c\)](#)

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

**F837** Word in s. 749 omitted (with effect in accordance with art. 1(2) of the amending S.I.) by virtue of The Finance Act 2009, Sections 101 and 102 (Interest on Late Payments and Repayments), Appointed Days and Consequential Provisions Order 2014 (S.I. 2014/992), arts. 1(1), **8(1)(a)**

**F838** S. 749(c) and word inserted (with effect in accordance with art. 1(2) of the amending S.I.) by The Finance Act 2009, Sections 101 and 102 (Interest on Late Payments and Repayments), Appointed Days and Consequential Provisions Order 2014 (S.I. 2014/992), arts. 1(1), **8(1)(b)**

**[<sup>F839</sup>749A Interest on tax overpaid**

No liability to income tax arises in respect of interest paid under section 826 of ICTA (interest on tax overpaid).]

**Textual Amendments**

**F839** S. 749A inserted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 635** (with Sch. 2 Pts. 1, 2)

**<sup>F840</sup>750 Interest from tax reserve certificates**

.....

**Textual Amendments**

**F840** S. 750 repealed (with effect in accordance with Sch. 39 para. 53(3) of the amending Act) by Finance Act 2012 (c. 14), **Sch. 39 para. 53(1)(a)**

**751 Interest on damages for personal injury**

(1) No liability to income tax arises in respect of interest on damages for personal injury or death if—

- (a) it is included in a sum awarded by a court,
- (b) it does not relate to the period between the making and satisfaction of the award, and
- (c) in the case of an award by a court in a country outside the United Kingdom, it is exempt from any charge to tax in that place.

(2) No liability to income tax arises in respect of interest if—

- (a) it is included in a payment in satisfaction of a cause of action (including a payment into court), and
- (b) it would fall within subsection (1) if it were included in a sum awarded by a court in respect of a cause of action.

(3) In subsection (1)—

“damages” in Scotland includes solatium, and  
“personal injury” includes disease and impairment of physical or mental condition.

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

## 752 Interest under employees' share schemes

- (1) This section applies if—
- (a) a scheme is set up to comply with section [F841 682(2)(b) of the Companies Act 2006 (c. 46)] (financial assistance for the purposes of an employees' share scheme), and
  - (b) under the scheme the trustees receive interest from a participant in the scheme.
- (2) So far as the scheme requires the trustees to pay to the company an equivalent amount as interest, no liability to income tax arises under Chapter 2 of Part 4 for the trustees in respect of the interest they receive.

### Textual Amendments

**F841** Words in s. 752(1)(a) substituted (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments\) \(Taxes and National Insurance\) Order 2009 \(S.I. 2009/1890\)](#), arts. 1(1), **12**

## 753 Interest on repayment of student loan

- (1) No liability to income tax arises in respect of interest if—
- (a) it is paid to a person to whom a student loan has been made, and
  - (b) it relates to an amount repaid to the person after being recovered from the person in respect of the loan.
- (2) In this section “student loan” means a loan made under—
- section 22 of the Teaching and Higher Education Act 1998 (c. 30),  
 section 73(f) of the Education (Scotland) Act 1980 (c. 44), or  
 Article 3 of the Education (Student Support) (Northern Ireland) Order 1998 (S.I. 1998/1760 (N.I. 14)).

## [F842] 753A Interest on unpaid relevant contributions

- (1) No liability to income tax arises in respect of interest paid in compliance with a requirement in a compliance notice or an unpaid contributions notice to pay interest in respect of unpaid relevant contributions.
- (2) In this section—
- “compliance notice” means a notice under section 35 of the Pensions Act;  
 “the Pensions Act” means the Pensions Act 2008 or the Pensions (No.2) Act (Northern Ireland) 2008;  
 “unpaid contributions notice” means a notice under section 37 of the Pensions Act;  
 “unpaid relevant contributions” has the same meaning as in section 38(2) (a) of the Pensions Act.]

### Textual Amendments

**F842** [S. 753A](#) inserted (19.7.2011) by [Finance Act 2011 \(c. 11\)](#), s. **69(3)**



*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

## 754 Redemption of funding bonds

- (1) The redemption of funding bonds is not treated as the payment of interest on a debt for income tax purposes if their issue was treated under section 380 of this Act or <sup>[F843]</sup>section 413 of CTA 2009] as the payment of interest on the debt.
- (2) In this section “funding bonds” includes any bonds, stocks, shares, securities or certificates of indebtedness.

### Textual Amendments

**F843** Words in s. 754(1) substituted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 636** (with **Sch. 2 Pts. 1, 2**)

## 755 Interest on foreign currency securities etc. owned by non-UK residents

- (1) This section applies to interest on—
  - (a) such foreign currency securities issued by a local authority or a statutory corporation as the Treasury direct, and
  - (b) such foreign currency loans made to a statutory corporation as the Treasury direct.
- (2) No liability to income tax arises in respect of interest to which this section applies if—
  - (a) in the case of interest on a security, its beneficial owner is a non-UK resident, and
  - (b) in the case of interest on a loan, the person for the time being entitled to repayment or eventual repayment is a non-UK resident.
- (3) But interest is not exempt under subsection (2) because a person is a non-UK resident if it is treated as another person's income under—  
Chapter 5 of Part 5 (settlements: amounts treated as income of settlor), or <sup>[F844]</sup>Chapter 2 of Part 13 of ITA 2007] (anti-avoidance provisions: transfer of assets abroad).
- (4) In this section—
  - “company” means a company, as defined in section <sup>[F845]</sup>1(1) of the Companies Act <sup>[F846]</sup>2006 (c. 46) <sup>[F847]</sup> ...,
  - “foreign currency”, in relation to loans and securities, has the meaning given by section 756, and
  - “statutory corporation” means—
    - (a) a corporation incorporated by an Act (other than a company), or
    - (b) any other corporation on which functions connected with carrying on an undertaking are conferred by an Act or by an order made under or confirmed by an Act.

### Textual Amendments

**F844** Words in s. 755(3) substituted (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by Income Tax Act 2007 (c. 3), ss. 1027, 1034, **Sch. 1 para. 574** (with transitional provisions and savings in **Sch. 2**)

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- F845** Word in s. 755(4) substituted (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments\) \(Taxes and National Insurance\) Order 2009 \(S.I. 2009/1890\)](#), arts. 1(1), **3(6)**
- F846** Words in s. 755(4) substituted (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments\) \(Taxes and National Insurance\) Order 2009 \(S.I. 2009/1890\)](#), arts. 1(1), **3(6)**
- F847** Words in s. 755(4) omitted (1.10.2009) by virtue of [The Companies Act 2006 \(Consequential Amendments\) \(Taxes and National Insurance\) Order 2009 \(S.I. 2009/1890\)](#), arts. 1(1), **3(6)**

## **756 Which securities and loans are foreign currency ones for section 755**

- (1) For the purposes of section 755, a security or loan is a foreign currency one if under its terms the currency to be used for repayment is not sterling.
- (2) Subsection (1) is subject to the following qualifications.
- (3) A security issued before 6th April 1982 is a foreign currency one if under its terms the currency to be used for repayment is not that of a country specified in Schedule 1 to the Exchange Control Act 1947 (c. 14) at the time of the issue of the security.
- (4) A loan made before that date is a foreign currency one if under its terms the currency to be used for repayment is not that of a country specified in that Schedule at the time the loan was made.
- (5) If in the case of a security there is an option as to the currency to be used for repayment, the security is only to be treated as a foreign currency one if the option is exercisable only by its holder.
- (6) If in the case of a loan there is an option as to the currency to be used for repayment, the loan is only to be treated as a foreign currency one if the option is exercisable only by the person for the time being entitled to repayment or eventual repayment.

## **[<sup>F848</sup>756] Interest on certain deposits of victims of National-Socialist persecution**

- (1) No liability to income tax arises in respect of interest which is paid—
  - (a) to or in respect of a victim of National-Socialist persecution,
  - (b) under a qualifying compensation scheme, and
  - (c) for a qualifying purpose in respect of a qualifying deposit of the victim.
- (2) A scheme is a qualifying compensation scheme if—
  - (a) it is constituted (whether under the law of any part of the United Kingdom or elsewhere) by an instrument in writing, and
  - (b) the purpose of the scheme, or one of its purposes, is to make payments of interest to or in respect of victims of National-Socialist persecution for qualifying purposes in respect of qualifying deposits.
- (3) Interest is paid for a qualifying purpose in respect of a deposit if—
  - (a) it is paid for meeting a liability in respect of interest on the deposit, or
  - (b) it is paid for compensating for the effects of inflation on the deposit.
- (4) In relation to a victim of National-Socialist persecution, a deposit is a qualifying deposit if it was made—
  - (a) by, or on behalf of, the victim, and
  - (b) on or before 5th June 1945.

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (5) In this section “deposit” has the <sup>F849</sup>same meaning as in Chapter 19 of Part 15 of ITA 2007 (see section 983 of that Act)]

#### Textual Amendments

- F848** S. 756A inserted (with effect as mentioned in s. 64(7) of the amending Act) by Finance Act 2006 (c. 25), s. 64(2) (with s. 64(9)-(12))
- F849** Words in s. 756A(5) substituted (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by Income Tax Act 2007 (c. 3), ss. 1027, 1034, Sch. 1 para. 575 (with transitional provisions and savings in Sch. 2)

### Interest and royalty payments

#### 757 Interest and royalty payments: introduction

- (1) Sections 758 to 767 make provision for an exemption from income tax in respect of certain interest and royalty payments.
- (2) They give effect to Council Directive 2003/49/EC of 3rd June 2003 on a common system of taxation applicable to interest and royalty payments made between associated companies of different member States <sup>F850</sup>, as amended by Council Directives 2004/66/EC and <sup>F851</sup>, 2004/76/EC and 2006/98/EC<sup>F852</sup> (“the Directive”).
- (3) Specifically—
- section 758 sets out the conditions to be met for the exemption to apply,
  - sections 759 to 761 explain certain terms used in those conditions,
  - section 762 confers powers on the <sup>F853</sup>Commissioners] to make regulations about exemption notices,
  - sections 763 and 764 make provision for limiting the exemption in the case of certain special relationships,
  - section 765 contains anti-avoidance provisions,
  - section 766 contains interpretation provisions, and
  - section 767 confers power on the Treasury to amend references in sections 757 to 766 to the Directive.

- <sup>F854</sup>(4) See section 914 of ITA 2007 for provision enabling a company to make a royalty payment gross if it reasonably believes that the payment is exempt from income tax as a result of section 758 of this Act.]

#### Textual Amendments

- F850** Words in s. 757(2) inserted (8.11.2005) by The Exemption From Income Tax For Certain Interest and Royalty Payments (Amendment to Section 97(1) of the Finance Act 2004 and Section 757(2) of the Income Tax (Trading and Other Income) Act 2005) Order 2005 (S.I. 2005/2899), {art. 3}
- F851** Words in s. 757(2) substituted (1.1.2007 with effect as mentioned in art. 1(2)) by The Exemption from Income Tax for Certain Interest and Royalty Payments (Amendment of Section 757(2) of the Income Tax (Trading and Other Income) Act 2005) Order 2006 (S.I. 2006/3288), {art. 2}
- F852** Council Directive 2006/98/EC; OJ No. L363, 20.12.2006, p. 129.
- F853** Word in s. 757(3) substituted (18.4.2005) by Commissioners for Revenue and Customs Act 2005 (c. 11), ss. 50, 53(1), Sch. 4 para. 132(3)(f); S.I. 2005/1126, art. 2(2)(h)

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

**F854** S. 757(4) inserted (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), ss. 1027, 1034, [Sch. 1 para. 576](#) (with transitional provisions and savings in [Sch. 2](#))

## 758 Exemption for certain interest and royalty payments

- (1) No liability to income tax arises in respect of a payment of interest or a payment of a royalty if, at the time the payment is made, conditions A to D are met.
- (2) Condition A is that the person making the payment is—
  - (a) a UK company, but not such a company's permanent establishment in a territory other than the United Kingdom, or
  - (b) a UK permanent establishment of an EU company.

See section 759 as to when a permanent establishment is to be treated as the person making the payment.

- (3) Condition B is that the person beneficially entitled to the income in respect of which the payment is made is an EU company, but not such a company's UK permanent establishment or non-EU permanent establishment.

See section 760 as to when a permanent establishment is to be treated as the person beneficially entitled to the income in respect of which the payment is made.

- (4) Condition C is that the company in condition A and the company in condition B are 25% associates (see section 761).
- (5) Condition D is that, if the payment is a payment of interest, [<sup>F855</sup>the Commissioners for Her Majesty's Revenue and Customs][<sup>F856</sup>have] issued an exemption notice in accordance with regulations under section 762.
- (6) This section is subject to—
  - sections 763 and 764 (special relationships), and
  - section 765 (anti-avoidance).

### Textual Amendments

**F855** Words in s. 758(5) substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), ss. 50, 53(1), [Sch. 4 para. 132\(2\)](#); S.I. 2005/1126, [art. 2\(2\)\(h\)](#)

**F856** Word in s. 758(5) substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), ss. 50, 53(1), [Sch. 4 para. 133\(6\)](#); S.I. 2005/1126, [art. 2\(2\)\(h\)](#)

## 759 The person making the payment

- (1) This section supplements condition A in section 758.
- (2) It applies in a case where a company is resident in one territory and has a permanent establishment in another territory.
- (3) The permanent establishment (and not the company) is to be treated as the person making the payment so far as (within the meaning of Article 1(3) of the Directive) the payment represents a tax-deductible expense for the permanent establishment in the territory in which it is situated.

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

## **760 The person beneficially entitled to the payment**

- (1) This section supplements condition B in section 758.
- (2) It applies in a case where an EU company has a UK permanent establishment or a non-EU permanent establishment.
- (3) The permanent establishment (and not the company) is to be treated as the person beneficially entitled to the income in respect of which the payment is made so far as subsections (4) and (5) apply to the payment.
- (4) This subsection applies to the payment if (within the meaning of Article 1(5) of the Directive) it arises in respect of a debt-claim, right or use of information which is effectively connected with the permanent establishment.
- (5) This subsection applies to the payment if (within the meaning of Article 1(5) of the Directive) it represents income in respect of which the permanent establishment is subject in the territory in which it is situated to United Kingdom corporation tax or a tax corresponding to that tax.

## **761 Meaning of “25% associates”**

For the purposes of condition C in section 758, two companies are 25% associates if—

- (a) one holds directly—
  - (i) 25% or more of the capital in the other, or
  - (ii) 25% or more of the voting rights in the other, or
- (b) a third company holds directly—
  - (i) 25% or more of the capital in each of them, or
  - (ii) 25% or more of the voting rights in each of them.

## **762 Interest payments: exemption notices**

- (1) [<sup>F857</sup>the Commissioners for Her Majesty’s Revenue and Customs] may make regulations about exemption notices under section 758(5).
- (2) The regulations may in particular make provision for or in connection with—
  - (a) enabling an exemption notice to be issued only on the request of a person of a prescribed description,
  - (b) requiring a person requesting the issue of an exemption notice to certify that conditions A to C in section 758 are met and that section 765 (anti-avoidance) does not apply,
  - (c) the information to be provided in the certificate,
  - (d) the person to whom an exemption notice is to be given,
  - (e) in a case where section 763 (special relationships) applies or may apply to a payment of interest, requiring an exemption notice to specify—
    - (i) the amount of the payment in relation to which the notice has effect, or
    - (ii) the method to be used for determining that amount,
  - (f) imposing a time limit for the issue of an exemption notice,
  - (g) imposing notification requirements,
  - (h) the cancellation of exemption notices by the [<sup>F858</sup>Commissioners] ,
  - (i) prescribing circumstances in which exemption notices are to become ineffective,

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (j) the making of appeals (for example, against a refusal to grant, or the cancellation of, an exemption notice),
- (k) authorising, in cases where—
  - (i) an exemption notice has been issued,
  - (ii) tax has not been deducted from a payment of interest, and
  - (iii) any of the conditions in section 758 were not met in the case of the payment,
 the recovery of that tax by assessment or by deduction from subsequent payments.

#### Textual Amendments

**F857** Words in s. 762(1) substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\), ss. 50, 53\(1\), Sch. 4 para. 132\(2\)](#); S.I. 2005/1126, [art. 2\(2\)\(h\)](#)

**F858** Word in s. 762(2) substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\), ss. 50, 53\(1\), Sch. 4 para. 132\(3\)\(g\)](#); S.I. 2005/1126, [art. 2\(2\)\(h\)](#)

### 763 Special relationships

- (1) This section applies if—
  - (a) apart from this section, section 758 would apply in relation to a payment of interest or of a royalty,
  - (b) at the time the payment is made there is a special relationship (within the meaning of Article 4(2) of the Directive)—
    - (i) between the company in condition A of section 758 and the company in condition B of that section, or
    - (ii) between one of those companies and another person, and
  - (c) owing to the special relationship, the amount of the payment exceeds the amount which would have been paid in the absence of the relationship (“the arm's length amount”).
- (2) Sections 757 to 767, apart from this section and section 764, have effect in relation to only so much of the payment as does not exceed the arm's length amount (which may be nil).
- (3) Nothing in this section or section 764 affects any relief which may be allowed under any arrangements having effect under <sup>F859</sup>section 2(1) of TIOPA 2010] (double taxation relief by agreement with other territories).

#### Textual Amendments

**F859** Words in s. 763(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. 68](#) (with [Sch. 9 paras. 1-9, 22](#))

### 764 Application of <sup>F860</sup>TIOPA 2010] provisions about special relationships

- (1) The provisions in <sup>F861</sup>TIOPA 2010] mentioned in subsections (2) and (3) apply in relation to section 763 as if that section were a <sup>F862</sup>special relationship rule] within the meaning of those provisions.

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (2) In the case of a payment of interest, those provisions are [<sup>F863</sup>section 131(3), (5) and (6) of TIOPA 2010] (interest: special relationship).
- (3) In the case of a payment of a royalty, those provisions are [<sup>F864</sup>sections 132(3) to (5), (7) and (8) and 133 of TIOPA 2010] (royalties: special relationship).
- (4) In those provisions as applied in relation to section 763, expressions also used in sections 757 to 767 have the same meaning as in those sections.

#### Textual Amendments

- F860** Words in s. 764 title 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. 69\(2\)](#) (with [Sch. 9 paras. 1-9, 22](#))
- F861** Words in s. 764(1) 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. 69\(2\)](#) (with [Sch. 9 paras. 1-9, 22](#))
- F862** Words in s. 764(1) 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. 69\(3\)](#) (with [Sch. 9 paras. 1-9, 22](#))
- F863** Words in s. 764(2) 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. 69\(4\)](#) (with [Sch. 9 paras. 1-9, 22](#))
- F864** Words in s. 764(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. 69\(5\)](#) (with [Sch. 9 paras. 1-9, 22](#))

#### 765 Anti-avoidance

- (1) Section 758 does not apply in relation to a payment of interest if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the debt-claim in respect of which the interest is paid to take advantage of that section by means of that creation or assignment.
- (2) Section 758 does not apply in relation to a payment of a royalty if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the right in respect of which the royalty is paid to take advantage of that section by means of that creation or assignment.

#### 766 Interest and royalty payments: interpretation

In sections 757 to 767—

“company” has the same meaning as the expression “company of a member State” has for the purposes of the Directive (see Article 3(a) of the Directive),

“debt-claim” has the same meaning as in the Directive,

“the Directive” has the meaning given by section 757(2),

“EU company” means a company resident in a member State other than the United Kingdom,

“interest” and “royalties” have the meaning given by Article 2 of the Directive,

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

“non-EU permanent establishment” means a permanent establishment in a territory other than a member State,

“UK company” means a company resident in the United Kingdom, and

“UK permanent establishment” means a permanent establishment in the United Kingdom.

## 767 Power to amend references to the Directive by order

- (1) The Treasury may by order make such provision amending any reference in sections 757 to 766 to, or to a provision of,—
- (a) the Directive, or
  - (b) any instrument referred to in those sections by virtue of an order made under this section,
- as appears to them appropriate for the purpose of giving effect to any Council Directive adopted after 8th April 2004 amending or replacing the Directive.
- (2) This includes a power to make provision amending any such reference as it applies to [F865sections 914 to 916 of ITA 2007](payment of royalties without deduction of tax) as a result of [F866section 917(2) of that Act] .

### Textual Amendments

**F865** Words in s. 767(2) substituted (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), ss. 1027, 1034, [Sch. 1 para. 577\(a\)](#) (with transitional provisions and savings in [Sch. 2](#))

**F866** Words in s. 767(2) substituted (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), ss. 1027, 1034, [Sch. 1 para. 577\(b\)](#) (with transitional provisions and savings in [Sch. 2](#))

### *Income from commercial occupation of woodlands*

## 768 Commercial occupation of woodlands

- (1) No liability to income tax arises under Chapter 8 of Part 5 (income not otherwise charged) in respect of income arising from the commercial occupation of woodlands in the United Kingdom.
- (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.

### *Housing grants*

## 769 Housing grants

- (1) No liability to income tax arises in respect of a payment if it is made—
- (a) under an enactment relating to the giving of financial assistance for the provision, maintenance or improvement of housing accommodation or other residential accommodation, and



*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (b) by way of grant or other contribution towards expenses.
- (2) It does not matter whether—
  - (a) the payment is made to the person who incurs the expenses, or
  - (b) the expenses have been, or are to be, incurred.
- (3) Subsection (1) does not apply so far as the payment is made towards an expense which is deductible in calculating income for any income or corporation tax purpose.

*[<sup>F867</sup>Schedule 2] share incentive plan distributions*

**Textual Amendments**

**F867** Words in s. 770 cross-heading substituted (6.4.2014) by Finance Act 2014 (c. 26), Sch. 8 paras. 66, 89 (with Sch. 8 paras. 90-96)

**770 Amounts applied by SIP trustees acquiring dividend shares or retained for reinvestment**

- (1) This section applies if—
  - (a) shares are awarded to a participant under [<sup>F868</sup>a Schedule 2] share incentive plan, and
  - (b) the condition in section 392(3) or (5) is met at the time the shares in question are so awarded (earnings within ITEPA 2003).

This is subject to subsection (4).

- (2) No liability to income tax arises for the participant in respect of—
  - (a) the amount applied by the trustees in acquiring dividend shares on behalf of the participant, or
  - (b) any amount retained under paragraph 68(2) of Schedule 2 to ITEPA 2003 (amount of cash dividend not reinvested).
- (3) Subsection (2) does not affect any liability arising as a result of—
  - (a) the retained amount later being paid out (see sections 393 and 406), or
  - (b) the dividend shares ceasing to be subject to the plan (see sections 394 and 407).
- (4) This section does not apply if the main purpose or one of the main purposes of the arrangements under which the shares are awarded or acquired is the avoidance of tax or national insurance contributions.
- (5) This section forms part of the SIP code (see section 488 of ITEPA 2003: <sup>F869</sup>... share incentive plans).
- (6) Accordingly, expressions used in this section and contained in the index in paragraph 100 of Schedule 2 to that Act (<sup>F869</sup>... share incentive plans) have the meaning indicated by that index.
- (7) In particular—
  - (a) for the meaning of “dividend shares” see paragraph 62(3)(b) of that Schedule,
  - (b) for the meaning of “participant” see paragraph 5(4) of that Schedule, and

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (c) for the meaning of “the trustees” see paragraphs 2(2) and 71(1) of that Schedule.

