



# Income Tax (Trading and Other Income) Act 2005

## 2005 CHAPTER 5

### PART 2

#### TRADING INCOME

#### CHAPTER 2

##### INCOME TAXED AS TRADE PROFITS

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

#### **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.

[<sup>F1</sup>(1A) Profits of a trade of dealing in or developing UK land arising to a non-UK resident are chargeable to tax under this Chapter wherever the trade is carried on.]

(2) Profits of a trade [<sup>F2</sup>other than a trade of dealing in or developing UK land] 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.

[<sup>F3</sup>(2A) If the tax year is a split year as respects a UK resident individual, this section has effect as if, for the overseas part of that year, the individual were non-UK resident.]

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(3) This section applies to professions and vocations as it applies to trades.

#### Textual Amendments

- F1** S. 6(1A) inserted (with effect in accordance with s. 82 of the amending Act) by [Finance Act 2016 \(c. 24\)](#), [s. 78\(1\)\(a\)](#) (and also with effect in accordance with [Finance \(No. 2\) Act 2017 \(c. 32\)](#), s. 39(1)(2))
- F2** Words in s. 6(2) inserted (with effect in accordance with s. 82 of the amending Act) by [Finance Act 2016 \(c. 24\)](#), [s. 78\(1\)\(b\)](#) (and also with effect in accordance with [Finance \(No. 2\) Act 2017 \(c. 32\)](#), s. 39(1)(2))
- F3** S. 6(2A) inserted (with effect in accordance with Sch. 45 para. 153(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 75](#)

#### [<sup>F4</sup>6A Arrangements for avoiding tax

- (1) Subsection (3) applies if a person has entered into an arrangement the main purpose or one of the main purposes of which is to obtain a relevant tax advantage for the person.
- (2) In subsection (1) the reference to obtaining a relevant tax advantage includes obtaining a relevant tax advantage by virtue of any provisions of double taxation arrangements, but only in a case where the relevant tax advantage is contrary to the object and purpose of the provisions of the double taxation arrangements (and subsection (3) has effect accordingly, regardless of anything in section 6(1) of TIOPA 2010).
- (3) The relevant tax advantage is to be counteracted by means of adjustments.
- (4) For this purpose adjustments may be made (whether by an officer of Revenue and Customs or by the person) by way of an assessment, the modification of an assessment, amendment or disallowance of a claim, or otherwise.
- (5) In this section “relevant tax advantage” means a tax advantage in relation to income tax to which the person is chargeable (or would without the tax advantage be chargeable) by virtue of section 6(1A).
- (6) In this section “tax advantage” includes—
- a relief or increased relief from tax,
  - repayment or increased repayment of tax,
  - avoidance or reduction of a charge to tax or an assessment to tax,
  - avoidance of a possible assessment to tax,
  - deferral of a payment of tax or advancement of a repayment of tax, and
  - avoidance of an obligation to deduct or account for tax.
- (7) In this section—
- “arrangement” (except in the phrase “double taxation arrangements”) includes any agreement, understanding, scheme, transaction or series of transactions, whether or not legally enforceable;
- “double taxation arrangements” means arrangements which have effect under section 2(1) of TIOPA 2010 (double taxation relief by agreement with territories outside the United Kingdom).

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### Textual Amendments

- F4** Ss. 6A, 6B inserted (with effect in accordance with s. 82 of the amending Act) by [Finance Act 2016 \(c. 24\)](#), [s. 78\(2\)](#) (and also with effect in accordance with [Finance \(No. 2\) Act 2017 \(c. 32\)](#), s. 39(1)(2))

## 6B Trade of dealing in or developing UK land

- (1) A non-UK resident person's "trade of dealing in or developing UK land" consists of—
- (a) any activities falling within subsection (2) which the person carries on, and
  - (b) any activities from which profits arise which are treated under Part 9A of ITA 2007 as profits of the person's trade of dealing in or developing UK land.
- (2) The activities within this subsection are—
- (a) dealing in UK land;
  - (b) developing UK land for the purpose of disposing of it.
- (3) In this section "land" includes—
- (a) buildings and structures,
  - (b) any estate, interest or right in or over land, and
  - (c) land under the sea or otherwise covered by water.
- (4) In this section—  
 "disposal" is to be interpreted in accordance with section 517R of ITA 2007;  
 "UK land" means land in the United Kingdom.]

