



# Income and Corporation Taxes Act 1988

## 1988 CHAPTER 1

### PART IV

#### PROVISIONS RELATING TO THE SCHEDULE D CHARGE

### CHAPTER VI

#### DISCONTINUANCE, AND CHANGE OF BASIS OF COMPUTATION

##### *Valuation of trading stock etc.*

#### **100 Valuation of trading stock at discontinuance of trade**

- (1) In computing for any tax purpose the profits or gains of a trade which has been discontinued, any trading stock belonging to the trade at the discontinuance shall be valued as follows—
  - (a) if—
    - (i) the stock is sold or transferred for valuable consideration to a person who carries on, or intends to carry on, a trade in the United Kingdom, and
    - (ii) the cost of the stock may be deducted by the purchaser as an expense in computing for any tax purpose the profits or gains of that trade, the value of the stock shall be taken to be the amount realised on the sale or the value of the consideration given for the transfer; and
  - (b) if the stock does not fall to be valued under paragraph (a) above, its value shall be taken to be the amount which it would have realised if it had been sold in the open market at the discontinuance of the trade.
- (2) For the purposes of this section “trading stock”, in relation to any trade—
  - (a) means property of any description, whether real or personal, being either—

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- (i) property such as is sold in the ordinary course of the trade, or would be so sold if it were mature or if its manufacture, preparation or construction were complete; or
  - (ii) materials such as are used in the manufacture, preparation or construction of any such property as is referred to in sub-paragraph (i) above; and
- (b) includes also any services, article or material which would, if the trade were a profession or vocation, be treated, for the purposes of section 101, as work in progress of the profession or vocation, and references to the sale or transfer of trading stock shall be construed accordingly.

### **101 Valuation of work in progress at discontinuance of profession or vocation**

- (1) Where, in computing for any tax purpose the profits or gains of a profession or vocation which has been discontinued, a valuation is taken of the work of the profession or vocation in progress at the discontinuance, that work shall be valued as follows—
- (a) if—
    - (i) the work is transferred for money or any other valuable consideration to a person who carries on, or intends to carry on, a profession or vocation in the United Kingdom, and
    - (ii) the cost of the work may be deducted by that person as an expense in computing for any tax purpose the profits or gains of that profession or vocation,
 the value of the work shall be taken to be the amount paid or other consideration given for the transfer; and
  - (b) if the work does not fall to be valued under paragraph (a) above, its value shall be taken to be the amount which would have been paid for a transfer of the work on the date of the discontinuance as between parties at arm's length.
- (2) Where a profession or vocation is discontinued, and the person by whom it was carried on immediately before the discontinuance so elects by notice sent to the inspector at any time within 12 months after the discontinuance—
- (a) the amount (if any) by which the value of the work in progress at the discontinuance (as ascertained under subsection (1) above) exceeds the actual cost of the work shall not be brought into account in computing the profits or gains of the period immediately before the discontinuance; but
  - (b) the amount by which any sums received for the transfer of the work exceed the actual cost of the work shall be included in the sums chargeable to tax by virtue of section 103 as if it were a sum to which that section applies received after the discontinuance.
- (3) References in this section to work in progress at the discontinuance of a profession or vocation shall be construed as references to—
- (a) any services performed in the ordinary course of the profession or vocation, the performance of which was wholly or partly completed at the time of the discontinuance and for which it would be reasonable to expect that a charge would have been made on their completion if the profession or vocation had not been discontinued; and
  - (b) any article produced, and any such material as is used, in the performance of any such services,

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and references in this section to the transfer of work in progress shall include references to the transfer of any benefits and rights which accrue, or might reasonably be expected to accrue, from the carrying out of the work.

## **102 Provisions supplementary to sections 100 and 101**

- (1) Any question arising under section 100(1)(a) or 101(1)(a) shall be determined as follows, for the purpose of computing for any tax purpose the profits or gains of both the trades or, as the case may be, the professions or vocations concerned—
  - (a) in a case where the same body of General Commissioners have jurisdiction with respect to both the trades, professions or vocations concerned, the question shall be determined by those Commissioners unless all parties concerned agree that it shall be determined by the Special Commissioners;
  - (b) in any other case, the question shall be determined by the Special Commissioners; and
  - (c) the General or Special Commissioners shall determine the question in like manner as an appeal.
- (2) Where, by virtue of section 113 or 337(1), a trade, profession or vocation is treated as having been permanently discontinued for the purpose of computing tax, it shall also be so treated for the purposes of sections 100 and 101; but those sections shall not apply in a case where a trade, profession or vocation carried on by a single individual is discontinued by reason of his death.