#### Textual Amendments

- F868** Words in s. 770(1)(a) substituted (6.4.2014) by Finance Act 2014 (c. 26), Sch. 8 paras. 67(2), 89 (with Sch. 8 paras. 90-96)
- F869** Word in s. 770(5)(6) omitted (6.4.2014) by virtue of Finance Act 2014 (c. 26), Sch. 8 paras. 67(3), 89 (with Sch. 8 paras. 90-96)

### *Foreign income of consular officers and employees*

#### **771 Relevant foreign income of consular officers and employees**

- (1) No liability to income tax arises in respect of relevant foreign income of a consular officer or employee in the United Kingdom for a foreign state if—
- Her Majesty by Order in Council directs that this section applies to the foreign state for the purpose of giving effect to a reciprocal arrangement with that state, and
  - the officer or employee meets conditions A to C.
- (2) Condition A is that the officer or employee is not—
- a British citizen,
  - a British overseas territories citizen,
  - a British National (Overseas), or
  - a British Overseas citizen.
- (3) Condition B is that the officer or employee is not engaged in any trade, profession, vocation or employment in the United Kingdom, otherwise than as a consular officer or employee of the state in question.
- [<sup>F870</sup>(4) Condition C is that—
- the officer or employee is a permanent employee of that state, or
  - the officer or employee was non-UK resident for each of the 2 tax years preceding the tax year in which the officer or employee became a consular officer or employee in the United Kingdom of that state.]
- (5) In this section and section 772—
- “consular officer or employee” includes any person employed for the purposes of the official business of a consular officer at—
- any consulate,
  - any consular establishment, or
  - any other premises used for those purposes, and
- “reciprocal arrangement” means a consular convention or other arrangement with a foreign state, making similar provision to that made by this section and sections 302, 646A and 681A of ITEPA 2003 in the case of Her Majesty's consular officers or employees in that state.

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

### Textual Amendments

**F870** S. 771(4) substituted (with effect in accordance with Sch. 46 para. 72 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 53\(1\)](#) (with [Sch. 46 para. 53\(2\)](#))

## 772 Further provisions about Orders under section 771

- (1) An Order in Council under section 771 may limit the operation of that section in relation to a state in any way appearing to Her Majesty appropriate having regard to the reciprocal arrangement with the state.
- (2) An Order under that section may be made so as to have effect from a date earlier than that on which it is made, but not earlier than the reciprocal arrangement in question comes into force.
- (3) An Order under that section may contain such transitional provisions as appear to Her Majesty appropriate.
- (4) A statutory instrument containing an Order under that section is subject to annulment in pursuance of a resolution of the House of Commons.

### *Income of non-UK residents from certain securities*

## 773 Income from Inter-American Development Bank securities

- (1) No liability to income tax arises for a non-UK resident in respect of income from a security issued by the Inter-American Development Bank if the liability only arises because one or more of circumstances A to C apply.
- (2) Circumstance A is that the security is issued in the United Kingdom or in sterling.
- (3) Circumstance B is that the income is made payable or paid in the United Kingdom or in sterling.
- (4) Circumstance C is that the Bank maintains an office or other place of business in the United Kingdom.

## 774 Income from securities issued by designated international organisations

- (1) No liability to income tax arises for a non-UK resident in respect of income from a security issued by an organisation if—
  - (a) the organisation has been designated by the Treasury for the purposes of this section, and
  - (b) the liability only arises because one or more of circumstances A to C apply.
- (2) Circumstance A is that the security is issued in the United Kingdom or in sterling.
- (3) Circumstance B is that the income is made payable or paid in the United Kingdom or in sterling.
- (4) Circumstance C is that the organisation maintains an office or other place of business in the United Kingdom.
- (5) The Treasury may by order designate for the purposes of this section—

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (a) any of the [<sup>F871</sup>Communities][<sup>F871</sup>European Union] ,
  - (b) the European Investment Bank,
  - (c) any international organisation that meets conditions A and B.
- (6) Condition A is that one of its members is the United Kingdom or any of the [<sup>F871</sup>Communities][<sup>F871</sup>European Union] .
- (7) Condition B is that the agreement under which that member became a member provides for the same kind of exemption from tax for income from securities issued by the organisation as this section provides.

#### Textual Amendments

**F871** Words in Act substituted (22.4.2011) by [The Treaty of Lisbon \(Changes in Terminology\) Order 2011](#) (S.I. 2011/1043), arts. 2, 3, 4 (with arts. 3(2)(3), 4(2), 6(4)(5))

#### Other

#### 775 Income towards reducing the national debt

- (1) This section applies if property is held on trust in accordance with directions which are valid and effective under section 9 of the Superannuation and other Trust Funds (Validation) Act 1927 (c. 41) (validation of trust funds for the reduction of the national debt).
- (2) No liability to income tax arises in respect of any of the following—
- (a) income arising from the property,
  - (b) income arising from the accumulation of that income, and
  - (c) profits of any description otherwise accruing to the property and liable to be accumulated under the trust.

#### 776 Scholarship income

- (1) No liability to income tax arises in respect of income from a scholarship held by an individual in full-time education at a university, college, school or other educational establishment.
- (2) This exemption is subject to section 215 of ITEPA 2003 (under which only the scholarship holder is entitled to the exemption if the scholarship is provided by reason of another person's employment).
- [<sup>F872</sup>(2A) No liability to income tax arises in respect of income from a payment made under section 23C(5A) of the Children Act 1989 (duty to make payments to former relevant children who pursue higher education).]
- (3) In this section “scholarship” includes a bursary, exhibition or other similar educational endowment.

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

### Textual Amendments

**F872** S. 776(2A) inserted (E.W.) (22.8.2009 for E., 18.3.2011 for W.) by [Children and Young Persons Act 2008 \(c. 23\)](#), [ss. 21\(4\), 44\(4\)](#); S.I. 2009/2273, art. 2(1); S.I. 2011/824, art. 2(a)

## 777 VAT repayment supplements

No liability to income tax arises in respect of a sum paid by way of supplement under section 79 of VATA 1994 (VAT repayment supplements).

## 778 Incentives to use electronic communications

No liability to income tax arises in respect of anything received by way of incentive under any regulations made in accordance with Schedule 38 to FA 2000 (regulations for providing incentives for electronic communications).

## 779 Gains on commodity and financial futures

- (1) No liability to income tax arises as a result of Chapter 8 of Part 5 (income not otherwise charged) in respect of a gain arising to a person in the course of dealing in—
  - (a) commodity or financial futures,
  - (b) traded options, or
  - (c) financial options.
- (2) The reference in subsection (1) to a gain arising in the course of dealing in commodity or financial futures includes a gain regarded as so arising under section 143(3) of TCGA 1992 (gains arising from transactions otherwise than in the course of dealing on a recognised futures exchange, involving authorised persons).
- (3) In this section—
  - “commodity or financial futures” means commodity futures or financial futures that are for the time being dealt in on a recognised futures exchange,
  - “financial option” has the meaning given by section 144(8)(c) of TCGA 1992, and
  - “traded option” has the meaning given by section 144(8)(b) of that Act.

## 780 Disabled person's vehicle maintenance grant

- (1) No liability to income tax arises in respect of a disabled person's vehicle maintenance grant.
- (2) For this purpose a “disabled person's vehicle maintenance grant” means a grant to any person owning a vehicle that is made under—
  - <sup>[F873]</sup>(a) paragraph 10 of Schedule 1 to the National Health Service Act 2006 or paragraph 10 of Schedule 1 to National Health Service (Wales) Act 2006]
  - (b) section 46(3) of the National Health Service (Scotland) Act 1978 (c. 29), or
  - (c) Article 30 of the Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265 (N.I. 14)).

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

#### Textual Amendments

**F873** Words in s. 780(2)(a) substituted (1.3.2007) by [National Health Service \(Consequential Provisions\) Act 2006 \(c. 43\), ss. 2, 8\(2\), Sch. 1 para. 276](#) (with Sch. 3 Pt. 1)

### 781 Payments under New Deal 50plus

- (1) No liability to income tax arises in respect of a payment that is made—
  - (a) by way of training grant under the “New Deal 50plus” scheme, and
  - (b) to a person as a participant in that scheme.
- (2) For this purpose the “New Deal 50plus” scheme means —
  - (a) the scheme under section 2(2) of the Employment and Training Act 1973 (c. 50) known as “New Deal 50plus”, or
  - (b) the corresponding scheme under section 1 of the Employment and Training Act (Northern Ireland) 1950 (c. 29 (N.I.)).

### 782 Payments under employment zone programme

- (1) No liability to income tax arises in respect of a payment that is made to a person as a participant in an employment zone programme.
- (2) For this purpose an “employment zone programme” means an employment zone programme established for an area or areas designated under section 60 of the Welfare Reform and Pensions Act 1999 (c. 30).

#### [<sup>F874</sup>782A] Domestic microgeneration

- (1) No liability to income tax arises in respect of income arising to an individual from the sale of electricity generated by a microgeneration system if—
  - (a) the system is installed at or near domestic premises occupied by the individual, and
  - (b) the individual intends that the amount of electricity generated by it will not significantly exceed the amount of electricity consumed in those premises.
- (2) In subsection (1)—
 

“domestic premises” means premises used wholly or mainly as a separate private dwelling, and

“microgeneration system” has the same meaning as in section 4 of the Climate Change and Sustainable Energy Act 2006.]

#### Textual Amendments

**F874** S. 782A inserted (19.7.2007 with effect as stated in s. 20(2) of the amending Act) by [Finance Act 2007 \(c. 11\), s. 20\(1\)](#)

#### [<sup>F875</sup>782B] Renewables obligation certificates for domestic microgeneration

- (1) No liability to income tax arises in respect of the receipt by an individual of a renewables obligation certificate if—

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (a) the individual receives the certificate in connection with the generation of electricity by a microgeneration system,
- (b) the system is installed at or near domestic premises occupied by the individual, and
- (c) the individual intends that the amount of electricity generated by it will not significantly exceed the amount of electricity consumed in those premises.

(2) In subsection (1)—

“domestic premises” and “microgeneration system” have the same meaning as in section 782A, and

“renewables obligation certificate” means a certificate issued under section 32B of the Electricity Act 1989 or Article 54 of the Energy (Northern Ireland) Order 2003.]

#### Textual Amendments

**F875** S. 782B inserted (19.7.2007 with effect as stated in [s. 21\(3\)](#) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [s. 21\(1\)](#)

## CHAPTER 10

### GENERAL

#### 783 General disregard of exempt income for income tax purposes

(1) Amounts of income which are exempt from income tax as a result of this Part (whether because the type of income concerned is exempt from every charge to income tax or because it is exempt from every charge that is relevant to those particular amounts) are accordingly to be ignored for all other income tax purposes.

[<sup>F876</sup>(2) There are exceptions to this in the following cases.

(2A) Interest on deposits in ordinary accounts with the National Savings Bank which is exempt under this Part from every charge to income tax is not to be ignored for the purpose of providing information.

(2B) Interest paid to or in respect of victims of National-Socialist persecution which is so exempt is not to be ignored for the purposes of sections 17 and 18 of TMA 1970 (information provisions relating to interest).]

(3) [<sup>F877</sup>These express exceptions to subsection (1) are] without prejudice to the existence of any other implied or express exception to that subsection (whether in connection with the provision of information or otherwise).

#### Textual Amendments

**F876** S. 783(2)-(2B) substituted (19.7.2006) for s. 783(2) by [Finance Act 2006 \(c. 25\)](#), [s. 64\(3\)\(a\)](#) (with [s. 64\(10\)-\(12\)](#))

**F877** Words in [s. 783\(3\)](#) substituted (19.7.2006) by [Finance Act 2006 \(c. 25\)](#), [s. 64\(3\)\(b\)](#) (with [s. 64\(10\)-\(12\)](#))

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

## PART 7

### INCOME CHARGED UNDER THIS ACT: RENT-A-ROOM AND <sup>F878</sup>QUALIFYING CARE] RELIEF

#### Textual Amendments

**F878** Words in Pt. 7 heading substituted (16.12.2010) (with effect in accordance with Sch. 1 para. 36 of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), **Sch. 1 para. 34** (with [Sch. 1 para. 37](#))

## CHAPTER 1

### RENT-A-ROOM RELIEF

#### *Introduction*

#### **784 Overview of Chapter 1**

- (1) This Chapter provides relief on income from the use of furnished accommodation in an individual's only or main residence.

The relief is referred to in this Chapter as “rent-a-room relief”.

- (2) The form of relief depends on whether the individual's total rent-a-room amount exceeds the individual's limit (see sections 788 to 790).
- (3) If it does not, the income is not charged to income tax unless the individual elects otherwise (see sections 791 to 794).
- (4) If it does, the individual may elect for alternative methods of calculating the income (see sections 795 to 798).

#### **785 Person who qualifies for relief**

- (1) An individual qualifies for rent-a-room relief for a tax year if the individual—
- (a) has rent-a-room receipts for the tax year (see section 786), and
  - (b) does not derive any taxable income other than rent-a-room receipts from a relevant trade, letting or agreement.
- (2) “Taxable income” means receipts or other income in respect of which the individual is liable to income tax for the tax year.
- (3) A relevant trade, letting or agreement is one from which the individual derives rent-a-room receipts for the tax year.

#### *Basic definitions*

#### **786 Meaning of “rent-a-room receipts”**

- (1) For the purposes of this Chapter an individual has rent-a-room receipts for a tax year if—



*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (a) the receipts are in respect of the use of furnished accommodation in a residence in the United Kingdom or in respect of goods or services supplied in connection with that use,
  - (b) they accrue to the individual during the income period for those receipts (see subsections (3) and (4)),
  - (c) for some or all of that period the residence is the individual's only or main residence, and
  - (d) the receipts would otherwise be brought into account in calculating the profits of a trade or UK property business or chargeable to income tax under Chapter 8 of Part 5 (income not otherwise charged).
- (2) Meals, cleaning and laundry are examples of goods or services supplied in connection with the use of furnished accommodation in a residence.
- (3) If the receipts would otherwise be brought into account in calculating the profits of a trade, the income period is the basis period for the tax year (see Chapter 15 of Part 2).
- (4) Otherwise the income period is the period which—
- (a) begins at the beginning of the tax year or, if later, the beginning of the letting in respect of which the receipts arise, and
  - (b) ends at the end of the tax year or, if earlier, the end of that letting.
- [<sup>F879</sup>(5) Subsections (6) and (7) apply if—
- (a) the receipts would otherwise be brought into account in calculating the profits of a trade, and
  - (b) an election under section 25A (cash basis for small businesses) has effect in relation to the trade.
- (6) Any amounts brought into account under section 96A (capital receipts) as a receipt in calculating the profits of the trade are to be treated as receipts within paragraph (a) of subsection (1) above.
- (7) The reference in subsection (1)(b) to receipts that accrue to an individual during the income period for those receipts is to be read as a reference to receipts that are received by the individual during that period.]

#### Textual Amendments

**F879** S. 786(5)-(7) inserted (with effect in accordance with Sch. 4 paras. 56, 57 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 4 para. 40](#)

### 787 Meaning of “residence”

- (1) In this Chapter “residence” means—
- (a) a building, or part of a building, occupied or intended to be occupied as a separate residence, or
  - (b) a caravan or houseboat.
- (2) If a building, or part of a building, designed for permanent use as a single residence is temporarily divided into two or more separate residences, it is still treated as a single residence.

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

## **788 Meaning of “total rent-a-room amount”**

- (1) For the purposes of this Chapter an individual's “total rent-a-room amount” for a tax year is the total of—
  - (a) the individual's rent-a-room receipts for the tax year, and
  - (b) any relevant balancing charges for the tax year (see section 802).
- (2) In calculating the total rent-a-room amount, no deduction is allowed for expenses or any other matter.

### *Individual's limit*

## **789 The individual's limit**

- (1) For the purposes of this Chapter an individual's limit for a tax year depends on whether the individual meets the exclusive receipts condition for the tax year (see section 790).
- (2) If the individual does, the individual's limit for the tax year is the basic amount for the tax year.
- (3) If the individual does not, the individual's limit for the tax year is half that amount.
- (4) The basic amount for a tax year is £4250.
- (5) The Treasury may by order amend the sum for the time being specified in subsection (4).

## **790 Exclusive receipts condition**

- (1) An individual meets the exclusive receipts condition for a tax year if, for each rent-a-room residence of the individual, no receipts accrue to any other person during any relevant period in respect of—
  - (a) the use of residential accommodation (whether furnished or not) in the residence, or
  - (b) goods or services supplied in connection with that use (such as meals, cleaning or laundry),at a time when the residence is the individual's only or main residence.
- (2) Each of the following periods is a relevant period—
  - (a) any income period specified in section 786 for any rent-a-room receipts of the individual for the tax year,
  - (b) the period of 12 months which begins at the same time as any such income period begins, and
  - (c) the period of 12 months which ends at the same time as any such income period ends.
- (3) A “rent-a-room residence of the individual” means a residence in respect of which the individual derives rent-a-room receipts for the tax year.

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

*Relief if amount does not exceed limit*

**791 Full rent-a-room relief: introduction**

Sections 792 to 794 (which give the full form of rent-a-room relief) apply if—

- (a) an individual qualifies for rent-a-room relief for a tax year,
- (b) the individual's total rent-a-room amount for the tax year does not exceed the individual's limit for the tax year, and
- (c) no election by the individual under section 799 has effect to disapply the full relief for the tax year.

**792 Full rent-a-room relief: trading income**

- (1) This section applies if the individual has any rent-a-room receipts for the tax year which would otherwise be brought into account in calculating the profits of a trade.
- (2) The profits or losses of the trade for the tax year are treated as nil.

**793 Full rent-a-room relief: property income**

- (1) This section applies if the individual has any rent-a-room receipts for the tax year which would otherwise be brought into account in calculating the profits of a UK property business.
- (2) In calculating those profits—
  - (a) those receipts for the tax year, and
  - (b) any expenses associated with them,are not brought into account.
- (3) No relevant balancing charge or relevant allowance (see section 802) is made in calculating those profits for the tax year.

**794 Full rent-a-room relief: income chargeable under Chapter 8 of Part 5**

- (1) This section applies if the individual has any rent-a-room receipts for the tax year which would otherwise be chargeable to income tax under Chapter 8 of Part 5 (income not otherwise charged).
- (2) For each agreement from which those receipts arise, the amount of—
  - (a) those receipts arising in the tax year from the agreement, less
  - (b) any expenses associated with them,is treated as nil.

*Alternative calculation of profits if amount exceeds limit*

**795 Alternative calculation of profits: introduction**

Sections 796 to 798 (which provide for alternative methods of calculating profits) apply if—

- (a) an individual qualifies for rent-a-room relief for a tax year,

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (b) the individual's total rent-a-room amount for the tax year exceeds the individual's limit for the tax year, and
- (c) an election by the individual under section 800 has effect to apply the alternative method of calculating profits for the tax year.

**796 Alternative calculation of profits: trading income**

- (1) This section applies if the individual has any rent-a-room receipts for the tax year which are the receipts of a trade.
- (2) The profits of the trade for the tax year are—
  - (a) the sum of the amount of the rent-a-room receipts for the tax year arising from the trade and the amount of any relevant balancing charge, less
  - (b) the deductible amount.
- (3) The deductible amount—
  - (a) is L if all the individual's rent-a-room receipts for the tax year arise from the trade, and
  - (b) otherwise, is—

$$\frac{L \times T}{R}$$

but, in either case, subject to a maximum of T.

- (4) In subsection (3)—
  - L is the individual's limit for the tax year,
  - T is the individual's rent-a-room receipts for the tax year arising from the trade, and
  - R is all the individual's rent-a-room receipts for the tax year.
- (5) In calculating the amount of any rent-a-room receipts for the purposes of this section, no deduction is allowed for expenses or any other matter.

**797 Alternative calculation of profits: property income**

- (1) This section applies if the individual has any rent-a-room receipts for the tax year (“Part 3 rent-a-room receipts”) which are to be brought into account in calculating the profits of a UK property business.
- (2) In calculating those profits for the tax year—
  - (a) the Part 3 rent-a-room receipts for the tax year are brought into account only in calculating the profits of the business for the tax year, and
  - (b) any expenses associated with those receipts are not brought into account.
- (3) In calculating those profits for the tax year—
  - (a) a deduction is allowed, and
  - (b) no relevant allowance, but any relevant balancing charge, is made.
- (4) The amount of the deduction—

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (a) is L if all the individual's rent-a-room receipts for the tax year are Part 3 rent-a-room receipts, and
- (b) otherwise, is—

$$\frac{L \times P}{R}$$

but, in either case, subject to a maximum of P.

- (5) In subsection (4)—

L is the individual's limit for the tax year,

P is the individual's Part 3 rent-a-room receipts for the tax year, and

R is all the individual's rent-a-room receipts for the tax year.

#### **798 Alternative calculation of profits: income chargeable under Chapter 8 of Part 5**

- (1) This section applies if the individual has any rent-a-room receipts for the tax year which are chargeable to income tax under Chapter 8 of Part 5 (income not otherwise charged).
- (2) The amount charged for the tax year arising from all the agreements from which the receipts are derived is—
  - (a) the amount of the receipts for the tax year so arising, less
  - (b) the deductible amount.
- (3) The deductible amount is—

$$\frac{L \times I}{R}$$

subject to a maximum of I.

- (4) In subsection (3)—

L is the individual's limit for the tax year,

I is the amount of the receipts for the tax year arising from the agreements, and

R is all the individual's rent-a-room receipts for the tax year.

- (5) In calculating the amount of any rent-a-room receipts for the purposes of this section, no deduction is allowed for expenses or any other matter.

#### *Elections*

#### **799 Election not to apply full relief**

- (1) An individual may elect for sections 792 to 794 (full relief) not to apply.
- (2) The election—
  - (a) must specify the tax year for which it is made, and
  - (b) has effect for that year (unless withdrawn by notice given by the individual).

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (3) An election or notice of withdrawal must be made or given to the Inland Revenue on or before—
- (a) the first anniversary of the normal self-assessment filing date for the tax year for which the election is made, or
  - (b) such later date as the Inland Revenue may, in a particular case, allow.

### **800 Election for alternative method of calculating profits**

- (1) An individual may elect for the alternative method of calculating profits given in sections 796 to 798 to apply if—
- (a) the individual qualifies for rent-a-room relief for a tax year, and
  - (b) the individual's total rent-a-room amount for the tax year exceeds the individual's limit for the tax year.
- (2) The election—
- (a) must specify the tax year for which it is made, and
  - (b) has effect for that year and subsequent tax years (unless withdrawn by notice given by the individual).
- (3) A notice of withdrawal of an election must specify the tax year for which it is given. The election ceases to have effect for that tax year and subsequent tax years.
- (4) Withdrawal of an election does not prevent a fresh election from being made for a subsequent tax year.
- (5) An election or notice of withdrawal must be made or given to the Inland Revenue on or before—
- (a) the first anniversary of the normal self-assessment filing date for the tax year specified in the election or notice of withdrawal, or
  - (b) such later date as the Inland Revenue may, in a particular case, allow.
- (6) If—
- (a) an election would otherwise have effect for a tax year, but
  - (b) the individual's total rent-a-room amount for the tax year does not exceed the individual's limit for the tax year,
- the individual is treated as giving a notice of withdrawal of the election which specifies that tax year as the one for which it is given (and the election, therefore, ceases to have effect for that tax year and subsequent tax years).