### Textual Amendments

- F4** Ss. 6A, 6B inserted (with effect in accordance with s. 82 of the amending Act) by [Finance Act 2016 \(c. 24\)](#), [s. 78\(2\)](#) (and also with effect in accordance with [Finance \(No. 2\) Act 2017 \(c. 32\)](#), s. 39(1)(2))

## 7 Income charged

- (1) Tax is charged under this Chapter on the full amount of the profits of the tax year.
- (2) For this purpose the profits of a tax year are the profits of the basis period for the tax year [<sup>F5</sup>(including amounts treated as profits of the tax year under section 23E(1))].
- (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"), 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.

### Textual Amendments

- F5** Words in s. 7(2) inserted (16.11.2017) (with effect in accordance with [s. 35\(4\)](#) of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [s. 35\(3\)](#)

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## 8 Person liable

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

### *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).
- (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).

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

## 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.

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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 <sup>F6</sup>Part 4 of ITA 2007 (loss relief) as losses of a trade carried on in the United Kingdom.
- (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,
  - (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
  - (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.

#### Textual Amendments

- F6** Words in s. 12(3) substituted (6.4.2007 with effect as noted in s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), ss. 1027, 1034, [Sch. 1 para. 494](#) (with transitional provisions and savings in [Sch. 2](#))

### 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.
- (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.
- (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
  - (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,

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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).

(8) In this section and section 14—

<sup>F7</sup>

“prescribed” means prescribed by regulations,

“regulations” means regulations made by the Treasury,

“relevant activity” means an activity of a prescribed description, and

<sup>F7</sup>

and a payment or transfer is connected with a relevant activity if it has a connection of the prescribed kind with that activity.

[<sup>F8</sup>(9) In this section and section 14—

(a) references to a payment include references to a payment by way of loan of money, and

(b) references to a transfer do not include references to a transfer of money but, subject to that, include references to—

(i) a temporary transfer (as by way of loan), and

(ii) a transfer of a right (whether or not a right to receive money).

(10) This section does not apply to payments or transfers of a kind prescribed in regulations under section 966(6) of ITA 2007.]

#### Textual Amendments

**F7** S. 13(8) definitions of "payment" and "transfer" repealed (6.4.2007 with effect as noted in s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), ss. 1027, 1031, 1034, [Sch. 1 para. 495\(2\)](#), [Sch. 3 Pt. 1](#) (with transitional provisions and savings in [Sch. 2](#))

**F8** S. 13(9)(10) inserted (6.4.2007 with effect as noted in s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), ss. 1027, 1034, [Sch. 1 para. 495\(3\)](#) (with transitional provisions and savings in [Sch. 2](#))

## 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,

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- (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).
- (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,
  - (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.
- (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—
- (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.
- (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—
- (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.
- (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.

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- (3) “Oil extraction activities” and “oil rights” have the meaning given by <sup>F9</sup>sections 225A and 225B].

#### Textual Amendments

**F9** Words in s. 16(3) substituted (1.4.2010) (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), s. 381(1), **Sch. 8 para. 190** (with [Sch. 9 paras. 1-9, 22](#))

#### Modifications etc. (not altering text)

**C1** S. 16 excluded (6.4.2007 with effect as stated in [s. 1034\(1\)](#) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), **ss. 87, 1034**, (with transitional provisions and savings in [Sch. 2](#))

### <sup>F10</sup>16A Voluntary office-holders: compensation for lost profits

- (1) This section applies if a payment is made by a relevant authority to a person where—
- the person holds a voluntary office with the authority,
  - the person carries out the duties of the office in a period in which he or she also carries on a trade, profession or vocation,
  - the payment is made solely to compensate the person for lost profits for the period (and accordingly does not exceed the amount of those profits), and
  - the payment would otherwise be dealt with under Part 2 of ITEPA 2003 by virtue of section 4(2)(b).
- (2) The payment is dealt with under this Part.
- (3) In subsection (1)(c) “lost profits” means the difference between—
- the amount of profits that the person would have received from the trade, profession or vocation for the period if he or she had not carried out the duties of the office, and
  - the amount of profits that the person did receive from the trade, profession or vocation for the period.
- (4) For the purposes of subsection (1)—
- “relevant authority” has the meaning given by section 299A of ITEPA 2003;
- references to a person holding a voluntary office are to be construed in accordance with section 299A(2) and (3) of that Act.]