### *Case VI charges on receipts*

## **103 Receipts after discontinuance: earnings basis charge and related charge affecting conventional basis**

- (1) Where any trade, profession or vocation the profits or gains of which are chargeable to tax under Case I or II of Schedule D has been permanently discontinued, tax shall be charged under Case VI of that Schedule in respect of any sums to which this section applies which are received after the discontinuance.
- (2) Subject to subsection (3) below, this section applies to the following sums arising from the carrying on of the trade, profession or vocation during any period before the discontinuance (not being sums otherwise chargeable to tax)—
  - (a) where the profits or gains for that period were computed by reference to earnings, all such sums in so far as their value was not brought into account in computing the profits or gains for any period before the discontinuance, and
  - (b) where those profits or gains were computed on a conventional basis (that is to say, were computed otherwise than by reference to earnings), any sums which, if those profits or gains had been computed by reference to earnings, would not have been brought into the computation for any period before the discontinuance because the date on which they became due, or the date on which the amount due in respect thereof was ascertained, fell after the discontinuance.
- (3) This section does not apply to any of the following sums—
  - (a) sums received by a person beneficially entitled thereto who is not resident in the United Kingdom, or by a person acting on his behalf, which represent

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income arising directly or indirectly from a country or territory outside the United Kingdom, or

- (b) a lump sum paid to the personal representatives of the author of a literary, dramatic, musical or artistic work as consideration for the assignment by them, wholly or partially, of the copyright in the work, or
- (c) sums realised by the transfer of trading stock belonging to a trade at the discontinuance of the trade, or by the transfer of the work of a profession or vocation in progress at its discontinuance.

Paragraph (b) above shall have effect in relation to public lending right as it has effect in relation to copyright.

(4) Where—

- (a) in computing for tax purposes the profits or gains of a trade, profession or vocation a deduction has been allowed for any debt incurred for the purposes of the trade, profession or vocation, and
- (b) the whole or any part of that debt is thereafter released, and
- (c) the trade, profession or vocation has been permanently discontinued at or after the end of the period for which the deduction was allowed and before the release was effected,

subsections (1) to (3) above shall apply as if the amount released were a sum received after the discontinuance.

- (5) For the purposes of this section the value of any sum received in payment of a debt shall be treated as not brought into account in the computation of the profits or gains of a trade, profession or vocation to the extent that a deduction has been allowed in respect of that sum under section 74(j).

#### **104 Conventional basis: general charge on receipts after discontinuance or change of basis**

- (1) Where any trade, profession or vocation the profits or gains of which are chargeable to tax under Case I or II of Schedule D has been permanently discontinued, and the profits or gains for any period before the discontinuance were computed on a conventional basis, tax shall be charged under Case VI of that Schedule in respect of any sums to which this subsection applies which are received on or after the discontinuance.
- (2) Subject to subsection (3) below, subsection (1) above applies to all sums arising from the carrying on of the trade, profession or vocation during any period before the discontinuance, not being sums otherwise chargeable to tax, in so far as the amount or value of the sums was not brought into account in computing the profits or gains for any period before the discontinuance.
- (3) In subsection (2) above the reference to sums otherwise chargeable to tax includes any sums which (disregarding this section) are chargeable to tax under section 103 or to which that section would have applied but for subsection (3)(a) and (b) of that section.
- (4) Where, in the case of any trade, profession or vocation the profits or gains of which are chargeable to tax under Case I or II of Schedule D, there has been—
  - (a) a change from a conventional basis to the earnings basis, or
  - (b) a change of conventional basis which may result in receipts dropping out of computation,

tax shall be charged under Case VI of that Schedule in respect of sums to which this subsection applies which are received after the change and before the trade, profession or vocation is permanently discontinued.

- (5) Subsection (4) above applies to all sums arising from the carrying on of the trade, profession or vocation during any period before the change, not being sums otherwise chargeable to tax, in so far as the amount or value of the sums was not brought into account in computing the profits or gains for any period.
- (6) It is hereby declared that where work in progress at the discontinuance of a profession or vocation, or the responsibility for its completion, is transferred, the sums to which subsection (1) above applies include any sums received by way of consideration for the transfer, and any sums received by way of realisation by the transferee, on behalf of the transferor, of the work in progress transferred.
- (7) Where in the case of any profession or vocation, the profits or gains of which are chargeable to tax under Case II of Schedule D—
  - (a) there has been a change from a conventional basis to the earnings basis, or a change of conventional basis, and
  - (b) the value of the work in progress at the time of the change was debited in the accounts and allowed as a deduction in computing profits for tax purposes for a period after the change,

then, in so far as no counterbalancing credit was brought into account in computing profits for tax purposes for any period ending before or with the date of the change, tax shall be charged under subsection (4) above in respect of that amount for the year of assessment in which the change occurred as if that amount were a sum to which that subsection applies, and the change of basis were a change of the kind described in that subsection.

## **105 Allowable deductions**

- (1) In computing the charge to tax in respect of sums received by any person which are chargeable to tax by virtue of section 103 or 104(1) (including amounts treated as sums received by him by virtue of section 103(4)), there shall be deducted from the amount which, apart from this subsection, would be chargeable to tax—
  - (a) any loss, expense or debit (not being a loss, expense or debit arising directly or indirectly from the discontinuance itself) which, if the trade, profession or vocation had not been discontinued, would have been deducted in computing for tax purposes the profits or gains of the person by whom it was carried on before the discontinuance, or would have been deducted from or set off against those profits or gains as so computed, and
  - (b) any capital allowance to which the person who carried on the trade, profession or vocation was entitled immediately before the discontinuance and to which effect has not been given by way of relief before the discontinuance.
- (2) No amount shall be deducted under subsection (1) above if that amount has been allowed under any other provision of the Tax Acts.
- (3) No amount shall be deducted more than once under subsection (1) above; and—
  - (a) any expense or debit shall be apportioned between a sum chargeable under section 103 and a sum chargeable under section 104(1) in such manner as may be just;

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- (b) as between sums chargeable, whether under section 103 or 104(1), for one chargeable period and sums so charged for a subsequent chargeable period, any deduction in respect of a loss or capital allowance shall be made against sums chargeable for the earlier chargeable period;
- (c) subject to paragraph (b) above, as between sums chargeable for any chargeable period under section 103 and sums so chargeable under section 104(1), any deduction in respect of a loss or capital allowance shall be made against the last-mentioned sums rather than the first-mentioned;

but, in the case of a loss which is to be allowed after the discontinuance, not so as to authorise its deduction from any sum chargeable for a chargeable period preceding that in which the loss is incurred.

- (4) In computing the charge to tax in respect of sums received by any person which are chargeable to tax by virtue of section 104(4), there shall be deducted any expense or debit which is not otherwise allowable and which, but for the change in basis, would have been deducted in computing for tax purposes the profits or gains of the trade, profession or vocation, but no amount shall be deducted more than once under this subsection.

#### **106 Application of charges where rights to payments transferred**

- (1) Subject to subsection (2) below, in the case of a transfer for value of the right to receive any sum to which section 103, 104(1) or 104(4) applies, any tax chargeable by virtue of either of those sections shall be charged in respect of the amount or value of the consideration (or, in the case of a transfer otherwise than at arm's length, in respect of the value of the right transferred as between parties at arm's length), and references in this Chapter, except section 101(2), to sums received shall be construed accordingly.
- (2) Where a trade, profession or vocation is treated as permanently discontinued by reason of a change in the persons carrying it on, and the right to receive any sum to which section 103 or 104(1) applies is or was transferred at the time of the change to the persons carrying on the trade, profession or vocation after the change, tax shall not be charged by virtue of either of those sections, but any sum received by those persons by virtue of the transfer shall be treated for all purposes as a receipt to be brought into the computation of the profits or gains of the trade, profession or vocation in the period in which it is received.

#### *Reliefs*

#### **107 Treatment of receipts as earned income**

Where an individual is chargeable to tax by virtue of section 103 or 104, and the profits or gains of the trade, profession or vocation to which he was entitled before the discontinuance or, as the case may be, change of basis fell to be treated as earned income for the purposes of income tax, the sums in respect of which he is so chargeable shall also be treated as earned income for those purposes (but, in the case of sums chargeable by virtue of section 104, after any reduction in those sums under section 109).

#### **108 Election for carry-back**

Where any sum is—

- (a) chargeable to tax by virtue of section 103 or 104, and
- (b) received in any year of assessment beginning not later than six years after the discontinuance or, as the case may be, change of basis by the person by whom the trade, profession or vocation was carried on before the discontinuance or change, or by his personal representatives,

that person or (in either case) his personal representatives may, by notice sent to the inspector within two years after that year of assessment, elect that the tax so chargeable shall be charged as if the sum in question were received on the date on which the discontinuance took place or, as the case may be, on the last day of the period at the end of which the change of basis took place; and, in any such case, an assessment shall (notwithstanding anything in the Tax Acts) be made accordingly, and, in connection with that assessment, no further deduction or relief shall be made or given in respect of any loss or allowance deducted in pursuance of section 105.

### 109 Charge under section 104: relief for individuals born before 6th April 1917

- (1) If an individual born before 6th April 1917, or the personal representatives of such an individual, is chargeable to tax under section 104 and—

- (a) the individual was engaged in carrying on a trade, profession or vocation on 18th March 1968, and
- (b) the profits or gains of the trade, profession or vocation were not computed by reference to earnings in the period in which that 18th March fell, or in any subsequent period ending before or with the relevant date,

the net amount with which he is so chargeable to tax shall be reduced by multiplying that net amount by the fraction given below.

- (2) Where section 104(4) applies in relation to a change of basis taking place on a date before 19th March 1968, then, in relation to tax chargeable by reference to that change of basis, that earlier date shall be substituted for the date in subsection (1)(a) above and subsection (1)(b) above shall be omitted.

- (3) The fraction referred to in subsection (1) above is—

- (a) where on 5th April 1968 the individual had not attained the age of 52—

$$\frac{19}{20}$$

- (b) where on that date he had attained the age of 52, but had not attained the age of 53—

$$\frac{18}{20}$$

and so on, reducing the fraction by—

$$\frac{1}{20}$$

for each year he had attained up to the age of 64;

- (c) where on that date he had attained the age of 65, or any greater age—

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- (4) In this section—
- “the net amount” with which a person is chargeable to tax under section 104 means the amount with which he is so chargeable after making any deduction authorised by section 105 but before giving any relief under this section; and
- “relevant date”—
- (a) in relation to tax under section 104(1), means the date of the permanent discontinuance, and
- (b) in relation to tax under section 104(4), means the date of the change of basis.
- (5) Subsections (1) to (4) above shall apply as follows as respects the net amount of any sum chargeable under section 104 which is assessed by reference to a sum accruing to a partnership—
- (a) the part of that net amount which is apportioned to any partner (who is an individual), or the personal representative of such an individual, shall be a net amount with which that person is chargeable under that section, and
- (b) if the part of that net amount which is so apportioned is a greater proportion of that amount than is the individual’s share (that is to say, the part to be included in his total income) of the total amount of the partnership profits assessed to income tax for the three years of assessment ending with the year in which the discontinuance or change of basis took place, the amount of the reduction to be given by way of relief shall not exceed the amount of relief which would have been so given if the apportionment had been made by reference to his share of that total amount.
- (6) For the purposes of this section the trade, profession or vocation carried on before a permanent discontinuance shall not be treated as the same as any carried after the discontinuance.

*Supplemental*

**110 Interpretation etc**

- (1) The following provisions have effect for the purposes of sections 103 to 109.
- (2) For the purposes of those sections, any reference to the permanent discontinuance of a trade, profession or vocation includes a reference to the occurring of any event which, under section 113 or 337(1), is to be treated as equivalent to the permanent discontinuance of a trade, profession or vocation.
- (3) The profits or gains of a trade, profession or vocation in any period shall be treated as computed by reference to earnings where all credits and liabilities accruing during that period as a consequence of its being carried on are brought into account in computing those profits or gains for tax purposes, and not otherwise, and “earnings basis” shall be construed accordingly.
- (4) “Conventional basis” has the meaning given by section 103(2), so that profits or gains are computed on a conventional basis if computed otherwise than by reference to earnings.



- (5) There is a change from a conventional basis to the earnings basis at the end of a period the profits or gains of which were computed on a conventional basis if the profits or gains of the next succeeding period are computed by reference to earnings; and, if the profits or gains of two successive periods are computed on different conventional bases, a change of conventional basis occurs at the end of the earlier period.
- (6) In sections 103 and 104—
- (a) “trading stock” has the meaning given by section 100(2);
  - (b) references to work in progress at the discontinuance of a profession or vocation, and to the transfer of work in progress, are to be construed in accordance with section 101(3); and
  - (c) the reference to work in progress at the time of a change of basis is also to be construed in accordance with section 101(3), substituting therein for this purpose references to the change of basis for references to the discontinuance.