### **801 Time limit on adjustment of assessment**

- (1) This section applies if it is necessary to make an adjustment by way of assessment to give effect to an election or notice of withdrawal under section 799 or 800.
- (2) The assessment is not out of time if it is made on or before the first anniversary of the normal self-assessment filing date for the tax year for which the election was made or notice was given (or treated as given).

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

## Interpretation

### 802 Minor definitions

In this Chapter—

“letting” includes a licence to occupy,

“relevant allowance”, for a tax year, means a capital allowance falling to be made for the tax year under Part 2 of CAA 2001 in respect of plant or machinery provided for the purposes of a trade or letting from which rent-a-room receipts are derived, and

“relevant balancing charge”, for a tax year, means a balancing charge falling to be made for the tax year under Part 2 of CAA 2001 in respect of plant or machinery provided for the purposes of a trade or letting from which rent-a-room receipts are derived.

## CHAPTER 2

### [<sup>F880</sup>QUALIFYING CARE RELIEF]

#### Textual Amendments

**F880** Pt. 7 Ch. 2 heading substituted (16.12.2010) (with effect in accordance with Sch. 1 para. 36 of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 1 para. 29](#) (with [Sch. 1 para. 37](#))

## Introduction

### 803 Overview of Chapter 2

[<sup>F881</sup>(1) This Chapter provides relief on income from the provision by an individual of qualifying care.

The relief is referred to in this Chapter as “qualifying care relief”.]

- (2) The form of relief depends on whether the individual's total [<sup>F882</sup>qualifying care] receipts exceed the individual's limit (see sections 807 to 811).
- (3) If they do not, the income is not charged to income tax (see sections 812 to 814).
- (4) If they do, the individual may elect for an alternative method of calculating the income (see sections 815 to 819).
- (5) If the [<sup>F883</sup>qualifying care] receipts are the receipts of a trade, special rules apply —
  - (a) if the period of account of the trade does not end on 5th April (see sections 820 to 823), and
  - (b) in relation to capital allowances (see sections 824 to 827).
- (6) The provisions of this Chapter which are expressed to apply in relation to trades also apply in relation to professions and vocations.

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

#### Textual Amendments

- F881** S. 803(1) substituted (16.12.2010) (with effect in accordance with Sch. 1 para. 36 of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), **Sch. 1 para. 2(2)** (with [Sch. 1 para. 37](#))
- F882** Words in s. 803(2) substituted (16.12.2010) (with effect in accordance with Sch. 1 para. 36 of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), **Sch. 1 para. 2(3)** (with [Sch. 1 para. 37](#))
- F883** Words in s. 803(5) substituted (16.12.2010) (with effect in accordance with Sch. 1 para. 36 of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), **Sch. 1 para. 2(3)** (with [Sch. 1 para. 37](#))

### 804 Person who qualifies for relief

- [<sup>F884</sup>(1) An individual qualifies for qualifying care relief for a tax year if the individual—
- (a) has qualifying care receipts for the tax year (see section 805), and
  - (b) does not derive any taxable income, other than qualifying care receipts, from a relevant trade or arrangement.]
- (2) “Taxable income” means receipts or other income in respect of which the individual is liable to income tax for the tax year.
- (3) A relevant trade or arrangement is one from which the individual derives [<sup>F885</sup>qualifying care] receipts for the tax year.
- [<sup>F886</sup>(4) Subsection (1) is subject to section 804A.]

#### Textual Amendments

- F884** S. 804(1) substituted (16.12.2010) (with effect in accordance with Sch. 1 para. 36 of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), **Sch. 1 para. 3(2)** (with [Sch. 1 para. 37](#))
- F885** Words in s. 804(3) substituted (16.12.2010) (with effect in accordance with Sch. 1 para. 36 of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), **Sch. 1 para. 3(3)** (with [Sch. 1 para. 37](#))
- F886** S. 804(4) inserted (16.12.2010) (with effect in accordance with Sch. 1 para. 36 of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), **Sch. 1 para. 3(4)** (with [Sch. 1 para. 37](#))

### [<sup>F887</sup>804A] Shared lives care: further condition for relief

- (1) This section applies if an individual (“N”) has qualifying care receipts for a tax year in respect of the provision of shared lives care.
- (2) N does not qualify for qualifying care relief in respect of those receipts if the placement cap is exceeded for the residence (or any of the residences) used by N to provide the care from which those receipts are derived.
- (3) The placement cap is exceeded for a residence if, at any given time during the relevant period, shared lives care is being provided there (whether by N or anyone else) for more than 3 people in total.
- (4) The relevant period, in relation to a residence, is the period for which the residence is N's only or main residence during the income period for the receipts (see section 805).
- (5) If the placement cap is so exceeded but N also has qualifying care receipts for the tax year in respect of the provision of foster care, this Chapter is to apply to N for the tax year as if—



*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (a) references to qualifying care were to foster care, and
  - (b) accordingly, references (other than in this section) to qualifying care receipts did not include receipts in respect of the provision of shared lives care.
- (6) In determining the number of people for whom shared lives care is being provided at any given time, brothers and sisters (including half-brothers and half-sisters) count as one person.]

#### Textual Amendments

**F887** S. 804A inserted (16.12.2010) (with effect in accordance with Sch. 1 para. 36 of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 1 para. 4](#) (with [Sch. 1 para. 37](#))

### Basic definitions

#### 805 Meaning of “[<sup>F888</sup>qualifying care] receipts”

- (1) For the purposes of this Chapter an individual has [<sup>F889</sup>qualifying care] receipts for a tax year if —
- (a) the receipts are in respect of the provision of [<sup>F890</sup>qualifying care],
  - (b) they accrue to the individual during the income period for those receipts (see subsections (2) and (3)), and
  - (c) the receipts would otherwise be brought into account in calculating the profits of a trade or chargeable to income tax under Chapter 8 of Part 5 (income not otherwise charged).
- (2) If the receipts would otherwise be brought into account in calculating the profits of a trade, the income period is the basis period for the tax year (see Chapter 15 of Part 2).
- (3) Otherwise the income period is the tax year.
- [<sup>F891</sup>(4) Subsections (5) and (6) apply if—
- (a) the receipts would otherwise be brought into account in calculating the profits of a trade, and
  - (b) an election under section 25A (cash basis for small businesses) has effect in relation to the trade.
- (5) Any amounts brought into account under section 96A (capital receipts) as a receipt in calculating the profits of the trade are to be treated as receipts within paragraph (a) of subsection (1) above.
- (6) The reference in subsection (1)(b) to receipts that accrue to an individual during the income period for those receipts is to be read as a reference to receipts that are received by the individual during that period.]

#### Textual Amendments

**F888** Words in s. 805 heading substituted (16.12.2010) (with effect in accordance with Sch. 1 para. 36 of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 1 para. 5\(2\)](#) (with [Sch. 1 para. 37](#))

**F889** Words in s. 805(1) substituted (16.12.2010) (with effect in accordance with Sch. 1 para. 36 of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 1 para. 5\(1\)\(a\)](#) (with [Sch. 1 para. 37](#))

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- F890** Words in s. 805(1)(a) substituted (16.12.2010) (with effect in accordance with Sch. 1 para. 36 of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 1 para. 5\(1\)\(b\)](#) (with [Sch. 1 para. 37](#))
- F891** S. 805(4)-(6) inserted (with effect in accordance with Sch. 4 paras. 56, 57 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 4 para. 42](#)

### [<sup>F892</sup>805A Meaning of providing qualifying care

For the purposes of this Chapter qualifying care is provided if an individual (alone or in partnership) provides—

- (a) foster care but not shared lives care,
- (b) shared lives care but not foster care, or
- (c) both foster care and shared lives care.]

#### Textual Amendments

- F892** S. 805A inserted (16.12.2010) (with effect in accordance with Sch. 1 para. 36 of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 1 para. 6](#) (with [Sch. 1 para. 37](#))

### 806 Meaning of providing foster care

- (1) For the purposes of this Chapter foster care is provided if an individual—
  - (a) provides accommodation and maintenance for a child, and
  - (b) does so as a foster carer.
- [<sup>F893</sup>(2) An individual is a foster carer if the child is placed with the individual by virtue of a compulsory supervision order or interim compulsory supervision order, or under any of the following enactments, unless the individual is excluded by subsection (5).]
  - (3) The enactments are—
    - (a) section [<sup>F894</sup>22C] or 59(1)(a) of the Children Act 1989 (c. 41) (provision of accommodation for children by local authorities or voluntary organisations),
    - (b) regulations under section 5 of the Social Work (Scotland) Act 1968 (c. 49),
    - <sup>F895</sup>(c) .....
    - (d) Article 27(2)(a) or 75(1)(a) of the Children (Northern Ireland) Order 1995 (S.I. 1995/755 (N.I. 2)) (provision of accommodation for children by authorities or voluntary organisations).
  - [<sup>F896</sup>(4) An individual is also a foster carer if the individual is approved as a foster carer by a local authority or a voluntary organisation in accordance with regulations under section 5 of the Social Work (Scotland) Act 1968, and the child in respect of whom the accommodation is provided—
    - (a) is being looked after by a local authority within the meaning of section 17(6) of the Children (Scotland) Act 1995, or
    - (b) is subject to an order or warrant made by the children’s hearing or sheriff under the Children’s Hearings (Scotland) Act 2011,
 unless the individual is excluded by subsection (5).]
  - (5) The following are excluded individuals—
    - (a) a parent of the child,

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (b) an individual who is not a parent of the child but who has parental responsibility (or, in Scotland, parental responsibilities) in relation to the child,
- [<sup>F897</sup>(ba) where the child is in care and there was a child arrangements order in force with respect to the child immediately before the care order was made, a person named in the child arrangements order as a person with whom the child was to live,
- (bb) (in Scotland) where the child is in care and there was a child arrangements order in force with respect to the child immediately before the child was placed in care, a person named in the child arrangements order as a person with whom the child was to live, spend time or otherwise have contact,]
- (c) if the child is in care and there was a residence order in force with respect to the child immediately before the care order was made, an individual in whose favour the residence order was made, [<sup>F898</sup>and]
- (d) (in Scotland) if the child is in care and there was a residence order or contact order in force with respect to the child immediately before the child was placed in care, an individual in whose favour the residence order or contact order was made. [<sup>F899</sup>; and
- (e) an individual with whom the child is placed under a placement falling within section 22C(6)(d) of the Children Act 1989.]

[<sup>F900</sup>(6) In this section—

“compulsory supervision order” has the meaning given by section 83 of the Children’s Hearings (Scotland) Act 2011; and

“interim compulsory supervision order” has the meaning given by section 86 of that Act.]

#### Textual Amendments

- F893** S. 806(2) substituted (24.6.2013) by The Children’s Hearings (Scotland) Act 2011 (Consequential and Transitional Provisions and Savings) Order 2013 (S.I. 2013/1465), art. 1(2), **Sch. 1 para. 10(a)**; S.S.I. 2013/195, **art. 2**
- F894** Word in s. 806(3)(a) substituted (E.W.) (1.4.2011 for E.) by Children and Young Persons Act 2008 (c. 23), s. 44(4), **Sch. 1 para. 18(2)**; S.I. 2010/2981, art. 4(a)
- F895** S. 806(3)(c) omitted (24.6.2013) by virtue of The Children’s Hearings (Scotland) Act 2011 (Consequential and Transitional Provisions and Savings) Order 2013 (S.I. 2013/1465), art. 1(2), **Sch. 1 para. 10(b)**; S.S.I. 2013/195, **art. 2**
- F896** S. 806(4) substituted (24.6.2013) by The Children’s Hearings (Scotland) Act 2011 (Consequential and Transitional Provisions and Savings) Order 2013 (S.I. 2013/1465), art. 1(2), **Sch. 1 para. 10(c)**; S.S.I. 2013/195, **art. 2**
- F897** S. 806(5)(ba)(bb) inserted (22.4.2014) by Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 2 para. 69**; S.I. 2014/889, art. 4(f) (with transitional provisions in S.I. 2014/1042, arts. 3, 4, 6-10)
- F898** Word in s. 806(5) repealed (1.4.2011 for E., 6.4.2016 for W.) by Children and Young Persons Act 2008 (c. 23), s. 44(4), **Sch. 1 para. 18(3)(a)**, **Sch. 4**; S.I. 2010/2981, art. 4(a)(l); S.I. 2016/452, art. 2(b)
- F899** S. 806(5)(e) and word inserted (E.W.) (1.4.2011 for E.) by Children and Young Persons Act 2008 (c. 23), s. 44(4), **Sch. 1 para. 18(3)(b)**; S.I. 2010/2981, art. 4(a)
- F900** S. 806(6) inserted (24.6.2013) by The Children’s Hearings (Scotland) Act 2011 (Consequential and Transitional Provisions and Savings) Order 2013 (S.I. 2013/1465), art. 1(2), **Sch. 1 para. 10(d)**; S.S.I. 2013/195, **art. 2**

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

## **[<sup>F901</sup>806A] Meaning of providing shared lives care**

- (1) For the purposes of this Chapter shared lives care is provided by an individual if—
  - (a) the individual provides accommodation and care for an adult or child (“X”) who has been placed with the individual, and
  - (b) the conditions in subsection (2) are met.
- (2) The conditions are—
  - (a) the accommodation is in the individual's own home,
  - (b) the accommodation and care are provided on the basis that X will share the individual's home and daily family life during the placement,
  - (c) the placement is made under a specified social care scheme,
  - (d) the individual does not provide the accommodation and care as a foster carer, and
  - (e) the individual is not excluded within the meaning of section 806(5).
- (3) Section 806(5) has effect for the purposes of subsection (2)(e) as if references to the child were to X (whatever X's age).
- (4) “Specified social care scheme” means a social care scheme of a kind specified or described in an order made by the Treasury.
- (5) An order under subsection (4) may make provision having effect in relation to the tax year current on the day on which the order is made.
- (6) In this section—
  - “care” means personal care, including assistance and support;
  - “home” means an individual's only or main residence;
  - “social care scheme” means a scheme, service or arrangement for those who, by reason of age, illness, disability or other vulnerability, are in need of care.]

### **Textual Amendments**

**F901** Ss. 806A, 806B inserted (16.12.2010) (with effect in accordance with Sch. 1 para. 36 of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 1 para. 7](#) (with [Sch. 1 para. 37](#))

## **[<sup>F901</sup>806B] Meaning of “residence”**

- (1) In this Chapter “residence” means—
  - (a) a building, or part of a building, occupied or intended to be occupied as a separate residence, or
  - (b) a caravan or houseboat.
- (2) If a building, or part of a building, designed for permanent use as a single residence is temporarily divided into two or more separate residences, it is still treated as a single residence.]

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

#### Textual Amendments

**F901** Ss. 806A, 806B inserted (16.12.2010) (with effect in accordance with Sch. 1 para. 36 of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 1 para. 7](#) (with [Sch. 1 para. 37](#))

### 807 Calculation of “total [<sup>F902</sup>qualifying care] receipts”

For the purposes of this Chapter, in calculating an individual's “total [<sup>F903</sup>qualifying care] receipts” for a tax year, no deduction is allowed for expenses or any other matter.

#### Textual Amendments

**F902** Words in s. 807 heading substituted (16.12.2010) (with effect in accordance with Sch. 1 para. 36 of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 1 para. 8\(2\)](#) (with [Sch. 1 para. 37](#))

**F903** Words in s. 807 substituted (16.12.2010) (with effect in accordance with Sch. 1 para. 36 of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 1 para. 8\(1\)](#) (with [Sch. 1 para. 37](#))

#### *Individual's limit*

### 808 The individual's limit

- (1) For the purposes of this Chapter an individual's limit for a tax year is the total of—
  - (a) the fixed amount for the tax year or, if section 809 or 810 applies, the individual's share of that amount, and
  - (b) each amount per [<sup>F904</sup>adult or] child for the individual for the tax year (see section 811).
- (2) For the purposes of this Chapter the fixed amount for a tax year is £10,000.
- (3) The Treasury may by order amend the sum for the time being specified in subsection (2).

#### Textual Amendments

**F904** Words in s. 808(1)(b) inserted (16.12.2010) (with effect in accordance with Sch. 1 para. 36 of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 1 para. 9](#) (with [Sch. 1 para. 37](#))

### [<sup>F905</sup>809 Share of fixed amount: residence used by more than one carer

- (1) This section applies if in a tax year—
  - (a) the residence used to provide the qualifying care from which an individual's qualifying care receipts for the tax year are derived is also used by another individual to provide qualifying care, and
  - (b) the other individual also has qualifying care receipts for the tax year.
- (2) Each individual's share of the fixed amount for the tax year is the fixed amount divided by the total number of individuals who—
  - (a) use the residence in the tax year to provide qualifying care, and
  - (b) have qualifying care receipts for the tax year.]

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

#### Textual Amendments

**F905** S. 809 substituted (16.12.2010) (with effect in accordance with Sch. 1 para. 36 of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), **Sch. 1 para. 10** (with [Sch. 1 para. 37](#))

### 810 Share of fixed amount: income period not a year

- (1) This section applies if in a tax year an individual's income period for the individual's [<sup>F906</sup>qualifying care] receipts is a period other than a year.
- (2) The individual's share of the fixed amount for the tax year is—

$$\frac{AS \times D}{365}$$

where—

AS is the fixed amount or (if section 809 applies) the individual's share of the fixed amount, and

D is the number of days in the individual's income period.

#### Textual Amendments

**F906** Words in s. 810(1) substituted (16.12.2010) (with effect in accordance with Sch. 1 para. 36 of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), **Sch. 1 para. 11** (with [Sch. 1 para. 37](#))

### 811 The amount per [<sup>F907</sup>adult or] child

- [<sup>F908</sup>(1) An individual's amount per adult or child for a tax year is found by multiplying—
- (a) the number of weeks during the income period for the tax year in which the individual provides qualifying care for the adult or child, by
  - (b) the weekly amount for the adult or child.
- (1A) The weekly amount for an adult is £250.]
- (2) The weekly amount for a child is—
    - (a) £200 for a week throughout which the child is under 11 years old, and
    - (b) £250 for other weeks.
  - (3) The Treasury may by order amend any amount for the time being specified in [<sup>F909</sup>subsection (1A) or (2)].
  - (4) If an individual provides [<sup>F910</sup>qualifying care for an adult or child] during an income period for only part of a week, the part is treated as a whole week.
  - (5) If an income period begins or ends during a week, the week is treated as falling within the income period ending during the week.

But if there is no such income period, the week is treated as falling within the income period beginning during the week.

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

(6) A week is a period of 7 days beginning with a Monday.

#### Textual Amendments

- F907** Words in s. 811 heading inserted (16.12.2010) (with effect in accordance with Sch. 1 para. 36 of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 1 para. 12\(5\)](#) (with [Sch. 1 para. 37](#))
- F908** S. 811(1)(1A) substituted (16.12.2010) for s. 811(1) (with effect in accordance with Sch. 1 para. 36 of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 1 para. 12\(2\)](#) (with [Sch. 1 para. 37](#))
- F909** Words in s. 811(3) substituted (16.12.2010) (with effect in accordance with Sch. 1 para. 36 of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 1 para. 12\(3\)](#) (with [Sch. 1 para. 37](#))
- F910** Words in s. 811(4) substituted (16.12.2010) (with effect in accordance with Sch. 1 para. 36 of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 1 para. 12\(4\)](#) (with [Sch. 1 para. 37](#))

*Relief if amount does not exceed limit*

#### [<sup>F911</sup>812 Full qualifying care relief: introduction

Sections 813 and 814 (which give the full form of qualifying care relief) apply if—

- (a) an individual qualifies for qualifying care relief for a tax year,
- (b) the individual's total qualifying care receipts for the tax year do not exceed the individual's limit for the tax year, and
- (c) sections 822 and 823 do not apply (accounting date for trade not 5 April).]

#### Textual Amendments

- F911** S. 812 substituted (16.12.2010) (with effect in accordance with Sch. 1 para. 36 of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 1 para. 13](#) (with [Sch. 1 para. 37](#))

#### 813 Full [<sup>F912</sup>qualifying care] relief: trading income

- (1) This section applies if the individual's [<sup>F913</sup>qualifying care] receipts for the tax year would otherwise be brought into account in calculating the profits of a trade.
- (2) The profits or losses of the trade for the tax year are treated as nil.

#### Textual Amendments

- F912** Words in s. 813 heading substituted (16.12.2010) (with effect in accordance with Sch. 1 para. 36 of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 1 para. 14\(2\)](#) (with [Sch. 1 para. 37](#))
- F913** Words in s. 813(1) substituted (16.12.2010) (with effect in accordance with Sch. 1 para. 36 of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 1 para. 14\(1\)](#) (with [Sch. 1 para. 37](#))

#### 814 Full [<sup>F914</sup>qualifying care] relief: income chargeable under Chapter 8 of Part 5

- (1) This section applies if the individual's [<sup>F915</sup>qualifying care] receipts for the tax year would otherwise be chargeable to income tax under Chapter 8 of Part 5 (income not otherwise charged).
- (2) For each arrangement from which those receipts arise, the amount of—

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (a) those receipts arising in the tax year from the arrangement, less
  - (b) any expenses associated with them,
- is treated as nil.

#### Textual Amendments

**F914** Words in s. 814 heading substituted (16.12.2010) (with effect in accordance with Sch. 1 para. 36 of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 1 para. 15\(2\)](#) (with [Sch. 1 para. 37](#))

**F915** Words in s. 814(1) substituted (16.12.2010) (with effect in accordance with Sch. 1 para. 36 of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 1 para. 15\(1\)](#) (with [Sch. 1 para. 37](#))

### *Alternative calculation of profits if amount exceeds limit*

#### 815 Alternative calculation of profits: introduction

Sections 816 and 817 (which provide for an alternative method of calculating profits) apply if—

- (a) an individual qualifies for [<sup>F916</sup>qualifying care] relief for a tax year,
- (b) the individual's total [<sup>F917</sup>qualifying care] receipts for the tax year exceed the individual's limit for the tax year,
- (c) sections 822 and 823 do not apply (accounting date for trade not 5th April), and
- (d) an election by the individual has effect to apply the alternative method of calculating profits for the tax year (see sections 818 and 819).

#### Textual Amendments

**F916** Words in s. 815(a) substituted (16.12.2010) (with effect in accordance with Sch. 1 para. 36 of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 1 para. 16](#) (with [Sch. 1 para. 37](#))

**F917** Words in s. 815(b) substituted (16.12.2010) (with effect in accordance with Sch. 1 para. 36 of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 1 para. 16](#) (with [Sch. 1 para. 37](#))

#### 816 Alternative calculation of profits: trading income

- (1) This section applies if the individual's [<sup>F918</sup>qualifying care] receipts for the tax year are the receipts of a trade.
- (2) The profits of the trade for the tax year are—
  - (a) the individual's total [<sup>F919</sup>qualifying care] receipts for the tax year, less
  - (b) the individual's limit for the tax year.

