



# Income Tax (Trading and Other Income) Act 2005

## 2005 CHAPTER 5

### PART 9

#### PARTNERSHIPS

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

- C1** Pt. 9 applied (1.4.2010) by [Income Tax Act 2007 \(c. 3\)](#), [ss. 809BZH\(2\)\(a\), 809BZK\(4\)\(a\)](#) (as inserted (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. 5 para. 3](#) (with [Sch. 9 paras. 1-9, 22](#)))
- C2** Pt. 9 modified (with effect as mentioned in [Sch. 6 para. 6\(2\)-\(7\)](#) to the amending Act) by [Income and Corporation Taxes Act 1988 \(c. 1\)](#), s. 774D(4) as inserted by [Finance Act 2006 \(c. 25\)](#), s. 76, [Sch. 6 para. 6\(1\)](#)

##### *Introduction*

#### **846 Overview of Part 9**

This Part contains some special rules about partnerships.

#### **847 General provisions**

- (1) In this Act persons carrying on a trade in partnership are referred to collectively as a “firm”.
- (2) The provisions of this Part [<sup>F1</sup>which are expressed to apply to trades also apply, unless otherwise indicated (whether expressly or by implication)] —
  - (a) to professions, and
  - (b) in the case of this section and sections 849, 850, 857 and 858 to businesses that are not trades or professions.

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- (3) In those sections as applied by subsection (2)(b)—
- (a) references to a trade are references to a business, and
  - (b) references to the profits of a trade are references to the income arising from a business.
- [<sup>F2</sup>(4) For the purposes of this Part, a person is an indirect partner in a partnership (“the underlying partnership”) if the person is a partner in—
- (a) a partnership which is a partner in the underlying partnership, or
  - (b) any partnership which is an indirect partner in the underlying partnership by virtue of the preceding application of this subsection.]

#### Textual Amendments

- F1** Words in s. 847(2) 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. 638](#) (with [Sch. 2 Pts. 1, 2](#))
- F2** [S. 847\(4\)](#) inserted (with effect in accordance with [Sch. 6 para. 5\(5\)](#) of the amending Act) by [Finance Act 2018 \(c. 3\)](#), [Sch. 6 para. 5\(2\)](#)

## 848 Assessment of partnerships

Unless otherwise indicated (whether expressly or by implication), a firm is not to be regarded for income tax purposes as an entity separate and distinct from the partners.

### [<sup>F3</sup>848A Bare trusts

- (1) This section applies if—
- (a) a partner in a firm is partner as trustee for a beneficiary who is absolutely entitled to the partner's share of the profits of the firm, and
  - (b) the beneficiary is chargeable to tax on those profits.
- (2) References in this Part to a partner or member of the firm include references to the beneficiary.]

#### Textual Amendments

- F3** [S. 848A](#) inserted (with effect in accordance with [Sch. 6 para. 4\(1\)](#) of the amending Act) by [Finance Act 2018 \(c. 3\)](#), [Sch. 6 para. 1](#)

### *Calculation of partners' shares*

## 849 Calculation of firm's profits or losses

- (1) If—
- (a) a firm carries on a trade, and
  - (b) any partner in the firm is chargeable to income tax,
- the profits or losses of the trade are calculated on the basis set out in subsection (2) or (3), as the case may require.

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- (2) For any period of account in which the partner is a UK resident individual, the profits or losses of the trade are calculated as if the firm were a UK resident individual.
  - (3) For any period of account in which the partner is non-UK resident, the profits or losses of the trade are calculated as if the firm were a non-UK resident individual.
- [<sup>F4</sup>(3A) For any tax year that is a split year as respects the partner, this section has effect as if the partner were non-UK resident in the overseas part of the year.]
- [<sup>F5</sup>(4) In calculating under subsection (2) or (3) the profits of a trade for any period of account no account is taken of any losses for another period of account.]

