

CORPORATION TAX ACT 2009

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3: Trading income

Overview

Chapter 15: Post-cessation receipts

Overview

709. This Chapter charges receipts which are derived from a trade but are not received until after the trade has ceased and have not been brought into the calculation of profits.
710. The Chapter rewrites sections 103 and 104 of ICTA without distinguishing between trade profits calculated on an earnings basis and trade profits calculated on a “conventional basis” (see section 110(4) of ICTA). One consequence of this approach is that there is no need to rewrite section 104(3) or section 110(3) to (5) of ICTA.

Section 188: Charge to tax on post-cessation receipts

711. This section applies the corporation tax charge on income to post-cessation receipts. It is based on sections 103 and 104 of ICTA. This application of the charge is separate from that on the profits of a trade (see section 35 of this Act). The corresponding rule for income tax is in section 242 of ITTOIA.

Section 189: Extent of charge to tax

712. This section sets out the charge to tax. It is based on sections 103 and 104 of ICTA, which create a charge under Schedule D Case VI on post-cessation receipts. This Act deals with the income where it logically belongs. In this case the income is trading income. The corresponding rule for income tax is in section 243 of ITTOIA.
713. The charge in the source legislation under Schedule D Case VI has consequences for loss relief. This Act preserves the position for loss relief by amending section 396 of ICTA and listing this Chapter in section 834A of ICTA (see Schedule 1 to this Act).
714. *Subsection (3)* deals with a company which has become non-UK resident after the trade has ceased. A trade carried on at least partly in the United Kingdom may include income that arises abroad. When the company was resident in the United Kingdom all the profits of the trade would have been within the charge under Part 2 of this Act (see section 5). This subsection removes the charge on a non-UK resident company if the receipt arises abroad.

Section 190: Basic meaning of “post-cessation receipt”

715. This section sets out the basic meaning of “post-cessation receipt”. It is based on sections 103, 104 and 110 of ICTA. The corresponding rule for income tax is in section 246 of ITTOIA.
716. *Subsection (2)* deals with the unusual case of a company receiving a “sum” which arises from the carrying on of a trade by a person liable to income tax.
717. Paragraph (a) deals with a non-UK resident company liable to income tax. If a company becomes liable to corporation tax it is treated as ceasing to carry on the income tax trade. A post-cessation receipt from that trade may be charged to corporation tax.
718. Paragraph (b) applies where the trade was carried on in partnership. If a partner leaves a firm and a company receives a sum arising from the carrying on of the trade by that partner, the sum may be a post-cessation receipt.

Section 191: Other rules about what counts as post-cessation receipts

719. This section is new. It contains signposts to:
- the seven sections in this Act that treat other sums as post-cessation receipts; and
 - the two sections in this Act that exclude certain sums from the charge on post-cessation receipts.
720. The corresponding rule for income tax is in section 247 of ITTOIA.

Section 192: Debts paid after cessation

721. This section sets out what happens when a trader is allowed a deduction for a bad or doubtful debt owed to the trade but then recovers the debt after the trade has ceased. It is based on section 103 of ICTA. The corresponding rule for income tax is in section 248 of ITTOIA.
722. If a deduction for the debt has been given during the course of the trade section 103(5) of ICTA makes it clear that the recovery has not been “brought into account” in calculating the trade profits. The result is that the recovery is within the charge in section 103 of ICTA.
723. *Subsections (1) and (2)* treat the recovery of the debt as a post-cessation receipt. The references to section 35 of ITTOIA and income tax cater for the possibility that a deduction for a bad debt is allowed to a person liable to income tax but the debt is paid to a person liable to corporation tax.

Section 193: Debts released after cessation

724. This section sets out the rules that apply when a debt owed by the trader is released after the trade has ceased. It is based on section 103 of ICTA. The corresponding rule for income tax is in section 249 of ITTOIA.
725. *Subsection (1)* sets out the four conditions to be met if the section is to apply. It is the equivalent of section 94 of this Act which applies in the case of a continuing trade. The reference to income tax caters for the possibility that a deduction for an expense is allowed to a person liable to income tax but a person liable to corporation tax takes over the related trade debt and is released from it.