#### Textual Amendments

**F918** Words in s. 816(1) substituted (16.12.2010) (with effect in accordance with Sch. 1 para. 36 of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 1 para. 17](#) (with [Sch. 1 para. 37](#))

**F919** Words in s. 816(2)(a) substituted (16.12.2010) (with effect in accordance with Sch. 1 para. 36 of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 1 para. 17](#) (with [Sch. 1 para. 37](#))



*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

## 817 Alternative calculation of profits: income chargeable under Chapter 8 of Part 5

- (1) This section applies if the individual has [<sup>F920</sup>qualifying care] receipts for the tax year which are chargeable to income tax under Chapter 8 of Part 5 (income not otherwise charged).
- (2) The amount charged for the tax year arising from all the arrangements from which the receipts are derived is—
  - (a) the individual's total [<sup>F921</sup>qualifying care] receipts for the tax year, less
  - (b) the individual's limit for the year.

### Textual Amendments

**F920** Words in s. 817(1) substituted (16.12.2010) (with effect in accordance with Sch. 1 para. 36 of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 1 para. 18](#) (with [Sch. 1 para. 37](#))

**F921** Words in s. 817(2)(a) substituted (16.12.2010) (with effect in accordance with Sch. 1 para. 36 of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 1 para. 18](#) (with [Sch. 1 para. 37](#))

## 818 Election for alternative method of calculating profits

- (1) An individual may elect for the alternative method of calculating profits given in sections 816 and 817 to apply if—
  - (a) the individual qualifies for [<sup>F922</sup>qualifying care] relief for a tax year,
  - (b) the individual's total [<sup>F923</sup>qualifying care] receipts for the tax year exceed the individual's limit for the tax year, and
  - (c) sections 822 and 823 do not apply (accounting date for trade not 5th April).
- (2) An election under this section—
  - (a) must specify the tax year for which it is made, and
  - (b) has effect for that year (unless withdrawn by notice given by the individual).
- (3) An election or notice of withdrawal under this section must be made or given to the Inland Revenue on or before—
  - (a) the first anniversary of the normal self-assessment filing date for the tax year for which the election is made, or
  - (b) such later date as the Inland Revenue may, in a particular case, allow.

### Textual Amendments

**F922** Words in s. 818(1)(a) substituted (16.12.2010) (with effect in accordance with Sch. 1 para. 36 of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 1 para. 19](#) (with [Sch. 1 para. 37](#))

**F923** Words in s. 818(1)(b) substituted (16.12.2010) (with effect in accordance with Sch. 1 para. 36 of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 1 para. 19](#) (with [Sch. 1 para. 37](#))

## 819 Adjustment of assessment

- (1) This section applies if—
  - (a) an individual does not make an election under section 818 for a tax year on or before the date for making the election, and

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (b) an adjustment is made after that date to the profits from the individual's provision of [<sup>F924</sup>qualifying care] on which the individual is liable to tax for the tax year.
- (2) The individual may make an election under this section to apply the alternative method of calculating profits given in sections 816 and 817 for the tax year.
- (3) The election—
- (a) must specify that tax year, and
  - (b) has effect for that tax year (unless withdrawn by notice given by the individual).
- (4) An election or notice of withdrawal under this section must be made or given to the Inland Revenue on or before—
- (a) the first anniversary of the normal self-assessment filing date for the tax year in which the adjustment is made, or
  - (b) such later date as the Inland Revenue may, in a particular case, allow.

#### Textual Amendments

**F924** Words in s. 819(1)(b) substituted (16.12.2010) (with effect in accordance with Sch. 1 para. 36 of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 1 para. 20](#) (with [Sch. 1 para. 37](#))

### *Periods of account not ending on 5th April*

#### **820 Periods of account not ending on 5th April**

- [<sup>F925</sup>(1)] Sections 822 and 823 (which deal with the period of account of a trade not ending on 5th April) apply if—
- (a) an individual qualifies for [<sup>F926</sup>qualifying care] relief for a tax year,
  - (b) the individual's [<sup>F927</sup>qualifying care] receipts for the tax year are the receipts of a trade, and
  - (c) the period of account in which those receipts accrue does not end on 5th April in the tax year.
- [<sup>F928</sup>(2) Where an election under section 25A (cash basis for small businesses) has effect in relation to the trade, any reference in this section or sections 821 to 823 to the period of account in which receipts accrue is to be read as a reference to the period of account in which receipts are received.]

#### Textual Amendments

**F925** S. 820(1): s. 820 renumbered as s. 820(1) (with effect in accordance with Sch. 4 paras. 56, 57 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 4 para. 43\(a\)](#)

**F926** Words in s. 820(a) substituted (with effect in accordance with Sch. 1 para. 36 of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 1 para. 21](#) (with [Sch. 1 para. 37](#))

**F927** Words in s. 820(b) substituted (with effect in accordance with Sch. 1 para. 36 of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 1 para. 21](#) (with [Sch. 1 para. 37](#))

**F928** S. 820(2) inserted (with effect in accordance with Sch. 4 paras. 56, 57 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 4 para. 43\(b\)](#)

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

## 821 Meaning of “relevant limit”

- (1) For the purposes of sections 822 and 823 the “relevant limit” for a period of account in which the individual's [<sup>F929</sup>qualifying care] receipts accrue is found by adding—
  - (a) the fixed amount for the tax year in which that period ends or (as the case may be) the individual's share of the fixed amount for that year (found in accordance with sections 808 to 810), and
  - (b) for each of the tax years in which the period of account falls, each amount per [<sup>F930</sup>adult or] child for the individual for each part of the period of account falling in that tax year.
- (2) For this purpose an individual's amount per [<sup>F931</sup>adult or] child for a part of the period of account is each amount that would be the individual's amount per [<sup>F931</sup>adult or] child under section 811 for the tax year in which the part falls if that part were the income period for that year.

### Textual Amendments

- F929** Words in s. 821(1) substituted (16.12.2010) (with effect in accordance with Sch. 1 para. 36 of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 1 para. 22\(2\)\(a\)](#) (with [Sch. 1 para. 37](#))
- F930** Words in s. 821(1)(b) inserted (16.12.2010) (with effect in accordance with Sch. 1 para. 36 of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 1 para. 22\(2\)\(b\)](#) (with [Sch. 1 para. 37](#))
- F931** Words in s. 821(2) inserted (16.12.2010) (with effect in accordance with Sch. 1 para. 36 of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 1 para. 22\(3\)](#) (with [Sch. 1 para. 37](#))

## 822 Full relief

- (1) This section applies if the individual's total [<sup>F932</sup>qualifying care] receipts for the period of account do not exceed the individual's relevant limit for the period.
- (2) The profits or losses of the trade for the tax year are treated as nil.

### Textual Amendments

- F932** Words in s. 822(1) substituted (16.12.2010) (with effect in accordance with Sch. 1 para. 36 of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 1 para. 23](#) (with [Sch. 1 para. 37](#))

## 823 Alternative method of calculating profits

- (1) This section applies if—
  - (a) the individual's total [<sup>F933</sup>qualifying care] receipts for the period of account exceed the individual's relevant limit for the period, and
  - (b) the individual makes an election under this section.
- (2) The profits of the trade for the tax year are—
  - (a) the individual's total [<sup>F934</sup>qualifying care] receipts for the period of account, less
  - (b) the individual's relevant limit for the period.

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (3) Sections 818(2) and (3) and 819 (adjustment of assessment) apply for the purposes of an election under this section as they apply for the purposes of an election under those sections.

#### Textual Amendments

**F933** Words in s. 823(1)(a) substituted (16.12.2010) (with effect in accordance with Sch. 1 para. 36 of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), **Sch. 1 para. 24** (with [Sch. 1 para. 37](#))

**F934** Words in s. 823(2)(a) substituted (16.12.2010) (with effect in accordance with Sch. 1 para. 36 of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), **Sch. 1 para. 24** (with [Sch. 1 para. 37](#))

### *Capital allowances for foster carers carrying on trade*

#### **824 Capital allowances: introduction**

- (1) In this group of sections (that is, this section and sections 825 to 827) an individual is a “relevant individual” if in a tax year—
- (a) the full [<sup>F935</sup>qualifying care] relief in section 813 or 822 (trading income), or
  - (b) the alternative method of calculating profits under section 816 or 823 (trading income),
- applies to the individual for the tax year.

- (2) In this group of sections a period is a “relevant chargeable period” of a relevant individual if—
- (a) it is a chargeable period of the individual, and
  - (b) it corresponds to the income period for the individual's [<sup>F936</sup>qualifying care] receipts in the tax year for which the individual is a relevant individual.

[<sup>F937</sup>(2A) In this group of sections, in relation to a relevant individual—

- (a) “the care business” means the provision of qualifying care by the individual,
- (b) “care business expenditure” means qualifying expenditure incurred on the provision of plant or machinery wholly or partly for the care business,
- (c) “care business pool” means a pool of care business expenditure (even if the balance for the time being is nil), and
- (d) a reference to “another activity” is to a qualifying activity carried on by the individual other than the care business.

(2B) In this group of sections, plant or machinery is referred to as being “in” a pool if qualifying expenditure incurred on its provision has been allocated at any time to that pool.]

(3) Expressions—

- (a) which are used in CAA 2001 and in this group of sections, but
- (b) which are not otherwise defined in this Chapter,

have the same meaning in this group of sections as in CAA 2001.

#### Textual Amendments

**F935** Words in s. 824(1)(a) substituted (16.12.2010) (with effect in accordance with Sch. 1 para. 36 of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), **Sch. 1 para. 25** (with [Sch. 1 para. 37](#))

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

**F936** Words in s. 824(2)(b) substituted (16.12.2010) (with effect in accordance with Sch. 1 para. 36 of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 1 para. 25](#) (with [Sch. 1 para. 37](#))

**F937** S. 824(2A)(2B) inserted (16.12.2010) (with effect in accordance with s. 3(4) of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [s. 3\(2\)](#)

**Modifications etc. (not altering text)**

**C86** Ss. 824-827 modified (16.12.2010) (with effect in accordance with Sch. 1 para. 36 of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 1 para. 37\(2\)](#) (with [Sch. 1 para. 37](#))

**[<sup>F938</sup>825 Unallocated capital expenditure**

- (1) This section applies if—
  - (a) at the beginning of a relevant chargeable period of a relevant individual, there is care business expenditure which has not been allocated to a care business pool,
  - (b) the individual is entitled under CAA 2001 to allocate the expenditure, or a part of it, to a care business pool for that period, and
  - (c) the previous chargeable period was not a relevant chargeable period.
- (2) So much of the expenditure as the individual is entitled to allocate to a care business pool for that period is to be treated for the purposes of CAA 2001 as allocated to the appropriate kind of care business pool for that period (whether or not any of it is actually so allocated).
- (3) For the different kinds of pool, see section 54 of CAA 2001.

**Textual Amendments**

**F938** Ss. 825-825D substituted (16.12.2010) for s. 825 (with effect in accordance with s. 3(4) of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [s. 3\(3\)](#) (with [s. 3\(5\)](#))

**825A Deemed disposal event**

- (1) Subsection (2) applies to a care business pool for a relevant chargeable period of a relevant individual if the previous chargeable period was not a relevant chargeable period.
- (2) CAA 2001 is to apply as if—
  - (a) a disposal event occurs immediately after the beginning of the relevant chargeable period in respect of plant or machinery in the pool,
  - (b) disposal receipts fall to be brought into account in the pool for the period because of that event, and
  - (c) the total of the receipts equals the sum of amount A and amount B (or nil if there are no such amounts).
- (3) Amount A is the amount of any expenditure treated as allocated to the pool for the period by virtue of section 825 (whether or not any of it is actually so allocated).
- (4) Amount B is the amount of any unrelieved qualifying expenditure carried forward in the pool from the previous chargeable period.

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

### Textual Amendments

**F938** Ss. 825-825D substituted (16.12.2010) for s. 825 (with effect in accordance with s. 3(4) of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), **s. 3(3)** (with s. 3(5))

## 825B Plant or machinery used for care business

- (1) This section applies if—
  - (a) disposal receipts fall to be brought into account in a pool for a relevant chargeable period by virtue of section 825A, and
  - (b) on the re-start date, the relevant individual still owns any of the plant or machinery which was in that pool and is still using any of it for the purposes of the care business.
- (2) The re-start date is the first day of the first subsequent chargeable period which is not a relevant chargeable period.
- (3) A reference in this section to the retained plant or machinery is to so much of the plant or machinery in the pool as the relevant individual—
  - (a) still owns on the re-start date, and
  - (b) is still using on that date for the purposes of the care business.
- (4) The individual is to be treated under CAA 2001—
  - (a) as having brought the retained plant or machinery into use on the re-start date for the purposes of the care business,
  - (b) as having incurred capital expenditure on the provision of that plant or machinery for those purposes on that date, and
  - (c) as owning that plant and machinery as a result of having incurred that expenditure.
- (5) The total amount of expenditure which the individual is to be treated as having incurred (for all of the retained plant or machinery) is the smaller of—
  - (a) the total market value of the retained plant or machinery on the re-start date, and
  - (b) an amount equal to the disposal receipts brought into account in the pool as described in subsection (1)(a).
- (6) If the individual is treated under section 13 of CAA 2001 as having incurred notional expenditure before the re-start date as a result of bringing plant or machinery in the pool into use for the purposes of another activity, the amount mentioned in subsection (5)(b) must be reduced by the total amount of that expenditure, as determined in accordance with section 825C(2).
- (7) But subsection (6) does not apply if the plant or machinery which was brought into use for the purposes of another activity is the retained plant or machinery (for example, where it was brought into use only partly for the purposes of that other activity).
- (8) The question whether the provision of the retained plant or machinery is to be treated as wholly or only partly for the purposes of the care business is to be determined according to whether the use referred to in subsection (3)(b) is wholly or only partly for those purposes.

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

### Textual Amendments

**F938** Ss. 825-825D substituted (16.12.2010) for s. 825 (with effect in accordance with s. 3(4) of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), **s. 3(3)** (with s. 3(5))

## 825C Plant or machinery used for other qualifying activities

- (1) This section applies if—
  - (a) disposal receipts fall to be brought into account in a pool by virtue of section 825A because of a disposal event, and
  - (b) after that disposal event, the relevant individual brings any of the plant or machinery in that pool into use for the purposes of another activity.
- (2) Section 13 of CAA 2001 has effect as if the total amount of the notional expenditure which the individual is treated under that section as having incurred, for all of the plant or machinery in that pool which is brought into use for the purposes of the other activity, were the smaller of—
  - (a) the total market value of that plant or machinery on the day on which it is brought into use for the purposes of that other activity, and
  - (b) an amount equal to the disposal receipts brought into account in the pool as mentioned in subsection (1)(a).
- (3) Subsection (2) does not apply to plant or machinery brought into use for the purposes of another activity if—
  - (a) the individual is treated by virtue of section 825B as having already brought that plant or machinery into use for the purposes of the care business, or
  - (b) this section has already applied to that plant or machinery since the disposal event.
- (4) The amount mentioned in subsection (2)(b) must be reduced by the appropriate sum if some plant or machinery in the pool is brought into use for the purposes of another activity after —
  - (a) the individual is treated by virtue of section 825B as having brought other plant or machinery in that pool into use for the purposes of the care business, or
  - (b) this section has applied to other plant or machinery in that pool since the disposal event.
- (5) The appropriate sum is—
  - (a) in a case within paragraph (a) of subsection (4), the total amount of expenditure which the individual is treated by virtue of section 825B as having incurred on the provision of that other plant or machinery, and
  - (b) in a case within paragraph (b) of that subsection, the total amount of the notional expenditure (as determined in accordance with subsection (2)) which the individual is treated under section 13 of CAA 2001 as having incurred on the provision of that other plant or machinery since the disposal event.

### Textual Amendments

**F938** Ss. 825-825D substituted (16.12.2010) for s. 825 (with effect in accordance with s. 3(4) of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), **s. 3(3)** (with s. 3(5))

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

## 825D Subsequent disposal events

- (1) This section applies to an item of plant or machinery which a relevant individual—
  - (a) is treated by virtue of section 825B as bringing into use, or
  - (b) brings into use in circumstances where section 825C(2) applies.
- (2) The date (in either case) on which the item is brought or treated as brought into such use is referred to in this section as the applicable date.
- (3) The first disposal event to occur in respect of the item on or after the applicable date is to be regarded for the purposes of section 60(3) of CAA 2001 as the first such event.
- (4) That event requires a disposal value to be brought into account regardless of anything to the contrary in section 64(1) of that Act.
- (5) But a reference in section 62 of that Act to the amount of qualifying expenditure incurred by the individual on the provision of that item is a reference to the amount of qualifying expenditure originally incurred by the individual on its provision (and not to any proportion of the total amount treated by virtue of section 825B or 825C as having been incurred).]

### Textual Amendments

**F938** Ss. 825-825D substituted (16.12.2010) for s. 825 (with effect in accordance with s. 3(4) of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), **s. 3(3)** (with s. 3(5))

## 826 Excluded capital expenditure

Capital expenditure (“excluded capital expenditure”) does not constitute qualifying expenditure for the purposes of CAA 2001 if it is—

- (a) incurred by a relevant individual in a relevant chargeable period, and
- (b) incurred on the provision of plant or machinery wholly or partly for the provision of [<sup>F939</sup>qualifying care] by the individual.

### Textual Amendments

**F939** Words in s. 826(b) substituted (16.12.2010) (with effect in accordance with Sch. 1 para. 36 of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), **Sch. 1 para. 27** (with [Sch. 1 para. 37](#))

### Modifications etc. (not altering text)

**C86** Ss. 824-827 modified (16.12.2010) (with effect in accordance with Sch. 1 para. 36 of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), **Sch. 1 para. 37(2)** (with [Sch. 1 para. 37](#))

## 827 Excluded capital expenditure: subsequent treatment of asset

If a relevant individual incurs excluded capital expenditure in a relevant chargeable period, section 13 of CAA 2001 applies as if, on the first day of the first subsequent chargeable period which is not a relevant chargeable period—

- (a) the individual brings into use for the provision of [<sup>F940</sup>qualifying care] such of the plant or machinery on which the expenditure was incurred as the individual still owns on that day, and



*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (b) the individual owns the plant or machinery as a result of incurring capital expenditure on its provision for other purposes.

#### Textual Amendments

**F940** Words in s. 827(a) substituted (with effect in accordance with Sch. 1 para. 36 of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), **Sch. 1 para. 28** (with [Sch. 1 para. 37](#))

#### Modifications etc. (not altering text)

**C86** Ss. 824-827 modified (16.12.2010) (with effect in accordance with Sch. 1 para. 36 of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), **Sch. 1 para. 37(2)** (with [Sch. 1 para. 37](#))

### Overlap profit

#### 828 Overlap profit

- (1) This section applies if the profits or losses of a trade for a tax year are calculated in accordance with section 813, 816, 822 or 823.
- (2) Nothing in this Chapter is to be read—
  - (a) as preventing a deduction for overlap profit under section 205 or 220 in calculating the profits or losses of the trade for the tax year, or
  - (b) as preventing overlap profit from arising by reference to profits of the trade calculated for the tax year in accordance with section 816 or 823 (alternative calculation of profits).
- (3) “Overlap profit” has the same meaning in this section as it has in Chapter 15 of Part 2 (see section 204).

## PART 8

### FOREIGN INCOME: SPECIAL RULES

#### CHAPTER 1

##### INTRODUCTION

#### 829 Overview of Part 8

This Part provides for—

- [<sup>F941</sup>(a) the charging of relevant foreign income of a person to whom section 809B, 809D or 809E of ITA 2007 applies (remittance basis),]
- (b) certain deductions in calculating relevant foreign income where that basis does not apply (see Chapter 3), and
- (c) relief where a person is prevented from transferring income to the United Kingdom (see Chapter 4).

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

### Textual Amendments

**F941** S. 829(a) substituted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 50](#)

## 830 Meaning of “relevant foreign income”

- (1) In this Act “relevant foreign income” means income [<sup>F942</sup>which—
- (a) arises from a source outside the United Kingdom, and
  - (b) is chargeable under any of the provisions specified in subsection (2) (or would be so chargeable if section 832 did not apply to it).]
- (2) The provisions are—
- (a) Chapter 2 of Part 2 (trade profits),
  - (b) Chapter 17 of Part 2 (adjustment income),
  - (c) Chapter 3 of Part 3 (profits of property business),
  - <sup>F943</sup>(d) .....
  - (e) Chapter 2 of Part 4 (interest),
  - (f) Chapter 4 of Part 4 (dividends from non-UK resident companies),
  - (g) Chapter 7 of Part 4 (purchased life annuity payments),
  - (h) Chapter 8 of Part 4 (profits from deeply discounted securities),
  - (i) Chapter 13 of Part 4 (sales of foreign dividend coupons),
  - (j) section 579 (royalties and other income from intellectual property),
  - (k) Chapter 3 of Part 5 (films and sound recordings: non-trading businesses),
  - (l) Chapter 4 of Part 5 (certain telecommunication rights: non-trading income),
  - (m) section 649 (estate income),
  - (n) Chapter 7 of Part 5 (annual payments not otherwise charged), and
  - (o) Chapter 8 of Part 5 (income not otherwise charged).
- (3) But “relevant foreign income” does not include income chargeable as a result of section 844 (unremittable income: income charged on withdrawal of relief after source ceases).
- (4) For the treatment of other income as relevant foreign income, see—
- (a) section 857(3) (a partner's share of a firm's trading income),
  - <sup>F944</sup>(aa) regulation 19 of the Offshore Funds (Tax) Regulations 2009 ([S.I. 2009/3001](#)),]
  - (b) paragraph 6(3) of Schedule 3 to the Commonwealth Development Corporation Act 1999 (c. 20) (distributions by the Commonwealth Development Corporation),
  - (c) section 575(3) of ITEPA 2003 (taxable pension income: foreign pensions),
  - (d) section 613(4) of that Act (taxable pension income: foreign annuities),
  - (e) section 631(3) of that Act (pre-1973 pensions paid under the Overseas Pensions Act 1973 (c. 21)),
  - (f) section 635(4) of that Act (taxable pension income: foreign voluntary annual payments), <sup>F945</sup> ...
  - (g) section 679(2) of that Act (taxable social security income: foreign benefits).
  - <sup>F946</sup>(h) section 670A of ITA 2007 (accrued income profits),] <sup>F947</sup> and

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (i) sections 726, 730 and 735 of that Act (transfer of assets abroad: foreign deemed income).]

#### Textual Amendments

- F942** Words in s. 830(1) substituted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 51\(2\)](#)
- F943** S. 830(2)(d) omitted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 51\(3\)](#)
- F944** S. 830(4)(aa) substituted (1.12.2009) (with effect in accordance with art. 1(2)(3) of, Sch. 1 to the amending S.I.) by [The Offshore Funds \(Tax\) Regulations 2009 \(S.I. 2009/3001\)](#), [regs. 1\(1\)](#), [128\(4\)](#)
- F945** Word in s. 830(4)(f) omitted (with effect in accordance with Sch. 7 para. 160 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 156\(a\)](#)
- F946** S. 830(4)(h) inserted (with effect in accordance with Sch. 7 para. 160 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 156\(b\)](#)
- F947** S. 830(4)(i) and word inserted (with effect in accordance with Sch. 7 para. 170 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 162](#)

## CHAPTER 2

### RELEVANT FOREIGN INCOME CHARGED ON REMITTANCE BASIS

#### *Remittance basis*

#### <sup>F948</sup>**831 Claims for relevant foreign income to be charged on the remittance basis**

#### Textual Amendments

- F948** [S. 831](#) omitted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 52](#)

#### <sup>F949</sup>**832 Relevant foreign income charged on remittance basis**

- (1) This section applies to an individual's relevant foreign income for a tax year (“the relevant foreign income”) if section 809B, 809D or 809E of ITA 2007 (remittance basis) applies to the individual for that year.
- <sup>F950</sup>(2) For any tax year for which the individual is UK resident, income tax is charged on the full amount of so much (if any) of the relevant foreign income as is remitted to the United Kingdom—
- (a) in that year, or
- (b) in the UK part of that year, if that year is a split year as respects the individual.]
- (3) Subsection (2) applies whether or not the source of the income exists when the income is remitted.
- (4) See Chapter A1 of Part 14 of ITA 2007 for the meaning of “remitted to the United Kingdom” etc.