#### Textual Amendments

- F4** S. 849(3A) inserted (with effect in accordance with Sch. 45 para. 153(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 78](#)
- F5** S. 849(4) inserted (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. 639](#) (with [Sch. 2 Pts. 1, 2](#))

### [<sup>F6</sup>850 Allocation of firm's profits or losses between partners

- (1) For any period of account a partner's share of a profit or loss of a trade carried on by a firm is determined for income tax purposes in accordance with the firm's profit-sharing arrangements during that period.

This is subject to sections 850A [<sup>F7</sup>to 850D][<sup>F8</sup>and section 12ABZB of TMA 1970 (partnership return is conclusive)].

- (2) In this section and sections 850A and 850B “profit-sharing arrangements” means the rights of the partners to share in the profits of the trade and the liabilities of the partners to share in the losses of the trade.

#### Textual Amendments

- F6** Ss. 850-850B substituted for s. 850 (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. 640](#) (with [Sch. 2 Pts. 1, 2](#))
- F7** Words in s. 850(1) substituted (5.12.2013) (retrospective and with effect in accordance with Sch. 17 paras. 12, 13 of the amending Act) by [Finance Act 2014 \(c. 26\)](#), [Sch. 17 paras. 7\(2\), 11](#)
- F8** Words in s. 850(1) inserted (with effect in accordance with Sch. 6 para. 14 of the amending Act) by [Finance Act 2018 \(c. 3\)](#), [Sch. 6 para. 11](#)

### 850A Profit-making period in which some partners have losses

- (1) For any period of account, if—
  - (a) the calculation under section 849 in relation to a partner (“A”) produces a profit, and
  - (b) A's share determined under section 850 is a loss,A's share of the profit of the trade is neither a profit nor a loss.
- (2) For any period of account, if—
  - (a) the calculation under section 849 in relation to A produces a profit,

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- (b) A's share determined under section 850 is a profit, and
- (c) the comparable amount for at least one other partner is a loss,

A's share of the profit of the trade is the amount produced by the formula in subsection (3).

(3) The formula is—

$$FP \times \frac{PP}{PP + TCP}$$

where—

FP is the amount of the firm's profit calculated under section 849 in relation to A,

PP is the amount determined under section 850 to be A's profit, and

TCP is the total of the comparable amounts attributed to other partners under step 3 in subsection (4) that are profits.

(4) The comparable amount for each partner other than A is determined as follows.

*Step 1*

Take the firm's profit calculated under section 849 in relation to A.

*Step 2*

Determine in accordance with the firm's profit-sharing arrangements during the relevant period of account the shares of that profit that are attributable to each of the other partners.

*Step 3*

Each such share is the comparable amount for the partner to whom it is attributed.

(5) In subsections (2) to (4) “partner” means any partner in the firm, whether or not chargeable to income tax.

**Textual Amendments**

**F6** Ss. 850-850B substituted for s. 850 (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. 640** (with **Sch. 2 Pts. 1, 2**)

**850B Loss-making period in which some partners have profits**

(1) For any period of account, if—

- (a) the calculation under section 849 in relation to a partner (“A”) produces a loss, and
- (b) A's share determined under section 850 is a profit,

A's share of the loss of the trade is neither a profit nor a loss.

(2) For any period of account, if—

- (a) the calculation under section 849 in relation to A produces a loss,

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- (b) A's share determined under section 850 is a loss, and
- (c) the comparable amount for at least one other partner is a profit,

A's share of the loss of the trade is the amount produced by the formula in subsection (3).

(3) The formula is—

$$FL \times \frac{PL}{PL + TCL}$$

where—

FL is the amount of the firm's loss calculated under section 849 in relation to A,

PL is the amount determined under section 850 to be A's loss, and

TCL is the total of the comparable amounts attributed to other partners under step 3 in subsection (4) that are losses.

(4) The comparable amount for each partner other than A is determined as follows.

*Step 1*

Take the firm's loss calculated under section 849 in relation to A.

*Step 2*

Determine in accordance with the firm's profit-sharing arrangements during the relevant period of account the shares of that loss that are attributable to each of the other partners.

*Step 3*

Each such share is the comparable amount for the partner to whom it is attributed.

(5) In subsections (2) to (4) “partner” means any partner in the firm, whether or not chargeable to income tax.]