Section 194: Transfer of rights if transferee does not carry on trade

726. This section deals with the position of the transferor if the right to a post-cessation receipt is transferred for value to a non-trading transferee. It is based on section 106 of ICTA. The corresponding rule for income tax is in section 251 of ITTOIA.

727. The transferor is charged to tax on the amount received for the transfer if the transfer is at arm's length. Otherwise the transferor is charged to tax on the arm's length value of the transfer. There is no later charge to tax on the transferee when the post-cessation receipt is received.
728. [Section 95](#) of this Act sets out the position if the transfer is to a trading transferee.

Section 195: Transfer of trading stock

729. This section excludes from the charge on post-cessation receipts sums arising from the transfer of stock. It is based on sections 103, 104 and 110 of ICTA. The corresponding rule for income tax is in section 252 of ITTOIA.
730. *Subsection (1)* makes explicit the general rule that there is no tax charge on a post-cessation receipt arising from trading stock.
731. The policy is that stock should be valued at cessation in accordance with the rules in Chapter 11 of this Part. Once that has been done there is no need to charge tax on any sums arising from the disposal or realisation of stock.

Section 196: Allowable deductions

732. This section is the first of two that set out the rules for allowing deductions from sums charged as post-cessation receipts. It is based on section 105 of ICTA. The corresponding rule for income tax is in section 254 of ITTOIA.
733. *Subsection (3)* ensures that a deduction is not allowed for any expenses for which relief has already been allowed (for income tax) under section 96 of ITA or under any other provision.

Section 197: Further rules about allowable deductions

734. This section is the second of two that set out the rules for allowing deductions from sums charged as post-cessation receipts. It is based on section 105 of ICTA. The corresponding rule for income tax is in section 255 of ITTOIA.
735. *Subsection (2)* ensures that any loss unused at the date of cessation is set off against post-cessation receipts in the same order as it would have been set off against profits under section 393 of ICTA, that is, against an earlier accounting period before a later accounting period.
736. The references to capital allowances in section 105(1)(b) and (3) of ICTA are no longer needed because any capital allowance is allowed as a trading expense.

Section 198: Election to carry back

737. This section allows a company to elect to have a post-cessation receipt taxed as though it had been received in the accounting period in which the company ceased to carry on the trade. It is based on section 108 of ICTA, although that section was repealed by ITTOIA. The corresponding rule for income tax is in section 257 of ITTOIA.
738. See *Change 42* in Annex 1.
739. *Subsection (1)* requires that the post-cessation receipt is received (broadly) within six years after the company ceases to carry on the trade. This corresponds to the limit in section 108 of ICTA (which was expressed in terms of years of assessment).
740. *Subsection (3)* gives a two year time limit for the election. This was the original time limit in section 108 of ICTA before it was amended for (income tax) Self Assessment.

Section 199: Deductions already made are not displaced

- 741. This section is a rule about losses allowed against a post-cessation receipts carried back to the period of cessation under section 198. It is new.
- 742. The rule in this section is broadly the same as the income tax rule in paragraph 5(5) of Schedule 1B to TMA. If relief has already been given under section 196, for a period later than the period of cessation, this section makes clear that the relief is not to be recalculated as a result of the election under section 198.
- 743. The section refers only to a “loss” for which a deduction has already been made. Any “expense or debit” already allowed under section 196 would in any event not be available for the accounting period in which the cessation occurred.
- 744. *Subsection (3)* makes clear that the rule about “displacing” a deduction for a loss does not apply to a deduction that has been made from the post-cessation receipt that is to be carried back.
- 745. See *Change 42* in Annex 1.

Section 200: Election given effect in accounting period in which receipt is received

- 746. This section sets out the procedure for dealing with an election under section 198. It is new.
- 747. The procedure for giving the relief is broadly the same as that for income tax. This is an election to which paragraph 58 of Schedule 18 to FA 1998 applies. This section makes clear that the relief is in terms of tax and corresponds to the income tax rule in paragraph 5 of Schedule 1B to TMA.
- 748. See *Change 42* in Annex 1.