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

#### Textual Amendments

- F949** Ss. 832-832B substituted for s. 832 (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), **Sch. 7 para. 53** (with [Sch. 7 para. 83](#))
- F950** S. 832(2) substituted (with effect in accordance with Sch. 45 para. 153(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), **Sch. 45 para. 90**

#### Modifications etc. (not altering text)

- C87** S. 832 applied by 2007 c. 3, s. 809F(3) (as inserted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), **Sch. 7 para. 1** (with [s. 809F\(6\)](#)))

### <sup>F951</sup> **832A Section 832: temporary non-residents**

- (1) This section applies if an individual is temporarily non-resident.
- (2) Treat any of the individual's relevant foreign income within subsection (3) that is remitted to the United Kingdom in the temporary period of non-residence as remitted to the United Kingdom in the period of return.
- (3) Relevant foreign income is within this subsection if—
  - (a) it is relevant foreign income for the UK part of the year of departure or an earlier tax year, and
  - (b) section 832 applies to it.
- (4) Any apportionment required for the purposes of subsection (3)(a) is to be done on a just and reasonable basis.
- (5) Nothing in any double taxation relief arrangements is to be read as preventing the individual from being chargeable to income tax in respect of any relevant foreign income treated by virtue of this section as remitted to the United Kingdom in the period of return (or as preventing a charge to that tax from arising as a result).
- (6) Part 4 of Schedule 45 to FA 2013 (statutory residence test: anti-avoidance) explains—
  - (a) when an individual is to be regarded as “temporarily non-resident”, and
  - (b) what “the temporary period of non-residence” and “the period of return” mean.
- (7) In this section, “double taxation relief arrangements” means arrangements that have effect under section 2(1) of TIOPA 2010.]

#### Textual Amendments

- F951** S. 832A substituted (with effect in accordance with Sch. 45 para. 153(3) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), **Sch. 45 para. 118**

### **832B Section 832: deductions from remitted income**

- (1) The only case in which deductions are allowed from the income mentioned in section 832(2) is where the income is from a trade, profession or vocation carried on outside the United Kingdom.

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

(2) In that case the same deductions are allowed as are allowed under the Income Tax Acts where the trade, profession or vocation is carried on in the United Kingdom.]

**Textual Amendments**

**F949** Ss. 832-832B substituted for s. 832 (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 53](#) (with [Sch. 7 para. 83](#))

**<sup>F952</sup>833 Income treated as remitted: repayment of UK-linked debts**

**Textual Amendments**

**F952** Ss. 833-837 omitted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 54](#)

**Modifications etc. (not altering text)**

**C88** S. 833 applied (6.4.2007 with effect as stated in [s. 1034\(1\)](#) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), [ss. 735\(6\)](#), [1034](#) (with transitional provisions and savings in [Sch. 2](#))

**<sup>F952</sup>834 Arrangements treated as repayment of UK-linked debts**

**Textual Amendments**

**F952** Ss. 833-837 omitted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 54](#)

**Modifications etc. (not altering text)**

**C89** S. 834 applied (6.4.2007 with effect as stated in [s. 1034\(1\)](#) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), [ss. 735\(6\)](#), [1034](#) (with transitional provisions and savings in [Sch. 2](#))

*Relief for delayed remittances*

**<sup>F952</sup>835 Relief for delayed remittances**

**Textual Amendments**

**F952** Ss. 833-837 omitted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 54](#)

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

### <sup>F952</sup> 836 Relief for delayed remittances: backdated pensions

.....

#### Textual Amendments

**F952** Ss. 833-837 omitted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by virtue of Finance Act 2008 (c. 9), **Sch. 7 para. 54**

### <sup>F952</sup> 837 Claims for relief on delayed remittances

.....

#### Textual Amendments

**F952** Ss. 833-837 omitted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by virtue of Finance Act 2008 (c. 9), **Sch. 7 para. 54**

## CHAPTER 3

### RELEVANT FOREIGN INCOME CHARGED ON ARISING BASIS: DEDUCTIONS AND RELIEFS

#### 838 Expenses attributable to collection or payment of relevant foreign income

- (1) In calculating the amount of relevant foreign income to be charged to income tax for a tax year, a deduction is allowed for expenses incurred outside the United Kingdom that are attributable to the collection or payment of the income.
- (2) Subsection (1) does not apply to income charged for the tax year in accordance with section 832 (relevant foreign income charged on the remittance basis).

#### 839 Annual payments payable out of relevant foreign income

- (1) In calculating the amount of relevant foreign income to be charged to income tax for a tax year, a deduction is to be allowed for an annual payment other than interest if it meets conditions [<sup>F953</sup>A, B1 or B2 and C] .
- (2) Condition A is that the payment is payable out of the relevant foreign income.
- (3) Condition [<sup>F954</sup>B1] is that, had the payment arisen in the United Kingdom, it would have been chargeable to income tax under one of the following provisions <sup>F955</sup> ...—  
<sup>F956</sup> ...  
 section 579 (charge to tax on royalties and other income from intellectual property),  
 Chapter 4 of Part 5 (certain telecommunication rights: non-trading income), <sup>F957</sup> ...  
 Chapter 7 of Part 5 (annual payments not otherwise charged).  
 [<sup>F958</sup>, or regulation 15 of the Unauthorised Unit Trusts (Tax) Regulations 2013.]
- (3A) Condition B2 is that, had the payment arisen in the United Kingdom it would have been—

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (a) required to be brought into account under Part 5 of CTA 2009 (loan relationships) as a non-trading credit, or
  - (b) chargeable to corporation tax under [<sup>F959</sup>Chapter 7 of Part 10 of that Act (annual payments not otherwise charged) or regulation 15 of the Unauthorised Unit Trusts (Tax) Regulations 2013].
- (4) Condition C is that the payment is made to a non-UK resident.
- (5) Subsection (1) does not apply if—
- (a) the relevant foreign income is received in the United Kingdom, or
  - (b) it is charged for the tax year in accordance with section 832 (relevant foreign income charged on remittance basis).

<sup>F960</sup>(6) .....

#### Textual Amendments

- F953** Words in s. 839(1) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 637\(2\)](#) (with Sch. 2 Pts. 1, 2)
- F954** Word in s. 839(3) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 637\(3\)\(a\)](#) (with Sch. 2 Pts. 1, 2)
- F955** Words in s. 839(3) repealed (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 637\(3\)\(b\), Sch. 3 Pt. 1](#) (with Sch. 2 Pts. 1, 2)
- F956** Words in s. 839(3) omitted (6.4.2014) by virtue of [The Unauthorised Unit Trusts \(Tax\) Regulations 2013 \(S.I. 2013/2819\), regs. 1\(3\), 36\(9\)\(a\)\(i\)](#) (with reg. 32)
- F957** Word in s. 839(3) omitted (6.4.2014) by virtue of [The Unauthorised Unit Trusts \(Tax\) Regulations 2013 \(S.I. 2013/2819\), regs. 1\(3\), 36\(9\)\(a\)\(ii\)](#) (with reg. 32)
- F958** Words in s. 839(3) inserted (6.4.2014) by [The Unauthorised Unit Trusts \(Tax\) Regulations 2013 \(S.I. 2013/2819\), regs. 1\(3\), 36\(9\)\(b\)](#) (with reg. 32)
- F959** Words in s. 839(3A)(b) substituted (6.4.2014) by [The Unauthorised Unit Trusts \(Tax\) Regulations 2013 \(S.I. 2013/2819\), regs. 1\(3\), 36\(9\)\(c\)](#) (with reg. 32)
- F960** S. 839(6) omitted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\), Sch. 7 para. 67](#)

#### 840 Relief for backdated pensions charged on the arising basis

- (1) This section applies if—
- (a) as a result of section 575(3), 613(4) or 635(4) of ITEPA 2003 a pension or annuity or an increase in a pension or annuity is treated as relevant foreign income,
  - (b) the pension, annuity or increase is paid in respect of a tax year (“the earlier year”) before the tax year in which the pension, annuity or increase arose, and
  - (c) the income is not charged in accordance with section 832 (relevant foreign income charged on the remittance basis).
- (2) If the person liable for the income tax makes a claim for relief under this section for the tax year in which the pension, annuity or increase paid in respect of the earlier year arises, that pension, annuity or increase is treated as income arising in the earlier year from a source that the person possessed in the earlier year.
- (3) But subsection (2) does not affect the calculation of the full amount of the income so arising under section 575(2), 613(3) or 635(3) of ITEPA 2003 (under which the full

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

amount of that income is to be calculated on the basis that the pension or annuity is 90% of its actual amount).

<sup>F961</sup>(4) .....

#### Textual Amendments

**F961** S. 840(4) omitted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by virtue of Finance Act 2008 (c. 9), **Sch. 7 para. 68**

#### <sup>F962</sup>**840A** Claims under section 840

- (1) A claim under section 840 must be made [<sup>F963</sup>not more than 4 years after the end of] the tax year for which the relief is claimed.
- (2) All adjustments (by way of repayment of tax, assessment or otherwise) are to be made which are necessary to give effect to section 840.
- (3) Those adjustments may be made at any time, despite anything to the contrary in the Income Tax Acts.
- (4) A person's personal representatives may make any claim under section 840 which the person might have made.
- (5) If a person dies—
  - (a) any tax paid by the person and repayable because of a claim under section 840 is to be repaid to the personal representatives, and
  - (b) the person's personal representatives are liable for any additional tax which arises because of a claim under that section.
- (6) If subsection (5)(b) applies, the additional tax—
  - (a) is to be assessed on the personal representatives, and
  - (b) is a debt due and payable out of the estate.]

#### Textual Amendments

**F962** S. 840A inserted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by Finance Act 2008 (c. 9), **Sch. 7 para. 69**

**F963** Words in s. 840A(1) substituted (1.4.2010) by Finance Act 2008 (c. 9), s. 118(2), **Sch. 39 para. 53**; S.I. 2009/403, art. 2(2) (with art. 10)

## CHAPTER 4

### UNREMITTABLE INCOME

#### **841 Unremittable income: introduction**

- (1) This Chapter applies if—
  - (a) a person is liable for income tax on income arising in a territory outside the United Kingdom, and
  - (b) the income is unremittable.



*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (2) For the purposes of this Chapter, income is unremittable if conditions A and B are met.
- (3) Condition A is that the income cannot be transferred to the United Kingdom by the person who is liable for income tax in respect of the income because of—
- (a) the laws of the territory where the income arises,
  - (b) executive action of its government, or
  - (c) the impossibility of obtaining there currency that could be transferred to the United Kingdom.
- (4) Condition B is that the person who is liable for income tax in respect of the income has not realised it outside that territory for an amount in sterling or in another currency which the person is not prevented from transferring to the United Kingdom.
- [<sup>F964</sup>(5) This Chapter does not apply to accrued income profits which a person is treated as making under Chapter 2 of Part 12 of ITA 2007, but see sections 668 and 669 of that Act (which make similar provision).]

#### Textual Amendments

**F964** S. 841(5) substituted (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), ss. 1027, 1034, [Sch. 1 para. 578](#) (with transitional provisions and savings in [Sch. 2](#))

### 842 Claim for relief for unremittable income

- (1) If a person liable for income tax on unremittable income makes a claim for relief under this section in respect of that income, it is not taken into account for income tax purposes.
- (2) Subsection (1) is subject to section 843.
- (3) No claim under this section may be made in respect of any income so far as an ECGD payment has been made in relation to it.
- (4) In subsection (3) “ECGD payment” means a payment made by the Export Credit Guarantee Department under an agreement entered into as a result of arrangements made under—
- (a) section 2 of the Export and Investment Guarantees Act 1991 (c. 67) (insurance in connection with overseas investment), or
  - (b) section 11 of the Export Guarantees and Overseas Investment Act 1978 (c. 18).
- (5) A claim under this section must be made on or before the first anniversary of the normal self-assessment filing date for the tax year for which the income would be charged to tax if no claim were made.

### 843 Withdrawal of relief

- (1) This section applies if—
- (a) a claim under section 842 has been made in relation to any income, and
  - (b) either—
    - (i) the income ceases to be unremittable, or
    - (ii) an ECGD payment is made in relation to it.

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

- (2) In this section “ECGD payment” has the meaning given by section 842(4).
- (3) If income ceases to be unremittable, the income is treated as arising on the date on which it ceases to be unremittable.
- (4) If an ECGD payment is made in relation to income, the income is treated, to the extent of the payment, as arising on the date on which the ECGD payment is made.
- (5) The income treated as arising under subsection (3) or (4), and any tax payable in respect of it under the law of the territory where it arises, are taken into account for income tax purposes at their value at the date on which the income is treated as arising.
- (6) Subsections (3) to (5) do not apply so far as the income has already been treated as arising as a result of this section.
- (7) If a person who would have become liable for income tax as a result of this section has died—
  - (a) the personal representatives are liable for the tax instead, and
  - (b) the tax is a debt due from and payable out of the estate.

#### **844 Income charged on withdrawal of relief after source ceases**

- (1) This section applies if—
  - (a) income is treated as arising as a result of section 843, and
  - (b) at the time it is so treated the person who would have become liable for income tax as a result of that section—
    - (i) has permanently ceased to carry on the trade, profession, vocation or property business from which the income arises, or
    - (ii) in the case of income from another source, has ceased to possess that source.
- (2) In the case of income from a trade, profession or vocation—
  - (a) the income is treated as a post-cessation receipt for the purposes of Chapter 18 of Part 2 (trading income: post-cessation receipts), but
  - (b) in the application of that Chapter to that income, section 243 (extent of charge to tax) is omitted.
- (3) In the case of income from a property business—
  - (a) the income is treated as a post-cessation receipt from a UK property business for the purposes of Chapter 10 of Part 3 (property income: post-cessation receipts), but
  - (b) in the application of that Chapter to that income, section 350 (extent of charge to tax) is omitted.
- (4) In the case of income from another source, the income is taxed as if the person continued to possess that source.

#### **845 Valuing unremittable income**

- (1) If no claim is made under section 842 in relation to unremittable income arising in a territory outside the United Kingdom, the amount of the income to be taken into account for income tax purposes is determined as follows.

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (2) If the currency in which the income is denominated has a generally recognised market value in the United Kingdom, the amount is determined by reference to that value.
- (3) In any other case, the amount is determined according to the official rate of exchange of the territory where the income arises.

## PART 9

### PARTNERSHIPS

#### Modifications etc. (not altering text)

- C90** Pt. 9 applied (1.4.2010) by [Income Tax Act 2007 \(c. 3\)](#), [ss. 809BZH\(2\)\(a\), 809BZK\(4\)\(a\)](#) (as inserted (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. 5 para. 3](#) (with [Sch. 9 paras. 1-9, 22](#)))
- C91** Pt. 9 modified (with effect as mentioned in [Sch. 6 para. 6\(2\)-\(7\)](#) to the amending Act) by [Income and Corporation Taxes Act 1988 \(c. 1\)](#), s. 774D(4) as inserted by [Finance Act 2006 \(c. 25\)](#), s. 76, [Sch. 6 para. 6\(1\)](#)

#### *Introduction*

#### **846 Overview of Part 9**

This Part contains some special rules about partnerships.

#### **847 General provisions**

- (1) In this Act persons carrying on a trade in partnership are referred to collectively as a “firm”.
- (2) The provisions of this Part [<sup>F965</sup>which are expressed to apply to trades also apply, unless otherwise indicated (whether expressly or by implication)] —
  - (a) to professions, and
  - (b) in the case of this section and sections 849, 850, 857 and 858 to businesses that are not trades or professions.
- (3) In those sections as applied by subsection (2)(b)—
  - (a) references to a trade are references to a business, and
  - (b) references to the profits of a trade are references to the income arising from a business.

#### Textual Amendments

- F965** Words in s. 847(2) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), [Sch. 1 para. 638](#) (with [Sch. 2 Pts. 1, 2](#))

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

## 848 Assessment of partnerships

Unless otherwise indicated (whether expressly or by implication), a firm is not to be regarded for income tax purposes as an entity separate and distinct from the partners.

### *Calculation of partners' shares*

## 849 Calculation of firm's profits or losses

- (1) If—
- (a) a firm carries on a trade, and
  - (b) any partner in the firm is chargeable to income tax,
- the profits or losses of the trade are calculated on the basis set out in subsection (2) or (3), as the case may require.
- (2) For any period of account in which the partner is a UK resident individual, the profits or losses of the trade are calculated as if the firm were a UK resident individual.
- (3) For any period of account in which the partner is non-UK resident, the profits or losses of the trade are calculated as if the firm were a non-UK resident individual.
- [<sup>F966</sup>(3A) For any tax year that is a split year as respects the partner, this section has effect as if the partner were non-UK resident in the overseas part of the year.]
- [<sup>F967</sup>(4) In calculating under subsection (2) or (3) the profits of a trade for any period of account no account is taken of any losses for another period of account.]

### Textual Amendments

**F966** S. 849(3A) inserted (with effect in accordance with Sch. 45 para. 153(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 78](#)

**F967** S. 849(4) inserted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), [Sch. 1 para. 639](#) (with [Sch. 2 Pts. 1, 2](#))

## [<sup>F968</sup>850 Allocation of firm's profits or losses between partners

- (1) For any period of account a partner's share of a profit or loss of a trade carried on by a firm is determined for income tax purposes in accordance with the firm's profit-sharing arrangements during that period.

This is subject to sections 850A [<sup>F969</sup>to 850D].

- (2) In this section and sections 850A and 850B “profit-sharing arrangements” means the rights of the partners to share in the profits of the trade and the liabilities of the partners to share in the losses of the trade.

### Textual Amendments

**F968** Ss. 850-850B substituted for s. 850 (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), [Sch. 1 para. 640](#) (with [Sch. 2 Pts. 1, 2](#))

**F969** Words in s. 850(1) substituted (5.12.2013) (retrospective and with effect in accordance with Sch. 17 paras. 12, 13 of the amending Act) by [Finance Act 2014 \(c. 26\)](#), [Sch. 17 paras. 7\(2\), 11](#)

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

### 850A Profit-making period in which some partners have losses

- (1) For any period of account, if—
- the calculation under section 849 in relation to a partner (“A”) produces a profit, and
  - A's share determined under section 850 is a loss,

A's share of the profit of the trade is neither a profit nor a loss.

- (2) For any period of account, if—
- the calculation under section 849 in relation to A produces a profit,
  - A's share determined under section 850 is a profit, and
  - the comparable amount for at least one other partner is a loss,

A's share of the profit of the trade is the amount produced by the formula in subsection (3).

- (3) The formula is—

$$FP \times P / (PP + TCP)$$

where—

FP is the amount of the firm's profit calculated under section 849 in relation to A,

PP is the amount determined under section 850 to be A's profit, and

TCP is the total of the comparable amounts attributed to other partners under step 3 in subsection (4) that are profits.

- (4) The comparable amount for each partner other than A is determined as follows.

#### *Step 1*

Take the firm's profit calculated under section 849 in relation to A.

#### *Step 2*

Determine in accordance with the firm's profit-sharing arrangements during the relevant period of account the shares of that profit that are attributable to each of the other partners.

#### *Step 3*

Each such share is the comparable amount for the partner to whom it is attributed.

- (5) In subsections (2) to (4) “partner” means any partner in the firm, whether or not chargeable to income tax.

#### **Textual Amendments**

**F968** Ss. 850-850B substituted for s. 850 (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 640** (with **Sch. 2 Pts. 1, 2**)

### 850B Loss-making period in which some partners have profits

- (1) For any period of account, if—

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

(a) the calculation under section 849 in relation to a partner (“A”) produces a loss, and

(b) A's share determined under section 850 is a profit,

A's share of the loss of the trade is neither a profit nor a loss.

(2) For any period of account, if—

(a) the calculation under section 849 in relation to A produces a loss,

(b) A's share determined under section 850 is a loss, and

(c) the comparable amount for at least one other partner is a profit,

A's share of the loss of the trade is the amount produced by the formula in subsection (3).

(3) The formula is—

$$FL \times PL / PL + TCL$$

where—

FL is the amount of the firm's loss calculated under section 849 in relation to A,

PL is the amount determined under section 850 to be A's loss, and

TCL is the total of the comparable amounts attributed to other partners under step 3 in subsection (4) that are losses.

(4) The comparable amount for each partner other than A is determined as follows.

*Step 1*

Take the firm's loss calculated under section 849 in relation to A.

*Step 2*

Determine in accordance with the firm's profit-sharing arrangements during the relevant period of account the shares of that loss that are attributable to each of the other partners.

*Step 3*

Each such share is the comparable amount for the partner to whom it is attributed.

(5) In subsections (2) to (4) “partner” means any partner in the firm, whether or not chargeable to income tax.]

#### Textual Amendments

**F968** Ss. 850-850B substituted for s. 850 (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 640** (with **Sch. 2 Pts. 1, 2**)

#### [<sup>F970</sup>850C] Excess profit allocation to non-individual partners

(1) Subsections (4) and (5) apply if—

(a) for a period of account (“the relevant period of account”)—

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

- (i) the calculation under section 849 in relation to an individual partner (“A”) (see subsection (6)) produces a profit for the firm, and
    - (ii) A's share of that profit determined under section 850 or 850A (“A's profit share”) is a profit or is neither a profit nor a loss,
  - (b) a non-individual partner (“B”) (see subsection (6)) has a share of the profit for the firm mentioned in paragraph (a)(i) (“B's profit share”) which is a profit (see subsection (7)), and
  - (c) condition X or Y is met.
- (2) Condition X is that it is reasonable to suppose that—
  - (a) amounts representing A's deferred profit (see subsection (8)) are included in B's profit share, and
  - (b) in consequence, both A's profit share and the relevant tax amount (see subsection (9)) are lower than they would otherwise have been.
- (3) Condition Y is that—
  - (a) B's profit share exceeds the appropriate notional profit (see subsections (10) to (17)),
  - (b) A has the power to enjoy B's profit share (“A's power to enjoy”) (see subsections (18) to (21)), and
  - (c) it is reasonable to suppose that—
    - (i) the whole or any part of B's profit share is attributable to A's power to enjoy, and
    - (ii) both A's profit share and the relevant tax amount (see subsection (9)) are lower than they would have been in the absence of A's power to enjoy.
- (4) A's profit share is increased by so much of the amount of B's profit share as, it is reasonable to suppose, is attributable to—
  - (a) A's deferred profit, or
  - (b) A's power to enjoy,as determined on a just and reasonable basis.

But any increase by virtue of paragraph (b) is not to exceed the amount of the excess mentioned in subsection (3)(a) after deducting from that amount any increase by virtue of paragraph (a).
- (5) If B is chargeable to income tax, in applying sections 850 to 850B in relation to B for the relevant period of account, such adjustments are to be made as are just and reasonable to take account of the increase in A's profit share under subsection (4).