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**Textual Amendments**

**F6** Ss. 850-850B substituted for s. 850 (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. 640** (with **Sch. 2 Pts. 1, 2**)

**[<sup>F9</sup>850C Excess profit allocation to non-individual partners**

(1) Subsections (4) and (5) apply if—

(a) for a period of account (“the relevant period of account”)—

- (i) the calculation under section 849 in relation to an individual partner (“A”) (see subsection (6)) produces a profit for the firm, and
- (ii) A's share of that profit determined under section 850 or 850A (“A's profit share”) is a profit or is neither a profit nor a loss,

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- (b) a non-individual partner (“B”) (see subsection (6)) has a share of the profit for the firm mentioned in paragraph (a)(i) (“B's profit share”) which is a profit (see subsection (7)), and
  - (c) condition X or Y is met.
- (2) Condition X is that it is reasonable to suppose that—
- (a) amounts representing A's deferred profit (see subsection (8)) are included in B's profit share, and
  - (b) in consequence, both A's profit share and the relevant tax amount (see subsection (9)) are lower than they would otherwise have been.
- (3) Condition Y is that—
- (a) B's profit share exceeds the appropriate notional profit (see subsections (10) to (17)),
  - (b) A has the power to enjoy B's profit share (“A's power to enjoy”) (see subsections (18) to (21)), and
  - (c) it is reasonable to suppose that—
    - (i) the whole or any part of B's profit share is attributable to A's power to enjoy, and
    - (ii) both A's profit share and the relevant tax amount (see subsection (9)) are lower than they would have been in the absence of A's power to enjoy.
- (4) A's profit share is increased by so much of the amount of B's profit share as, it is reasonable to suppose, is attributable to—
- (a) A's deferred profit, or
  - (b) A's power to enjoy,
- as determined on a just and reasonable basis.
- But any increase by virtue of paragraph (b) is not to exceed the amount of the excess mentioned in subsection (3)(a) after deducting from that amount any increase by virtue of paragraph (a).
- (5) If B is chargeable to income tax, in applying sections 850 to 850B in relation to B for the relevant period of account, such adjustments are to be made as are just and reasonable to take account of the increase in A's profit share under subsection (4).
- (This subsection does not apply for the purposes of subsection (7) or section 850D(7).)
- (6) A partner in a firm is an “individual partner” if the partner is an individual and “non-individual partner” is to be read accordingly; but “non-individual partner” does not include the firm itself where it is treated as a partner under section 863I (allocation of profit to AIFM firm).
- (7) B's profit share is to be determined by applying section 850 and, if relevant, section 850A in relation to B for the relevant period of account (whether or not B is chargeable to income tax) on the assumption that the calculation under section 849 in relation to B produces the profit for the firm mentioned in subsection (1)(a)(i).
- (8) “A's deferred profit”—
- (a) is any remuneration or other benefits or returns the provision of which to A has been deferred (whether pending the meeting of any conditions (including conditions which may never be met) or otherwise), and

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- (b) includes A's share (as determined on a just and reasonable basis) of any remuneration or other benefits or returns the provision of which to A and one or more other persons, taken together, has been deferred (whether pending the meeting of any conditions (including conditions which may never be met) or otherwise).
- (9) “The relevant tax amount” is the total amount of tax which, apart from this section, would be chargeable in respect of A and B's income as partners in the firm.
- (10) “The appropriate notional profit” is the sum of the appropriate notional return on capital and the appropriate notional consideration for services.
- (11) “The appropriate notional return on capital” is—
- the return which B would receive for the relevant period of account in respect of B's contribution to the firm were the return to be calculated on the basis mentioned in subsection (12), less
  - any return actually received for the relevant period of account in respect of B's contribution to the firm which is not included in B's profit share.
- (12) The return mentioned in subsection (11)(a) is to be calculated on the basis that it is a return which is—
- by reference to the time value of an amount of money equal to B's contribution to the firm, and
  - at a rate which (in all the circumstances) is a commercial rate of interest.
- (13) For the purposes of subsections (11) and (12) B's contribution to the firm is amount A determined under section 108 of ITA 2007 (meaning of “contribution to the LLP”).
- (14) That section is to be applied—
- reading references to the individual as references to B and references to the LLP as references to the firm, and
  - with the omission of—
    - subsections (5)(b) and (9), and
    - in subsection (6) the words from “but” to the end.
- (15) “The appropriate notional consideration for services” is—
- the amount which B would receive in consideration for any services provided to the firm by B during the relevant period of account were the consideration to be calculated on the basis mentioned in subsection (16), less
  - any amount actually received in consideration for any such services which is not included in B's profit share.
- (16) The consideration mentioned in subsection (15)(a) is to be calculated on the basis that B is not a partner in the firm and is acting at arm's length from the firm.
- (17) Any services, the provision of which involves any partner in the firm in addition to B, are to be ignored for the purposes of subsection (15).
- (18) A has the power to enjoy B's profit share if—
- A is connected with B by virtue of a provision of section 993 of ITA 2007 (meaning of “connected” persons) other than subsection (4) of that section,
  - A is a party to arrangements the main purpose, or one of the main purposes, of which is to secure that an amount included in B's profit share—
    - is charged to corporation tax rather than income tax, or