#### Textual Amendments

**F10** S. 16A inserted (6.4.2018) by [The Enactment of Extra-Statutory Concessions Order 2018 \(S.I. 2018/282\)](#), arts. 1, **3(3)**

### <sup>F11</sup>16B. Payments to company directors

- (1) This section applies where—



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- (a) a company (“the paying company”) makes a payment to, or for the benefit of, a director of the paying company in respect of the director’s employment as a director of the paying company,
  - (b) the payment would otherwise be employment income of the director chargeable to tax under Part 2 of ITEPA 2003,
  - (c) the director was or is a member of a firm, or was appointed by a company (“the appointing company”) other than the paying company, and
  - (d) condition A or B is met.
- (2) The payment is to be treated for income tax purposes as a receipt of—
- (a) a trade carried on by the firm, or
  - (b) a trade carried on by the appointing company.
- (3) Condition A applies where the director is a member of a firm, and is that—
- (a) the director carries on a profession,
  - (b) being a director of a company is a normal incident of that profession and of membership of the firm,
  - (c) the director is required by the terms of the partnership agreement to account to the firm for the payment, and
  - (d) the amount of the payment is insubstantial, compared with the total amount brought into account as receipts when calculating the firm’s profits.
- (4) Condition B applies where the director is appointed by a company, and is that—
- (a) the profits of the appointing company are within the charge to income tax,
  - (b) by virtue of an agreement with the appointing company, the director is required to account for the payment to that company, and
  - (c) either subsection (5) or subsection (6) applies to the appointing company.
- (5) This subsection applies if the appointing company had the right to appoint the director by virtue of its shareholding in, or an agreement with, the paying company.
- (6) This subsection applies if the appointing company is not one over which—
- (a) the director has control, or
  - (b) any person connected with the director has control, or
  - (c) the director and any persons connected with him together have control.
- (7) For the purposes of subsection (6), the following persons are connected with the director: the spouse, civil partner, parent, child, son-in-law or daughter-in-law of the director.

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#### Textual Amendments

**F11** Ss. 16B, 16C inserted (6.4.2018) by [The Enactment of Extra-Statutory Concessions Order 2018 \(S.I. 2018/282\)](#), arts. 1, 5(2)

### 16C. Professionals in practice: incidental income from an office or employment

- (1) This section applies where—
- (a) a payment is received by an individual who carries on a profession (alone or in partnership),

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- (b) the payment is made to the individual in his or her capacity as an employee or office-holder, but is not made in respect of employment as a director of a company,
  - (c) the payment would otherwise be employment income of the individual chargeable to tax under Part 2 of ITEPA 2003,
  - (d) the conditions in subsection (3) are met, and
  - (e) where the individual carries on the profession in partnership, the condition in subsection (4) is also met.
- (2) The payment is to be treated for income tax purposes as a receipt of a trade carried on by the individual or, where the individual carries on the profession in partnership, by the firm.
- (3) The conditions referred to in subsection (1)(d) are that—
- (a) the time spent by the individual in performing the duties of the office or employment is insubstantial compared with the time spent by the individual in carrying on the profession,
  - (b) the office or employment is related to the profession carried on by the individual,
  - (c) the amount of the payment is insubstantial compared with—
    - (i) the total amount brought into account as receipts when calculating the individual's trade profits; or
    - (ii) where the individual carries on a profession in partnership, so much of the total amount brought into account as receipts when calculating the firm's profits as is attributable to the individual.
- (4) The condition referred to in subsection (1)(e) is that the individual is required by the terms of the partnership agreement to account to the firm for the payment and does so.]

#### Textual Amendments

**F11** Ss. 16B, 16C inserted (6.4.2018) by [The Enactment of Extra-Statutory Concessions Order 2018 \(S.I. 2018/282\)](#), arts. 1, **5(2)**

### *Starting and ceasing to trade*

#### **17 Effect of becoming or ceasing to be a UK resident**

[<sup>F12</sup>(1) This section applies if—

- (a) an individual carries on a trade otherwise than in partnership, and
- (b) there is a change of residence.

(1A) For the purposes of this section there is a “change of residence” if—

- (a) the individual becomes or ceases to be UK resident, or
- (b) a tax year is, as respects the individual, a split year.

(1B) The change of residence occurs—

- (a) in a case falling within subsection (1A)(a), at the start of the tax year for which the individual becomes or ceases to be UK resident, and

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- (b) in a case falling within subsection (1A)(b), at the start of whichever of the UK part or the overseas part of the tax year is the later part.]
- (2) [<sup>F13</sup>If this section applies and the individual does not actually cease permanently to carry on the trade immediately before the change of residence occurs,] the individual is treated for income tax purposes—
  - (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 [<sup>F14</sup>deducted under section 83 of ITA 2007 from] profits arising after the change.
- (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).

#### Textual Amendments

- F12** S. 17(1)-(1B) substituted for s. 17(1) (with effect in accordance with Sch. 45 para. 153(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 76\(2\)](#)
- F13** Words in s. 17(2) inserted (with effect in accordance with Sch. 45 para. 153(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 76\(3\)](#)
- F14** Words in s. 17(3) substituted (with effect as noted in [s. 1034\(1\)](#) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), [ss. 1027, 1034](#), [Sch. 1 para. 496](#) (with transitional provisions and savings in [Sch. 2](#))

## 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
  - (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 —
  - (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
  - (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.

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- (2) Both the receipts and expenses are instead brought into account in calculating the profits of the trade.
- (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,
 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
  - (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.
- (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—
  - “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.

## 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)),
  - (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.
- (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—

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- (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.
- (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).
- (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—
- (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.
- (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 [<sup>F15</sup>incurred by the trader in respect of the wayleave would otherwise be brought into account in calculating profits] charged under that Chapter,
- the trader may instead bring both the rent and expenses into account in calculating the profits of the trade.
- (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
  - (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—
- (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—
- (a) an electric, telegraph or telephone wire or cable,

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- (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—
- (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.

#### Textual Amendments

**F15** Words in s. 22(2)(b) substituted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 588** (with Sch. 2 Pts. 1, 2)

### *[<sup>F16</sup>Trading allowance*

#### Textual Amendments

**F16** S. 22A and cross-heading inserted (16.11.2017) (with effect in accordance with Sch. 3 para. 13 of the amending Act) by Finance (No. 2) Act 2017 (c. 32), **Sch. 3 para. 4**

## 22A Trading allowance

- (1) The rules for calculating the profits of a trade, profession or vocation carried on by an individual are subject to Chapter 1 of Part 6A (trading allowance).
- (2) That Chapter gives relief on relevant income and, where relief is given, disallows most deductions under this Part (see, in particular, sections 783AC, 783AF and 783AI.)

### *Rent-a-room and [<sup>F17</sup>qualifying care] relief*

#### Textual Amendments

**F17** Words in s. 23 cross-heading substituted (16.12.2010) (with effect in accordance with Sch. 1 para. 36 of the amending Act) by Finance (No. 3) Act 2010 (c. 33), **Sch. 1 para. 32(2)(b)** (with Sch. 1 para. 37)

## 23 Rent-a-room and [<sup>F18</sup>qualifying care] relief

- (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).
- (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 ([<sup>F19</sup>qualifying care] relief).

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- (4) That Chapter provides relief on income from the provision by the individual of [F20 qualifying care] (see, in particular, sections 813, 816, 822 and 823).

#### Textual Amendments

- F18** Words in s. 23 heading substituted (16.12.2010) (with effect in accordance with Sch. 1 para. 36 of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 1 para. 32\(2\)\(a\)](#) (with [Sch. 1 para. 37](#))
- F19** Words in s. 23(3) substituted (16.12.2010) (with effect in accordance with Sch. 1 para. 36 of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 1 para. 32\(1\)\(a\)](#) (with [Sch. 1 para. 37](#))
- F20** Words in s. 23(4) substituted (16.12.2010) (with effect in accordance with Sch. 1 para. 36 of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 1 para. 32\(1\)\(b\)](#) (with [Sch. 1 para. 37](#))

#### [F21 Trading income provided through third parties

#### Textual Amendments

- F21** Ss. 23A-23H and cross-heading inserted (16.11.2017) (with effect in accordance with s. 35(4) of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [s. 35\(2\)](#)

### 23A Application of section 23E: conditions

- (1) Section 23E (tax treatment of relevant benefits) applies if Conditions A to E are met.
- (2) Condition A is that a person (“T”) is or has been carrying on a trade (the “relevant trade”) alone or in partnership.
- (3) Condition B is that—
- (a) there is an arrangement (“the arrangement”) in connection with the relevant trade to which T is a party or which otherwise (wholly or partly) covers or relates to T, and
  - (b) it is reasonable to suppose that, in essence—
    - (i) the arrangement, or
    - (ii) the arrangement so far as it covers or relates to T,
 is (wholly or partly) a means of providing, or is otherwise concerned with the provision of, relevant benefits.
- (4) Condition C is that—
- (a) a relevant benefit arises to T, or a person who is or has been connected with T, in pursuance of the arrangement, or
  - (b) a relevant benefit arises to any other person in pursuance of the arrangement and any of the enjoyment conditions (see section 23F) is met in relation to the relevant benefit.
- (5) Condition D is that it is reasonable to suppose that the relevant benefit (directly or indirectly) represents, or has arisen or derives from, or is otherwise connected with, the whole or part of a qualifying third party payment.
- (6) Condition E is that it is reasonable to suppose that a tax advantage would be obtained by T, or a person who is or has been connected with T, as a result of the arrangement.

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- (7) For the purposes of subsection (3) in particular, all relevant circumstances are to be taken into account in order to get to the essence of the matter.
- (8) In this section and sections 23B to 23H, “this group of sections” means this section and those sections.
- (9) The provisions of this group of sections apply to professions and vocations as they apply to trades.
- (10) See Schedule 12 to F(No.2)A 2017 for provision about the application of this group of sections in relation to loans and quasi-loans that are outstanding on 5 April 2019.

**Modifications etc. (not altering text)**

- C2** Ss. 23A-23H modified (16.11.2017) (with application in accordance with Sch. 12 para. 1(2) of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 12 para. 1\(1\)](#) (as amended (22.7.2020) by [Finance Act 2020 \(c. 14\)](#), [s. 16\(5\)\(a\)](#))

**23B Meaning of “relevant benefit”**

- (1) The following provisions apply for the purposes of this group of sections.
- (2) “Relevant benefit” means any payment (including a payment by way of a loan), a transfer of money's worth, or any other benefit.
- (3) The assumption of a liability of T by another person is to be treated as the provision of a relevant benefit to T.
- (4) The assumption, by a person other than T, of a liability of a person (“C”) who is or has been connected with T, is to be treated as the provision of a relevant benefit to C.
- (5) “Loan” includes—
  - (a) any form of credit;
  - (b) a payment that is purported to be made by way of a loan.

**Modifications etc. (not altering text)**

- C2** Ss. 23A-23H modified (16.11.2017) (with application in accordance with Sch. 12 para. 1(2) of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 12 para. 1\(1\)](#) (as amended (22.7.2020) by [Finance Act 2020 \(c. 14\)](#), [s. 16\(5\)\(a\)](#))

**23C Meaning of “qualifying third party payment”**

- (1) The following provisions apply for the purposes of this group of sections.
- (2) A payment is a “third party payment” if it is made (by T or another person) to—
  - (a) T acting as trustee, or
  - (b) any person other than T.
- (3) A third party payment is a “qualifying third party payment” if the deduction condition or the trade connection condition is met in relation to the payment.
- (4) The “deduction condition” is met in relation to a payment if—



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- (a) a deduction for the payment is made in calculating the profits of the relevant trade, or
  - (b) where the relevant trade is or has been carried on in partnership, a deduction for the payment is made in calculating the amount on which T is liable to income tax in respect of the profits of the trade.
- (5) The “trade connection condition” is met in relation to a payment if it is reasonable to suppose that in essence—
- (a) the payment is by way of consideration for goods or services provided in the course of the relevant trade, or
  - (b) there is some other connection (direct or indirect) between the payment and the provision of goods or services in the course of the relevant trade.
- (6) For the purposes of subsection (5) in particular, all relevant circumstances are to be taken into account in order to get to the essence of the matter.

**Modifications etc. (not altering text)**

- C2** Ss. 23A-23H modified (16.11.2017) (with application in accordance with Sch. 12 para. 1(2) of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 12 para. 1\(1\)](#) (as amended (22.7.2020) by [Finance Act 2020 \(c. 14\)](#), [s. 16\(5\)\(a\)](#))

## 23D Other definitions

- (1) The following provisions apply for the purposes of this group of sections.
- (2) “Arrangement” includes any agreement, understanding, scheme, settlement, trust, transaction or series of transactions (whether or not legally enforceable).
- (3) A “tax advantage” includes—
- (a) relief or increased relief from tax,
  - (b) repayment or increased repayment of tax,
  - (c) avoidance or reduction of a charge to tax or an assessment to tax,
  - (d) avoidance of a possible assessment to tax,
  - (e) deferral of a payment of tax or advancement of a repayment of tax, and
  - (f) avoidance of an obligation to deduct or account for tax.
- (4) Section 993 of ITA 2007 (meaning of “connected” persons) applies for the purposes of this group of sections as if subsection (4) of that section 993 were omitted.

**Modifications etc. (not altering text)**

- C2** Ss. 23A-23H modified (16.11.2017) (with application in accordance with Sch. 12 para. 1(2) of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 12 para. 1\(1\)](#) (as amended (22.7.2020) by [Finance Act 2020 \(c. 14\)](#), [s. 16\(5\)\(a\)](#))

## 23E Tax treatment of relevant benefits

- (1) Where this section applies (see section 23A), the relevant benefit amount is to be treated for income tax purposes as profits of the relevant trade for—
- (a) the tax year in which the relevant benefit arises, or

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- (b) if T has ceased to carry on the relevant trade in a tax year (the “earlier tax year”) before the tax year referred to in paragraph (a), the earlier tax year.
- (2) For the purposes of this section, “the relevant benefit amount” means—
- (a) if the relevant benefit is a payment otherwise than by way of a loan, an amount equal to the amount of the payment,
  - (b) if the relevant benefit is a payment by way of loan, an amount equal to the principal amount lent, or
  - (c) in any other case, an amount equal to the value of the relevant benefit.
- (3) For the purposes of subsection (2)(c), the value of a relevant benefit is—
- (a) its market value at the time it arises, or
  - (b) if higher, the cost of providing it.
- (4) In subsection (3) “market value” has the same meaning as it has for the purposes of TCGA 1992 by virtue of Part 8 of that Act.

**Modifications etc. (not altering text)**

- C2** Ss. 23A-23H modified (16.11.2017) (with application in accordance with Sch. 12 para. 1(2) of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 12 para. 1\(1\)](#) (as amended (22.7.2020) by [Finance Act 2020 \(c. 14\)](#), [s. 16\(5\)\(a\)](#))
- C3** S. 23E modified by 2017 c. 32, Sch. 12 para. 1(3A)-(3G) (as inserted (22.7.2020) by [Finance Act 2020 \(c. 14\)](#), [s. 16\(5\)\(c\)](#))
- C4** S. 23E modified (16.11.2017) (with effect in accordance with s. 35(4) of the amending Act) by Finance (No. 2) Act 2017 (c. 32), Sch. 12 para. 1(3) (as amended (22.7.2020) by [Finance Act 2020 \(c. 14\)](#), [s. 16\(5\)\(b\)\(i\)](#))

**23F Relevant benefits: persons other than T**

- (1) For the purposes of section 23A(4), the enjoyment conditions are—
- (a) that the relevant benefit, or part of it, is in fact so dealt with by any person as to be calculated at some time to enure for the benefit of T;
  - (b) that the arising of the relevant benefit operates to increase the value to T of any assets—
    - (i) which T holds, or
    - (ii) which are held for the benefit of T;
  - (c) that T receives, or is entitled to receive, at any time any benefit provided or to be provided out of, or deriving or to be derived from, the relevant benefit (or part of it);
  - (d) where the relevant benefit is the payment of a sum of money (including a payment by way of loan), that T may become entitled to the beneficial enjoyment of the sum or part of the sum if one or more powers are exercised or successively exercised (and for these purposes it does not matter who may exercise the powers or whether they are exercisable with or without the consent of another person);
  - (e) where the relevant benefit is the payment of a sum of money (including a payment by way of loan), that T is able in any manner to control directly or indirectly the application of the sum or part of the sum.

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- (2) Where an enjoyment condition is met in relation to part only of a relevant benefit, that part is to be treated as a separate benefit for the purposes of section 23A(4).
- (3) In subsection (1) references to T include references to a person who is or has been connected with T.
- (4) In determining whether any of the enjoyment conditions is met in relation to a relevant benefit, regard must be had to the substantial result and effect of all the relevant circumstances.

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**Modifications etc. (not altering text)**

- C2** Ss. 23A-23H modified (16.11.2017) (with application in accordance with Sch. 12 para. 1(2) of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), **Sch. 12 para. 1(1)** (as amended (22.7.2020) by [Finance Act 2020 \(c. 14\)](#), **s. 16(5)(a)**)

### 23G Anti-avoidance

- (1) In determining whether section 23E applies in relation to a relevant benefit, no regard is to be had to any arrangements the main purpose, or one of the main purposes, of which is to secure that section 23E does not apply in relation to the whole, or any part, of—
  - (a) the relevant benefit, or
  - (b) the relevant benefit and one or more other relevant benefits (whether or not all arising to the same person).
- (2) Where arrangements are disregarded under subsection (1), and a relevant benefit (or part of it)—
  - (a) would, if the arrangements were not disregarded, arise before 6 April 2017, but
  - (b) would, when the arrangements are disregarded, arise on or after that date, the relevant benefit (or part) is to be regarded for the purposes of this group of sections as arising on the date on which it would arise apart from the arrangements.

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**Modifications etc. (not altering text)**

- C2** Ss. 23A-23H modified (16.11.2017) (with application in accordance with Sch. 12 para. 1(2) of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), **Sch. 12 para. 1(1)** (as amended (22.7.2020) by [Finance Act 2020 \(c. 14\)](#), **s. 16(5)(a)**)

### 23H Double taxation

- (1) This section applies where—
  - (a) income tax is charged on an individual by virtue of the application of section 23E in relation to a relevant benefit amount, and
  - (b) at any time, a tax (whether income tax or another tax) is charged on the individual or another person otherwise than by virtue of the application of section 23E in relation to the relevant benefit concerned.

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- (2) In order to avoid a double charge to tax, the individual may make a claim for one or more consequential adjustments to be made in respect of the tax charged as mentioned in subsection (1)(b).
- (3) On a claim under this section an officer of Revenue and Customs must make such of the consequential adjustments claimed (if any) as are just and reasonable.
- (4) The value of any consequential adjustments must not exceed the lesser of—
  - (a) the income tax charged on the individual as mentioned in subsection (1)(a), and
  - (b) the tax charged as mentioned in subsection (1)(b).
- (5) Consequential adjustments may be made—
  - (a) in respect of any period,
  - (b) by way of an assessment, the modification of an assessment, the amendment of a claim, or otherwise, and
  - (c) despite any time limit imposed by or under any enactment.]

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**Modifications etc. (not altering text)**

- C2** Ss. 23A-23H modified (16.11.2017) (with application in accordance with Sch. 12 para. 1(2) of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 12 para. 1\(1\)](#) (as amended (22.7.2020) by [Finance Act 2020 \(c. 14\)](#), [s. 16\(5\)\(a\)](#))

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 7A-7D inserted by [2022 c. 3 Sch. 1 para. 3](#)
- s. 31E(4) inserted by [2022 c. 3 Sch. 1 para. 7\(3\)](#)
- s. 649(1A)(1B) inserted by [2023 c. 30 Sch. 2 para. 11\(2\)](#)
- s. 679(3A) inserted by [2023 c. 30 Sch. 2 para. 11\(5\)\(b\)](#)
- s. 679A(3A) inserted by [2023 c. 30 Sch. 2 para. 11\(6\)\(b\)](#)
- s. 680(1A) inserted by [2023 c. 30 Sch. 2 para. 11\(7\)\(a\)](#)