(This subsection does not apply for the purposes of subsection (7) or section 850D(7).)
- (6) A partner in a firm is an “individual partner” if the partner is an individual and “non-individual partner” is to be read accordingly; but “non-individual partner” does not include the firm itself where it is treated as a partner under section 863I (allocation of profit to AIFM firm).
- (7) B's profit share is to be determined by applying section 850 and, if relevant, section 850A in relation to B for the relevant period of account (whether or not B is chargeable to income tax) on the assumption that the calculation under section 849 in relation to B produces the profit for the firm mentioned in subsection (1)(a)(i).

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

- (8) “A's deferred profit”—
- (a) is any remuneration or other benefits or returns the provision of which to A has been deferred (whether pending the meeting of any conditions (including conditions which may never be met) or otherwise), and
  - (b) includes A's share (as determined on a just and reasonable basis) of any remuneration or other benefits or returns the provision of which to A and one or more other persons, taken together, has been deferred (whether pending the meeting of any conditions (including conditions which may never be met) or otherwise).
- (9) “The relevant tax amount” is the total amount of tax which, apart from this section, would be chargeable in respect of A and B's income as partners in the firm.
- (10) “The appropriate notional profit” is the sum of the appropriate notional return on capital and the appropriate notional consideration for services.
- (11) “The appropriate notional return on capital” is—
- (a) the return which B would receive for the relevant period of account in respect of B's contribution to the firm were the return to be calculated on the basis mentioned in subsection (12), less
  - (b) any return actually received for the relevant period of account in respect of B's contribution to the firm which is not included in B's profit share.
- (12) The return mentioned in subsection (11)(a) is to be calculated on the basis that it is a return which is—
- (a) by reference to the time value of an amount of money equal to B's contribution to the firm, and
  - (b) at a rate which (in all the circumstances) is a commercial rate of interest.
- (13) For the purposes of subsections (11) and (12) B's contribution to the firm is amount A determined under section 108 of ITA 2007 (meaning of “contribution to the LLP”).
- (14) That section is to be applied—
- (a) reading references to the individual as references to B and references to the LLP as references to the firm, and
  - (b) with the omission of—
    - (i) subsections (5)(b) and (9), and
    - (ii) in subsection (6) the words from “but” to the end.
- (15) “The appropriate notional consideration for services” is—
- (a) the amount which B would receive in consideration for any services provided to the firm by B during the relevant period of account were the consideration to be calculated on the basis mentioned in subsection (16), less
  - (b) any amount actually received in consideration for any such services which is not included in B's profit share.
- (16) The consideration mentioned in subsection (15)(a) is to be calculated on the basis that B is not a partner in the firm and is acting at arm's length from the firm.
- (17) Any services, the provision of which involves any partner in the firm in addition to B, are to be ignored for the purposes of subsection (15).
- (18) A has the power to enjoy B's profit share if—



*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (a) A is connected with B by virtue of a provision of section 993 of ITA 2007 (meaning of “connected” persons) other than subsection (4) of that section,
  - (b) A is a party to arrangements the main purpose, or one of the main purposes, of which is to secure that an amount included in B's profit share—
    - (i) is charged to corporation tax rather than income tax, or
    - (ii) is otherwise subject to the provisions of the Corporation Tax Acts rather than the provisions of the Income Tax Acts, or
  - (c) any of the enjoyment conditions (see subsection (20)) is met in relation to B's profit share or any part of B's profit share.
- (19) In subsection (18)(b) “arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable).
- (20) The enjoyment conditions are—
- (a) B's profit share, or the part, is in fact so dealt with by any person as to be calculated at some time to enure for the benefit of A, whether in the form of income or not;
  - (b) the receipt or accrual of B's profit share, or the part, by or to B operates to increase the value to A of any assets held by, or for the benefit of, A;
  - (c) A receives or is entitled to receive at any time any benefit provided or to be provided (directly or indirectly) out of B's profit share or the part;
  - (d) A may become entitled to the beneficial enjoyment of B's profit share, or the part, if one or more powers are exercised or successively exercised by any person;
  - (e) A is able in any manner to control (directly or indirectly) the application of B's profit share or the part.
- (21) In subsection (20) references to A include any person connected with A apart from B.
- (22) Subsection (23) applies if—
- (a) the increase under subsection (4), or any part of it, is allocated by A to the firm itself under section 863I (allocation of profit to AIFM firm), and
  - (b) B makes a payment to the firm representing any income tax for which the firm is liable by virtue of section 863I in respect of the amount of the increase allocated to it.
- (23) For income tax purposes, the payment—
- (a) is not to be income of any partner in the firm, and
  - (b) is not to be taken into account in calculating any profits or losses of B or otherwise deducted from any income of B.

#### **Textual Amendments**

**F970** Ss. 850C-850E inserted (retrospective for specified purposes and 6.4.2014 in so far as not already in force and with effect in accordance with Sch. 17 paras. 12, 13 of the amending Act) by [Finance Act 2014 \(c. 26\)](#), [Sch. 17 paras. 7\(3\), 11](#)

#### **Modifications etc. (not altering text)**

**C92** S. 850C(4) applied by 2009 c. 4, s. 1264A(1) (as inserted (retrospective for specified purposes and with effect in accordance with Sch. 17 paras. 12, 13 of the amending Act) by [Finance Act 2014 \(c. 26\)](#), [Sch. 17 paras. 10\(3\), 11](#))

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

## **850D Excess profit allocation: cases involving individuals who are not partners**

- (1) Subsections (4) and (5) apply if—
- (a) at a time during a period of account (“the relevant period of account”) in respect of a firm, an individual (“A”) personally performs services for the firm,
  - (b) if A had been a partner in the firm throughout the relevant period of account, the calculation under section 849 in relation to A for the relevant period of account would have produced a profit for the firm,
  - (c) a non-individual partner (“B”) in the firm (see subsection (6)) has a share of that profit (“B’s profit share”) which is a profit (see subsection (7)),
  - (d) it is reasonable to suppose that A would have been a partner in the firm at a time during the relevant period of account or any earlier period of account but for the provision contained in section 850C (see also subsections (8) to (10)), and
  - (e) condition X or Y is met.
- (2) Condition X is that it is reasonable to suppose that amounts representing A’s deferred profit (see subsection (11)) are included in B’s profit share.
- (3) Condition Y is that—
- (a) B’s profit share exceeds the appropriate notional profit (see subsection (12)),
  - (b) A has the power to enjoy B’s profit share (“A’s power to enjoy”) (see subsection (13)), and
  - (c) it is reasonable to suppose that the whole or any part of B’s profit share is attributable to A’s power to enjoy.
- (4) A is to be treated on the following basis—
- (a) A is a partner in the firm throughout the relevant period of account (but not for the purposes of section 863I (allocation of profit to AIFM firm)),
  - (b) A’s share of the firm’s profit for the relevant period of account is so much of the amount of B’s profit share as, it is reasonable to suppose, is attributable to—
    - (i) A’s deferred profit, or
    - (ii) A’s power to enjoy,
 as determined on a just and reasonable basis, and
  - (c) A’s share of the firm’s profit is chargeable to income tax under the applicable provisions of the Income Tax Acts for the tax year in which the relevant period of account ends.

But A’s share of the firm’s profit by virtue of paragraph (b)(ii) is not to exceed the amount of the excess mentioned in subsection (3)(a) after deducting from that amount A’s share of the firm’s profit (if any) by virtue of paragraph (b)(i).

- (5) If B is chargeable to income tax, in applying sections 850 to 850B in relation to B for the relevant period of account, such adjustments are to be made as are just and reasonable to take account of A’s share of the firm’s profit under subsection (4).

(This subsection does not apply for the purposes of subsection (7) or section 850C(7).)

- (6) “Non-individual partner” is to be read in accordance with section 850C(6).
- (7) B’s profit share is to be determined by applying section 850 and, if relevant, section 850A in relation to B for the relevant period of account (whether or not B is

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- chargeable to income tax) on the assumption that the calculation under section 849 in relation to B produces the profit for the firm mentioned in subsection (1)(b).
- (8) The requirement of subsection (1)(d) is to be assumed to be met if, at a time during the relevant period of account, A is a member of a partnership which is associated with the firm.
- (9) A partnership is “associated” with the firm if—
- it is a member of the firm, or
  - it is a member of a partnership which is associated with the firm (whether by virtue of paragraph (a) or this paragraph).
- (10) In subsections (8) and (9) “partnership” includes a limited liability partnership whether or not section 863(1) applies in relation to it.
- (11) “A's deferred profit” is to be read in accordance with section 850C(8).
- (12) Section 850C(10) to (17) applies for the purpose of determining “the appropriate notional profit”; and A is to be treated as a partner in the firm for the purposes of section 850C(17).
- (13) Section 850C(18) to (21) applies for the purpose of determining if A has the power to enjoy B's profit share.

#### Textual Amendments

**F970** Ss. 850C-850E inserted (retrospective for specified purposes and 6.4.2014 in so far as not already in force and with effect in accordance with Sch. 17 paras. 12, 13 of the amending Act) by [Finance Act 2014 \(c. 26\)](#), [Sch. 17 paras. 7\(3\), 11](#)

#### Modifications etc. (not altering text)

**C93** S. 850D(4) applied by 2009 c. 4, s. 1264A(1) (as inserted) (5.12.2013) (retrospective for specified purposes and with effect in accordance with Sch. 17 paras. 12, 13 of the amending Act) by [Finance Act 2014 \(c. 26\)](#), [Sch. 17 paras. 10\(3\), 11](#)

### **850E Payments by B out of the excess part of B's profit share**

- (1) Subsection (2) applies in a case in which section 850C(4) or section 850D(4) applies if—
- there is an agreement in place in relation to the excess part of B's profit share,
  - as a result of the agreement, B makes a payment to another person out of the excess part of B's profit share, and
  - the payment is not made under any arrangements the main purpose, or one of the main purposes, of which is the obtaining of a tax advantage for any person.
- (2) For income tax purposes, the payment—
- is not to be income of the recipient,
  - is not to be taken into account in calculating any profits or losses of B or otherwise deducted from any income of B, and
  - is not to be regarded as a distribution.
- (3) In this section—

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

“arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable),

“B's profit share” has the same meaning as in section 850C or 850D (as the case may be),

“the excess part of B's profit share” means so much of the amount of B's profit share as is represented by the amount of, as the case may be—

- (a) the increase under section 850C(4), or
- (b) A's share of the firm's profit under section 850D(4), and

“tax advantage” has the meaning given by section 1139 of CTA 2010.]

#### Textual Amendments

**F970** Ss. 850C-850E inserted (retrospective for specified purposes and 6.4.2014 in so far as not already in force and with effect in accordance with Sch. 17 paras. 12, 13 of the amending Act) by [Finance Act 2014 \(c. 26\)](#), [Sch. 17 paras. 7\(3\), 11](#)

### 851 Calculations etc. where firm has other income or losses

- (1) This section applies if—
  - (a) sections 849 and 850 apply in relation to the profits or losses of a trade carried on by a firm, and
  - (b) the firm has other income or losses.
- (2) Those sections also apply as if references to the profits or losses of the trade were references to the other income or losses.

#### *Firms with trading income*

### 852 Carrying on by partner of notional trade

- (1) For each tax year in which a firm carries on a trade (the “actual trade”), each partner's share of the firm's trading profits or losses is treated, for the purposes of Chapter 15 of Part 2 (basis periods), as profits or losses of a trade carried on by the partner alone (the “notional trade”).
- (2) A partner starts to carry on a notional trade at the later of—
  - (a) when becoming a partner in the firm, and
  - (b) when the firm starts to carry on the actual trade.

This is subject to subsection (3).
- (3) If the partner carries on the actual trade alone before the firm starts to carry it on, the partner starts to carry on the notional trade when the partner starts to carry on the actual trade.
- (4) A partner permanently ceases to carry on a notional trade at the earlier of—
  - (a) when the partner ceases to be a partner in the firm, and
  - (b) when the firm permanently ceases to carry on the actual trade.

This is subject to subsections (5) and (6).

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (5) If the partner carries on the actual trade alone after the firm permanently ceases to carry it on, the partner permanently ceases to carry on the notional trade when the partner permanently ceases to carry on the actual trade.
- [<sup>F971</sup>(6) If there is a change of residence, the partner is treated as permanently ceasing to carry on one notional trade when that change of residence occurs and starting to carry on another immediately afterwards.]
- (7) Subsection (6) does not prevent a loss made before the change of residence from being [<sup>F972</sup>deducted under section 83 of ITA 2007 from] profits arising after the change.
- [<sup>F973</sup>(8) Subsections (1A) and (1B) of section 17 apply for the purposes of subsection (6).]

#### Textual Amendments

- F971** S. 852(6) substituted (with effect in accordance with Sch. 45 para. 153(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 79\(2\)](#)
- F972** Words in s. 852(7) substituted (with effect as stated in [s. 1034\(1\)](#) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), [ss. 1027, 1034](#), [Sch. 1 para. 579](#) (with transitional provisions and savings in [Sch. 2](#))
- F973** S. 852(8) inserted (with effect in accordance with Sch. 45 para. 153(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 79\(3\)](#)

### 853 Basis periods for partners' notional trades

- (1) The basis period of a partner's notional trade is determined by applying the rules in Chapter 15 of Part 2 as if—
- the trade were carried on by an individual, and
  - its accounts were drawn up to the same dates as the accounts of the actual trade.

This is subject to subsection (2).

- (2) If, on the assumption that the actual trade is carried on by an individual,—
- section 216 (change of accounting date in later tax year) would apply in relation to the actual trade, but
  - the basis period for the actual trade would be given by subsection (4) of that section (ineffective change of accounting date), because the conditions in section 217 (conditions for basis period to end with new accounting date) would not be met in relation to that trade,

the accounts of the actual trade are treated for the purposes of subsection (1) as drawn up to the old accounting date.

- (3) For the purposes of determining whether, on the assumption that the actual trade is carried on by an individual, the conditions in section 217 would be met in relation to that trade—
- a notice under section 217(2) must be given by one of the partners in the firm nominated by them for the purposes of this subsection, and
  - any appeal under section 218(4) against a notice by [<sup>F974</sup>an officer of Revenue and Customs] must be made by a partner so nominated.
- (4) Section 207 (treatment of business start-up payments received in overlap period) applies as a result of this section in relation to a partner's notional trade so that—

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (a) the requirement in subsection (1)(a) of that section becomes a requirement that the partner's share of the firm's profits so far as attributable to a business start-up payment falls within two basis periods, and
- (b) the reference in subsection (2) of that section to the payment is a reference to any part of the partner's share of the firm's profits which is so attributable.

#### Textual Amendments

**F974** Words in s. 853(3)(b) substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005](#) (c. 11), ss. 50, 53(1), [Sch. 4 para. 132\(1\)](#); S.I. 2005/1126, [art. 2\(2\)\(h\)](#)

### *Firms with trading and other source income*

#### **854 Carrying on by partner of notional business**

- (1) For each tax year in which a firm—
  - (a) carries on a trade, and
  - (b) has untaxed income or relieviable losses from other sources,
 each partner's share of the firm's untaxed income or relieviable losses other than trading profits or losses is treated, for the purposes of Chapter 15 of Part 2, as profits or losses of a trade carried on by the partner alone (the “notional business”).
- (2) A partner starts to carry on a notional business at the later of—
  - (a) when becoming a partner in the firm, and
  - (b) when the firm starts to carry on a trade.
- (3) A notional business continues even if either or both of the following occur—
  - (a) separate sources of income that comprise the business start and cease, and
  - (b) no income arises during a particular tax year.

This is subject to subsections (4) and (5).

- (4) A partner permanently ceases to carry on a notional business at the earlier of—
  - (a) when the partner ceases to be a partner in the firm, and
  - (b) when the firm permanently ceases to carry on a trade.

[<sup>F975</sup>(5) If there is a change of residence, the partner is treated as permanently ceasing to carry on one notional business when that change of residence occurs and starting to carry on another immediately afterwards.]

[<sup>F976</sup>(5A) Subsections (1A) and (1B) of section 17 apply for the purposes of subsection (5).]

- (6) In this section “untaxed income” means any income that is not—
  - (a) income from which income tax has been deducted,
  - (b) income from or on which income tax is treated as having been deducted or paid, or
  - (c) dividends or other distributions of a company chargeable under Chapter 3 of Part 4.

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

#### Textual Amendments

- F975** S. 854(5) substituted (with effect in accordance with Sch. 45 para. 153(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 80\(2\)](#)
- F976** S. 854(5A) inserted (with effect in accordance with Sch. 45 para. 153(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 80\(3\)](#)

### 855 Basis periods for partners' notional businesses

- (1) The general rule is that the basis period for a partner's notional business is the same as the basis period for a partner's notional trade, but subject to the exceptions in subsections (2) and (3).
- (2) If the partner carries on the actual trade alone before the firm starts to carry it on the partner is treated as starting to carry on the notional business when the partnership is set up.
- (3) If the partner carries on the actual trade alone after the firm permanently ceases to carry it on the partner is treated as permanently ceasing to carry on the notional business when the firm permanently ceases to carry on the actual trade.

### 856 Overlap profits from partners' notional businesses

- (1) This section applies if—
  - (a) the basis period for a partner's notional business for a tax year is given by—
    - (i) section 215 (change of accounting date in third tax year), or
    - (ii) section 216(3) (change of accounting date in later tax year),
  - (b) a deduction is to be made for overlap profit under section 220 in calculating the profits of the notional business of the tax year, and
  - (c) the amount to be deducted exceeds the amount which would otherwise be the amount of the profits of the notional business of the tax year.
- (2) This section also applies if—
  - (a) the basis period for a partner's notional business for a tax year is given by section 202 (final tax year),
  - (b) a deduction is to be made for overlap profit under section 205 in calculating the profits of the notional business of the tax year, and
  - (c) the amount to be deducted exceeds the amount which would otherwise be the amount of the profits of the notional business of the tax year.
- (3) The amount of the excess is to be deducted in calculating the partner's income for the tax year.

#### *Firms with a foreign element*

### 857 Partners to whom the remittance basis [<sup>F977</sup> applies]

- (1) This section applies if—
  - (a) a firm carries on a trade wholly or partly outside the United Kingdom,
  - (b) the control and management of the trade is outside the United Kingdom, and

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- [<sup>F978</sup>(c) section 809B, 809D or 809E of ITA 2007 (remittance basis) applies to a partner for a tax year.]
- (2) The partner's share of the profits of the trade arising in the United Kingdom is determined in accordance with sections 849 to 856.
- (3) The partner's share of the profits of the trade arising outside the United Kingdom is treated as relevant foreign income <sup>F979</sup>....

#### Textual Amendments

**F977** Word in s. 857 heading substituted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 70\(4\)](#)

**F978** S. 857(1)(c) substituted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 70\(2\)](#)

**F979** Words in s. 857(3) omitted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 70\(3\)](#)

### 858 Resident partners and double taxation agreements

- (1) This section applies if—
- (a) a UK resident (“the partner”) is a member of a firm which—
    - (i) resides outside the United Kingdom, or
    - (ii) carries on a trade the control and management of which is outside the United Kingdom, and
  - (b) by virtue of any arrangements having effect under [<sup>F980</sup>section 2(1) of TIOPA 2010] (“the arrangements”) any of the income of the firm is relieved from income tax in the United Kingdom.
- (2) The partner is liable to income tax on the partner's share of the income of the firm despite the arrangements.
- (3) If the partner's share of the income of the firm consists of or includes a share in a qualifying distribution—
- (a) made by a UK resident company, and
  - (b) chargeable to tax under Chapter 3 of Part 4,
- the partner (and not the firm) is, despite the arrangements, entitled to the share of the tax credit which corresponds to the partner's share of the distribution.

[<sup>F981</sup>(4) For the purposes of this section the members of a firm include any person entitled to a share of income of the firm.]

#### Textual Amendments

**F980** Words in s. 858(1)(b) 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. 70](#) (with [Sch. 9 paras. 1-9, 22](#))

**F981** S. 858(4) inserted (retrospectively) by [Finance Act 2008 \(c. 9\)](#), s. [58\(3\)\(4\)](#)



*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

### Miscellaneous

#### 859 Special provisions about farming and property income

- (1) The rule in section 9(2) (farming trades) operates in relation to firms so that—
  - (a) all farming in the United Kingdom which a firm carries on, other than farming carried on as part of another trade, is treated as one trade, but
  - (b) the farming carried on by a firm which is treated as one trade is not included in any farming trade of any partner in the firm.
- (2) Section 264 (UK property business) operates in relation to firms so that—
  - (a) every business and transaction mentioned in that section carried on, or entered into, by a firm constitutes the firm's UK property business, but
  - (b) each business or transaction included in the firm's UK property business is not included in any UK property business of any partner in the firm.
- (3) Section 265 (overseas property business) operates in relation to firms so that—
  - (a) every business and transaction mentioned in that section carried on, or entered into, by a firm constitutes the firm's overseas property business, but
  - (b) each business or transaction included in the firm's overseas property business is not included in any overseas property business of any partner in the firm.

#### 860 Adjustment income

- (1) A change in the persons carrying on a trade from one period of account to the next does not prevent Chapter 17 of Part 2 (adjustment income) applying in relation to the trade so long as a person carrying on the trade immediately before the change continues to carry on the trade immediately after the change.
- [<sup>F982</sup>(1A) A change in the persons carrying on a property business from one period of account to the next does not prevent Chapter 7 of Part 3 (adjustment income) applying in relation to the property business so long as a person carrying on the property business immediately before the change continues to carry on the property business immediately after the change.]
- (2) A change in the persons carrying on a trade does not constitute the permanent cessation of the trade for the purposes of Chapter 17 of Part 2 so long as a person carrying on the trade immediately before the change continues to carry on the trade immediately after the change.
- (3) In the case of a trade [<sup>F983</sup>or property business] carried on by a firm the amount of any adjustment under Chapter 17 of Part 2 [<sup>F984</sup>, or Chapter 7 of Part 3,] is calculated as if the firm were a UK resident individual.
- (4) Each partner's share of any amount of adjustment income is determined according to the firm's profit-sharing arrangements for the 12 months ending immediately before the date on which the new basis was adopted.
- (5) Any election under Chapter 17 of Part 2 must be made jointly by all the persons who have been members of the firm in that 12 month period.
- (6) For the purposes of this section—
  - (a) “adjustment income” and “change of basis” have the same meaning as in Chapter 17 of Part 2, [<sup>F985</sup>or Chapter 7 of Part 3 (as the case requires)]

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (b) “profit-sharing arrangements” means the rights of the partners to share in the profits of the trade [<sup>F986</sup>or property business (as the case requires)] , and
- (c) references to the date on which a new basis was adopted are to the first day of the first period of account for which the new basis was adopted.

(7) Sections 849 to 856 do not apply so far as this section applies.