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- (ii) is otherwise subject to the provisions of the Corporation Tax Acts rather than the provisions of the Income Tax Acts, or
  - (c) any of the enjoyment conditions (see subsection (20)) is met in relation to B's profit share or any part of B's profit share.
- (19) In subsection (18)(b) “arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable).
- (20) The enjoyment conditions are—
- (a) B's profit share, or the part, is in fact so dealt with by any person as to be calculated at some time to enure for the benefit of A, whether in the form of income or not;
  - (b) the receipt or accrual of B's profit share, or the part, by or to B operates to increase the value to A of any assets held by, or for the benefit of, A;
  - (c) A receives or is entitled to receive at any time any benefit provided or to be provided (directly or indirectly) out of B's profit share or the part;
  - (d) A may become entitled to the beneficial enjoyment of B's profit share, or the part, if one or more powers are exercised or successively exercised by any person;
  - (e) A is able in any manner to control (directly or indirectly) the application of B's profit share or the part.
- (21) In subsection (20) references to A include any person connected with A apart from B.
- (22) Subsection (23) applies if—
- (a) the increase under subsection (4), or any part of it, is allocated by A to the firm itself under section 863I (allocation of profit to AIFM firm), and
  - (b) B makes a payment to the firm representing any income tax for which the firm is liable by virtue of section 863I in respect of the amount of the increase allocated to it.
- (23) For income tax purposes, the payment—
- (a) is not to be income of any partner in the firm, and
  - (b) is not to be taken into account in calculating any profits or losses of B or otherwise deducted from any income of B.

#### Textual Amendments

**F9** Ss. 850C-850E inserted (retrospective for specified purposes and 6.4.2014 in so far as not already in force and with effect in accordance with Sch. 17 paras. 12, 13 of the amending Act) by [Finance Act 2014 \(c. 26\)](#), [Sch. 17 paras. 7\(3\)](#), 11

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

**C3** S. 850C(4) applied by 2009 c. 4, s. 1264A(1) (as inserted (retrospective for specified purposes and with effect in accordance with Sch. 17 paras. 12, 13 of the amending Act) by [Finance Act 2014 \(c. 26\)](#), [Sch. 17 paras. 10\(3\)](#), 11)

