



Income Tax (Trading and Other Income) Act 2005

2005 CHAPTER 5

PART 2 **U.K.**

TRADING INCOME

CHAPTER 8 **U.K.**

TRADE PROFITS: HERD BASIS RULES

Introduction

111 Election for application of herd basis rules **U.K.**

- (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.

Changes to legislation: There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Chapter 8. (See end of Document for details)

[^{F1}111A Herd basis rules not to apply where cash basis used **U.K.**

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

Textual Amendments

F1 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. **U.K.**

- (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 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 **U.K.**

- (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—

Changes to legislation: There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Chapter 8. (See end of Document for details)

- (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.

The herd basis rules

114 Initial cost of herd and value of herd U.K.

- (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 U.K.

- (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 U.K.

- (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”).

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- (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 U.K.

- (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,
 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 U.K.

- (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.

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- (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 U.K.

- (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
 - (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 U.K.

- (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—

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- (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—
- (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 **U.K.**

- (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 **U.K.**

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

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- (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 **U.K.**

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

- (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.

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- (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
 - (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 **U.K.**

- (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 **U.K.**

- (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,

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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 **U.K.**

- (1) This section applies if—
- (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.

Changes to legislation: There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Chapter 8. (See end of Document for details)

Supplementary

^{F2}128 Information if election made **U.K.**

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Textual Amendments

F2 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 **U.K.**

- (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.

Changes to legislation:

There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Chapter 8.