#### Textual Amendments

- F982** S. 860(1A) inserted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 641\(2\)](#) (with [Sch. 2 Pts. 1, 2](#))
- F983** Words in s. 860(3) inserted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 641\(3\)\(a\)](#) (with [Sch. 2 Pts. 1, 2](#))
- F984** Words in s. 860(3) inserted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 641\(3\)\(b\)](#) (with [Sch. 2 Pts. 1, 2](#))
- F985** Words in s. 860(6)(a) inserted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 641\(4\)\(a\)](#) (with [Sch. 2 Pts. 1, 2](#))
- F986** Words in s. 860(6)(b) inserted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 641\(4\)\(b\)](#) (with [Sch. 2 Pts. 1, 2](#))

#### [<sup>F987</sup> 861 Sale of patent rights: effect of partnership changes

- (1) This section applies if each of the following conditions is met—
- (a) a person (“the trader”) sells the whole or part of any patent rights in carrying on a trade,
  - (b) tax is chargeable under section 587 of this Act or section 912 of CTA 2009 on the proceeds of the sale or on any instalment of those proceeds,
  - (c) the tax is chargeable in one or more tax years or accounting periods (referred to in this section as “the tax charge periods”),
  - (d) there is a change in the persons carrying on the trade at any time between the beginning of the first of those tax charge periods and the end of the last of them, and
  - (e) the partnership condition and the continuity condition are met.
- (2) The partnership condition is that—
- (a) the trader is a firm at the time of the sale, or
  - (b) the trade is carried on in partnership at any time between the beginning of the first of the tax charge periods and the end of the last of them.
- (3) The continuity condition is—
- (a) in the case of an amount chargeable under section 587, that a person who carried on the trade immediately before the change continues to carry it on after the change, or
  - (b) in the case of an amount chargeable under section 912 of CTA 2009, that a company which carried on the trade in partnership immediately before the change continues to carry it on in partnership after the change.
- (4) Any amounts chargeable in respect of the proceeds or instalment that would (apart from this section) be treated in accordance with Chapter 2 of Part 5 of this Act or Chapter 3 of Part 9 of CTA 2009 as profits of the seller of the patent rights chargeable

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

in tax charge periods falling wholly after the change are treated for income tax purposes—

- (a) as proceeds, arising at a constant daily rate during the remainder of the relevant period, of a sale of patent rights by the person or persons carrying on the trade after the change, and
  - (b) if the trade is carried on in partnership after the change, as arising to the partners in shares calculated in accordance with the firm's profit-sharing arrangements.
- (5) If the change occurs during the course of a tax charge period—
- (a) any person who would, but for this section, have been charged to income tax in that period on a sum (“S”) in respect of the proceeds or instalment is so charged on a fraction of S proportionate to the length of the part of the period before the change, and
  - (b) the balance of S not dealt with under paragraph (a) is treated for the purposes of this section and section 1271 of CTA 2009 (sale of patent rights: effect of partnership changes) as if it were an amount such as is described in subsection (4).
- (6) In this section “the remainder of the relevant period” means—
- (a) if one or more tax charge periods begins after the tax charge period in which the change occurs, the period beginning immediately after the change and ending 6 years after the beginning of the first of the tax charge periods, or
  - (b) otherwise, the period beginning immediately after the change and ending at the end of the tax charge period in which the change occurs.
- (7) In this section “profit-sharing arrangements” means the rights of the partners to share in the profits of the trade.]

#### Textual Amendments

**F987** S. 861 substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), [Sch. 1 para. 642](#) (with [Sch. 2 Pts. 1, 2](#))

#### Modifications etc. (not altering text)

**C94** S. 861 modified (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), [ss. 1271\(5\)\(b\)](#), 1329(1) (with [Sch. 2 Pts. 1, 2](#))

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

[<sup>F988</sup>(1) This section applies if—

- (a) a person (“the trader”) sells the whole or part of any patent rights in carrying on a trade,
- (b) by virtue of section 861 amounts are chargeable to income tax under section 587 as profits of one or more persons for the time being carrying on the trade in partnership,
- (c) a partner permanently ceases to carry on the trade after that, and
- (d) no person who carried on the trade immediately before the cessation continues to carry on the trade immediately after the cessation.

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (2) Any amounts mentioned in subsection (1)(b) which would have been chargeable in any tax year later than that in which the cessation occurred are charged in the tax year in which the cessation occurred.]
- <sup>F989</sup>(3) .....
- (4) If an additional amount is chargeable under subsection (2), the person liable may elect that the amount of income tax payable should be reduced to the amount that would have been payable on the assumptions mentioned in subsection (5).
- (5) The assumptions are—
- (a) that subsection (2) does not apply, and
  - (b) that the total of the amounts that would have been charged in later tax years is charged in equal instalments in each of the tax years—
    - (i) beginning with the year in which the trader received the proceeds of the sale or instalment of those proceeds, and
    - (ii) ending with the year in which the cessation occurs.
- (6) The election must be made on or before the first anniversary of the normal self-assessment filing date for the tax year in which the cessation occurred.
- <sup>F990</sup>(7) .....

#### Textual Amendments

**F988** S. 862(1)(2) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 643\(2\)](#) (with [Sch. 2 Pts. 1, 2](#))

**F989** S. 862(3) repealed (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 643\(3\), Sch. 3 Pt. 1](#) (with [Sch. 2 Pts. 1, 2](#))

**F990** S. 862(7) repealed (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 643\(3\), Sch. 3 Pt. 1](#) (with [Sch. 2 Pts. 1, 2](#))

### 863 Limited liability partnerships

- (1) For income tax purposes, if a limited liability partnership carries on a trade, profession or business with a view to profit—
- (a) all the activities of the limited liability partnership are treated as carried on in partnership by its members (and not by the limited liability partnership as such),
  - (b) anything done by, to or in relation to the limited liability partnership for the purposes of, or in connection with, any of its activities is treated as done by, to or in relation to the members as partners, and
  - (c) the property of the limited liability partnership is treated as held by the members as partnership property.

References in this subsection to the activities of the limited liability partnership are to anything that it does, whether or not in the course of carrying on a trade, profession or business with a view to profit.

- (2) For all purposes, except as otherwise provided, in the Income Tax Acts—
- (a) references to a firm [<sup>F991</sup>or partnership] include a limited liability partnership in relation to which subsection (1) applies,

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (b) references to members [<sup>F992</sup>or partners] of a firm [<sup>F993</sup>or partnership] include members of such a limited liability partnership,
  - (c) references to a company do not include such a limited liability partnership, and
  - (d) references to members of a company do not include members of such a limited liability partnership.
- (3) Subsection (1) continues to apply in relation to a limited liability partnership which no longer carries on any trade, profession or business with a view to profit—
- (a) if the cessation is only temporary, or
  - (b) during a period of winding up following a permanent cessation, provided—
    - (i) the winding up is not for reasons connected in whole or in part with the avoidance of tax, and
    - (ii) the period of winding up is not unreasonably prolonged.

This is subject to subsection (4).

- (4) Subsection (1) ceases to apply in relation to a limited liability partnership—
- (a) on the appointment of a liquidator or (if earlier) the making of a winding-up order by the court, or
  - (b) on the occurrence of any event under the law of a territory outside the United Kingdom corresponding to an event specified in paragraph (a).

#### Textual Amendments

**F991** Words in s. 863(2)(a) inserted (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), ss. 1027, 1034, [Sch. 1 para. 580\(a\)](#) (with transitional provisions and savings in [Sch. 2](#))

**F992** Words in s. 863(2)(b) inserted (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), ss. 1027, 1034, [Sch. 1 para. 580\(b\)\(i\)](#) (with transitional provisions and savings in [Sch. 2](#))

**F993** Words in s. 863(2)(b) inserted (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), ss. 1027, 1034, [Sch. 1 para. 580\(b\)\(ii\)](#) (with transitional provisions and savings in [Sch. 2](#))

#### [<sup>F994</sup>863A] Limited liability partnerships: salaried members

- (1) Subsection (2) applies at any time when conditions A to C in sections 863B to 863D are met in the case of an individual (“M”) who is a member of a limited liability partnership in relation to which section 863(1) applies.
- (2) For the purposes of the Income Tax Acts—
- (a) M is to be treated as being employed by the limited liability partnership under a contract of service instead of being a member of the partnership, and
  - (b) accordingly, M’s rights and duties as a member of the limited liability partnership are to be treated as rights and duties under that contract of service.
- (3) This section needs to be read with section 863G (anti-avoidance).

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

### Textual Amendments

**F994** Ss. 863A-863G inserted (6.4.2014 for specified purposes) by [Finance Act 2014 \(c. 26\)](#), [Sch. 17 paras. 1, 6](#)

## 863B Condition A

- (1) The question of whether condition A is met is to be determined at the following times—
  - (a) if relevant arrangements are in place—
    - (i) at the beginning of the tax year 2014-15, or
    - (ii) if later, when M becomes a member of the limited liability partnership,
 

at the time mentioned in sub-paragraph (i) or (ii) (as the case may be);
  - (b) at any subsequent time when relevant arrangements are put in place or modified;
  - (c) where—
    - (i) the question has previously been determined, and
    - (ii) the relevant arrangements which were in place at the time of the previous determination do not end, and are not modified, by the end of the period which was the relevant period for the purposes of the previous determination (see step 1 in subsection (3)),
 

immediately after the end of that period.
- (2) “Relevant arrangements” means arrangements under which amounts are to be, or may be, payable by the limited liability partnership in respect of M's performance of services for the partnership in M's capacity as a member of the partnership.
- (3) Take the following steps to determine whether condition A is met at a time (“the relevant time”).
 

*Step 1* Identify the relevant period by reference to the relevant arrangements which are in place at the relevant time. “The relevant period” means the period—

  - (a) beginning with the relevant time, and
  - (b) ending at the time when, as at the relevant time, it is reasonable to expect that the relevant arrangements will end or be modified.

*Step 2* Condition A is met if, at the relevant time, it is reasonable to expect that at least 80% of the total amount payable by the limited liability partnership in respect of M's performance during the relevant period of services for the partnership in M's capacity as a member of the partnership will be disguised salary. An amount within the total amount is “disguised salary” if it—

  - (a) is fixed,
  - (b) is variable, but is varied without reference to the overall amount of the profits or losses of the limited liability partnership, or
  - (c) is not, in practice, affected by the overall amount of those profits or losses.
- (4) If condition A is determined to be met, or not to be met, at a time, the condition is to be treated as met, or as not met, at all subsequent times until the question is required to be re-determined under subsection (1)(b) or (c).

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (5) In this section “arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable).

**Textual Amendments**

**F994** Ss. 863A-863G inserted (6.4.2014 for specified purposes) by [Finance Act 2014 \(c. 26\)](#), [Sch. 17 paras. 1, 6](#)

**863C Condition B**

Condition B is that the mutual rights and duties of the members of the limited liability partnership, and of the partnership and its members, do not give M significant influence over the affairs of the partnership.

**Textual Amendments**

**F994** Ss. 863A-863G inserted (6.4.2014 for specified purposes) by [Finance Act 2014 \(c. 26\)](#), [Sch. 17 paras. 1, 6](#)

**863D Condition C**

- (1) Condition C is that, at the time at which it is being determined whether the condition is met (“the relevant time”), M's contribution to the limited liability partnership (see sections 863E and 863F) is less than 25% of the amount given by subsection (2) (subject to subsection (7)).
- (2) That amount is the total amount of the disguised salary which, at the relevant time, it is reasonable to expect will be payable by the limited liability partnership in respect of M's performance during the relevant tax year of services for the partnership in M's capacity as a member of the partnership.

In this section “the relevant tax year” means the tax year in which the relevant time falls and an amount is “disguised salary” if it falls within any of paragraphs (a) to (c) at step 2 in section 863B(3).

- (3) The question of whether condition C is met is to be determined—
- (a) at the beginning of the tax year 2014-15 or, if later, the time at which M becomes a member of the limited liability partnership;
  - (b) after that, at the beginning of each tax year.
- (4) If in a tax year—
- (a) there is a change in M's contribution to the limited liability partnership, or
  - (b) there is otherwise a change of circumstances which might affect the question of whether condition C is met,
- the question of whether the condition is met is to be re-determined at the time of the change.

This subsection is subject to section 863F(3).

- (5) If condition C is determined to be met (including by virtue of subsection (7)), or not to be met, at the relevant time, the condition is to be treated as met, or as not

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

met, at all subsequent times until the question is required to be re-determined under subsection (3)(b) or (4).

- (6) Subsection (7) applies if—
- (a) the relevant time coincides with an increase in M's contribution to the limited liability partnership, and
  - (b) apart from subsection (7), that increase would cause condition C not to be met at the relevant time.
- (7) Condition C is to be treated as met at the relevant time unless, at that time, it is reasonable to expect that condition C will not be met for the remainder of the relevant tax year (ignoring this subsection).
- (8) If there are any excluded days in the relevant tax year (see subsections (9) to (11)), in subsection (1) the reference to M's contribution to the limited liability partnership is to be read as a reference to that contribution multiplied by the following fraction—
- $$\frac{D - E}{D}$$
- where—
- D is the number of days in the relevant tax year, and
- E is the number of excluded days in the relevant tax year.
- (9) Any day in the relevant tax year—
- (a) which is before the day on which the relevant time falls, and
  - (b) on which M is not a member of the limited liability partnership,
- is an “excluded” day for the purposes of subsection (8).
- (10) If, at the relevant time, it is reasonable to expect that M will not be a member of the limited liability partnership for the remainder of the relevant tax year, any day in the relevant tax year—
- (a) which is after the day on which the relevant time falls, and
  - (b) on which it is reasonable to expect that M will not be a member of the limited liability partnership,
- is an “excluded” day for the purposes of subsection (8).
- (11) If the relevant time coincides with an increase in M's contribution to the limited liability partnership, any day in the relevant tax year—
- (a) which is before the day on which the relevant time falls, and
  - (b) on which condition C is met,
- is an “excluded” day for the purposes of subsection (8).
- (12) In subsections (6) and (11) references to an increase in M's contribution to the limited liability partnership include (in particular)—
- (a) the making of M's first contribution to the capital of the limited liability partnership, and
  - (b) M being treated as having made a contribution by section 863F(2).



*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

#### Textual Amendments

**F994** Ss. 863A-863G inserted (6.4.2014 for specified purposes) by [Finance Act 2014 \(c. 26\)](#), [Sch. 17 paras. 1, 6](#)

### **863E M's contribution to the limited liability partnership: the basic calculation**

- (1) For the purposes of condition C in section 863D M's contribution to the limited liability partnership at a time is amount A.
- (2) Amount A is the total amount which M has contributed to the limited liability partnership as capital less so much of that amount (if any) as is within subsection (6).
- (3) In particular, M's share of any profits of the limited liability partnership is to be included in the amount which M has contributed to the partnership as capital so far as that share has been added to the partnership's capital.
- (4) In subsection (3) the reference to profits is to profits calculated in accordance with generally accepted accounting practice (before any adjustment required or authorised by law in calculating profits for income tax purposes).
- (5) Subsection (3) applies as well for the purpose of construing references to contributions to the capital of the limited liability partnership in sections 863D(12)(a) and 863F.
- (6) An amount of capital is within this subsection if it is an amount which—
  - (a) M has previously drawn out or received back,
  - (b) M is or may be entitled to draw out or receive back at any time when M is a member of the limited liability partnership, or
  - (c) M is or may be entitled to require another person to reimburse to M.
- (7) In subsection (6) any reference to drawing out or receiving back an amount is to doing so directly or indirectly.

#### Textual Amendments

**F994** Ss. 863A-863G inserted (6.4.2014 for specified purposes) by [Finance Act 2014 \(c. 26\)](#), [Sch. 17 paras. 1, 6](#)

### **863F M's contribution to the limited liability partnership: deemed contributions**

- (1) This section applies if—
  - (a) by the time mentioned in section 863D(3)(a), M has given an undertaking (whether or not legally enforceable) to make a contribution to the capital of the limited liability partnership but has not made the contribution,
  - (b) the undertaking requires M to make the contribution by the end of—
    - (i) the period of 3 months ending with 5 July 2014, or
    - (ii) if it ends after that date, the period of 2 months beginning with the date on which M becomes a member of the limited liability partnership, and
  - (c) when it is made, the contribution will be included in amount A under section 863E.

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

In the following subsections “the relevant period” means the period mentioned in paragraph (b)(i) or (ii) (as the case may be).

- (2) For the purpose of determining whether condition C in section 863D is met—
  - (a) at the time mentioned in section 863D(3)(a), or
  - (b) at any subsequent time during the relevant period,
 M is to be treated as having made the contribution at the time mentioned in section 863D(3)(a) (so far as M has not (actually) made the contribution at the time at which it is being determined whether condition C is met).
- (3) If M (actually) makes the contribution (in whole or in part) during the relevant period, the question of whether condition C is met is not to be re-determined under section 863D(4) just because of the making of the contribution (in whole or in part).
- (4) If M does not (actually) make the contribution (in whole or in part) by the end of the relevant period, any determination in relation to which subsection (2) applied is to be made again (as at the time at which it was originally made).
- (5) In making a determination again—
  - (a) if it is the whole of the contribution which M does not make by the end of the relevant period, subsection (2) is to be ignored;
  - (b) if M makes part of the contribution by the end of the relevant period, in subsection (2) references to the contribution are to be read as references to that part of it.

#### Textual Amendments

**F994** Ss. 863A-863G inserted (6.4.2014 for specified purposes) by [Finance Act 2014 \(c. 26\)](#), [Sch. 17 paras. 1, 6](#)

### 863G Anti-avoidance

- (1) In determining whether section 863A(2) applies in the case of an individual who is a member of a limited liability partnership, no regard is to be had to any arrangements the main purpose, or one of the main purposes, of which is to secure that section 863A(2) does not apply in the case of—
  - (a) the individual, or
  - (b) the individual and one or more other individuals.
- (2) Subsection (4) applies if—
  - (a) an individual (“X”) personally performs services for a limited liability partnership at a time when X is not a member of the partnership,
  - (b) X performs the services under arrangements involving a member of the limited liability partnership (“Y”) who is not an individual,
  - (c) the main purpose, or one of the main purposes, of those arrangements is to secure that section 863A(2) does not apply in the case of X or in the case of X and one or more other individuals, and
  - (d) in relation to X's performance of the services, an amount falling within subsection (3) arises to Y in respect of Y's membership of the limited liability partnership.

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

- (3) An amount falls within this subsection if—
- (a) were X performing the services under a contract of service by which X were employed by the limited liability partnership, and
  - (b) were the amount to arise to X directly from the limited liability partnership, the amount would be employment income of X in respect of the employment.
- (4) If this subsection applies, in relation to X's performance of the services, X is to be treated on the following basis—
- (a) X is a member of the limited liability partnership in whose case section 863A(2) applies,
  - (b) the amount arising to Y arises instead to X directly from the limited liability partnership,
  - (c) that amount is employment income of X in respect of the employment under section 863A(2) accordingly, and
  - (d) neither that amount, nor any amount representing that amount, is to be income of X for income tax purposes on any other basis.
- (4A) Section 863A(2) does not apply in the case of a member of a limited liability partnership if, apart from this subsection, it would apply in consequence of arrangements the main purpose, or one of the main purposes, of which is to secure that section 850C does not apply for one or more periods of account in relation to—
- (a) the member, or
  - (b) the member and one or more other members of the limited liability partnership.
- (5) In this section “arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable).]

#### Textual Amendments

**F994** Ss. 863A-863G inserted (6.4.2014 for specified purposes) by [Finance Act 2014 \(c. 26\)](#), [Sch. 17 paras. 1, 6](#)

## PART 10

### GENERAL PROVISIONS

#### CHAPTER 1

##### INTRODUCTION

## 864 Overview of Part 10

This Part —

- (a) contains general rules which are of wider application than to a particular Part of this Act including certain calculation rules (see Chapter 2), and
- (b) deals with supplementary matters including general definitions (see Chapter 3).

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

## CHAPTER 2

### GENERAL CALCULATION RULES ETC.

#### *Unpaid remuneration*

#### **865 Unpaid remuneration: non-trades and non-property businesses**

- (1) This section applies if, in calculating profits or other income of a period of account for income tax purposes—
  - (a) an amount is charged in the accounts for the period in respect of employees' remuneration, and
  - (b) a deduction for the remuneration would otherwise be allowable for the period.
- (2) For this purpose “profits or other income” does not include the profits of—
  - (a) a trade, profession or vocation, or
  - (b) a property business,
 but see subsection (6).
- (3) No deduction is allowed for the remuneration for the period of account unless it is paid before the end of the period of 9 months immediately following the end of the period of account.
- (4) If the remuneration is paid after the end of that 9 month period, a deduction for it is allowed for the period of account in which it is paid.
- (5) Section 37 (supplementary provision) applies for the purposes of this section as it applies for the purposes of section 36 (unpaid remuneration: trades, professions and vocations).
- (6) Provision corresponding to that made by this section is made by—
  - (a) sections 36 and 37 (in relation to trades, professions and vocations), and
  - (b) section 272 (in relation to property businesses).

#### *Employee benefit contributions*

#### **866 Employee benefit contributions: non-trades and non-property businesses**

- (1) This section applies if, in calculating a person's profits or other income of a period for income tax purposes—
  - (a) the profits or other income of the period are required to be calculated for those purposes, and
  - (b) a deduction would otherwise be allowable for the period for any employee benefit contributions made or to be made by the person (“the employer”) (but see subsection (5)).
- (2) For this purpose “profits or other income” does not include the profits of—
  - (a) a trade, profession or vocation, or
  - (b) a property business,
 but see subsection (7).
- (3) No deduction is allowed for the contributions for the period except so far as—

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

- (a) qualifying benefits are provided, or qualifying expenses are paid, out of the contributions during the period or within 9 months from the end of it, or
  - (b) if the making of the contributions is itself the provision of qualifying benefits, the contributions are made during the period or within 9 months from the end of it.
- (4) An amount disallowed under subsection (3) is allowed as a deduction for a subsequent period so far as—
- (a) qualifying benefits are provided out of the contributions before the end of the subsequent period, or
  - (b) if the making of the contributions is itself the provision of qualifying benefits, the contributions are made before the end of the subsequent period.
- (5) This section does not apply to any deduction that is allowable for—
- (a) anything given as consideration for goods or services provided in the course of a trade or profession,
  - (b) contributions under a registered pension scheme or under a superannuation fund to which section 615(3) of ICTA applies,
  - (c) contributions under a qualifying overseas pension scheme in respect of an individual who is a relevant migrant member of the pension scheme in relation to the contributions, or
  - (d) contributions under an accident benefit scheme.
- For the purposes of paragraph (c) “qualifying overseas pension scheme” and “relevant migrant member” have the same meaning as in Schedule 33 to FA 2004 (see paragraphs 4 to 6 of that Schedule).
- (6) Sections 39 to 44 (supplementary provisions) apply for the purposes of this section as they apply for the purposes of section 38 (employee benefit contributions: trades, professions and vocations).
- (7) Provision corresponding to that made by this section is made by—
- (a) sections 38 to 44 (in relation to trades, professions and vocations), and
  - (b) section 272 (in relation to property businesses).