### 850D Excess profit allocation: cases involving individuals who are not partners

- (1) Subsections (4) and (5) apply if—



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- (a) at a time during a period of account (“the relevant period of account”) in respect of a firm, an individual (“A”) personally performs services for the firm,
  - (b) if A had been a partner in the firm throughout the relevant period of account, the calculation under section 849 in relation to A for the relevant period of account would have produced a profit for the firm,
  - (c) a non-individual partner (“B”) in the firm (see subsection (6)) has a share of that profit (“B’s profit share”) which is a profit (see subsection (7)),
  - (d) it is reasonable to suppose that A would have been a partner in the firm at a time during the relevant period of account or any earlier period of account but for the provision contained in section 850C (see also subsections (8) to (10)), and
  - (e) condition X or Y is met.
- (2) Condition X is that it is reasonable to suppose that amounts representing A’s deferred profit (see subsection (11)) are included in B’s profit share.
- (3) Condition Y is that—
- (a) B’s profit share exceeds the appropriate notional profit (see subsection (12)),
  - (b) A has the power to enjoy B’s profit share (“A’s power to enjoy”) (see subsection (13)), and
  - (c) it is reasonable to suppose that the whole or any part of B’s profit share is attributable to A’s power to enjoy.
- (4) A is to be treated on the following basis—
- (a) A is a partner in the firm throughout the relevant period of account (but not for the purposes of section 863I (allocation of profit to AIFM firm)),
  - (b) A’s share of the firm’s profit for the relevant period of account is so much of the amount of B’s profit share as, it is reasonable to suppose, is attributable to—
    - (i) A’s deferred profit, or
    - (ii) A’s power to enjoy,
 as determined on a just and reasonable basis, and
  - (c) A’s share of the firm’s profit is chargeable to income tax under the applicable provisions of the Income Tax Acts for the tax year in which the relevant period of account ends.

But A’s share of the firm’s profit by virtue of paragraph (b)(ii) is not to exceed the amount of the excess mentioned in subsection (3)(a) after deducting from that amount A’s share of the firm’s profit (if any) by virtue of paragraph (b)(i).

- (5) If B is chargeable to income tax, in applying sections 850 to 850B in relation to B for the relevant period of account, such adjustments are to be made as are just and reasonable to take account of A’s share of the firm’s profit under subsection (4).

(This subsection does not apply for the purposes of subsection (7) or section 850C(7).)

- (6) “Non-individual partner” is to be read in accordance with section 850C(6).
- (7) B’s profit share is to be determined by applying section 850 and, if relevant, section 850A in relation to B for the relevant period of account (whether or not B is chargeable to income tax) on the assumption that the calculation under section 849 in relation to B produces the profit for the firm mentioned in subsection (1)(b).

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- (8) The requirement of subsection (1)(d) is to be assumed to be met if, at a time during the relevant period of account, A is a member of a partnership which is associated with the firm.
- (9) A partnership is “associated” with the firm if—
- (a) it is a member of the firm, or
  - (b) it is a member of a partnership which is associated with the firm (whether by virtue of paragraph (a) or this paragraph).
- (10) In subsections (8) and (9) “partnership” includes a limited liability partnership whether or not section 863(1) applies in relation to it.
- (11) “A's deferred profit” is to be read in accordance with section 850C(8).
- (12) Section 850C(10) to (17) applies for the purpose of determining “the appropriate notional profit”; and A is to be treated as a partner in the firm for the purposes of section 850C(17).
- (13) Section 850C(18) to (21) applies for the purpose of determining if A has the power to enjoy B's profit share.

#### Textual Amendments

- F9** Ss. 850C-850E inserted (retrospective for specified purposes and 6.4.2014 in so far as not already in force and with effect in accordance with Sch. 17 paras. 12, 13 of the amending Act) by [Finance Act 2014 \(c. 26\)](#), [Sch. 17 paras. 7\(3\), 11](#)

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

- C4** S. 850D(4) applied by 2009 c. 4, s. 1264A(1) (as inserted) (5.12.2013) (retrospective for specified purposes and with effect in accordance with Sch. 17 paras. 12, 13 of the amending Act) by [Finance Act 2014 \(c. 26\)](#), [Sch. 17 paras. 10\(3\), 11](#)

### 850E Payments by B out of the excess part of B's profit share

- (1) Subsection (2) applies in a case in which section 850C(4) or section 850D(4) applies if—
- (a) there is an agreement in place in relation to the excess part of B's profit share,
  - (b) as a result of the agreement, B makes a payment to another person out of the excess part of B's profit share, and
  - (c) the payment is not made under any arrangements the main purpose, or one of the main purposes, of which is the obtaining of a tax advantage for any person.
- (2) For income tax purposes, the payment—
- (a) is not to be income of the recipient,
  - (b) is not to be taken into account in calculating any profits or losses of B or otherwise deducted from any income of B, and
  - (c) is not to be regarded as a distribution.
- (3) In this section—
- “arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable),

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“B's profit share” has the same meaning as in section 850C or 850D (as the case may be),

“the excess part of B's profit share” means so much of the amount of B's profit share as is represented by the amount of, as the case may be—

- (a) the increase under section 850C(4), or
- (b) A's share of the firm's profit under section 850D(4), and

“tax advantage” has the meaning given by section 1139 of CTA 2010.]

#### Textual Amendments

- F9** Ss. 850C-850E inserted (retrospective for specified purposes and 6.4.2014 in so far as not already in force and with effect in accordance with Sch. 17 paras. 12, 13 of the amending Act) by [Finance Act 2014 \(c. 26\)](#), [Sch. 17 paras. 7\(3\), 11](#)

### 851 Calculations etc. where firm has other income or losses

- (1) This section applies if—
  - (a) sections 849 and 850 apply in relation to the profits or losses of a trade carried on by a firm, and
  - (b) the firm has other income or losses.
- (2) Those sections also apply as if references to the profits or losses of the trade were references to the other income or losses.

#### *Firms with trading income*

### 852 Carrying on by partner of notional trade

- (1) For each tax year in which a firm carries on a trade (the “actual trade”), each partner's share of the firm's trading profits or losses is treated, for the purposes of Chapter 15 of Part 2 (basis periods), as profits or losses of a trade carried on by the partner alone (the “notional trade”).
  - (2) A partner starts to carry on a notional trade at the later of—
    - (a) when becoming a partner in the firm, and
    - (b) when the firm starts to carry on the actual trade.
- This is subject to subsection (3).
- (3) If the partner carries on the actual trade alone before the firm starts to carry it on, the partner starts to carry on the notional trade when the partner starts to carry on the actual trade.
  - (4) A partner permanently ceases to carry on a notional trade at the earlier of—
    - (a) when the partner ceases to be a partner in the firm, and
    - (b) when the firm permanently ceases to carry on the actual trade.

This is subject to subsections (5) and (6).

- (5) If the partner carries on the actual trade alone after the firm permanently ceases to carry it on, the partner permanently ceases to carry on the notional trade when the partner permanently ceases to carry on the actual trade.

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[<sup>F10</sup>(6) If there is a change of residence, the partner is treated as permanently ceasing to carry on one notional trade when that change of residence occurs and starting to carry on another immediately afterwards.]

(7) Subsection (6) does not prevent a loss made before the change of residence from being [<sup>F11</sup>deducted under section 83 of ITA 2007 from] profits arising after the change.

[<sup>F12</sup>(8) Subsections (1A) and (1B) of section 17 apply for the purposes of subsection (6).]

#### Textual Amendments

**F10** S. 852(6) substituted (with effect in accordance with Sch. 45 para. 153(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 79\(2\)](#)

**F11** Words in s. 852(7) substituted (with effect as stated in [s. 1034\(1\)](#) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), [ss. 1027, 1034](#), [Sch. 1 para. 579](#) (with transitional provisions and savings in [Sch. 2](#))

**F12** S. 852(8) inserted (with effect in accordance with Sch. 45 para. 153(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 79\(3\)](#)

#### [<sup>F13</sup>852A Notional trades: indirect partners

- (1) This section applies in relation to the notional trade of a partner in a firm if—
- the firm consists of a partnership which is a partner or indirect partner in another partnership (“the underlying partnership”),
  - the members of the underlying partnership carry on a trade (the “underlying trade”),
  - the firm's trading profits or losses referred to in section 852(1) arise by virtue of profits or losses (“the underlying profits or losses”) arising in the carrying on of the underlying trade, and
  - the underlying profits or losses do not themselves arise by virtue of the underlying partnership's membership of a partnership.

- (2) Section 852 (carrying on by partner of notional trade) has effect as if for subsections (2) to (5) there were substituted—

- “(2) The partner starts to carry on the notional trade at the later of—
- when the partner becomes an indirect partner in the underlying partnership, and
  - when the underlying partnership starts to carry on the underlying trade.

This is subject to subsection (3).

- (3) If the partner carries on the actual trade (whether alone or in partnership) before the underlying partnership starts to carry on the underlying trade, the partner starts to carry on the notional trade when the partner starts to carry on the actual trade.
- (4) The partner permanently ceases to carry on the notional trade at the earlier of—
- when the partner ceases to be an indirect partner in the underlying partnership, and

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- (b) when the underlying partnership permanently ceases to carry on the underlying trade.

This is subject to subsection (5).

- (5) If the partner carries on the actual trade (whether alone or in partnership) after the underlying partnership permanently ceases to carry on the underlying trade, the partner permanently ceases to carry on the notional trade when the partner permanently ceases to carry on the actual trade.”]

#### Textual Amendments

**F13** S. 852A inserted (with effect in accordance with Sch. 6 para. 5(5) of the amending Act) by [Finance Act 2018 \(c. 3\)](#), [Sch. 6 para. 5\(3\)](#)

### 853 Basis periods for partners' notional trades

- (1) The basis period of a partner's notional trade is determined by applying the rules in Chapter 15 of Part 2 as if—
  - (a) the trade were carried on by an individual, and
  - (b) its accounts were drawn up to the same dates as the accounts of the actual trade.

This is subject to subsection (2).

- (2) If, on the assumption that the actual trade is carried on by an individual,—
  - (a) section 216 (change of accounting date in later tax year) would apply in relation to the actual trade, but
  - (b) the basis period for the actual trade would be given by subsection (4) of that section (ineffective change of accounting date), because the conditions in section 217 (conditions for basis period to end with new accounting date) would not be met in relation to that trade,

the accounts of the actual trade are treated for the purposes of subsection (1) as drawn up to the old accounting date.

- (3) For the purposes of determining whether, on the assumption that the actual trade is carried on by an individual, the conditions in section 217 would be met in relation to that trade—
  - (a) a notice under section 217(2) must be given by one of the partners in the firm nominated by them for the purposes of this subsection, and
  - (b) any appeal under section 218(4) against a notice by <sup>F14</sup>an officer of Revenue and Customs] must be made by a partner so nominated.
- (4) Section 207 (treatment of business start-up payments received in overlap period) applies as a result of this section in relation to a partner's notional trade so that—
  - (a) the requirement in subsection (1)(a) of that section becomes a requirement that the partner's share of the firm's profits so far as attributable to a business start-up payment falls within two basis periods, and
  - (b) the reference in subsection (2) of that section to the payment is a reference to any part of the partner's share of the firm's profits which is so attributable.

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### Textual Amendments

**F14** Words in s. 853(3)(b) substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\), ss. 50, 53\(1\), Sch. 4 para. 132\(1\)](#); S.I. 2005/1126, [art. 2\(2\)\(h\)](#)

## *Firms with trading and other source income*

### **854 Carrying on by partner of notional business**

- (1) For each tax year in which a firm—
- carries on a trade, and
  - has untaxed income or relieviable losses from other sources,
- each partner's share of the firm's untaxed income or relieviable losses other than trading profits or losses is treated, for the purposes of Chapter 15 of Part 2, as profits or losses of a trade carried on by the partner alone (the “notional business”).
- (2) A partner starts to carry on a notional business at the later of—
- when becoming a partner in the firm, and
  - when the firm starts to carry on a trade.
- (3) A notional business continues even if either or both of the following occur—
- separate sources of income that comprise the business start and cease, and
  - no income arises during a particular tax year.

This is subject to subsections (4) and (5).

- (4) A partner permanently ceases to carry on a notional business at the earlier of—
- when the partner ceases to be a partner in the firm, and
  - when the firm permanently ceases to carry on a trade.

[<sup>F15</sup>(5) If there is a change of residence, the partner is treated as permanently ceasing to carry on one notional business when that change of residence occurs and starting to carry on another immediately afterwards.]

[<sup>F16</sup>(5A) Subsections (1A) and (1B) of section 17 apply for the purposes of subsection (5).]

