

# Income Tax (Trading and Other Income) Bill

## EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by the Tax Law Rewrite Project at the Inland Revenue, are published separately as Bill 9 – EN.

## TABLES

A Table of Origins and a Table of Destinations for the Bill are available in a separate volume. The Tables have no official status.

## EUROPEAN CONVENTION ON HUMAN RIGHTS

Mr Chancellor of the Exchequer has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of the Income Tax (Trading and Other Income) Bill are compatible with the Convention rights.

# Income Tax (Trading and Other Income) Bill (Volume I)

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The Bill is divided into three volumes. Volume I contains Clauses 1 to 364 to the Bill. Volume II contains Clauses 365 to 886 to the Bill. Volume III contains the Schedules to the Bill.

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A  
**B I L L**

TO

Restate, with minor changes, certain enactments relating to income tax on trading income, property income, savings and investment income and certain other income; and for connected purposes.

**B**E IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

**PART 1**

OVERVIEW

**1 Overview of Act**

- |  |    |
|--|----|
| (1) This Act imposes charges to income tax under—  | 5  |
| (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) Those charges to tax have effect for the purposes of section 1(1) of ICTA (the general charge to income tax).  | 10 |
| (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.   | 15 |
| (5) This Act also contains—  |    |
| (a) provision about rent-a-room relief and foster-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).  | 20 |

- (6) For abbreviations and defined expressions used in this Act, see section 885 and Schedule 4.

## 2 Overview of priority rules

- (1) This Act contains some rules establishing an order of priority in respect of certain amounts which would otherwise – 5
- (a) fall within a charge to income tax under two or more Chapters or Parts of this Act, or
  - (b) fall within a charge to income tax under a Chapter or Part of this Act and ITEPA 2003.
- (2) See, in particular – 10
- 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), 15
  - 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. 20
- (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

25

#### INTRODUCTION

## 3 Overview of Part 2

- (1) This Part imposes charges to income tax under –
- (a) Chapter 2 (the profits of a trade, profession or vocation which meet the territorial conditions mentioned in section 6), 30
  - (b) Chapter 17 (amounts treated as adjustment income under section 228), and
  - (c) Chapter 18 (post-cessation receipts that are chargeable under this Part).
- (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). 35
- (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. 40

- (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 5
  - (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), 10
- is dealt with under the relevant Part of ITEPA 2003.

### **CHAPTER 2**

#### **INCOME TAXED AS TRADE PROFITS**

##### *Charge to tax on trade profits* 15

#### **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. 20
- (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. 25
- (3) This section applies to professions and vocations as it applies to trades.

#### **7 Income charged**

- (1) Tax is charged under this Chapter on the full amount of the profits of the tax year. 30
- (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”), 35  
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. 5

### *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). 10
- (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). 15

## 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 – 20
  - (a) on a commercial basis, and
  - (b) with a view to the realisation of profits.
- (3) This section does not apply – 25
  - (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).

## 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 – 30
  - (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). 35

## 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 Chapter 1 of Part 10 of ICTA (loss relief) as losses of a trade carried on in the United Kingdom. 5
- (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, 10
  - (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 15
  - (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. 20

### 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
  - (b) performs a relevant activity in the United Kingdom in the tax year. 25
- (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. 30
- (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 35
  - (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, 40
- 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). 5
- (8) In this section and section 14—
- “payment” means a payment from which income tax is to be deducted under section 555(2) of ICTA, 10
  - “prescribed” means prescribed by regulations,
  - “regulations” means regulations made by the Treasury,
  - “relevant activity” means an activity of a prescribed description, and
  - “transfer” means a transfer in respect of which income tax is to be accounted for under section 555(3) of ICTA, 15
- and a payment or transfer is connected with a relevant activity if it has a connection of the prescribed kind with that activity.

#### 14 Visiting performers: supplementary

- (1) Regulations may provide—
- (a) 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, 20
  - (b) 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). 25
- (2) Regulations may provide—
- (a) for the apportionment of profits between different trades, professions or vocations of the performer,
  - (b) for the apportionment between different tax years of the profits arising from relevant activities of the performer, 30
  - (c) 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,
  - (d) 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. 35
- (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— 40
- (a) make provision generally for giving effect to section 13, and
  - (b) make different provision for different cases or descriptions of cases.

#### 15 Divers and diving supervisors

- (1) This section applies if—

- (a) 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),
  - (b) the duties consist wholly or mainly of seabed diving activities, and
  - (c) any employment income from the employment would otherwise be chargeable to tax under Part 2 of ITEPA 2003. 5
- (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.
- (3) For the purposes of this section the following are seabed diving activities – 10
- (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. 15
- (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. 20
- (3) “Oil extraction activities” and “oil rights” have the meaning given by section 502(1) of ICTA.

### *Starting and ceasing to trade*

- ## 17 Effect of becoming or ceasing to be a UK resident 25
- (1) This section applies if –
- (a) an individual carries on a trade wholly or partly outside the United Kingdom otherwise than in partnership, and
  - (b) the individual becomes or ceases to be UK resident.
- (2) The individual is treated for income tax purposes – 30
- (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 set off under section 385 of ICTA against profits arising after the change. 35
- (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).

**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 5
  - (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 – 10
- (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 15
  - (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. 20
- (3) Any apportionment of receipts or expenses that is necessary because –
- (a) the receipts or expenses do not relate only to the premises, or
  - (b) the above conditions are met only in relation to part of the premises, 25
- 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 30
  - (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. 35
- (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 – 40
- “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. 5

## 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)), 10
  - (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. 15
- (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— 20
- (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.
- (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. 25
- (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). 30
- (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— 35
- (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. 40
- (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 would otherwise be brought into account in calculating the profits charged under that Chapter,
- the trader may instead bring both the rent and expenses into account in calculating the profits of the trade. 5
- (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 10
- (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 — 15
- (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 — 20
- (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.
- (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 — 25
- (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.

*Rent-a-room and foster-care relief*

- 23 Rent-a-room and foster-care relief** 30
- (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). 35
- (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 (foster-care relief).
- (4) That Chapter provides relief on income from the provision by the individual of foster care (see, in particular, sections 813, 816, 822 and 823).

**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. 5

**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— 10
  - (a) require a person to comply with the requirements of the Companies Act 1985 (c. 6) or the Companies (Northern Ireland) Order 1986 (S.I. 1986/1032 (N.I. 6)) except as to the basis of calculation, or
  - (b) impose any requirements as to audit or disclosure.
- (3) This section is subject to section 160 (barristers and advocates in early years of practice). 15
- (4) This section does not affect provisions of the Income Tax Acts relating to the calculation of the profits of Lloyd's underwriters.

**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. 20
- (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. 25
- (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— 30

- (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 – 5
  - (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). 10
- (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 15**

- (1) Any relevant permissive rule in this Part –
  - (a) has priority over any relevant prohibitive rule in this Part, but
  - (b) is subject to sections 48 (car or motor cycle hire) and 55 (crime-related payments).
- (2) In this section “any relevant permissive rule in this Part” means any provision of – 20
  - (a) Chapter 5 (apart from sections 60 to 67),
  - (b) Chapter 11, or
  - (c) Chapter 13,
 which allows a deduction in calculating the profits of a trade. 25
- (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 48 and 55) which might otherwise be read as –
  - (a) prohibiting the deduction, or
  - (b) restricting the amount of the deduction. 30

**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. 35

*Capital expenditure***33 Capital expenditure**

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

*Wholly and exclusively and losses rules* 5

**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. 10
- (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** 15

- (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. 20
- (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* 25

**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 30
  - (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. 35
- (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 – 5
- (a) particular employments, or
  - (b) employments generally.
- (3) If the profits of the trade are calculated before the end of the 9 month period mentioned in section 36(2) – 10
- (a) 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
  - (b) 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. 15
- (4) For the purposes of this section and section 36 remuneration is paid when it – 20
- (a) 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
  - (b) 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. 25

*Employee benefit contributions***38 Restriction of deductions**

- (1) This section applies if, in calculating the profits of a person's trade of a period – 30
- (a) the profits of the trade of the period are required to be calculated for income tax 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 (4)). 35
- (2) 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. 40
- (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. 5
- (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, 10
- (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). 15
- (5) See also –
- section 39 (making of “employee benefit contributions”),
- section 40 (provision of qualifying benefits), 20
- 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).
- 39 Making of “employee benefit contributions” 25**
- (1) For the purposes of section 38 the employer makes an “employee benefit contribution” if –
- (a) the employer pays money or transfers an asset to another person (“the third party”), and
- (b) the third party is entitled or required, under the terms of an employee benefit scheme, to hold or use the money or asset for or in connection with the provision of benefits to, or in respect of, present or former employees of the employer. 30
- (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 employees of the employer. 35
- 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, 40
- 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. 5
- (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. 10
- (6) None of the conditions is met if the payment or transfer is by way of loan.
- (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), 15
- “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. 20
- 41 Timing and amount of certain qualifying benefits**
- (1) If the provision of a qualifying benefit –
- (a) takes the form of a payment of money, and 25
- (b) is not made under an employer-financed retirement benefits scheme, the benefit is provided for the purposes of section 38 when the money is treated as received for the purposes of Chapter 4 of Part 2 of ITEPA 2003 (applying the rules in section 18 of that Act (receipt of money earnings)).
- (2) If the provision of a qualifying benefit takes the form of a transfer of an asset, the amount provided for the purposes of section 38 is the total of – 30
- (a) the amount (if any) spent on the asset by the third party, and
- (b) in a case where the asset was transferred to the third party 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. 35
- (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. 40
- 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 the third party after the receipt by the third party 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). 5
- (3) For the purposes of section 38(3)(a) any qualifying benefits provided by the third party after the receipt by the third party 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). 10
- (5) For the purposes of this section no account is taken of any other amount received or paid by the third party.

#### **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). 15
- (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. 20

#### **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, 25
  - “employee benefit contribution” is to be read in accordance with section 39(1), 30
  - “employee benefit scheme” has the meaning given by section 39(2),
  - “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),
  - “qualifying benefits” is to be read in accordance with section 40, 35
  - “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 40
  - “the third party” is to be read in accordance with section 39(1).

- (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.

*Business entertainment and gifts*

**45 Business entertainment and gifts: general rule** 5

- (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 10
  - (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. 15
- (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, 20
  - (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. 25

**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 30
  - (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.
- (3) Case B is where the entertainment is provided for employees of the trader unless – 35
- (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** 40

- (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 or motor cycle 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 or motor cycle—
- (a) which is not a qualifying hire car or motor cycle (see section 49(2)), and
  - (b) the retail price of which when new exceeds £12,000.
- (2) The amount of the deduction which would otherwise be allowable is reduced by multiplying the amount by the fraction—

$$\frac{\pounds 12,000 + RP}{2 \times RP} \quad 30$$

where RP is the retail price of the car or motor cycle when new.

- (3) Subsection (4) applies if the deduction is reduced as a result of subsection (2) 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 under section 97 (debts incurred and later released), or
  - (b) is treated as a post-cessation receipt under section 249 (debts released after cessation),

is reduced by multiplying it by the fraction in subsection (2).

- (5) The power under section 74(4) of CAA 2001 to increase or further increase the sums of money specified in Chapter 8 of Part 2 of CAA 2001 includes the power to increase or further increase the sum of money specified in subsection (1)(b) or (2).

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#### 49 Car or motor cycle hire: supplementary

- (1) In section 48 “car or motor cycle” means a mechanically propelled road vehicle other than one—

- (a) of a construction primarily suited for the conveyance of goods or burden of any description, or  
(b) of a type not commonly used as a private vehicle and unsuitable for such use.

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- (2) In section 48 “a qualifying hire car or motor cycle” means a car or motor cycle which—

- (a) is hired under a hire-purchase agreement (see subsection (3)) 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 when new, or  
(c) is a qualifying hire car for the purposes of Part 2 of CAA 2001 (under section 82 of CAA 2001).

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- (3) For this purpose “hire-purchase agreement” means an agreement under which—

- (a) goods are bailed or (in Scotland) hired in return for periodical payments by the person to whom they are bailed or hired, and  
(b) the property in the goods will pass to that person if the terms of the agreement are complied with and one or more of the following events occurs,

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but does not include a conditional sale agreement (see subsection (5)).

- (4) The events are—

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- (a) the exercise of an option to purchase by that person,  
(b) the doing of any other specified act by any party to the agreement, and  
(c) the happening of any other specified event.

- (5) A “conditional sale agreement” means an agreement for the sale of goods under which—

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- (a) the purchase price or part of it is payable by instalments, and  
(b) the goods are to remain the property of the seller (even though they are to be in the possession of the buyer) until specified conditions as to the payment of instalments or otherwise are met.

- (6) In this section and section 48 “new” means unused and not second-hand.

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#### 50 Hiring cars (but not motor cycles) with low carbon dioxide emissions

- (1) Section 48 does not apply to expenses incurred on the hiring of—

- (a) a car with low CO<sub>2</sub> emissions, or  
(b) an electrically-propelled car.

- (2) For this purpose—  
     “car with low CO<sub>2</sub> emissions” has the meaning given by section 45D of CAA 2001, and  
     “electrically-propelled car” has the meaning given by that section.
- (3) This section does not apply to expenses incurred on the hiring of any such car— 5  
     (a) under a contract entered into after 31st March 2008, or  
     (b) for a period of hire which begins after that date.

*Patent royalties*

- 51 Patent royalties** 10
- In calculating the profits of a trade, no deduction is allowed for royalties or other sums paid for the use of patents.

*Interest payments*

- 52 Exclusion of double relief for interest**
- (1) In calculating the profits of a trade, no deduction is allowed— 15  
     (a) for any tax year for the interest paid on a debt or liability in respect of which relief is given under section 353 of ICTA (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 20  
     could, but for the relief, have been brought into account in calculating the profits of a trade of the tax year.
- (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 25  
         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— 30  
     (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 section 353 of ICTA 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 section 353 of ICTA if interest on a debt or 35  
     liability is brought into account in calculating the profits of a trade, see section 368(3) of ICTA.

*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.

*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)		25
Penalty under any of sections 60 to 70 of VATA 1994	Value added tax	
Interest under section 74 of VATA 1994		30
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		35

<i>Penalty or interest</i>	<i>Description of tax, levy or duty</i>	
Penalty under any provision of Part 5 of Schedule 5 to FA 1996	Landfill tax	
Interest under paragraph 26 or 27 of that Schedule		5
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	10
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		15
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		20

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

#### *Crime-related payments*

### **55 Crime-related payments**

- (1) In calculating the profits of a trade, 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.
- (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—
- (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).

## 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), the provisions of this Chapter apply to professions and vocations as they apply to trades. 5

*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”). 10

(2) If, in calculating the profits of the trade—  
 (a) no deduction would otherwise be allowed for the expenses, but  
 (b) a deduction would be allowed for them if they were incurred on the start date, 15

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

*Incidental costs of obtaining finance***58 Incidental costs of obtaining finance** 20

(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. 25

(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. 30

(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. 35

(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
- (5) This section needs to be read with section 59 (which provides for restrictions in relation to convertible loans and loan stock etc.).

## 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 10
  - (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— 15
- (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. 20
- (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. 25
- (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.* 30
- (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. 35
- (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.)— 40
- “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 by reference to a taxed receipt have the same meaning as in Chapter 4 of Part 3 (see section 290(6)). 5
- (7) In the application of sections 64 to 67 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 10
- (b) references to the lease so granted are to be read as references to the sublease.

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

- (1) 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. 15
- (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 is a day –
- (a) that falls within the receipt period of the taxed receipt, and
- (b) 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. 20
- (4) 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 –

$$\frac{A}{\text{TRP}} \quad 25$$

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.

- (5) 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 – 30

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

where –

F is the fraction of the land that is so occupied calculated on a just and reasonable basis, and 35

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

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

**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). 5
- (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 – 10

$$\frac{WE - AP}{WE} \quad 15$$

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 – 20
- (a) does not occupy the land subject to the taxed lease, or a part of it, but
  - (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. 25
- (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. 30
- (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**

- (1) This section applies if – 35
- (a) a lease has been granted out of the taxed lease, and
  - (b) 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.
- In this section and sections 65 and 67 such a receipt is referred to as a “lease premium receipt”. 40

- (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. 5
- (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.* 10
- (6) In this section –  
the “daily amount” of the taxed receipt is given by the formula – 15
- $$\frac{A}{TRP}$$
- 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, and 20
- the “daily reduction” of a lease premium receipt is given by the formula –
- $$\frac{AR}{RRP}$$
- where –  
AR is the reduction under section 288 by reference to the taxed receipt, and  
RRP is the number of days in the receipt period of the lease premium receipt. 25
- (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.
- 65 Restrictions on section 61 expenses: lease of part of premises** 30
- (1) This section applies if –  
(a) the conditions in section 64(1)(a) and (b) are met, and  
(b) 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. 35
- (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 –*

- (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 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
- (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. 10
- (6) This fraction is calculated on a just and reasonable basis.
- 66 Corporation tax receipts treated as taxed receipts**
- Section 296 (corporation tax receipts treated as taxed receipts) applies for the purposes of sections 60 to 67.
- 67 Restrictions on section 61 expenses: corporation tax receipts** 15
- (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 20
- (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— 25
- (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 30
- (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 35
- (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. 40
- (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, or 45

- (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).
- (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 – 5
- (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, 10
- so far as attributable to the amount chargeable on the superior interest for the purposes of section 37 of ICTA.

#### *Renewals*

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

- (1) This section applies if – 15
- (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. 20
- (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 – 25
- (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. 30
- (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.

#### *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 – 35
- (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 – 5  
 “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 10  
 (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. 15

## 71 Educational establishments

- (1) A body in England and Wales is an educational establishment for the purposes of section 70 if it is – 20  
 (a) a local education authority,  
 (b) an educational institution maintained or otherwise supported by a local education 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), or 25  
 (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).
- (2) A body in Scotland is an educational establishment for the purposes of section 70 if it is – 30  
 (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, 35  
 (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, 40  
 (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. 45

- (3) A body in Northern Ireland is an educational establishment for the purposes of section 70 if it is –
- (a) an education or 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 or a controlled, maintained, grant-maintained integrated, controlled integrated, voluntary or 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)).

*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,
  - (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.
- (3) In this section “approved agent” and “approved scheme” have the same meaning as in section 714 of ITEPA 2003.

*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 5

- (1) In calculating the profits of a trade, a deduction is allowed for retraining course expenses if –
  - (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 10
  - (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 15
  - “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. 20

#### 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 25
  - (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 30
  - (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. 35
- (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 the Inland Revenue a notice containing particulars of – 40
  - (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.

- (5) If the Inland Revenue have reason to believe that the employer has failed to give such a notice, they may by notice require the employer to provide such information as they may reasonably require for the purposes of this section about –
- (a) the failure to begin the course, 5
  - (b) the continued employment, or
  - (c) the re-employment.
- (6) A notice under subsection (5) may specify a time (not less than 60 days) within which the required information must be provided.

*Redundancy payments etc.* 10

## 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 15
  - (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 – 20
- (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 – 25
- “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 30
  - (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 – 35
- (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. 40

- (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. 5
- (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).

## **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 – 10
  - (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 – 15
  - (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. 20

## **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 – 25
  - (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.
- (2) If there is a change in the persons carrying on the trade, this section does not apply so long as a person carrying on the trade immediately before the change continues to carry it on after the change. 30
- (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, 35
 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. 40
- (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).

## 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 – 5
- (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)). 10
- (2) So far as the employer reimburses the Secretary of State or Department for the payment, sections 77 to 79 apply as if the payment were –
- (a) a redundancy payment, or
  - (b) an approved contractual payment, 15
- made by the employer.

### *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), 20
  - (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 25
  - (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 – 30
- (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). 35
- (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. 40

- (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 – 5
- (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 – 10
- “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* 15

## **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) – 20
- (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. 25
- (3) But if, in connection with the making of the contribution, the contributor or a connected person – 30
- (a) receives a disqualifying benefit of any kind, or
  - (b) is entitled to receive such a benefit,
- 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 – 35
- (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) – 40
- (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. 5

### 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 10
  - (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), 15
  - (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. 20
- (4) “Scottish local enterprise company” means a company with which –
- (a) Scottish Enterprise, or
  - (b) Highlands and Islands Enterprise, 25
- has an agreement under which the company is to carry out the functions of a local enterprise company.
- (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. 30

### 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 35
  - (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. 40

- (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 – 5
- (a) to any of its members, or
  - (b) to any person charged with the control and direction of its affairs.
- (6) The payment of – 10
- (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 15**
- (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 – 20
- (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)) – 25
- (a) the approval must specify the fund, and
  - (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 – 30
- (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). 35
- 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 – 40
- (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. 5
- (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* 10

**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, 15
- 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. 20
- (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
  - (b) research and development of a medical nature which has a special relation to the welfare of workers employed in the trade. 25
- (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 section 837A of ICTA and includes oil and gas exploration and appraisal. 30
- (6) This section does not apply to professions or vocations.

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

- (1) If a person carrying on a trade –
- (a) pays any sum to an approved scientific research association which has as its object scientific research related to the class of trade to which the trade belongs, or
  - (b) pays any sum to be used for such scientific research to an approved university, college research institute or other similar institution, 35
- a deduction is allowed for the sum in calculating the profits of the trade. 40
- (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) a scientific research association, or
  - (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
- (5) The references in this section 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 10
  - (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 15
  - (b) 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.
- (7) The same expenses may not be brought into account under this section in relation to more than one trade. 20
- (8) This section does not apply to professions or vocations.

*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* – 25
- (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. 30
- (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, 35
  - (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.

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*Expenses connected with foreign trades*

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**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.

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(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.

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(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.

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(4) In this section and section 93 “foreign trade” means a trade carried on wholly outside the United Kingdom.

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**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. 5
- (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. 10
- (4) Expenses within section 92(3)(d) are allocated—
- (a) to the trade carried on at the trader’s place of destination, if that trade is a foreign trade, and 15
  - (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)), 20
- 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 or child if the journey— 25
- (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. 30
- (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.

### CHAPTER 6 35

#### 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. 40

*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. 5

*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, 10
  - (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 15
  - (b) is treated as arising on the date of the release.

*Amounts received following earlier cessation***98 Acquisition of trade: receipts from transferor's trade**

- (1) This section applies if – 20
- (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 25
  - (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, 30
- 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). 35

*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 5
  - (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 10
  - (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, 15
- 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 20
  - (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. 25
- (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 30
  - (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. 35
- (4) A “sale and lease-back arrangement” means any such arrangement as is described in section 779(1) or (2) or 780(1) of ICTA.

**101 Tax treatment of reverse premiums**

- (1) A reverse premium is treated for income tax purposes as a receipt of a revenue nature. 40

- (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). 5

## 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 10
  - (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— 15
- (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. 20
- (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— 25
- (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 30

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
- (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). 35

### *Assets of mutual concerns*

## 104 Distribution of assets of mutual concerns

- (1) This section applies if— 40
- (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. 5
- (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 – 10
- (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). 15
- (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 20
  - (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. 25
- (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. 30
- (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). 35
- (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** 40

- (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)). 45

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

*Proceeds of insurance etc.*

**106 Sums recovered under insurance policies etc.** 10

- (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).* 15

**CHAPTER 7**

**TRADE PROFITS: GIFTS TO CHARITIES ETC.** 20

**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. 30
- (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 paragraph 1 of Schedule 18 to FA 2002 (relief for 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) the Trustees of the British Museum,
  - (d) the Trustees of the Natural History Museum, and
- 35

(e) the National Endowment for Science, Technology and the Arts.

- (5) This section needs to be read with section 109 (receipt by donor or connected person of benefit attributable to certain gifts).

### **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. 10
- (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). 15

### **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. 20
- (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, the Inland Revenue 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 30
  - (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. 35
- (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
  - (b) are subject to negative resolution within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954 (c. 33 (N.I.)). 40

## 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”).                                   | 5  |
| (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”).  | 10 |
| (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.  | 15 |

**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   | 20 |
|     | (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. | 25 |
| (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.   | 30 |
| (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   | 35 |
|     | (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.  | 40 |

- (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. 5

### 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 – 10
  - (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. 15
- (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 20
  - (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. 25
- (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 30

- (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 35

- (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** 10

- (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. 15
- (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). 20
- (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. 25

#### **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,
- 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— 35
- (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— 40
- (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. 5

### 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). 10
- (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. 15
- (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 20
  - (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. 25

### 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
  - (b) section 122 applies (replacement of part sold begun within 5 years of sale), 30
 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. 35

### 120 Acquisition of new herd begun within 5 years of sale 40

- (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—
- (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. 5
- (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. 10
- (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** 15
- (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. 20
- (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. 25
- (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** 30
- (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. 35
- (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. 40

- (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. 5

### *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 – 10
- (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. 15
- (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. 20
- (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 25
- (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. 30
- (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. 35

#### **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. 40
- (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. 5

## 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. 10
- (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 15
  - (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 — 20
  - (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 — 25
  - (a) central government,
  - (b) a devolved authority,
  - (c) a local authority, or
  - (d) another public authority.

*Preventing abuse of the herd basis rules* 30

## 127 Preventing abuse of the herd basis rules

- (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 35
  - (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, 40
  - (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 5
  - (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. 10
- (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— 15
- (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* 20

**128 Information if election made**

- (1) The Inland Revenue may by notice require the person carrying on a trade in relation to which a herd basis election is made to deliver a return of such information about—
- (a) the animals kept for the purposes of the trade, and 25
  - (b) the products of those animals,
- as may be required by the notice.
- (2) The return must be delivered to the Inland Revenue within the time specified in the notice.

**129 Further assessment etc. if herd basis rules apply** 30

- (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.

## CHAPTER 9

## TRADE PROFITS: FILMS AND SOUND RECORDINGS

*Introduction***130 Expenditure to which this Chapter applies**

- |  |    |
|--|----|
| (1) This Chapter makes provision about—  | 5  |
| (a) expenditure incurred on the production or acquisition of the original master version of a film or sound recording, and   |    |
| (b) preliminary expenditure in relation to a film.   |    |
| (2) In this Chapter references to production expenditure are to expenditure incurred on the production of the original master version of a film or sound recording.  | 10 |
| (3) In this Chapter references to acquisition expenditure are to expenditure incurred on the acquisition of the original master version of a film or 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 film or sound recording that are held or acquired with it. | 15 |
| (5) In this Chapter references to production or acquisition expenditure do not include—  |    |
| (a) interest (as to which, see section 29), or   | 20 |
| (b) the incidental costs of obtaining finance (as to which, see sections 58 and 59).   |    |
| (6) In this Chapter “preliminary expenditure”, in relation to a film, means expenditure which—   |    |
| (a) can reasonably be said to have been incurred with a view to enabling a decision to be taken as to whether to make the film,  | 25 |
| (b) is payable before the first day of principal photography (if the decision is to make the film), and  |    |
| (c) is not repayable under a contract or other arrangement if the film is not made.  | 30 |
| (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.   | 35 |

**131 Meaning of “film” and related expressions**

- |  |    |
|--|----|
| (1) In this Chapter “film” includes any record, however made, of a sequence of visual images which is capable of being used as a means of showing that sequence as a moving picture. |    |
| (2) For the purposes of this Chapter each part of a series of films is treated as a separate film.   | 40 |

- (3) But if the Secretary of State has given a direction under paragraph 1(4) of Schedule 1 to the Films Act 1985 (c. 21) that parts of a series of films are to be treated as a single film for the purposes of that Schedule, they are also treated as a single film for the purposes of this Chapter.
- (4) In this Chapter references to a film include the film soundtrack (if any). 5
- (5) For the purposes of this Chapter a film is completed when it is first in a form in which it can reasonably be regarded as ready for copies of it to be made and distributed for presentation to the general public.

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

- (1) In this Chapter “original master version” means – 10
- (a) in relation to a film, the original master negative, tape or disc, and
  - (b) in relation to a sound recording, the original master audio tape or disc.
- (2) In this Chapter references to the original master version of a film include the original master version of the film soundtrack (if any).
- (3) In this Chapter “certified master version”, in relation to a film, means an original master negative, tape or disc which is certified under paragraph 3 of Schedule 1 to the Films Act 1985 as a qualifying film, tape or disc for the purposes of this Chapter. 15

### 133 Meaning of “relevant period”

- In this Chapter “relevant period”, in relation to a trade, means – 20
- (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.

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

### 134 Expenditure treated as revenue in nature 25

- (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 – 30
- (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 – 35
- (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. 40

- (4) This section does not apply if an election under section 143 below or section 40D of F(No.2)A 1992 (corresponding corporation tax provision) has effect in relation to the expenditure.

*Films and sound recordings: normal rules for allocating expenditure*

<b>135</b>	<b>Films and sound recordings: production or acquisition expenditure</b>	<b>5</b>
(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 films or sound recordings,	
	(b) the original master versions do not constitute trading stock of the trade (within the meaning of section 174),	10
	(c) the person carrying on the trade incurs production or acquisition expenditure in, or before, the relevant period, and	
	(d) no election under section 143 below or section 40D of F(No.2)A 1992 has effect in relation to the expenditure.	15
(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.	
(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)).	20
(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	25
	(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.	30
(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).	35
(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) under any other provision of this Chapter to the relevant period or any other relevant period,	40
	(c) under section 40B of F(No.2)A 1992 (corporation tax provision corresponding to this section) to any other relevant period, or	
	(d) under section 41 of that Act (corporation tax provision corresponding to section 137 below) or 42 of that Act (corporation tax provision corresponding to sections 138 to 140 below) to the relevant period or any other relevant period.	45

- (7) *If any expenditure in respect of the original master version is allocated to the relevant period –*
- (a) *under any other provision of this Chapter, or*
  - (b) *under section 41 or 42 of F(No.2)A 1992,*
- no other production or acquisition expenditure in respect of the original master version may be allocated to the relevant period under this section.* 5

*Certified master versions: special rules for allocating expenditure*

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

- Sections 137 to 140 (certified master versions: certain expenditure) apply for the purpose of calculating the profits of a trade of a relevant period if – 10
- (a) the trade consists of or includes the exploitation of films,
  - (b) the films do not constitute trading stock of the trade (within the meaning of section 174),
  - (c) the expenditure in question is of a revenue nature (whether as a result of section 134 or otherwise), and 15
  - (d) no election under section 143 below or section 40D of F(No.2)A 1992 has effect in relation to the expenditure.

**137 Certified master versions: preliminary expenditure**

- (1) This section applies if –
- (a) the person carrying on the trade has incurred preliminary expenditure in connection with a film in, or before, the relevant period, 20
  - (b) the certified master version condition is met (see subsection (2)), and
  - (c) the film is genuinely intended for theatrical release.
- (2) The certified master version condition is –
- (a) if the film is completed, that the original master version of it is a certified master version, or 25
  - (b) if the film is not completed, that it is reasonably likely that, if the film were completed, the original master version of it would be a certified master version.
- (3) A deduction is allowed for the amount of the preliminary expenditure allocated to the relevant period, but this is subject to the application of any prohibitive rule. 30
- (4) The person carrying on the trade may allocate up to 100% of the preliminary expenditure to the relevant period.
- (5) But the total amount allocated under this section must not exceed 20% of the budgeted total expenditure on the film, calculated as at the first day of principal photography. 35
- (6) Expenditure may not be allocated to the relevant period under this section if –
- (a) it is allocated under this section to any other relevant period,
  - (b) it is allocated under any other provision of this Chapter to the relevant period or any other relevant period, 40
  - (c) it is allocated under section 41 of F(No.2)A 1992 to any other relevant period,

- (d) it is allocated under section 40B or 42 of that Act to the relevant period or any other relevant period, or
  - (e) a deduction in respect of it has otherwise been made in calculating the profits of the trade for income or corporation tax purposes.
- (7) *If any preliminary expenditure in connection with the film is allocated to the relevant period –* 5
- (a) *under section 135 above, or*
  - (b) *under section 40B of F(No.2)A 1992,*
- no other preliminary expenditure in connection with the film may be allocated to the relevant period under this section.* 10
- (8) So far as a deduction is given in respect of any expenditure –
- (a) under this section, or
  - (b) under section 41 of F(No.2)A 1992,
- no further deduction is allowed in respect of that expenditure in calculating the profits of the trade for income tax purposes. 15

### 138 Certified master versions: production or acquisition expenditure

- (1) This section applies if –
- (a) the person carrying on the trade has incurred production or acquisition expenditure in respect of the original master version of a film in, or before, the relevant period, 20
  - (b) the film was completed in, or before, that period,
  - (c) the original master version is a certified master version, and
  - (d) the film is genuinely intended for theatrical release.
- (2) A deduction is allowed for the amount of the expenditure allocated to the relevant period, but this is subject to the application of any prohibitive rule. 25
- (3) The person carrying on the trade may allocate up to the permissible amount of the expenditure to the relevant period.
- (4) The permissible amount of the expenditure is the smallest amount given by the following calculations.
- (5) The calculations are – 30
- Calculation 1*
- Calculate one-third of the total production or acquisition expenditure incurred by the person in respect of the original master version (“the total expenditure”).
- Calculation 2*
- Calculate one-third of the sum obtained by deducting from the total expenditure – 35
- (a) any amount of the total expenditure already allocated under section 137,
  - (b) any amount of the total expenditure already allocated under section 41 of F(No.2)A 1992, and 40
  - (c) any amount of the total expenditure that has already been, or is capable of being, allocated under section 139 or 140 below or under section 42 of F(No.2)A 1992 as applied by section 48(1) to (3) of F(No.2)A 1997 (corresponding corporation tax provision).
- Calculation 3* 45

- Calculate so much of the total expenditure as has not already been allocated to the relevant period or any other relevant period –
- (a) under this section or any other provision of this Chapter, or
  - (b) under any of sections 40B, 41 or 42 of F(No.2)A 1992.
- (6) If the relevant period is less than 12 months the above references to one-third are to be read as references to a proportionately smaller fraction. 5
- (7) If any production or acquisition expenditure in respect of the original master version is allocated to the relevant period –
- (a) under section 135 above, or
  - (b) under section 40B of F(No.2)A 1992, 10
- no other production or acquisition expenditure in respect of the original master version may be allocated to the relevant period under this section.

*Certified master versions: limited-budget films*

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

- (1) This section applies if – 15
- (a) the person carrying on the trade has incurred production expenditure in respect of the original master version of a film in, or before, the relevant period,
  - (b) the expenditure was incurred before 2nd July 2005 (see section 142 for timing rule), 20
  - (c) the original master version is a certified master version,
  - (d) the film is genuinely intended for theatrical release, and
  - (e) the total production expenditure in respect of the original master version is £15 million or less (see section 141).
- (2) A deduction is allowed for the amount of the production expenditure allocated to the relevant period, but this is subject to the application of any prohibitive rule. 25
- (3) The person carrying on the trade may allocate up to 100% of the production expenditure to the relevant period.
- (4) Any expenditure which – 30
- (a) has not been paid at the time the film is completed, and
  - (b) is not, at that time, the subject of an unconditional obligation to pay within 4 months after the date of completion,
- is not regarded as production expenditure for the purposes of this section.
- (5) Expenditure may not be allocated to the relevant period under this section if it is allocated – 35
- (a) under this section to any other relevant period,
  - (b) under any other provision of this Chapter to the relevant period or any other relevant period,
  - (c) under section 42 of F(No.2)A 1992 as applied by section 48(1) and (2) of F(No.2)A 1997 (corporation tax provision corresponding to this section) to any other relevant period, or 40
  - (d) under section 40B or 41 of F(No.2)A 1992, or section 42 of that Act (but not as applied by section 48(1) and (2) of F(No.2)A 1997), to the relevant period or any other relevant period. 45

- (6) If any production expenditure in respect of the original master version is allocated to the relevant period –
- (a) under section 135 above, or
  - (b) under section 40B of F(No.2)A 1992,
- no other production expenditure in respect of the original master version may be allocated to the relevant period under this section. 5

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

- (1) This section applies if –
- (a) the person carrying on the trade has incurred acquisition expenditure in respect of the original master version of a film in, or before, the relevant period, 10
  - (b) the acquisition was a relevant acquisition (see subsection (2)),
  - (c) the expenditure was incurred before 2nd July 2005 (see section 142 for timing rule),
  - (d) the original master version is a certified master version, 15
  - (e) the film is genuinely intended for theatrical release, and
  - (f) the total production expenditure in respect of the original master version is £15 million or less (see section 141).
- (2) An acquisition is a relevant acquisition if –
- (a) the acquisition is by the producer and the producer has not previously acquired the original master version of the film, or 20
  - (b) the acquisition is directly from the producer and the original master version of the film has not previously been acquired directly from the producer,
- and for this purpose “the producer” means the person who commissions the making of the film and is entitled to control its exploitation. 25
- (3) A deduction is allowed for the amount of the acquisition expenditure allocated to the relevant period, but this is subject to the application of any prohibitive rule.
- (4) The person carrying on the trade may allocate up to 100% of the acquisition expenditure to the relevant period. 30
- (5) But the total amount allocated under this section may not exceed the total production expenditure in respect of the original master version.
- (6) Expenditure may not be allocated to the relevant period under this section if it is allocated – 35
- (a) under this section to any other relevant period,
  - (b) under any other provision of this Chapter to the relevant period or any other relevant period,
  - (c) under section 42 of F(No.2)A 1992 as applied by section 48(1) to (3) of F(No.2)A 1997 to any other relevant period, or 40
  - (d) under section 40B or 41 of F(No.2)A 1992, or section 42 of that Act (but not as applied by section 48(1) to (3) of F(No.2)A 1997), to the relevant period or any other relevant period.
- (7) If any acquisition expenditure in respect of the original master version is allocated to the relevant period – 45
- (a) under section 135 above, or

(b) under section 40B of F(No.2)A 1992,  
no other acquisition expenditure in respect of the original master version may be allocated to the relevant period under this section.

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

- (1) The following provisions of this section define what is meant by “the total production expenditure in respect of the original master version” for the purposes of sections 139 and 140. 5
- (2) “The total production expenditure in respect of the original master version” means the total of all the production expenditure in respect of the original master version – 10
- (a) whenever the expenditure is incurred, and
- (b) whether or not it is incurred by the person carrying on the trade.
- (3) Any expenditure which –
- (a) has not been paid at the time the film is completed, and
- (b) is not, at that time, the subject of an unconditional obligation to pay within 4 months after the date of completion, 15
- is ignored.
- (4) Any part of the production expenditure in respect of the original master version which –
- (a) is incurred by a person under or as a result of a transaction entered into directly or indirectly between that person and a connected person, and 20
- (b) might have been expected to have been of a greater amount (“the arm’s length amount”) if the transaction had been between independent persons dealing at arm’s length,
- is treated as having been of an amount equal to the arm’s length amount. 25

#### 142 When expenditure is incurred

- (1) This section applies to determine when expenditure is treated as incurred for the purposes of sections 139 and 140.
- (2) The general rule is that an amount of expenditure is treated as incurred as soon as there is an unconditional obligation to pay it. 30
- (3) The general rule applies even if the whole or a part of the expenditure is not required to be paid until a later date.
- (4) There are the following exceptions to the general rule.
- (5) If under an agreement –
- (a) the expenditure is on the provision of an original master version, 35
- (b) an unconditional obligation to pay an amount of the expenditure comes into being as a result of the giving of a certificate or any other event,
- (c) the giving of the certificate, or other event, occurs within the period of one month after the end of a relevant period, and
- (d) at or before the end of the relevant period, the original master version has become the property of, or is otherwise under the agreement attributed to, the person subject to the unconditional obligation to pay, 40
- the expenditure is treated as incurred immediately before the end of the relevant period.

- (6) If under an agreement an amount of expenditure is not required to be paid until a date more than 4 months after the unconditional obligation to pay has come into being, the amount is treated as incurred on that date.
- (7) If under an agreement –
- (a) there is an unconditional obligation to pay an amount of expenditure on a date earlier than accords with normal commercial usage, and 5
  - (b) the sole or main benefit which might (as a result) have been expected to be obtained is that the amount would be treated, under the general rule, as incurred at an earlier time,
- the amount is treated as incurred on the date on or before which it is required to be paid. 10

*Election for sections 134 to 140 not to apply*

**143 Election for sections 134 to 140 not to apply**

- (1) A person carrying on a trade which consists of or includes the exploitation of original master versions of films may elect for sections 134 to 140 not to apply in relation to expenditure if – 15
- (a) the person incurs expenditure on the production or acquisition of an original master version of a film,
  - (b) the original master version is a certified master version,
  - (c) its value is expected to be realisable over a period of not less than two years, and 20
  - (d) the film is genuinely intended for theatrical release.
- (2) The election must relate to all expenditure –
- (a) incurred, or
  - (b) to be incurred, 25
- on the production or acquisition of the original master version in question.
- (3) The election is irrevocable.
- (4) The election must be made on or before the first anniversary of the normal self-assessment filing date for the tax year in which ends the relevant period in which the original master version of the film is completed. 30
- (5) For this purpose a film is completed –
- (a) at the time given by section 131(5), or
  - (b) if the expenditure is acquisition expenditure and the acquisition takes place after that time, at the time of the acquisition.
- (6) No election may be made in relation to expenditure on the production or acquisition of an original master version of a film if any of that expenditure has been allocated – 35
- (a) under any of sections 137 to 140 above, or
  - (b) under section 41 or 42 of F(No.2)A 1992.

*Supplementary*

**144 Meaning of “genuinely intended for theatrical release”**

- (1) This section determines for the purposes of this Chapter whether films are genuinely intended for theatrical release.
- (2) The relevant intention is the intention at the time the film is completed of the person then entitled to determine how the film is to be exploited. 5
- (3) “Theatrical release” means exhibition to the paying public at the commercial cinema.
- (4) A film is not regarded as genuinely intended for theatrical release unless it is intended that a significant proportion of the earnings from the film should be obtained by exhibition to the paying public at the commercial cinema. 10

**CHAPTER 10**

TRADE PROFITS: CERTAIN TELECOMMUNICATION RIGHTS

**145 Professions and vocations**

The provisions of this Chapter apply to professions and vocations as they apply to trades. 15

**146 Meaning of “relevant telecommunication right”**

In this Chapter a “relevant telecommunication right” means –

- (a) a licence granted under section 1 of the Wireless Telegraphy Act 1949 (c. 54) in accordance with regulations made under section 3 of the Wireless Telegraphy Act 1998 (c. 6) (bidding for licences), 20
- (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.

**147 Expenditure and receipts treated as revenue in nature** 25

- (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, 30
 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 35
  - (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** 5

- (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. 10
- (3) In calculating the profits of the trade, the amount is brought into account for the period of account in which it is recognised.

## CHAPTER 11

### TRADE PROFITS: OTHER SPECIFIC TRADES

*Dealers in securities etc.* 15

**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 – 20
  - (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. 25
- (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. 30
- (4) In this section “securities” includes – 35
  - (a) shares,
  - (b) rights of unit holders in unit trust schemes to which TCGA 1992 applies as a result of section 99 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).

**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.* 5
- (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 10
  - (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). 15
- (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. 20
- (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. 25
- (6) The fraction is—
- $$\frac{\text{NH}}{\text{NH} + \text{C}}$$
- where—
- NH is the market value of the new holding at the time of the transaction, and 30
  - 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. 35
- (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, 40
  - (c) rights of unit holders in unit trust schemes to which TCGA 1992 applies as a result of section 99 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. 5

### 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 10
  - (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. 15
- (4) The fraction is—
 
$$\frac{SV}{TV}$$
 where—
  - SV is the market value of one strip, and 20
  - 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. 25
- (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 30

- (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. 35
- (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. 40

- (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 5  
     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 10  
         to that Act), or  
     (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 15  
     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 20  
         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 25  
     (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 30  
     (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 35  
     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 40  
         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).

*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 carried on by a person who—
- (a) is authorised for the purposes of FISMA 2000 (see section 31(1) of that Act), but
  - (b) is not an investment company (within the meaning of section 130 of ICTA).
- (2) A deduction is allowed for any sum spent by the person in paying a levy, so far as it is not otherwise allowable.
- (3) A payment made to the person as a result of a repayment provision is brought into account as a receipt.
- (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 (other than an award which is not an award of costs under rules made under section 230 of FISMA 2000 or under provision relating to costs contained in those standard terms).
- (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.

*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—
- (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.

**157 Relief in respect of mineral royalties**

- (1) This section applies for the purpose of calculating the profits of a trade if in a tax year a person who is UK resident, or ordinarily UK resident, carries on the trade the receipts of which include mineral royalties –
- (a) which the person is entitled to receive under a mineral lease or agreement, and 5
  - (b) which are not chargeable to tax under Chapter 8 of Part 3 (rent receivable in connection with a UK section 12(4) concern) because of the priority rule in section 261.
- (2) The person is treated as entitled to receive only half of the total of the mineral royalties arising under the lease or agreement in the tax year. 10
- (3) Sections 341 to 343 (meaning of “mineral lease or agreement” and “mineral royalties”) apply for the purposes of this section as they apply for the purposes of Chapter 8 of Part 3.

**158 Lease premiums etc: reduction of receipts**

15

- (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), 20
  - (c) sums within section 280 (sums payable for surrender of a lease),
  - (d) sums within section 281 (sums payable for variation or waiver of term of lease),
  - (e) consideration for the assignment of a lease within section 282 (lease granted at an undervalue), and 25
  - (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. 30
- (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, 35
- 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 40
  - (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.

*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* 25**160 Alternative basis of calculation in early years of practice**

- (1) The profits of a barrister or advocate in independent practice for a period of account ending not more than 7 years after the start of such practice may be calculated in accordance with this section.
- (2) For this purpose barristers and advocates start in independent practice when they first hold themselves out as available for fee-earning work.
- (3) The profits of a barrister or advocate for a period of account to which this section applies may be calculated—
- (a) on a cash basis, or
  - (b) by reference to fees earned whose amount has been agreed or in respect of which a fee note has been delivered.
- (4) Once a particular basis has been adopted it must be applied consistently.
- (5) If for any period of account an accounting basis is adopted that complies with section 25 (generally accepted accounting practice), the exemption from that section given by this section ceases.

- (6) In that case, section 25 applies to all subsequent periods of account.

*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 5
  - (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. 10
- (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*

**162 Payments by persons liable to pool betting duty**

15

- (1) This section applies for the purpose of calculating the profits of a trade if—
- (a) the person carrying on the trade is liable to pool betting duty,
  - (b) there is a reduction in that duty, and
  - (c) the person makes a qualifying payment in consequence of that reduction. 20
- (2) A qualifying payment is one—
- (a) made in order to meet (directly or indirectly) capital expenditure incurred by any person in improving the safety or comfort of spectators at a ground to be used for the playing of association football, or
  - (b) made to trustees established mainly for the support of athletic sports or athletic games but with power to support the arts. 25
- (3) A deduction is allowed for the qualifying payment.

*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. 30
- (2) A deduction is allowed for—
- (a) the amount of the deemed employment payment, and 35
  - (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. 5
- (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. 10
- (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— 15
- (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. 20

#### *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— 25
- (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. 30
- (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— 35
- (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. 40
- (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
- (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. 10

### 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—

$$\text{RE} \times \frac{\text{WD}}{\text{SV} + \text{WD}}$$

where— 15

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. 20

- (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, 25
- (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)). 30

- (3) The excluded amount of unrelieved old expenditure is calculated by multiplying the unrelieved old expenditure (see subsection (4)) by the fraction— 35

$$\frac{\text{WD}}{\text{SV} + \text{WD}}$$

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. 40

- (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 – 5
  - “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)), 10
    - (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, 15
    - (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) 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 20
    - (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. 25
- (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 30
  - (b) in the course of carrying it on.

### 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. 35
- (2) A deduction is allowed for the unrelieved amount of the payment.
- (3) The deduction is allowed for the period of account in which the payment is made.
- (4) The unrelieved amount of a site restoration payment is the amount of the payment, less – 40
  - (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. 45

- (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)),
  - (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.

*Cemeteries and crematoria*

**169 Cemeteries and crematoria: introduction**

- (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—
- (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.

## 170 Deduction for capital expenditure 5

- (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 – 10
- (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 – 15
- (a) under both paragraphs (a) and (b) of subsection (2), or
  - (b) under both subsection (2)(a) above and section 91(1)(b) of ICTA (relief for corporation tax purposes) or under both subsection (2)(b) above and section 91(1)(a) of ICTA,
- whether for the same or different periods of account. 20
- (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).

## 171 Allocation of ancillary capital expenditure 25

- (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)), 30
  - 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. 35
- (2) “Residual expenditure” means the total of all ancillary capital expenditure incurred at any time before the end of the relevant period, less –
- (a) ancillary capital expenditure incurred on buildings or structures which were destroyed before the beginning of the first sale period,
  - (b) the excluded amount of any remaining old expenditure (see subsection (3)), 40

- (c) 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
- (d) any amount deducted under section 170(2)(b) above, or under section 91(1)(b) of ICTA, for a period of account ending before the relevant period. 5
- (3) The excluded amount of remaining old expenditure is calculated by multiplying the remaining old expenditure by the fraction –

$$\frac{\text{PSB}}{\text{PAB} + \text{PSB}}$$

where – 10

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. 15

- (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 20
- (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 25
- (b) if later, the basis period for the tax year 1954-55, and
- “remaining old expenditure” means ancillary capital expenditure which – 30
- (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).

## 172 Exclusion of expenditure met by subsidies 35

- (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 40
- (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 45

- (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 – 5
- (a) insurance money, or
- (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 – 10
- (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. 15

## CHAPTER 12

### TRADE PROFITS: VALUATION OF STOCK AND WORK IN PROGRESS

#### *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 – 20
- (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). 25
- (2) But no valuation of the stock is required under this Chapter if paragraph 1(2) of Schedule 28AA to ICTA (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. 30
- (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. 35

#### **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 40
- (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. 5
- (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. 10

### 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. 15
- (2) If the stock is sold to a person who—
- (a) carries on, or intends to carry on, a trade in the United Kingdom, and
  - (b) is entitled to deduct the cost of the stock as an expense in calculating the profits of that trade 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). 20
- (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). 25
- (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.

### 176 Sale basis of valuation: sale to unconnected person 30

- (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 in the United Kingdom and is entitled to deduct the cost of the stock as an expense in calculating the profits of that trade for income or corporation tax purposes, and 35
  - (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. 40

### 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 in the United Kingdom and is entitled to deduct the cost of the stock as an expense in calculating the profits of that trade for income or corporation tax purposes,
  - (b) the buyer is connected with the seller, and 5
  - (c) no election is made under section 178 (election by connected persons).
- (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.

### 178 Sale basis of valuation: election by connected persons

- (1) The value of trading stock is determined in accordance with this section if— 10
- (a) it is sold to a person who carries on, or intends to carry on, a trade in the United Kingdom and is entitled to deduct the cost of the stock as an expense in calculating the profits of that trade for income or corporation tax purposes,
  - (b) the buyer is connected with the seller, and 15
  - (c) 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—
- (a) its acquisition value, and
  - (b) the amount in fact realised on the sale. 20
- (3) If an election is made, the value is taken to be—
- (a) its acquisition value, or,
  - (b) 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. 25
- (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—
- (a) 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 30
  - (b) 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. 35

### 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— 40
- (a) they are connected with each other within the meaning of section 839 of ICTA,
  - (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. 5

### 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 carried on by the buyer of trading stock. 10
- (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) section 100(1A) to (1C) of ICTA (corresponding corporation tax rules),
 the cost of the stock to the buyer is taken to be the value as so determined.

### 181 Meaning of “sale” and related expressions 15

- (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, 20
  - “buyer” means the person to whom the transfer is made, and
  - “seller” means the person who makes the transfer.

#### *Valuation of work in progress*

### 182 Valuation of work in progress on cessation

- (1) If— 25
  - (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). 30
- (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. 35

### 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 40

(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. 5

(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 – 10

(a) carries on, or intends to carry on, a 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 profession or vocation for income or corporation tax purposes, 15

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. 20

(3) These rules are subject to any election under section 185 (election for valuation at cost).

#### **185 Election for valuation at cost**

(1) The person who was carrying on the profession or vocation immediately before the cessation may elect that – 25

(a) 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

(b) 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). 30

(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. 35

#### *Supplementary*

#### **186 Determination of questions by Commissioners**

(1) Any question arising under –

(a) section 175(3) or sections 176 to 178 (sale basis of valuation of trading stock), or 40

(b) section 184(1) (valuation of work in progress transferred for valuable consideration),

must be determined by the General or Special Commissioners in the same way as an appeal.

- (2) If the same General Commissioners have jurisdiction in relation to each of the persons whose trade, profession or vocation is concerned (including any company within the charge to corporation tax), the question must be determined by those Commissioners. 5
- (3) But this does not apply if all parties concerned agree that the question should be determined by the Special Commissioners.
- (4) In any other case, the question must be determined by the Special Commissioners. 10

## 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. 15

#### 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, 20
  - (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. 25
- (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. 30
- (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, 35
  - (b) executive action of its government, and
  - (c) the impossibility of obtaining there currency that could be transferred to the United Kingdom.

#### 189 Relief for unremittable amounts

- (1) If— 40
  - (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— 5  
(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. 10
- (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 15  
(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)). 20
- (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** 25
- (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). 30
- (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. 35
- (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— 40  
(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, 5
  - (d) the amount or part of it is exchanged for, or discharged by, an amount that is not unremittable,
  - (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. 10
- (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 15
  - (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. 20

## CHAPTER 14

### DISPOSAL AND ACQUISITION OF KNOW-HOW

#### 192 Meaning of “know-how” etc.

- (1) In this Chapter “know-how” means any industrial information or techniques likely to assist in – 25
- (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 – 30
- “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.* 35
- (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. 40
- (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, 5
  - (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). 10
- (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. 15
- (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 20
  - (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. 25
- (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** 30

- (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. 35
- (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 40
  - (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 subsection (3) of section 531 of ICTA (corresponding corporation tax provision), and
  - (b) the person making the acquisition mentioned in that subsection is within the charge to income tax,
- the persons making the election under that subsection 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).

#### **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 this purposes of this section “body of persons” includes a firm.

### **CHAPTER 15**

#### **BASIS PERIODS**

##### *Introduction* 30

#### **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”** 35

- (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*

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### 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— 10
  - 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), 15
  - 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).

### 199 First tax year

- (1) The basis period for the tax year in which a person starts to carry on a trade— 20
  - (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). 25

### 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— 30
  - (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— 35
  - (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— 40
  - (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** 5
- (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. 10
- (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). 15
- 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 20
- (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 25
- (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** 30
- (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 35
- (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. 40

- (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.

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*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.

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**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.

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*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.

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**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.

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**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—

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- (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 5
- (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.)).

*Rules where first accounting date shortly before end of tax year* 10

## **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. 15
- (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, 20
 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. 25
- (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. 30
- (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, 35
 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”). 40
- (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 – 5
- (a) begins immediately after the end of the basis period for the previous tax year, and  
 (b) ends on the date in the relevant tax year that corresponds to the first accounting date. 10
- (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. 15
- (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** 20

- (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). 25
- (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. 30
- (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. 35

**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, 40

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 5
  - (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 –
- (a) the accounting date in the previous tax year was determined under section 211, and 10
  - (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 – 15
- (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), 20
- 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), 25
  - (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* 30

### 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 35
  - (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. 40
- (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** 5

- (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,
  - (b) the person does not permanently cease to carry on the trade in that tax year, and 10
  - (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 15
  - (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— 20
  - (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. 25
- (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, 30

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, 35

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. 40

## **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 the Inland Revenue (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 the Inland Revenue if (and only if) the notice is given – 5
- (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
  - (b) on or before the day on which the return is required to be made and delivered under that provision. 10
- (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, 15
- 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. 20
- (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 25
  - (b) the notice under subsection (2) sets out the reasons for the change.

## **218 Commercial reasons for change of accounting date**

- (1) If the Inland Revenue do 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. 30
- (2) If the Inland Revenue do 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 – 35
- (a) state that the Inland Revenue are 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. 40
- (5) On an appeal –
- (a) if the Commissioners are satisfied that the change is made for commercial reasons, they may set aside the notice, and

- (b) if they are not satisfied that the change is made for commercial reasons, they may confirm the notice.
- (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. 5

## 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 10
  - (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). 15
- (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). 20

## 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. 25
- (2) A deduction must be made for overlap profit.
- (3) The amount of the deduction is calculated as follows.
  - Step 1*
  - Add together the overlap profit arising in all overlap periods ending before the end of the tax year. 30
  - Step 2*
  - Subtract from that any deductions made under this section for previous tax years.
  - The balance is “the remaining overlap profit”.
  - Step 3* 35
  - 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”. 40
  - 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”. 5

*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). 10

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 15
  - (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. 20
- (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, 25
- the person carrying on the trade may ignore the 29th February for the purpose of calculating the amount of the deduction.

## CHAPTER 16

### AVERAGING PROFITS OF FARMERS AND CREATIVE ARTISTS

- 221 Claim for averaging of fluctuating profits** 30
- (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. 35
- (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. 40

- (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. 5
- (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. 10

## 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 15
  - (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. 20
- (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* 25
  - (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. 30
- (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. 35
- (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 40
  - (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%,
- 5
- 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 –
- 10
- $$(D \times 3) - (P \times 0.75)$$
- 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*
- 15
- 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.
- 20
- 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.
- 25
- (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.
- 30
- (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.
- 35
- (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.
- 40

- (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** 5

- (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.
- (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. 10
- (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.

**CHAPTER 17** 15

ADJUSTMENT INCOME

*Introduction*

**226 Professions and vocations**

The provisions of this Chapter apply to professions and vocations as they apply to trades. 20

*Adjustment on change of basis*

**227 Application of Chapter**

- (1) This Chapter applies if—
- (a) 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, 25
- (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, 30
- 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. 35
- (3) A person changes the basis on which profits of a trade are calculated for income tax purposes if the person makes—
- (a) a relevant change of accounting approach (see subsection (4)), or
- (b) a change in the tax adjustments applied (see subsections (5) and (6)).

- (4) A “relevant change of accounting approach” means a change of accounting principle or practice that, in accordance with generally accepted accounting practice, gives rise to a prior period adjustment.
- (5) A “tax adjustment” means any adjustment required or authorised by law in calculating profits of a trade for income tax purposes. 5
- (6) A “change in the tax adjustments applied” –
- (a) does not include a change made in order to comply with amending legislation not applicable to the previous period of account, but
- (b) 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. 10

## 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. 15  
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”. 20
- (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. 25
- (2) This is subject to –
- (a) sections 237 to 239 (which provide for spreading of adjustment income), and
- (b) Part 8 (foreign income: special rules).

## 230 Person liable 30

The person liable for any tax charged under this Chapter is the person receiving or entitled to the adjustment income.

## 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 –

35

	<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.	5
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.	10
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.	15
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.	20

*Step 2* 25

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 –

	<i>Amounts</i>	
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.	30
2	Expenses which were not brought into account in calculating the profits of a period of account before the change, so far as they – (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 (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.	35 40

	<i>Amounts</i>	
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 –	
	(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	5
	(b) are calculated on a different basis that if used to calculate those deductions would have given a lower figure.	10

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. 15
- (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 Chapter 1 of Part 10 of ICTA (loss relief) as profits of the trade for the tax year in which tax is charged on it. 20
- (4) In the case of an individual whose income from the trade is –
  - (a) earned income within section 833(4)(c) of ICTA, or
  - (b) relevant UK earnings within section 189(2)(b) of FA 2004,
 adjustment income is similarly earned income or relevant UK earnings. 25

**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). 30

*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. 35
- (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. 5
- (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, 10
- (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
- (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. 15

*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 20
- (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, 25
- 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. 30

**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. 35
- (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.

- (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 — 5
- (a) is treated as arising, and
  - (b) is charged to tax,
- immediately before the cessation.

*Spreading of adjustment income: barristers and advocates*

**238 Spreading on ending of exemption for barristers and advocates 10**

- (1) If an individual makes a change of basis —
- (a) on ceasing to take advantage of the exemption given by section 160 (barristers and advocates in early years of practice), or
  - (b) on that exemption coming to an end,
- any adjustment income is spread over 10 tax years as follows. 15
- (2) In each of the 9 tax years beginning with that in which the whole amount of the adjustment income would otherwise be chargeable to tax, an amount equal to —
- (a) one tenth of the amount of the adjustment income, or
  - (b) if less, 10% of the profits of the profession of the tax year, 20
- is treated as arising and is charged to tax.
- (3) For this purpose “the profits of the profession” means the profits as calculated for the purposes of this Part leaving out of account any allowances or charges under CAA 2001.
- (4) In the tenth tax year the balance of the adjustment income is treated as arising and is charged to tax. 25
- (5) If, before the whole of the adjustment income has been charged to tax, the individual permanently ceases to carry on the profession, this section continues to apply but with the omission of the alternative limit in subsection (2)(b). 30
- (6) This section is subject to any election under section 239 (election to accelerate charge).

**239 Election to accelerate charge under section 238**

- (1) An individual who under section 238 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. 35
- (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). 40

- (4) If an election is made, section 238 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 –

$$A \times \frac{10}{T}$$

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 10 tax years referred to in section 238.

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### *Supplementary*

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## **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 –
- is to be assessed and charged on the personal representatives, and
  - 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.

15

## **CHAPTER 18**

20

### POST-CESSATION RECEIPTS

#### *Introduction*

## **241 Professions and vocations**

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

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#### *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.

30

- (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
- (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 10
  - (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).
- 244 Income charged**
- (1) Tax is charged under this Chapter on the full amount of the receipts received in the tax year. 15
- (2) This is subject to—
- (a) sections 254 and 255 (allowable deductions), and
  - (b) section 257 (election to carry back).
- 245 Person liable** 20
- 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— 25
- (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 the occurrence of an event which under section 337(1) of ICTA is treated as the discontinuance of a trade. 30
- (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). 35
- (4) The partner is treated for the purposes of this Chapter as permanently ceasing to carry on the trade.

**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—
- section 82(6) (contributions to local enterprise organisations or urban regeneration companies), 5
  - 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), 10
  - section 249 (debts released after cessation), as qualified, where appropriate, by section 48(4) (car or motor cycle 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). 15
- (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.

*Sums treated as post-cessation receipts* 20

**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), 25
- 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 section 109A(4) or (4A) of ICTA (relief for post-cessation expenditure) in respect of a debt owed to a person who has permanently ceased to carry on a trade. 30
- (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.

**249 Debts released after cessation**

- (1) This section applies if— 35
- (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, 40
  - (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 the occurrence of an event which under section 337(1) of ICTA is treated as the discontinuance of a trade.

## 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 section 109A of ICTA (relief for post-cessation expenditure). 5
- (2) The following sums are treated as post-cessation receipts –
- (a) in the case of a payment within section 109A(2)(a) or (b) of ICTA (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, 10
  - (b) in the case of a payment within section 109A(2)(c) of ICTA (payment to insure against claims for defective work etc.), a refund of the premium, or other sum received, in connection with the insurance, and 15
  - (c) in the case of a payment within section 109A(2)(d) of ICTA (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). 20
- (4) Any adjustment required to give effect to subsection (3) is to be made by way of –
- (a) amendment of an assessment, or 25
  - (b) discharge or repayment of tax.

## 251 Transfer of rights if transferee does not carry on trade

- (1) This section applies if –
- (a) a person (“the transferor”) permanently ceases to carry on a trade,
  - (b) the transferor transfers to another person (“the transferee”) for value the right to receive sums arising from the carrying on of the trade, and 30
  - (c) 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 –
- (a) the amount or value of the consideration for the transfer, if the transfer is at arm’s length, or 35
  - (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 trade are not post-cessation receipts. 40
- (5) This section is subject to –
- (a) section 252 (transfer of trading stock or work in progress), and
  - (b) 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 –
- (a) the transfer of trading stock, or
  - (b) 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). 5
- (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). 10
- (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. 15

**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. 20
- (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. 25
- (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. 30
- (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, 35
- 40

but no deduction is allowed if the loss, expense or debit arises directly or indirectly from the cessation itself.

- (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 5
  - (b) as a result of section 90(4) of FA 1995 (capital gains tax relief for post-cessation expenditure).

## 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. 10
- (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 – 15
- (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 20

- (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 earned income within section 833(4)(c) of ICTA or relevant UK earnings within section 189(2)(b) of FA 2004. 25
- (2) Any post-cessation receipts arising to the individual from the trade are similarly earned income or relevant UK earnings.

## 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. 30
- (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). 35
- (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 5
  - (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 10
  - (b) any of the trustees or personal representatives after the change starting to carry on the trade, profession or vocation.

**259 Meaning of “statutory insolvency arrangement”**

In this Part “statutory insolvency arrangement” means—

- (a) a voluntary arrangement which has taken effect under or as a result of the Insolvency Act 1986 (c. 45), Schedule 4 or 5 to the Bankruptcy (Scotland) Act 1985 (c. 66) or the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)), or 15
- (b) a compromise or arrangement which has taken effect under section 425 of the Companies Act 1985 (c. 6) or Article 418 of the Companies (Northern Ireland) Order 1986 (S.I. 1986/1032 (N.I. 6)). 20

## PART 3

## PROPERTY INCOME

## CHAPTER 1

## INTRODUCTION 25

**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), 30
  - (c) Chapter 8 (rent receivable in connection with a UK section 12(4) concern),
  - (d) Chapter 9 (rent receivable for UK electric-line wayleaves),
  - (e) Chapter 10 (post-cessation receipts arising from a UK property business), and 35
  - (f) Chapter 11 (overseas property income of a person to whom the remittance basis applies).
- (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
- (5) This section needs to be read with the relevant priority rules (see sections 2 and 261).

## 261 Provisions which must be given priority over Part 3

- Any receipt or other credit item, so far as it falls within – 10
- (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. 15

## 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
- (b) Chapter 8 (rent receivable in connection with a UK section 12(4) concern),  
is dealt with under Chapter 8. 20
- (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. 25
- (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 30

#### *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). 35
- (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
- (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. 10
- (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 – 15
- (a) every business which the person carries on for generating income from land in the United Kingdom, and
  - (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 – 20
- (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. 25

*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. 30
- (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. 35
- (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.).

5

**CHAPTER 3**

10

## 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.

**269 Territorial scope of charge to tax**

15

- (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.
- (3) *But, in the case of an overseas property business carried on by a UK resident to whom the remittance basis applies, the only profits of the business chargeable to tax under this Chapter are those in respect of land in the Republic of Ireland.*
- (4) For a UK resident to whom the remittance basis applies, see also Chapter 11 (charge to tax on overseas property income other than income arising in Republic of Ireland).

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**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).

**271 Person liable**

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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 – 5

<i>In Chapter 3 (basic rules) –</i>		
section 25	generally accepted accounting practice	
section 26	losses calculated on same basis as profits	
section 27	receipts and expenses	10
section 28	items treated under CAA 2001 as receipts and expenses	
section 29	interest	
<i>In Chapter 4 (rules restricting deductions) –</i>		
section 33	capital expenditure	
section 34	expenses not wholly and exclusively for trade and unconnected losses	15
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 50	car or motor cycle hire	20
section 51	patent royalties	
section 52	exclusion of double relief for interest	
section 53	social security contributions	
section 54	penalties, interest and VAT surcharges	
section 55	crime-related payments	25
<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	30

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
<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
<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.

### 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) –
- (a) section 19 (tied premises),
  - (b) section 20 (caravan sites where trade carried on),

- (c) section 21 (surplus business accommodation), and
  - (d) 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. 5

#### **274 Relationship between rules prohibiting and allowing deductions**

- (1) Any relevant permissive rule in this Part –
- (a) has priority over any relevant prohibitive rule in this Part, but
  - (b) is subject to sections 48 (car or motor cycle hire) and 55 (crime-related payments), as applied by section 272. 10
- (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 48 and 55, as applied by section 272) which might otherwise be read as – 15
- (a) prohibiting the deduction, or
  - (b) restricting the amount of the deduction.
- (4) In this section any reference to any provision of this Part includes any provision applied by section 272. 20

#### *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 – 25
- (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). 30
- (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 – 35
- (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.  | 5  |
| (2) | The amounts relate to short-term leases in the case of –<br>section 277 (lease premiums),<br>section 278 (amount treated as lease premium where work required),<br>section 280 (sums payable for surrender of lease), and<br>section 282 (assignments for profit of lease granted at undervalue). | 10 |
| (3) | The amounts relate to any lease in the case of –<br>section 279 (sums payable instead of rent), and<br>section 281 (sums payable for variation or waiver of term of lease).   | 15 |
| (4) | The amounts relate to the sale of any estate or interest in land in the case of –<br>section 284 (sales with right to reconveyance), and<br>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).   | 20 |
| (6) | In this Chapter “short-term lease” means a lease whose effective duration is 50 years or less.  |    |

*Amounts treated as receipts: leases***277 Lease premiums**

- |     |  |    |
|-----|--|----|
| (1) | This section applies if a premium is required to be paid –<br>(a) under a short-term lease, or<br>(b) otherwise under the terms subject to which a short-term lease is granted.  | 25 |
| (2) | The person to whom the premium is due is treated as –<br>(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<br>(b) receiving the amount calculated under subsections (4) and (5) as a result of that transaction. | 30 |
| (3) | <i>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.</i>   | 35 |

- (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) 5  
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.

**278 Amount treated as lease premium where work required** 10

- (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). 15
- (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.
- (4) An obligation, or part of an obligation, that requires the carrying out of excepted work is ignored for the purposes of this section. 20
- (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.

**279 Sums payable instead of rent** 25

- (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.* 30
- (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. 35
- (3) *That amount is brought into account as a receipt in calculating the profits of the property business which consists or of 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) 5  
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. 10

## 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. 15

- (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 20

(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.* 25

- (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) 30  
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.

## 281 Sums payable for variation or waiver of term of lease 35

- (1) This section applies if –

(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.

## **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. 10
- (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.
- (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. 15
- (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. 20
- (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. 25
- (6) The amount of the excess is the profit.

*Other amounts treated as receipts* 30

### 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, 35
  - (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. 40
- (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. 5
- (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 –
- $$E \times \left( \frac{50 - Y}{50} \right) \quad 10$$
- 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
- 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. 15
- (5) See section 286 for some provisions which are supplementary to this section.

## 285 Sale and leaseback transactions

- (1) This section applies if – 20
- (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 25
- (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. 30
- (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 35
- (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. 40

- (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.

## 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), 5
  - section 279 (sums payable instead of rent),
  - section 280 (sums payable for surrender of lease),
  - section 281 (sums payable for variation or waiver of term of lease)*, or
  - section 282 (assignments for profit of lease granted at undervalue).
- (2) It applies if conditions A and B are met. 10
- (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 15
  - (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 –
- (a) there is a receipt under any of sections 277 to 282 in respect of the lease, or 20
  - (b) there would be such a receipt, but for the operation of the additional calculation rule in the calculation of its amount.
- In this Chapter such a receipt 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.* 25
- (6) See section 290 for an explanation of when a taxed receipt has an “unused amount”.

**288 The additional calculation rule**

- (1) The rule in this section applies if the conditions mentioned in section 287 are met. 30
- (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 – 35
- (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). 40

- (4) The basic relieving amount by reference to a taxed receipt is given by the formula—

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

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 282, but see section 290(2) to (4)), 5
- 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). 10
- (6) For the purposes of this Chapter, the “receipt period” of a receipt is—
- (a) in the case of a receipt under section 277 or 280, the effective duration of the lease,
  - (b) in the case of a receipt under section 279, the period in relation to which the sum payable instead of rent is payable, 15
  - (c) in the case of a receipt under section 281, the period for which the variation or waiver has effect, and
  - (d) in the case of a receipt under section 282, the effective duration of the lease remaining at the date of the assignment. 20

## 289 The additional calculation rule: special cases

- (1) This section explains how section 288 operates in some special cases.
- (2) If—
- (a) the receipt under calculation is under any of sections 277 to 281, and
  - (b) the lease does not extend to the whole of the premises subject to the taxed lease, 25
- 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. 30
- (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. 35

## 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).* 40

- (2) In this Chapter the “unreduced amount” of a taxed receipt is the amount given, in respect of the taxed receipt, by the formula in section 277, 279, 280, 281 or 282.
- (3) Subsection (4) applies to a taxed receipt under section 277 (lease premiums) as a result of section 278 (amount treated as lease premium where work required). 5
- (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 –* 10
- (a) *the reductions under section 288 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 (tenant under taxed lease who uses land in connection with trade treated as incurring expenses) by reference to the taxed receipt, and* 15
- (c) *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.*
- (6) For the purposes of this Chapter references to a reduction under section 288 by reference to a taxed receipt are to a reduction under that section so far as attributable to the taxed receipt. 20

*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. 25
- (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 – 30
- (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). 35
- (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 – 40
- 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. 5
- (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 – 10

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

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.

- (5) This section is subject to sections 293 and 294 (restrictions on expenses where the additional calculation rule is relevant). 15
- (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”).

**293 Restrictions on section 292 expenses: the additional calculation rule** 20

- (1) This section applies if, in calculating the amount of a receipt (“the lease premium receipt”), there is a reduction under section 288 (the additional calculation rule) by reference to the taxed 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. 25
- (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.
- (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. 30
- (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.* 35
- (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

5

the “daily reduction” of a lease premium receipt is given by the formula –

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

where –

AR is the reduction under section 288 by reference to the taxed receipt (see section 290(6)), and

10

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.

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#### **294 Restrictions on section 292 expenses: lease of part of premises**

- (1) This section applies if –

- (a) a lease has been granted out of the taxed lease,
- (b) the lease does not extend to the whole of the premises subject to the taxed lease, and
- (c) 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 term of lease) in respect of the lease (“the lease premium receipt”), there is a reduction under section 288 by reference to the taxed receipt.

20

25

- (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 –

30

- (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.*

35

- (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.

40

*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,* 5
- must not exceed the amount referred to in subsection (2).*
- (2) *The amount mentioned in subsection (1) is the difference between—* 10
- (a) *the unreduced amount of the taxed receipt, and*
  - (b) *the deductions allowed in calculating the profits of a trade, profession or vocation for expenses under section 61 (tenant under taxed lease who uses land in connection with trade treated as incurring expenses) by reference to the taxed receipt.* 15

*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, or 20
  - (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). 25
- 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. 30
- (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 35
  - (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.
- (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. 40

- (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. 5

## **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 10
- (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— 15
- (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, 20  
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. 25
- (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, 30
- (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— 35
- (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. 40

## **298 Taking account of deductions for rent as a result of section 37(4) or 87(2) of ICTA** 45

- (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, 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. 5
- (2) References in sections 290(5)(b) and 295(2)(b) 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. 10
- (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, 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 15
- (b) the amount chargeable on the superior interest is the taxed receipt for the purposes of this Chapter. 20
- (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. 25

*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 30
- (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 term 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 the Inland Revenue may allow. 35
- (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. 40

**300 Statement of accuracy for purposes of section 282**

- (1) This section applies if any of the persons mentioned in subsection (3) provides the Inland Revenue 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 45

- (b) the amount of any receipt.
- (2) The Inland Revenue 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, 5
  - (b) a person who assigned it, or
  - (c) a person to whom it was assigned.

### 301 Claim for repayment of tax payable by virtue of section 284

- (1) This section applies if—
  - (a) there is a receipt under section 284 (sales with right to reconveyance), 10  
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— 15
  - 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. 20
- (3) The claim must be made within 6 years after the day on which the estate or interest was reconveyed.

### 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), 25  
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— 30
  - 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. 35
- (3) The claim must be made within 6 years after the day on which the lease was granted.

#### *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. 40

*Rule 1:* A lease is not to be treated as having been granted for a term longer than one ending on a date before the end of the term for which the lease was granted if –

- (a) the terms of the lease or any other circumstances make it unlikely that the lease will continue beyond that date, and 5
- (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. 10

*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) – 15

- (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. 20

(2) The rules are to be applied in accordance with section 304.

(3) In this section and section 304, in relation to Scotland, “term”, where referring to the duration of a lease, means period.

### **304 Applying the rules in section 303**

(1) The rules in section 303 apply by reference to the facts known or ascertainable – 25

- (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 term of lease), at the time when the contract for the variation or waiver is entered into. 30

(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 35
- (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 securing a tax advantage in the application of this Chapter or sections 34 to 39 of ICTA (premiums, leases at undervalue etc.). 40

(5) In applying 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 – 45

- (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.

### 305 Information about effective duration of lease

- (1) This section applies if the Inland Revenue have reason to believe that a person has information relevant to the determination of the effective duration of a lease. 5
- (2) The Inland Revenue may by notice require the person to provide such information on the matters specified in the notice as is in the person's possession.
- (3) The information must be provided within a time specified in the notice. 10
- (4) In relation to anything done by a solicitor on behalf of a client, the solicitor is required only to—
  - (a) state that the solicitor was acting on behalf of a client, and
  - (b) provide the name and address of the client.

*Other interpretative provisions* 15

### 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. 20
- (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. 25

### 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. 30
- (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. 35
- (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.

## CHAPTER 5

### PROFITS OF PROPERTY BUSINESSES: OTHER RULES ABOUT RECEIPTS AND DEDUCTIONS

#### *Furnished accommodation: receipts and deductions* 5

#### **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 10
  - (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. 15
- (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 – 20
- (a) “premises” includes a caravan and a houseboat, and
  - (b) “sum” includes the value of any consideration.

#### **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). 25
- (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** 30

- (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 35
  - (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. 5
- (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. 10

*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. 15
- (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 20
  - (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— 25
- (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. 30
- (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** 35

- (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 in the dwelling-house an energy-saving item (see subsections (5) to (7)), 40
  - (c) the expenditure is incurred before 6th April 2009,

- (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. 5
- (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. 10
- (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, 15
- (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 – 20
- (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. 25
- (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. 30

### 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 – 35
- (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 – 40
- (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
  - (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. 5

### 314 Regulations

- (1) In relation to any deduction under section 312, the Treasury may make regulations for—
- (a) restricting or reducing the amount of expenditure for which the deduction is allowable, 10
  - (b) excluding entitlement to the deduction in such cases as may be specified in, or determined in accordance with, the regulations, 15
  - (c) 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,
  - (d) 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. 20
- (2) The apportionments that may be made include apportionments to companies within the charge to corporation tax.

#### *Deductions for expenditure on sea walls*

- 315 Deduction for expenditure on sea walls** 25
- (1) This section applies if in a tax year a person —
- (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. 30
- (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 35
  - (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). 40

**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 – 5
  - (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. 10
- (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 – 15
  - (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). 20

**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. 25
- (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). 30

**318 Transfer involving company within the charge to corporation tax**

- (1) This section explains how section 316 works if – 35
  - (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 – 40
  - (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 section 30 of ICTA (corresponding corporation tax provision). 5

*Mineral royalties*

**319 Relief in respect of mineral royalties**

- (1) This section applies if in a tax year a person who is UK resident, or ordinarily UK resident, carries on a UK property business the receipts of which consist of or include mineral royalties – 10
- (a) which the person is entitled to receive under a mineral lease or agreement, and
- (b) which are not chargeable to tax under Chapter 8 (rent receivable in connection with a UK section 12(4) concern).
- (2) In calculating the profits of the business, the person is treated as – 15
- (a) entitled to receive only half of the total of the mineral royalties arising under the lease or agreement in the tax year, and
- (b) making in the tax year only half of the total of the payments made in respect of the management of the property concerned.
- (3) Sections 341 to 343 (meaning of “mineral lease or agreement” and “mineral royalties”) apply for the purposes of this section as they apply for the purposes of Chapter 8. 20

*Apportionments on sale of land*

**320 Nature of item apportioned on sale of estate or interest in land**

- (1) This section applies if – 25
- (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. 30
- (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. 35
- (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).  | 5  |
| (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)),  | 10 |
|     | (b) Chapter 1 of Part 10 of ICTA (loss relief: see section 504A of that Act),  |    |
|     | (c) section 833(4)(c) of ICTA (income regarded as earned income: see section 504A of that Act),  |    |
|     | (d) certain provisions of TCGA 1992 (see section 241 of that Act),   | 15 |
|     | (e) CAA 2001 (see, for example, sections 248 and 249 of that Act), and   |    |
|     | (f) section 189(2)(b) of FA 2004 (income regarded as relevant UK earnings for pension purposes: see section 504A of that Act).   |    |
| (3) | This Chapter also supplements the above provisions by providing in certain circumstances for the profit of the furnished holiday lettings part of a UK property business to be calculated separately (see sections 327 and 328). | 20 |

*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.                             | 25 |
| (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 | 30 |
|     | (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**

35

- |     |   |
|-----|---|
| (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 140 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 70 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.

### **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 70.

- (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. 5
- (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.

*Separate profit calculations*

**327 Capital allowances and loss relief**

- (1) If a UK property business consists of both— 10
  - (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. 15
- (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 Chapter 1 of Part 10 of ICTA (loss relief) applies in relation to a loss made in either of those parts. 20
- (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.

**328 Earned income and relevant UK earnings for pension purposes** 25

- (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. 30
- (2) The calculation must be made if the profits of the furnished holiday lettings part are treated as—
  - (a) earned income under section 833(4)(c) of ICTA, or
  - (b) income regarded as relevant UK earnings for pension purposes under section 189(2)(b) of FA 2004. 35
- (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.

**CHAPTER 7****ADJUSTMENT INCOME***Adjustment on change of basis***329 Application of Chapter**

- (1) This Chapter applies if— 5
- (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 10
  - (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. 15
- (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 20**

- (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.
- (2) If the amount produced by the calculation is positive, it is treated as income and charged to income tax under this Chapter. 25  
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. 30

**331 Income charged**

Tax is charged under this Chapter on the full amount of any adjustment income arising in the tax year. 35

**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. 5
- (3) Adjustment income is treated for the purposes of Chapter 1 of Part 10 of ICTA (loss relief) as profits of the UK property business for the tax year in which tax is charged on it. 10

**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 adjustment expense is treated as arising only when the asset to which it relates is realised or written off. 15

**CHAPTER 8****RENT RECEIVABLE IN CONNECTION WITH A UK SECTION 12(4) CONCERN 20***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” 25**

- (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). 30
- (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, 35
  - (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. 5

**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), and
  - section 340 (relief in respect of mineral royalties). 10

**338 Person liable**

The person liable for any tax charged under this Chapter is the person receiving or entitled to the rent. 15

*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. 20
- (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.
- (3) This is subject to section 340 (relief in respect of mineral royalties).

*Mineral royalties* 25

**340 Relief in respect of mineral royalties**

- (1) This section applies if in a tax year—
  - (a) a person who is UK resident, or ordinarily UK resident, is entitled to receive mineral royalties under a mineral lease or agreement, and
  - (b) the royalties are chargeable to tax under this Chapter. 30
- (2) In calculating the amount of the royalties so chargeable, the person is treated as—
  - (a) entitled to receive only half of the total of the royalties arising under the lease or agreement in the tax year, and
  - (b) paying in the tax year only half of the total of the expenses mentioned in section 339(1)(b) (deduction for management expenses of owner of mineral rights). 35

- (3) As to the meaning of “mineral lease or agreement” and “mineral royalties”, see sections 341 to 343.

### **341 Meaning of “mineral lease or agreement” and “mineral royalties”**

- (1) In this Chapter “mineral lease or agreement” means –
- (a) a lease, profit à prendre, licence or other agreement conferring a right to win and work minerals in the United Kingdom, 5
  - (b) a contract for the sale, or a conveyance, of minerals in or under land in the United Kingdom, and
  - (c) a grant of a right under section 1 of the Mines (Working Facilities and Support) Act 1966 (c. 4) other than an ancillary right (within the meaning of that Act). 10
- (2) In this Chapter “mineral royalties” means so much of any rent receivable under a mineral lease or agreement as relates to the winning and working of minerals.
- (3) For the purposes of this section and section 343 “minerals” means all minerals and substances in or under land which are ordinarily worked for removal – 15
- (a) by underground working, or
  - (b) by surface working,
- but excluding water, peat, top-soil and vegetation.

### **342 Extended meaning of “mineral royalties” etc. in Northern Ireland**

- (1) In the application of this Chapter to Northern Ireland references to mineral royalties include the following periodical payments. 20
- (2) The payments are –
- (a) payments of compensation under section 29 or 35 of the Mineral Development Act (Northern Ireland) 1969 (c. 35 (N.I.)) (“the 1969 Act”),
  - (b) payments of compensation under section 4 of the Petroleum (Production) Act (Northern Ireland) 1964 (c. 28 (N.I.)) (“the 1964 Act”), 25
  - (c) payments made as mentioned in section 37 of the 1969 Act,
  - (d) payments made under section 55(4)(b) of the 1969 Act, and
  - (e) payments made under section 11 of the 1964 Act (payments in respect of minerals to persons entitled to a share of royalties under section 13(3) of the Irish Land Act 1903 (c. 37)). 30
- (3) In the application of this Chapter to Northern Ireland references to the mineral lease or agreement under which mineral royalties are receivable include the enactment under which those payments are made.

### **343 Power of Board to determine what counts as “mineral royalties”**

35

The Board of Inland Revenue may by regulations –

- (a) provide whether, and to what extent, rents receivable under a mineral lease or agreement which relate both to the winning and working of minerals and to other matters are treated as mineral royalties, and
- (b) provide for treating the whole of such rents as mineral royalties if the extent to which they relate to matters other than the winning and working of minerals is small. 40

## 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. 5

**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 10
  - (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— 15
- (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. 20

**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 25
  - (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. 30
- (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. 35

**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**

5

*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**

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- (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.

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**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).

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**352 Person liable**

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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,

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- (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. 5

### 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. 10
- (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), 15
  - 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 248 (debts paid after cessation), 20
  - section 249 (debts released after cessation), as qualified, where appropriate, by section 48(4) (car or motor cycle hire), and
  - section 250 (receipts relating to post-cessation expenditure).
- (3) This Chapter also needs to be read with –
- (a) section 310(3) (which treats certain amounts as not being post-cessation receipts), and 25
  - (b) section 844 (which treats certain income as a post-cessation receipt: unremittable income).

### 355 Transfer of rights if transferee does not carry on UK property business

- (1) This section applies if – 30
- (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 35
  - (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 40
  - (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.

*Supplementary*

**356 Application to Schedule A businesses**

- (1) In this Chapter (except in section 355) any reference to a UK property business includes a Schedule A business. 5
- (2) In this Chapter (except in section 355) any reference to a person permanently ceasing to carry on a UK property business includes the occurrence of an event which under section 337 of ICTA is treated as the discontinuance of a Schedule A business. 10
- (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 Schedule A business for corporation tax purposes.

**CHAPTER 11**

15

OVERSEAS PROPERTY INCOME

**357 Charge to tax on overseas property income**

Income tax is charged on the overseas property income of a person to whom the remittance basis applies.

**358 Meaning of “overseas property income”**

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In this Chapter “overseas property income”, in relation to a person to whom the remittance basis applies, means amounts which—

- (a) are not brought into account in calculating the profits of any overseas property business of the person, but
- (b) would be if section 269(3) (charge to tax on profits of an overseas property business of a person to whom the remittance basis applies only in respect of land in the Republic of Ireland) were omitted. 25

**359 Income charged**

Tax is charged under this Chapter on the amount specified by section 832 (relevant foreign income charged on the remittance basis).

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**360 Person liable**

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

**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 5
  - (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 10
  - (b) any of the trustees or personal representatives after the change starting  
to carry on the business.

**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. 15
- (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. 20

**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. 25
- (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.

**364 Meaning of “lease” and “premises”**

- (1) In this Part “lease” includes— 30
- (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.

# Income Tax (Trading and Other Income) Bill

A

## **B I L L**

To restate, with minor changes, certain enactments relating to income tax on trading income, property income, savings and investment income and certain other income; and for connected purposes.

*Presented by Mr Chancellor of the Exchequer  
supported by  
Ms Secretary Hewitt, Mr Secretary Johnson,  
Mr Paul Boateng, Dawn Primarolo,  
Mr Stephen Timms and John Healey.*

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*Ordered, by The House of Commons,  
to be printed, 30th November 2004.*

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PUBLISHED BY AUTHORITY OF THE HOUSE OF COMMONS  
LONDON: THE STATIONERY OFFICE  
Printed in the United Kingdom by  
The Stationery Office Limited  
£x.xx net