#### *Business entertainment and gifts*

### **867 Business entertainment and gifts: non-trades and non-property businesses**

- (1) This section applies for the purpose of calculating profits or other income charged to income tax which arise from the carrying on of a business.
- (2) For this purpose “business” does not include—
  - (a) a trade, profession or vocation, or
  - (b) a property business,but see subsection (7).
- (3) The general rule is that no deduction is allowed in calculating the profits or other income for expenses incurred in providing entertainment or gifts in connection with the business.
- (4) A deduction for expenses which are incurred—

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

- (a) in paying sums to or on behalf of an employee of the person carrying on the business, or
  - (b) in putting sums at the disposal of an employee of that person,
- is prohibited by the general rule if (and only if) the sums are paid, or put at the employee's disposal, exclusively for meeting expenses incurred or to be incurred by the employee in providing the entertainment or gift.
- (5) The general rule is subject to—
- section 46 (business entertainment: exceptions), and
  - section 47 (business gifts: exceptions),
- which apply in relation to a business as they apply in relation to a trade (but as if the reference to a basis period were to a tax year).
- (6) For the purposes of this section and those two sections as so applied—
- (a) “employee”, in relation to a company, includes a director of the company and a person engaged in the management of the company,
  - (b) “entertainment” includes hospitality of any kind, and
  - (c) the expenses incurred in providing entertainment or a gift include expenses incurred in providing anything incidental to the provision of entertainment or a gift.
- (7) Provision corresponding to that made by this section is made by—
- (a) sections 45 to 47 (in relation to trades, professions and vocations), and
  - (b) section 272 (in relation to property businesses).

#### *Social security contributions*

### **868 Social security contributions: non-trades etc.**

- (1) This section applies for the purpose of calculating profits or other income charged to income tax.
- (2) For this purpose “profits or other income” does not include—
- (a) the profits of a trade, profession, or vocation,
  - (b) the profits of a property business, or
  - (c) employment income,
- but see subsection (6).
- (3) No deduction is allowed for any contribution paid by any person under—
- (a) Part 1 of the Social Security Contributions and Benefits Act 1992 (c. 4), or
  - (b) Part 1 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7).
- (4) But this prohibition does not apply to an employer's contribution.
- (5) For this purpose “an employer's contribution” means—
- (a) a secondary Class 1 contribution,
  - (b) a Class 1A contribution, or
  - (c) a Class 1B contribution,

---

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

---

within the meaning of Part 1 of the Social Security Contributions and Benefits Act 1992 (c. 4) or of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7).

- (6) Provision corresponding to that made by this section is made by—
- (a) section 53 (in relation to trades, professions and vocations),
  - (b) section 272 (in relation to property businesses), and
  - (c) section 360A of ITEPA 2003 (in relation to employment income).

*Penalties, interest and VAT surcharges*

**869 Penalties, interest and VAT surcharges: non-trades etc.**

- (1) This section applies for the purpose of calculating profits or other income charged to income tax.
- (2) For this purpose “profits or other income” does not include the profits of—
  - (a) a trade, profession, or vocation, or
  - (b) a property business,
 but see subsection (6).
- (3) No deduction is allowed for any penalty or interest mentioned in the first column of the following table.
- (4) This is the table—

<i>Penalty or interest</i>	<i>Description of tax, levy or duty</i>
Interest under any provision of Part 9 of TMA 1970	Income tax, capital gains tax and corporation tax
Interest required to be paid by regulations made under section 71 of FA 2004 (construction industry)	
Penalty under any of sections 60 to 70 of VATA 1994	Value added tax
Interest under section 74 [ <sup>F995</sup> or 85A] of VATA 1994	
Penalty under any of sections 8 to 11 of FA 1994	Excise duties
Penalty under any of paragraphs 12 to 19 of Schedule 7 to FA 1994	Insurance premium tax
[ <sup>F996</sup> Interest under section 60(8) of FA 1994 or paragraph 21 to Schedule 7 to FA 1994]	
Penalty under any provision of Part 5 of Schedule 5 to FA 1996	Landfill tax

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

[<sup>F997</sup>Interest under section 56(5) of, or paragraph 26 or 27 of Schedule 5 to, FA 1996]

Penalty under any provision of Schedule 6 to FA 2000                      Climate change levy

Interest under any of paragraphs 70, 81 to 85 [<sup>F998</sup>, 109 and 123(6)] of that Schedule

Penalty under any provision of Part 2 of FA 2001                      Aggregates levy

Interest under [<sup>F999</sup>section 42(6) of, or] any of paragraphs 5 to 9 of Schedule 5 to, paragraph 6 of Schedule 8 to and paragraph 5 of Schedule 10 [<sup>F1000</sup>to, FA 2001]

Penalty under section 25 or 26 of FA 2003                      Customs, export and import duties

Penalty under any provision of Part 4 of FA 2003                      Stamp duty land tax

Interest under any provision of that Part

[<sup>F1001</sup>Penalty under Schedule 24 to FA 2007                      Various taxes and excise duties]

[<sup>F1002</sup>Penalty under Schedule 41 to FA 2008                      Various taxes and excise duties]

(5) No deduction is allowed for any surcharge under section 59 of VATA 1994.

(6) Provision corresponding to that made by this section is made by—

- (a) section 54 (in relation to trades, professions and vocations), and
- (b) section 272 (in relation to property businesses).

#### Textual Amendments

**F995** Words in s. 869(4) table inserted (1.4.2009) by The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56), art. 1(2), **Sch. 1 para. 442(2)**

**F996** Words in s. 869(4) table substituted (1.4.2009) by The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56), art. 1(2), **Sch. 1 para. 442(3)**

**F997** Words in s. 869(4) table substituted (1.4.2009) by The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56), art. 1(2), **Sch. 1 para. 442(4)**

**F998** Words in s. 869(4) table inserted (1.4.2009) by The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56), art. 1(2), **Sch. 1 para. 442(5)**

**F999** Words in s. 869(4) table inserted (1.4.2009) by The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56), art. 1(2), **Sch. 1 para. 442(6)(a)**

**F1000** Words in s. 869(4) table substituted (1.4.2009) by The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56), art. 1(2), **Sch. 1 para. 442(6)(b)**

**F1001** Words in s. 869(4) table added (1.4.2009) by The Finance Act 2008, Schedule 40 (Appointed Day, Transitional Provisions and Consequential Amendments) Order 2009 (S.I. 2009/571), art. 1(1), **Sch. 1 para. 29**



*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

**F1002** Words in s. 869(4) table added (1.4.2010) by The Finance Act 2008 (Penalties for Errors and Failure to Notify etc) (Consequential Amendments) Order 2010 (S.I. 2010/530), art. 1, **Sch. para. 9**

### *Crime-related payments*

#### **870 Crime-related payments: non-trades and non-property businesses**

- (1) This section—
  - (a) applies for the purpose of calculating profits or other income charged to income tax, but
  - (b) does not apply for the purpose of calculating the profits of a trade, profession or vocation or of a property business (but see subsection (4)).
- (2) No deduction is allowed for expenses incurred—
  - (a) in making a payment if the making of the payment constitutes a criminal offence, or
  - (b) in making a payment outside the United Kingdom if the making of a corresponding payment in any part of the United Kingdom would constitute a criminal offence in that part.
- (3) No deduction is allowed for expenses incurred in making a payment induced by a demand which constitutes—
  - (a) the offence of blackmail under section 21 of the Theft Act 1968 (c. 60) (England and Wales),
  - (b) the offence of extortion (Scotland), or
  - (c) the offence of blackmail under section 20 of the Theft Act (Northern Ireland) 1969 (c. 16 (N.I.)) (Northern Ireland).
- (4) Provision corresponding to that made by this section is made by—
  - (a) section 55 (in relation to trades, professions and vocations), and
  - (b) section 272 (in relation to property businesses).

### *Apportionment of profits*

#### **871 Apportionment etc. of miscellaneous profits to tax year**

- (1) This section applies if—
  - (a) income is chargeable to income tax under or by virtue of any provision to which [F1003]section 1016 of ITA 2007] applies, and
  - (b) any period for which the accounts are drawn up (a “period of account”) does not coincide with a tax year.
- (2) For this purpose the reference to any provision to which [F1004]section 1016 of ITA 2007] applies is to be read as if [F1005]subsection (3)(a)] of that section were omitted (exclusion for relevant foreign income charged under this Act).
- (3) Any of the following steps may be taken if they are necessary in order to arrive at the profits or losses of the tax year—
  - (a) apportioning the profits or losses of a period of account to the parts of that period falling in different tax years, and

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (b) adding the profits or losses of a period of account (or part of a period) to profits or losses of other periods of account (or parts).
- (4) The steps must be taken by reference to the number of days in the periods concerned.
- (5) But the person to whom the profits or losses arise may use a different way of measuring the length of the periods concerned if—
  - (a) it is reasonable to do so, and
  - (b) the way of measuring the length of periods is used consistently for the purpose of charging to income tax the income in question.

#### Textual Amendments

**F1003** Words in s. 871(1)(a) substituted (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by Income Tax Act 2007 (c. 3), ss. 1027, 1034, **Sch. 1 para. 581(a)** (with transitional provisions and savings in Sch. 2)

**F1004** Words in s. 871(2) substituted (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by Income Tax Act 2007 (c. 3), ss. 1027, 1034, **Sch. 1 para. 581(b)(i)** (with transitional provisions and savings in Sch. 2)

**F1005** Words in s. 871(2) substituted (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by Income Tax Act 2007 (c. 3), ss. 1027, 1034, **Sch. 1 para. 581(b)(ii)** (with transitional provisions and savings in Sch. 2)

### Calculation of losses

#### 872 Losses calculated on same basis as miscellaneous income

- (1) The same rules apply for income tax purposes in calculating miscellaneous losses as apply in calculating corresponding miscellaneous income.
- (2) This is subject to any express provision to the contrary.
- (3) In this section—
  - (a) “miscellaneous income” means profits or other income charged to income tax under or by virtue of a provision to which [<sup>F1006</sup>section 1016 of ITA 2007] applies, and
  - (b) “miscellaneous losses” means losses arising from a transaction which is of such a nature that, if profits or other income had arisen from it, the income would have been charged to income tax under or by virtue of such a provision.
- (4) Provision corresponding to that made by this section is made by—
  - (a) section 26 (in relation to trades, professions and vocations), and
  - (b) section 272 (in relation to property businesses).

#### Textual Amendments

**F1006** Words in s. 872(3)(a) substituted (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by Income Tax Act 2007 (c. 3), ss. 1027, 1034, **Sch. 1 para. 582** (with transitional provisions and savings in Sch. 2)

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

## CHAPTER 3

### SUPPLEMENTARY AND GENERAL PROVISIONS

#### *Orders and regulations*

#### **873 Orders and regulations made by Treasury or <sup>F1007</sup>Commissioners]**

- (1) Any power of the Treasury or <sup>F1008</sup>the Commissioners for Her Majesty's Revenue and Customs] to make any order or regulations under this Act is exercisable by statutory instrument.
- (2) Any statutory instrument containing any order or regulations made by the Treasury or <sup>F1008</sup>the Commissioners for Her Majesty's Revenue and Customs] under this Act is subject to annulment in pursuance of a resolution of the House of Commons.
- (3) Subsection (2) does not apply in relation to any order or regulations made under—
  - (a) section 86 (meaning of “urban regeneration company”),
  - (b) section 724 (purchased life annuity payments),
  - (c) section 774 (income from securities issued by designated international organisations), or
  - (d) section 883(5) (transitional or saving provision).
- <sup>F1009</sup>(4) Further, subsection (2) does not apply if any other Parliamentary procedure is expressly provided to apply in relation to the order or regulations.]

#### **Textual Amendments**

**F1007** Word in s. 873 substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), ss. 50, 53(1), [Sch. 4 para. 132\(3\)\(h\)](#); S.I. 2005/1126, [art. 2\(2\)\(h\)](#)

**F1008** Words in s. 873(1)(2) substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), ss. 50, 53(1), [Sch. 4 para. 132\(2\)](#); S.I. 2005/1126, [art. 2\(2\)\(h\)](#)

**F1009** S. 873(4) inserted (with effect in accordance with Sch. 19 para. 14 of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 19 para. 8](#)

#### *Interpretation*

#### **874 Activities in UK sector of continental shelf**

- (1) Any profits—
  - (a) from exploration or exploitation activities carried on in the UK sector of the continental shelf, or
  - (b) from exploration or exploitation rights,are treated for income tax purposes as profits from activities or property in the United Kingdom.
- (2) In this section—

“exploration or exploitation activities” means activities carried on in connection with the exploration or exploitation of so much of the seabed and subsoil and their natural resources as is situated in the United Kingdom or the UK sector of the continental shelf,

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

“exploration or exploitation rights” means rights to assets to be produced by exploration or exploitation activities or interests in or to the benefit of such assets, and

“the UK sector of the continental shelf” means the areas designated by Order in Council under section 1(7) of the Continental Shelf Act 1964 (c. 29).

**875 Meaning of “caravan”**

- (1) In this Act “caravan” means—
  - (a) a structure designed or adapted for human habitation which is capable of being moved by being towed or being transported on a motor vehicle or trailer, or
  - (b) a motor vehicle designed or adapted for human habitation,
 but does not include railway rolling stock which is on rails forming part of a railway system or any tent.
- (2) A structure composed of two sections—
  - (a) separately constructed, and
  - (b) designed to be assembled on a site by means of bolts, clamps or other devices,
 is not prevented from being a caravan just because it cannot, when assembled, be lawfully moved on a highway (or, in Scotland or Northern Ireland, road) by being towed or being transported on a motor vehicle or trailer.

**876 Meaning of “farming” and related expressions**

F1010 .....

**Textual Amendments**

**F1010** S. 876 repealed (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), ss. 1027, 1031, 1034, Sch. 1 para. 583, **Sch. 3 Pt. 1** (with transitional provisions and savings in Sch. 2)

**877 Meaning of grossing up**

F1011 .....

**Textual Amendments**

**F1011** S. 877 repealed (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), ss. 1027, 1031, 1034, Sch. 1 para. 584, **Sch. 3 Pt. 1** (with transitional provisions and savings in Sch. 2)

**878 Other definitions**

- (1) In this Act, unless otherwise indicated (whether expressly or by implication)—

F1012 .....

F1013 .....

“houseboat” means a boat or similar structure designed or adapted for use as a place of human habitation, [<sup>F1014</sup>and]

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

<sup>F1015</sup>“income” includes amounts treated as income (whether expressly or by implication),

<sup>F1012</sup> .....

“non-UK resident” means not resident in the United Kingdom (and references to a non-UK resident or a non-UK resident person are to a person who is not resident there),

“normal self-assessment filing date”, in relation to a tax year, means the 31st January following the tax year,

“personal representatives”, in relation to a person who has died, means—

- (a) in the United Kingdom, persons responsible for administering the estate of the deceased, and
- (b) in a territory outside the United Kingdom, those persons having functions under its law equivalent to those of administering the estate of the deceased,

“tax year”, in relation to income tax, means a year for which any Act provides for income tax to be charged,

“the tax year 2005-06” means the tax year beginning on 6th April 2005 (and any corresponding expression in which two years are similarly mentioned is to be read in the same way), and

“UK resident” means resident in the United Kingdom (and references to a UK resident or a UK resident person are to a person who is resident there).

<sup>F1016</sup>(2) .....

- (3) In this Act any reference to a claim or election is to a claim or election in writing or in any form authorised (in relation to the case in question) by directions under [<sup>F1017</sup>section 43E(1) of TMA 1970].
- (4) For further information about claims and elections, see TMA 1970 [<sup>F1018</sup>more generally (but in] particular, section 42(2), (10) and (11) and Schedule 1A).
- (5) [<sup>F1019</sup>Section 993 of ITA 2007] (how to tell whether persons are connected) applies for the purposes of this Act unless otherwise indicated (whether expressly or by implication).
- (6) [<sup>F1020</sup>Section 995 of ITA 2007 (meaning of “control”)] applies for the purposes of this Act unless otherwise indicated (whether expressly or by implication).

### Textual Amendments

**F1012S.** 878(1): definitions of "the Board of Inland Revenue" and "the Inland Revenue" repealed (18.4.2005) by Commissioners for Revenue and Customs Act 2005 (c. 11), ss. 50, 52, 53(1), Sch. 4 para. 134(1), Sch. 5; S.I. 2005/1126, art. 2(2)(h)(i)

**F1013S.** 878(1): definition of 'charity' repealed (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by Income Tax Act 2007 (c. 3), ss. 1027, 1031, 1034, Sch. 1 para. 585(2)(a), Sch. 3 Pt. 1 (with transitional provisions and savings in Sch. 2)

**F1014**Word in s. 878(1) inserted (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by Income Tax Act 2007 (c. 3), ss. 1027, 1034, Sch. 1 para. 585(2)(b) (with transitional provisions and savings in Sch. 2)

**F1015**By Income Tax Act 2007 (c. 3), ss. 1027, 1031, 1034, Sch. 1 para. 585(2)(c), Sch. 3 Pt. 1 it is provided that the words in s. 878(1) after the definition of 'income' are repealed (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) (with transitional provisions and savings in Sch. 2)

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

**F1016S.** 878(2) omitted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by virtue of Finance Act 2008 (c. 9), **Sch. 7 para. 71**

**F1017**Words in s. 878(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. 7 para. 90(2)** (with Sch. 9 paras. 1-9, 22)

**F1018**Words in s. 878(4) 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. 7 para. 90(3)** (with Sch. 9 paras. 1-9, 22)

**F1019**Words in s. 878(5) substituted (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by Income Tax Act 2007 (c. 3), ss. 1027, 1034, **Sch. 1 para. 585(3)** (with transitional provisions and savings in Sch. 2)

**F1020**Words in s. 878(6) substituted (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by Income Tax Act 2007 (c. 3), ss. 1027, 1034, **Sch. 1 para. 585(4)** (with transitional provisions and savings in Sch. 2)

**879 Interpretation: Scotland**

(1) In the application of this Act to Scotland—

**F1021** .....

“mortgage” means—

- (a) a standard security, or
- (b) a heritable security, as defined in the Conveyancing (Scotland) Act 1924 (c. 27), but including a security constituted by ex facie absolute disposition or assignation, **F1021** . . .

**F1021** .....

(2) **F1022** .....

(3) In the application of section 755 (interest on foreign currency securities etc. owned by non-UK residents) to Scotland, “Act” includes an Act of the Scottish Parliament.

(4) In the application of sections 769 (housing grants) and 882 (consequential amendments) and Part 1 of Schedule 2 (transitionals and savings: general provisions) to Scotland, “enactment” includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament.

(5) The express provision made by subsection (4) does not affect the construction of “enactment” in the application of section 631 (retained and accumulated income) to Scotland.

**Textual Amendments**

**F1021S.** 879(1): definitions of 'assignment' and 'surrender' and word preceding definition of 'surrender' repealed (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by Income Tax Act 2007 (c. 3), ss. 1027, 1031, 1034, Sch. 1 para. 586(a), **Sch. 3 Pt. 1** (with transitional provisions and savings in Sch. 2)

**F1022S.** 879(2) repealed (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by Income Tax Act 2007 (c. 3), ss. 1027, 1031, 1034, Sch. 1 para. 586(b), **Sch. 3 Pt. 1** (with transitional provisions and savings in Sch. 2)

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

## 880 Interpretation: Northern Ireland

- (1) In the application of section 755 (interest on foreign currency securities etc. owned by non-UK residents) to Northern Ireland, “Act” includes any Act, Order in Council or Measure constituting Northern Ireland legislation.
- (2) In the application of section 769 (housing grants) and 882 (consequential amendments) and Part 1 of Schedule 2 (transitionals and savings: general provisions) to Northern Ireland, “enactment” includes an enactment comprised in, or in an instrument made under, Northern Ireland legislation.
- (3) The express provision made by subsection (2) does not affect the construction of “enactment” in the application of section 631 (retained and accumulated income) to Northern Ireland.

*General and final*

## F1023 881 Disapplication of corporation tax: section 9 of ICTA

.....

### Textual Amendments

**F1023** S. 881 repealed (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), Sch. 1 para. 644, **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

## 882 Consequential amendments

- (1) Schedule 1 (which contains consequential amendments) has effect.
- (2) The Treasury may by order make such modifications of any enactment or provision made under an enactment as the Treasury consider appropriate in consequence of this Act.
- (3) In subsection (2) “modifications” includes amendments or repeals.
- (4) An order under subsection (2)—
  - (a) must not change the effect of the law as it was immediately before 6th April 2005, and
  - (b) may include such transitional or saving provision as the Treasury consider appropriate.
- (5) Subsection (4)(a) does not apply so far as an order contains provision made in consequence of a change already made by this Act in the effect of the law.

### Commencement Information

**II** S. 882 wholly in force at 6.4.2005; s. 882(2)-(5) in force at Royal Assent and s. 882(1) in force at 6.4.2005 see s. 883

*Status: Point in time view as at 06/05/2014.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

### 883 Commencement and transitional provisions etc.

- (1) This Act comes into force on 6th April 2005 and has effect—
  - (a) for income tax purposes, for the tax year 2005-06 and subsequent tax years, and
  - (b) for corporation tax purposes, for accounting periods ending after 5th April 2005.
- (2) Subsection (1) is subject to subsections (3) to (5) (including Schedule 2).
- (3) Subsection (1) does not apply to the following provisions of this Act (which therefore come into force on the passing of this Act)—
  - (a) section 873 (orders and regulations made by Treasury or <sup>F1024</sup>Commissioners)],
  - (b) sections 875 to 881 (certain interpretation and general provisions),
  - (c) section 882(2) to (5) (power to make consequential amendments),
  - (d) this section other than subsection (4) below,
  - (e) section 885 and Schedule 4 (abbreviations and general index),
  - (f) section 886 (short title), and
  - (g) paragraphs 78 and 148(5) of Schedule 2 (powers relating to open-ended investment companies and periodical payments of personal injury damages etc.) and subsection (4) below so far as it applies for the purposes of those provisions.
- (4) Schedule 2 (which contains transitional provisions and savings etc.) has effect.
- (5) The Treasury may by order make such transitional or saving provision as the Treasury consider appropriate in connection with the coming into force of this Act.

#### Textual Amendments

**F1024** Word in s. 883(3) substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005](#) (c. 11), ss. 50, 53(1), [Sch. 4 para. 132\(3\)\(i\)](#); S.I. 2005/1126, [art. 2\(2\)\(h\)](#)

#### Commencement Information

**I2** [S. 883](#) wholly in force at 6.4.2005; [s. 883\(1\)-\(3\)\(5\)](#) in force at Royal Assent and [s. 883\(4\)](#) in force for certain purposes at Royal Assent and [s. 883\(4\)](#) in force at 6.4.2005 in so far as not already in force see [s. 883](#)

### 884 Repeals and revocations

Schedule 3 (which contains repeals and revocations of enactments including certain spent enactments) has effect.

### 885 Abbreviations and general index in Schedule 4

- (1) Schedule 4 (which contains abbreviations and defined expressions that apply for the purposes of this Act) has effect.
- (2) Part 1 of that Schedule gives the meaning of the abbreviated references to Acts used in this Act.



---

**Status:** Point in time view as at 06/05/2014.

**Changes to legislation:** There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

---

- (3) Part 2 of that Schedule lists the places where expressions used in this Act are defined or otherwise explained—
- (a) in this Act for the purposes of this Act or for purposes including this Act,
  - (b) in this Act for the purposes of a Part or Chapter of this Act, or
  - (c) in [<sup>F1025</sup>another Act] for the purposes of this Act.

---

**Textual Amendments**

**F1025** Words in s. 885(3)(c) substituted (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), ss. 1027, 1034, [Sch. 1 para. 587](#) (with transitional provisions and savings in [Sch. 2](#))

**886 Short title**

This Act may be cited as the Income Tax (Trading and Other Income) Act 2005.

**Status:**

Point in time view as at 06/05/2014.

**Changes to legislation:**

There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations.