



Income Tax (Trading and Other Income) Act 2005

2005 CHAPTER 5

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).

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—

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- (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—
- (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

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- (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—
- (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),

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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,
- 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).

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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 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
Interest under paragraph 21 of that Schedule	
Penalty under any provision of Part 5 of Schedule 5 to FA 1996	Landfill tax
Interest under paragraph 26 or 27 of that Schedule	
Penalty under any provision of Schedule 6 to FA 2000	Climate change levy
Interest under any of paragraphs 70, 81 to 85 and 109 of that Schedule	
Penalty under any provision of Part 2 of FA 2001	Aggregates levy
Interest under any of paragraphs 5 to 9 of Schedule 5 to, paragraph 6 of Schedule 8 to and paragraph 5 of Schedule 10 to FA 2001	

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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

- (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).

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 section 836B of ICTA applies, and

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- (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 section 836B of ICTA applies is to be read as if subsection (4)(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
 - (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.

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 section 836B of ICTA 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).

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CHAPTER 3

SUPPLEMENTARY AND GENERAL PROVISIONS

Orders and regulations

873 Orders and regulations made by Treasury or ^{F1}Commissioners]

- (1) Any power of the Treasury or ^{F2}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 ^{F2}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).

Textual Amendments

F1 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)**

F2 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)**

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,

“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

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“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

- (1) In this Act “farming” means the occupation of land wholly or mainly for the purposes of husbandry, but does not include market gardening (see subsection (5)).
- (2) Husbandry includes (for example)—
 - (a) hop growing, and
 - (b) the breeding and rearing of horses and the grazing of horses in connection with those activities.
- (3) For the purposes of this Act the cultivation of short rotation coppice is regarded as farming and not as forestry.
- (4) In this Act “woodlands” does not include land on which short rotation coppice is cultivated.
- (5) In this Act “market gardening” means the occupation of land as a garden or nursery for the purpose of growing produce for sale.
- (6) For the purposes of this section “short rotation coppice” means a perennial crop of tree species planted at high density, the stems of which are harvested above ground level at intervals of less than 10 years.

877 Meaning of grossing up

- (1) In this Act references to grossing up by reference to a rate of tax are to calculating the amount (“the gross amount”) which after deduction of income tax at that rate would equal the amount to be grossed up (“the net amount”).
- (2) The gross amount is the sum of the net amount and the tax deducted.
- (3) The gross amount may also be expressed as—

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$$GA = NA + \left(NA \times \frac{R}{100 - R} \right)$$

where—

GA is the gross amount,

NA is the net amount, and

R is the percentage rate of tax by reference to which the net amount is to be grossed up.

878 Other definitions

(1) In this Act, unless otherwise indicated (whether expressly or by implication)—

^{F3}
 “charity” means a body of persons or trust established for charitable purposes only,

“houseboat” means a boat or similar structure designed or adapted for use as a place of human habitation,

“income” includes amounts treated as income (whether expressly or by implication),

^{F3}

“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).

(2) For the purposes of this Act, the remittance basis applies to a person for a tax year for which the person makes a claim under section 831 (claims for relevant foreign income to be charged on the remittance basis).

(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 section 118 of FA 1998.

(4) For further information about claims and elections, see TMA 1970 (in particular, section 42(2), (10) and (11) and Schedule 1A).

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- (5) Section 839 of ICTA (how to tell whether persons are connected) applies for the purposes of this Act unless otherwise indicated (whether expressly or by implication).
- (6) Section 840 of ICTA (meaning of control in relation to a body corporate) applies for the purposes of this Act unless otherwise indicated (whether expressly or by implication).

Textual Amendments

- F3** S. 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\(2\)\(h\)\(i\)](#)

879 Interpretation: Scotland

- (1) In the application of this Act to Scotland—
 - “assignment” means an assignation,
 - “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, and
 - “surrender” includes renunciation.
- (2) In the application of this Act to Scotland, any reference to property or rights being held on trust or on trusts is a reference to the property or rights being held in trust.
- (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.

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.

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General and final

881 Disapplication of corporation tax: section 9 of ICTA

Section 9 of ICTA (computation of income for corporation tax purposes: application of income tax principles) does not operate on the provisions of this Act so as to convert them into provisions of the Corporation Tax Acts.

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](#)

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 [^{F4}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)

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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

- F4** 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.
- (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 ICTA or ITEPA 2003 for the purposes of this Act.

886 Short title

This Act may be cited as the Income Tax (Trading and Other Income) Act 2005.

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