



Finance Act 1994

1994 CHAPTER 9

PART IV

INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

CHAPTER IV

CHANGES FOR FACILITATING SELF-ASSESSMENT

Assessment under Cases I and II of Schedule D

200 Assessment on current year basis.

For section 60 of the Taxes Act 1988 there shall be substituted the following section—

“60 Assessment on current year basis.

- (1) Subject to subsection (2) below and section 63A, income tax shall be charged under Cases I and II of Schedule D on the full amount of the profits or gains of the year of assessment.
- (2) Where, in the case of a trade, profession or vocation, a basis period for the year of assessment is given by subsection (3) below or sections 61 to 63, the profits or gains of that period shall be taken to be the profits or gains of the year.
- (3) Subject to sections 61 to 63, the basis period for a year of assessment is as follows—
 - (a) if the year is the first year of assessment in which there is an accounting date which falls not less than 12 months after the commencement date, the period of 12 months ending with that accounting date; and
 - (b) if there is a basis period for the immediately preceding year and that basis period is not given by section 61, the period of 12 months beginning immediately after the end of that basis period.

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- (4) In the case of a person who, if he had not died, would under the provisions of this section and sections 61 to 63A have become chargeable to income tax for any year, the tax which would have been so chargeable—
 - (a) shall be assessed and charged on his personal representatives, and
 - (b) shall be a debt due from and payable out of his estate.
- (5) In this section and sections 61 to 63—
 - “accounting date”, in relation to a year of assessment, means a date in the year to which accounts are made up or, where there are two or more such dates, the latest of those dates;
 - “the commencement date” and “the commencement year” mean respectively the date on which and the year of assessment in which the trade, profession or vocation is set up and commenced.”

201 Basis of assessment at commencement.

For section 61 of the Taxes Act 1988 there shall be substituted the following section—

“61 Basis of assessment at commencement.

- (1) Notwithstanding anything in section 60, where the year of assessment is the commencement year, the computation of the profits or gains chargeable to income tax under Case I or II of Schedule D shall be made on the profits or gains arising in the year.
- (2) Subject to section 63, where the year of assessment is the year next following the commencement year and—
 - (a) there is an accounting date in the year and the period beginning with the commencement date and ending with the accounting date is a period of less than 12 months; or
 - (b) the basis period for the year would, apart from this subsection, be given by section 62(2) and the period beginning with the commencement date and ending with the new date in the year is a period of less than 12 months,
 the basis period for the year is the period of 12 months beginning with the commencement date.
- (3) In this section “the new date” has the same meaning as in section 62.”

202 Change of basis period.

For section 62 of the Taxes Act 1988 there shall be substituted the following section—

“62 Change of basis period.

- (1) Subsection (2) below applies where, in the case of a trade, profession or vocation—
 - (a) an accounting change, that is, a change from one accounting date (“the old date”) to another (“the new date”), is made or treated as made in a year of assessment; and

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- (b) either section 62A applies or the year of assessment is the year next following or next but one following the commencement year.
- (2) The basis period for the year of assessment is as follows—
 - (a) if the year is the year next following the commencement year or the relevant period is a period of less than 12 months, the period of 12 months ending with the new date in the year; and
 - (b) if the relevant period is a period of more than 12 months, that period; and in this subsection “the relevant period” means the period beginning immediately after the end of the basis period for the preceding year and ending with the new date in the year.
- (3) Where subsection (2) above does not apply as respects an accounting change made or treated as made in a year of assessment (“the first year”), this section and section 62A shall have effect in relation to the next following year (“the second year”) as if the change had not been made or treated as made.
- (4) As a consequence of subsection (3) above—
 - (a) an accounting change shall be treated as made in the second year if the date or, as the case may be, the latest date in that year to which accounts are made up is a date other than the date of the end of the basis period for the first year; and
 - (b) no such change shall be treated as made in the second year if that date is the date of the end of that period.
- (5) For the purposes of this section an accounting change is made in the first year of assessment in which accounts are not made up to the old date, or accounts are made up to the new date, or both.”

203 Conditions for such a change.

After section 62 of the Taxes Act 1988 there shall be inserted the following section—

“62A Conditions for such a change.

- (1) This section applies in relation to an accounting change if the following are fulfilled, namely—
 - (a) the first and second conditions mentioned below, and
 - (b) either the third or the fourth condition so mentioned.
- (2) The first condition is that the first accounting period ending with the new date does not exceed 18 months.
- (3) The second condition is that notice of the accounting change is given to an officer of the Board on or before the 31st January next following the year of assessment.
- (4) The third condition is that no accounting change as respects which section 62(2) has applied has been made or treated as made in any of the five years immediately preceding the year of assessment.
- (5) The fourth condition is that—
 - (a) the notice required by the second condition sets out the reasons for which the change is made; and

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- (b) either the officer is satisfied that the change is made for bona fide commercial reasons or he does not, within 60 days of receiving the notice, give notice to the person carrying on the trade, profession or vocation that he is not so satisfied.
- (6) An appeal may be brought against the giving of a notice under subsection (5)(b) above within the period of 30 days beginning with the date on which the notice is given.
- (7) Subject to subsection (8) below, the provisions of the Management Act relating to appeals shall have effect in relation to an appeal under subsection (6) above as they have effect in relation to an appeal against an assessment to tax.
- (8) On an appeal under subsection (6) above section 50(6) to (8) of the Management Act shall not apply but the Commissioners may—
 - (a) if they are satisfied that the change is made for bona fide commercial reasons, set the notice under subsection (5)(b) above aside; or
 - (b) if they are not so satisfied, confirm that notice.
- (9) Obtaining a tax advantage shall not be regarded as a bona fide commercial reason for the purposes of subsections (5) and (8) above.
- (10) In this section—
 - (a) “accounting period” means a period for which accounts are made up, and
 - (b) expressions which are also used in section 62 have the same meanings as in that section.”

204 Basis of assessment on discontinuance.

For section 63 of the Taxes Act 1988 there shall be substituted the following section—

“63 Basis of assessment on discontinuance.

Where a trade, profession or vocation is permanently discontinued in a year of assessment other than the commencement year, the basis period for the year shall be the period beginning—

- (a) where the year is the year next following the commencement year, immediately after the end of the commencement year, and
 - (b) in any other case, immediately after the end of the basis period for the preceding year of assessment,
- and (in either case) ending with the date on which the trade, profession or vocation is permanently discontinued.”

205 Overlap profits and overlap losses.

After section 63 of the Taxes Act 1988 there shall be inserted the following section—

“63A Overlap profits and overlap losses.

- (1) Where, in the case of any trade, profession or vocation, the basis period for a year of assessment is given by section 62(2)(b), a deduction shall be made in

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computing the profits or gains of that year of an amount equal to that. given by the formula in subsection (2) below.

(2) The formula referred to in subsection (1) above is—

$$A \times \frac{B - C}{D}$$

where—

A = the aggregate of any overlap profits less the aggregate of any amounts previously deducted under subsection (1) above;

B = the number of days in the basis period;

C = the number of days in the year of assessment;

D = the aggregate of the overlap periods of any overlap profits less the aggregate number of days given by the variable “B — C” in any previous applications of this subsection.

(3) Where, in the case of any trade, profession or vocation, the basis period for a year of assessment is given by section 63, a deduction shall be made in computing the profits or gains of that year of an amount equal to—

- (a) the aggregate of any overlap profits, less
- (b) the aggregate of any amounts deducted under subsection (1) above.

(4) Where, in the case of any trade, profession or vocation, an amount of a loss would, apart from this subsection, fall to be included in the computations for two successive years of assessment, that amount shall not be included in the computation for the second of those years.

(5) In this section—

“overlap profit” means an amount of profits or gains which, by virtue of sections 60 to 62, is included in the computations for two successive years of assessment; and

“overlap period”, in relation to an overlap profit, means the number of days in the period in which the overlap profit arose.”

Assessment under Cases III to VI of Schedule D

206 Basis of assessment under Case III.

For section 64 of the Taxes Act 1988 there shall be substituted the following section—

“64 Case III assessments.

Income tax under Case III of Schedule D shall be computed on the full amount of the income arising within the year of assessment, and shall be paid on the actual amount of that income, without any deduction.”

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207 Basis of assessment under Cases IV and V.

- (1) In subsection (1) of section 65 of that Act (Case IV and V assessments: general), the words “and sections 66 and 67” and the words “the year preceding” shall cease to have effect.
- (2) In subsection (3) of that section—
 - (a) after the words “Cases I and II of Schedule D” there shall be inserted the words “(including sections 60 to 63A and 113)”; and
 - (b) the words from “Nothing in this subsection” to the end shall cease to have effect.
- (3) In subsection (5) of that section, the words “subject to sections 66 and 67” and the words “the year preceding”, in each place where they occur, shall cease to have effect.
- (4) Sections 66 and 67 of that Act (special rules for fresh income and special rules where source of income disposed of or yield ceases) shall cease to have effect.
- (5) In subsection (1) of section 68 of that Act (special rules where property etc. situated in Republic of Ireland), for the words “sections 65 or 66” there shall be substituted the words “section 65”.
- (6) In its application to trades, professions or vocations set up and commenced before 6th April 1994, subsection (2) above has effect as respects the year 1997-98 and subsequent years of assessment.

208 Basis of assessment under Case VI.

For section 69 of the Taxes Act 1988 there shall be substituted the following section—

“69 Case VI assessments.

Income tax under Case VI of Schedule D shall be computed on the full amount of the profits or gains arising in the year of assessment.”

Loss relief

209 Loss relief: general.

- (1) For subsections (1) and (2) of section 380 of the Taxes Act 1988 (set-off against general income) there shall be substituted the following subsections—
 - “(1) Where in any year of assessment any person sustains a loss in any trade, profession, vocation or employment carried on by him either solely or in partnership, he may, by notice given within twelve months from the 31st January next following that year, make a claim for relief from income tax on—
 - (a) so much of his income for that year as is equal to the amount of the loss or, where it is less than that amount, the whole of that income; or
 - (b) so much of his income for the last preceding year as is equal to that amount or, where it is less than that amount, the whole of that income;
 but relief shall not be given for the loss or the same part of the loss both under paragraph (a) and under paragraph (b) above.

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- (2) Any relief claimed under paragraph (a) of subsection (1) above in respect of any income shall be given in priority to any relief claimed in respect of that income under paragraph (b) of that subsection.”
- (2) In subsection (2) of section 381 of that Act (further relief for individuals for losses in early years of trade), for the words “an amount of the claimant’s income equal to the amount of the loss” there shall be substituted the words “ so much of the claimant’s income as is equal to the amount of the loss or, where it is less than that amount, the whole of that income ”.
- (3) For subsections (3) and (4) of section 382 of that Act (provisions supplementary to sections 380 and 381) there shall be substituted the following subsections—
- “(3) Subject to subsection (4) below, for the purposes of sections 380 and 381, the amount of a loss sustained in a trade, profession or vocation shall be computed in like manner and in respect of the same period as the profits or gains arising or accruing from the trade, profession or vocation are computed under the provisions of the Income Tax Acts applicable to Case I or II of Schedule D.
- (4) An amount of a loss which, apart from this subsection, would fall to be included in the computations for two successive years of assessment shall not be included in the computation for the second of those years.”
- (4) For subsection (1) of section 385 of that Act (carry-forward against subsequent profits) there shall be substituted the following subsection—
- “(1) Where a person has, in any trade, profession or vocation carried on by him either alone or in partnership, sustained a loss (to be computed as mentioned in subsections (3) and (4) of section 382) in respect of which relief has not been wholly given either under section 380 or any provision of the Income Tax Acts—
- (a) he may make a claim requiring that any part of the loss for which relief has not been so given shall be set off for the purposes of income tax against the income of the trade, profession or vocation for subsequent years of assessment; and
- (b) where he makes such a claim, the income from the trade, profession or vocation in any subsequent year of assessment shall be treated as reduced by that part of the loss, or by so much of that part as cannot, on that claim, be relieved against such income of an earlier year of assessment.”
- (5) Subsections (3) and (8) of that section shall cease to have effect.
- (6) In subsection (1) of section 388 of that Act (carry-back of terminal losses) for the words “the three years of assessment last preceding that in which the discontinuance occurs” there shall be substituted the words “ the year of assessment in which the discontinuance occurs and the three years last preceding it ”.
- (7) In their application to trades, professions or vocations set up and commenced before 6th April 1994, subsections (3) to (5) above have effect as respects the year 1997-98 and subsequent years of assessment.

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Modifications etc. (not altering text)

C1 S. 209 amended (retrospectively) by 1995 c. 4, s. 118

210 Relief for losses on unquoted shares.

- (1) For subsections (1) and (2) of section 574 of the Taxes Act 1988 (relief for individuals for losses on unquoted shares) there shall be substituted the following subsections—

“(1) Where an individual who has subscribed for shares in a qualifying trading company incurs an allowable loss (for capital gains tax purposes) on the disposal of the shares in any year of assessment, he may, by notice given within twelve months from the 31st January next following that year, make a claim for relief from income tax on—

- (a) so much of his income for that year as is equal to the amount of the loss or, where it is less than that amount, the whole of that income; or
- (b) so much of his income for the last preceding year as is equal to that amount or, where it is less than that amount, the whole of that income;

but relief shall not be given for the loss or the same part of the loss both under paragraph (a) and under paragraph (b) above.

Where such relief is given in respect of the loss or any part of it, no deduction shall be made in respect of the loss or (as the case may be) that part under the 1992 Act.

- (2) Any relief claimed under paragraph (a) of subsection (1) above in respect of any income shall be given in priority to any relief claimed in respect of that income under paragraph (b) of that subsection; and any relief claimed under either paragraph in respect of any income shall be given in priority to any relief claimed in respect of that income under section 380 or 381.”

- (2) This section has effect as respects the year 1994-95 and subsequent years of assessment.

Modifications etc. (not altering text)

C2 S. 210 amended (retrospectively) by 1995 c. 4, s. 119

Capital allowances

211 Income tax allowances and charges in taxing a trade etc.

- (1) For section 140 of the ^{M1}Capital Allowances Act 1990 there shall be substituted the following section—

“140 Income tax allowances and charges in taxing a trade etc.

- (1) In computing for the purposes of income tax a person’s income for any period of account there shall be made all such deductions and additions as are required to give effect to the provisions of Parts I to VI and this Part which relate to allowances and charges in respect of capital expenditure; and

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subsection (2) below and section 141 have effect as respects allowances and charges which fall to be made under those provisions as they apply for the purposes of income tax.

- (2) Allowances and charges which fall to be made for any period of account in taxing a trade under the provisions of Parts I to VI and this Part as they apply for the purposes of income tax shall be given effect by treating the amount of any allowance as a trading expense of the trade in that period, and by treating the amount on which any such charge is to be made as a trading receipt of the trade in that period.
 - (3) Any claim made by a person for an allowance falling to be made to him in taxing his trade shall be made in his return of income for income tax purposes, and section 42 of the Taxes Management Act 1970 shall not apply to any such claim.
 - (4) This section shall apply in relation to professions, vocations, employments and offices as it applies in relation to trades.
 - (5) Deductions allowable in taxing a trade under the provisions of Part VII as they apply for the purposes of income tax shall be given effect in accordance with subsections (1) and (2) above.
 - (6) In the application of subsection (2) above to allowances and charges which fall to be made under the provisions of Part I, references to a trade shall be treated as including references to an undertaking treated by virtue of section 21(5A) as carried on by way of trade.”
- (2) Subject to section 214(7) below, this section and sections 212 to 214 below, in their application to trades, professions or vocations set up and commenced before 6th April 1994 or employments or offices entered into before that date, have effect as respects the year 1997-98 and subsequent years of assessment.

Marginal Citations

M1 1990 c. 1.

212 Chargeable periods for income tax purposes.

- (1) For section 160 of the ^{M2}Capital Allowances Act 1990 there shall be substituted the following section—

“160 Meaning of “period of account”.

- (1) In this Act as it applies for income tax purposes, “period of account” has the meaning given by the following provisions of this section.
- (2) In the case of a person to or on whom an allowance or charge falls to be made in taxing his trade, profession or vocation, “period of account” means, subject to subsections (3) and (4) below, any period for which accounts are made up for the purposes of the trade, profession or vocation.
- (3) For the purposes of subsection (2) above—

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- (a) where two periods of account overlap, the period common to both shall be deemed to fall in the first period of account only; and
 - (b) where there is an interval between two periods of account, the interval shall be deemed to be part of the first period of account.
- (4) For the purposes of subsection (2) above, where a period of account (“the original period”) would, apart from this subsection, be a period of more than 18 months, that period shall be deemed to be divided into as many separate periods of account—
- (a) the first beginning with the commencement date of the original period; and
 - (b) each subsequent one beginning with an anniversary of that date,
- as may be necessary to secure that none of those periods of account is a period of more than 12 months.
- (5) In the case of any other person to or on whom an allowance or charge falls to be made under Parts I to VI or this Part, “period of account” means any year of assessment.
- (6) Any reference in this section to the overlapping of two periods shall be construed as including a reference to the coincidence of two periods or to the inclusion of one period in another, and references to the period common to both of two periods shall be construed accordingly.”
- (2) In subsection (2) of section 161 of that Act (other interpretative provisions), for the definitions of “chargeable period” and related expressions there shall be substituted the following definitions—
- ““chargeable period” means an accounting period of a company or a period of account, and a reference to a “chargeable period related to” the incurring of expenditure, or a sale or other event, is a reference to the chargeable period in which the expenditure is incurred, or the sale or other event takes place;”.

Marginal Citations

M2 1990 c. 1.

213 Other amendments of Capital Allowances Act 1990.

- (1) In the ^{M3}Capital Allowances Act 1990 the following words, in each place where they occur, shall cease to have effect, namely— “ or its basis period ”; “ or of which the basis periods end on or before that date ”; “ or, as the case may be, in its basis period ”; “ or in the basis period for which ”; “ or, as the case may be, its basis period ”; and “ or the basis periods for which ”.
- (2) In subsection (2) of section 3 of that Act (writing down allowances for industrial buildings and structures), after the word “less” there shall be inserted the words “ or more ” and after the word “reduced” there shall be inserted the words “ or increased ”.
- (3) In section 8 of that Act (writing off of expenditure on industrial buildings and structures)—

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- (a) in subsection (5), in paragraph (a), the words from “or” to the end shall cease to have effect; and
 - (b) in subsection (13), for paragraph (d) there shall be substituted the following paragraph—
 - “(d) the periods of account of that other person in respect of that trade had, in the case of each year of assessment, ended immediately before the beginning of the next following year of assessment.”
- (4) In subsection (2)(a) of section 24 of that Act (writing-down allowances and balancing adjustments), for sub-paragraph (ii) there shall be substituted the following sub-paragraph—
 - “(ii) a proportionately reduced or, as the case may require, increased percentage of the excess if the period is a period of less or more than a year, or the trade has been carried on for part only of the period;”.
- (5) In subsection (3) of section 34 of that Act (writing-down allowances etc. for expensive motor cars), for paragraphs (a) and (b) there shall be substituted the following paragraphs—
 - “(a) except in a case falling within paragraph (b) below, £3,000 or, if the period is a period of less or more than a year, that amount proportionately reduced or, as the case may require, increased,
 - (b) if, by virtue of section 153, the person carrying on the trade is regarded as having incurred a part only of the expenditure actually incurred on the provision of the motor car, a proportionate part of £3,000 or, if the period is a period of less or more than a year, that part proportionately reduced or, as the case may require, increased.”
- (6) In subsection (1)(b) of section 35 of that Act (contributions to expenditure on expensive motor cars), for the words “or, if the chargeable period is part only of a year, that amount proportionately reduced” there shall be substituted the words “ or, if the chargeable period is a period of less or more than a year, that amount proportionately reduced or, as the case may require, increased ”.
- (7) In subsection (2) of section 85 of that Act (writing down allowances), after the word “less” there shall be inserted the words “ or more ” and after the word “reduced” there shall be inserted the words “ or increased ”.
- (8) For subsection (6) of section 98 of that Act (mineral extraction: writing down and balancing allowances), there shall be substituted the following subsection—
 - “(6) If a chargeable period is a period of less or more than a year or if the trade has been carried on for part only of it, the percentage appropriate under subsection (5) above shall be correspondingly reduced or, as the case may require, increased.”
- (9) In subsection (1) of section 134 of that Act (allowances for expenditure on dredging), the words from “but where a writing-down allowance” to the end shall cease to have effect.
- (10) For subsections (5) to (7) of section 137 of that Act (allowances for capital expenditure on scientific research) there shall be substituted the following subsection—

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“(5) The relevant chargeable period shall be the chargeable period in which the expenditure was incurred or, if it was incurred before the setting up and commencement of the trade, the chargeable period beginning with that setting up and commencement.”

(11) In subsection (5) of section 161 of that Act (other interpretative provisions), for the words from “or in charging” to the end there shall be substituted the words “or income tax.”

Marginal Citations

M3 1990 c. 1.

214 Amendments of other enactments.

- (1) In the Taxes Act 1988, the following provisions shall cease to have effect, namely—
 - (a) in section 96 (farming and market gardening: relief for fluctuating profits), in subsection (7), paragraph (b);
 - (b) section 383 (extension of right to set-off to capital allowances);
 - (c) in section 384 (restrictions on right of set-off), in subsection (1), the words “(including any amount in respect of capital allowances which, by virtue of section 383, is to be treated as a loss)”, and in subsection (2), the words “or an allowance in respect of expenditure incurred”, paragraph (b) and the word “or” immediately preceding that paragraph;
 - (d) in section 388 (carry-back of terminal losses), in subsection (6), paragraphs (b) and (d) and the word “and” immediately preceding paragraph (d), and in subsection (7), the words from the beginning to “an earlier year: and”; and
 - (e) in section 389 (supplementary provisions relating to carry-back of terminal losses), subsections (5) to (7).
- (2) In subsection (6) of section 384 of that Act—
 - (a) for the words “There shall be disregarded for the purposes of section 383 any allowances” there shall be substituted the words “ There shall be disregarded for the purposes of sections 380 and 381 so much of any loss as derives from any allowances ”; and
 - (b) for the words “the year of the loss (as defined in section 383)” there shall be substituted the words “ the year of assessment in which the loss was sustained ”.
- (3) In subsection (1) of section 397 of that Act (restriction of relief in case of farming and market gardening)—
 - (a) after the word “loss”, in the second place where it occurs, there shall be inserted the words “ , computed without regard to capital allowances, ”; and
 - (b) the words from “and where” to the end shall cease to have effect.
- (4) In subsection (4)(a) of section 520 of that Act (allowances for expenditure on purchase of patent rights), for sub-paragraph (ii) there shall be substituted the following sub-paragraph—

“(ii) a proportionately reduced or, as the case may require, increased percentage of the excess if the period is a period of

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less or more than a year, or the trade has been carried on for part only of the period;”.

(5) In the following provisions of that Act, namely—

- (a) section 521 (provisions supplementary to section 520);
- (b) section 528 (manner of making allowances and charges); and
- (c) section 530 (disposal of know-how),

the words “or its basis period”, in each place where they occur, shall cease to have effect.

(6) In subsection (2)(a) of section 530 of that Act (disposal of know-how), for sub-paragraph (ii) there shall be substituted the following sub-paragraph—

“(ii) a proportionately reduced or, as the case may require, increased percentage of the excess if the period is a period of less or more than a year, or the trade has been carried on for part only of the period;”.

(7) Subsection (1)(a) above—

- (a) except in its application to a trade set up and commenced on or after 6th April 1994, has effect where the first of the two years of assessment to which the claim relates is the year 1996-97 or any subsequent year, and
- (b) in its application to a trade so set up and commenced, has effect where the first of those two years of assessment is the year 1995-96 or any subsequent year.

Miscellaneous and supplemental

215 Treatment of partnerships.

(1) For section 111 of the Taxes Act 1988 there shall be substituted the following section—

“111 Treatment of partnerships.

- (1) Where a trade or profession is carried on by two or more persons in partnership, the partnership shall not, unless the contrary intention appears, be treated for the purposes of the Tax Acts as an entity which is separate and distinct from those persons.
- (2) So long as a trade or profession (“the actual trade or profession”) is carried on by persons in partnership, and each of those persons is chargeable to income tax, the profits or gains or losses arising from the trade or profession shall be computed for the purposes of income tax in like manner as if the partnership were an individual.
- (3) A person’s share in the profits or gains or losses of the partnership which for any period are computed in accordance with subsection (2) above shall be determined according to the interests of the partners during that period; and income tax shall be chargeable or, as the case may require, loss relief may be claimed as if—
 - (a) that share derived from a trade or profession (“the deemed trade or profession”) carried on by the person alone;
 - (b) the deemed trade or profession was set up and commenced by him at the time when he became a partner or, where the actual trade or

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- profession was previously carried on by him alone, the time when the actual trade was set up and commenced; and
- (c) the deemed trade or profession is permanently discontinued by him at the time when he ceases to be a partner or, where the actual trade or profession is subsequently carried on by him alone, the time when the actual trade or profession is permanently discontinued.
- (4) Where—
- (a) subsections (2) and (3) above apply in relation to the profits or gains or losses of a trade or profession carried on by persons in partnership, and
- (b) other income accrues to those persons by virtue of their being partners,
- that other income shall be chargeable to tax by reference to the same periods as if it were profits or gains arising from the trade or profession.
- (5) Subsections (1) to (3) above apply, with the necessary modifications, in relation to a business as they apply in relation to a trade.”
- (2) In section 114 of that Act (special rules for computing profits or losses), after the word “trade”—
- (a) in subsection (1), in each place where it occurs;
- (b) in subsection (2); and
- (c) in subsection (3), in the first place where it occurs,
- there shall be inserted the words “ profession or business ”.
- (3) The following provisions of that Act shall cease to have effect, namely—
- (a) in section 114, in subsection (3), the words from “except that” to the end, and subsection (4);
- (b) in section 115 (provisions supplementary to section 114), subsections (1) to (3) and (6); and
- (c) in section 277 (personal reliefs: partnerships), in subsection (1), the words “Subject to subsection (2) below”, paragraph (c) and the word “and” immediately preceding that paragraph, and subsection (2).
- (4) This section and section 216 below—
- (a) except in their application to partnerships mentioned in subsection (5) below, have effect as respects the year 1997-98 and subsequent years of assessment, and
- (b) in its application to partnerships so mentioned, have effect as respects the year 1994-95 and subsequent years of assessment.
- (5) The partnerships referred to in subsection (4) above are partnerships—
- (a) whose trades, professions or businesses are set up and commenced on or after 6th April 1994; and
- (b) which are not partnership firms to which section 112(3) of the Taxes Act 1988 (partnerships controlled abroad) applies.

Modifications etc. (not altering text)

C3 S. 215 amended (*retrospectively*) by 1995 c. 4, s. 117

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216 Effect of change in ownership of trade, profession or vocation.

- (1) For subsection (2) of section 113 of the Taxes Act 1988 (effect of change in ownership of trade, profession or vocation) there shall be substituted the following subsection—

“(2) Where—

- (a) there is such a change as is mentioned in subsection (1) above, and
- (b) a person engaged in carrying on the trade, profession or vocation immediately before the change continues to be so engaged immediately after it,

subsection (1) above shall not apply to treat the trade, profession or vocation as discontinued or a new one as set up and commenced.”

- (2) Subsections (3) to (5) of that section and, in subsection (6) of that section, the words from “and where” to the end shall cease to have effect.

- (3) The following provisions of that Act shall cease to have effect, namely—

- (a) in section 96 (farming and market gardening: relief for fluctuating profits), in subsection (6) the words from “except that” to the end;
- (b) in section 380 (set-off against general income), subsection (3);
- (c) in section 381 (further relief in early years of trade), subsection (6);
- (d) in section 384 (restrictions on right of set-off), subsection (5);
- (e) in section 385 (carry-forward against subsequent profits), subsections (2) and (5);
- (f) in section 386 (carry-forward where business transferred to a company), subsection (4); and
- (g) in section 389 (supplementary provisions relating to carry-back of terminal losses), subsection (3).

- (4) For subsection (4) of section 389 of that Act, there shall be substituted the following subsection—

“(4) For the purposes of this section and section 388 a trade, profession or vocation shall be treated as discontinued, and a new one as set up and commenced, when it is so treated for the purposes of section 111 or 113.”

- (5) Subsection (3)(a) above—

- (a) except in its application to a trade set up and commenced on or after 6th April 1994, has effect where the first of the two years of assessment to which the claim relates is the year 1996-97 or any subsequent year, and
- (b) in its application to a trade so set up and commenced, has effect where the first of those two years of assessment is the year 1995-96 or any subsequent year.

217 Double taxation relief in respect of overlap profits.

- (1) In subsection (1) of section 804 of the Taxes Act 1988 (relief against income tax in respect of income arising in years of commencement), for the words “any income arising in the years of commencement” there shall be substituted the words “any income which is an overlap profit”.

- (2) For subsection (5) of that section there shall be substituted the following subsections—

“(5) Subsections (5A) and (5B) below apply where—

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- (a) credit against income tax for any year of assessment is allowed by virtue of subsection (1) above in respect of any income which is an overlap profit (“the original income”), and
 - (b) the original income or any part of it contributes to an amount which, by virtue of section 63A(1) or (3), is deducted in computing the profits or gains of a subsequent year of assessment (“the subsequent year”).
- (5A) The following shall be set off one against the other, namely—
 - (a) the difference between—
 - (i) the amount of the credit which, under this Part (including this section), has been allowed against income tax in respect of so much of the original income as contributes as mentioned in subsection (5) above, and
 - (ii) the amount of the credit which, apart from this section, would have been so allowed; and
 - (b) the amount of credit which, on the assumption that no amount were deducted by virtue of section 63A(1) or (3), would be allowable under this Part against income tax in respect of income arising in the subsequent year from the same source as the original income.
- (5B) The person chargeable in respect of the income (if any) arising in the subsequent year from the same source as the original income shall—
 - (a) if the amount given by paragraph (a) of subsection (5A) above exceeds that given by paragraph (b) of that subsection, be treated as having received in that year a payment chargeable under Case VI of Schedule D of an amount such that income tax on it at the basic rate is equal to the excess; and
 - (b) if the amount given by paragraph (b) of subsection (5A) above exceeds that given by paragraph (a) of that subsection, be allowed for that year under this Part an amount of credit equal to the excess.
- (5C) For the purposes of subsections (5) to (5B) above, it shall be assumed that, where an amount is deducted by virtue of section 63A(1), each of the overlap profits included in the aggregate of such profits contributes to that amount in the proportion which that overlap profit bears to that aggregate.”
- (3) In subsection (8) of that section—
 - (a) immediately before the definition of “overseas tax” there shall be inserted the following definition—
 - ““overlap profit” means an amount of profits or gains which, by virtue of sections 60 to 62, is included in the computations for two successive years of assessment;”; and
 - (b) the definitions of “non-basis period” and “years of commencement” and the words “references to the enactments relating to cessation are references to sections 63, 67 and 113” shall cease to have effect.”

218 Commencement, transitional provisions and savings.

- (1) Unless the contrary intention appears, this Chapter—

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- (a) except in its application to a trade set up and commenced on or after 6th April 1994 or income from a source arising to a person on or after that date, has effect as respects the year 1996-97 and subsequent years of assessment, and
- (b) in its application to a trade so set up and commenced or income from a source so arising, has effect as respects the year 1994-95 and subsequent years of assessment.

[^{F1}(1A) In a case where—

- (a) a trade is set up and commenced by a company, and
 - (b) it is not set up and commenced before 6th April 1994,
- sections 213(4) and (8) and 214(4) and (6) have effect only if it is set up and commenced on or after 6th April 1995.]
- (2) Any reference in subsection (1) above to a trade includes a reference to a profession, vocation, employment or office.
 - (3) Where the first underwriting year of the underwriting business of a member of Lloyd's is the year 1994, subsection (1) above shall have effect in relation to that business as if it had been set up and commenced on 6th April 1994.
 - (4) Where, as respects income from any source, income tax is to be charged under Case IV or V of Schedule D by reference to the amounts of income received in the United Kingdom, the source shall be treated for the purposes of subsection (1) above as arising on the date on which the first amount of income is so received.
 - (5) This Chapter shall have effect subject to the transitional provisions and savings contained in Schedule 20 to this Act.

Textual Amendments

F1 S. 218(1A) inserted (*retrospectively*) by 1995 c. 4, s. 102(2)

Status:

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