- (6) In this section “untaxed income” means any income that is not—
- income from which income tax has been deducted,
  - income from or on which income tax is treated as having been deducted or paid,<sup>F17</sup> ...
  - dividends or other distributions of a company chargeable under Chapter 3 of Part 4.
- [<sup>F18</sup>(d) income chargeable under Chapter 5 of Part 4 (stock dividends from UK resident companies), or
- income chargeable under Chapter 6 of Part 4 (release of loan to participator in closed company).]

### Textual Amendments

**F15** S. 854(5) substituted (with effect in accordance with Sch. 45 para. 153(2) of the amending Act) by [Finance Act 2013 \(c. 29\), Sch. 45 para. 80\(2\)](#)

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- F16** S. 854(5A) inserted (with effect in accordance with Sch. 45 para. 153(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 80\(3\)](#)
- F17** Word in s. 854(6)(b) omitted (with effect in accordance with Sch. 1 para. 73 of the amending Act) by virtue of [Finance Act 2016 \(c. 24\)](#), [Sch. 1 para. 26\(a\)](#)
- F18** S. 854(6)(d)(e) inserted (with effect in accordance with Sch. 1 para. 73 of the amending Act) by [Finance Act 2016 \(c. 24\)](#), [Sch. 1 para. 26\(b\)](#)

## **855 Basis periods for partners' notional businesses**

- (1) The general rule is that the basis period for a partner's notional business is the same as the basis period for a partner's notional trade, but subject to the exceptions in subsections (2) and (3).
- (2) If the partner carries on the actual trade alone before the firm starts to carry it on the partner is treated as starting to carry on the notional business when the partnership is set up.
- (3) If the partner carries on the actual trade alone after the firm permanently ceases to carry it on the partner is treated as permanently ceasing to carry on the notional business when the firm permanently ceases to carry on the actual trade.

### **[<sup>F19</sup>855A] Notional business: indirect partners**

- (1) This section applies in relation to the notional business of a partner in a firm if—
  - (a) the firm consists of a partnership which is a partner or indirect partner in another partnership (“the underlying partnership”),
  - (b) the members of the underlying partnership carry on a trade (“the underlying trade”),
  - (c) the firm's untaxed income or relievable losses referred to in section 854(1)(b) arise by virtue of untaxed income or relievable losses (“the underlying profits or losses”) arising to members of the underlying partnership—
    - (i) from sources other than the carrying on of a trade, and
    - (ii) otherwise than by virtue of the underlying partnership's membership of a partnership.
- (2) Section 854 (carrying on by partner of notional business) has effect as if—
  - (a) for subsection (2) there were substituted—

“(2) The partner starts to carry on the notional business at the later of—

    - (a) when the partner becomes an indirect partner in the underlying partnership, and
    - (b) when the underlying partnership starts to carry on the underlying trade.”;
  - (b) for subsection (4) there were substituted—

“(4) The partner permanently ceases to carry on the notional business at the earlier of—

    - (a) when the partner ceases to be an indirect partner in the underlying partnership, and
    - (b) when the underlying partnership permanently ceases to carry on the underlying trade.”

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(3) Section 855 has effect as if for subsections (2) and (3) there were substituted—

“(2) If the partner carries on the actual trade (whether alone or in partnership) before the firm starts to carry it on, the partner starts to carry on the notional business when the firm starts to carry on the actual trade.

(3) If the partner carries on the actual trade (whether alone or in partnership) after the firm permanently ceases to carry it on, the partner permanently ceases to carry on the notional business when the firm permanently ceases to carry on the actual trade.”

(4) In this section “untaxed income” has the same meaning as in section 854.]

#### Textual Amendments

**F19** S. 855A inserted (with effect in accordance with Sch. 6 para. 5(5) of the amending Act) by [Finance Act 2018 \(c. 3\)](#), [Sch. 6 para. 5\(4\)](#)

### 856 Overlap profits from partners' notional businesses

(1) This section applies if—

- (a) the basis period for a partner's notional business for a tax year is given by—
  - (i) section 215 (change of accounting date in third tax year), or
  - (ii) section 216(3) (change of accounting date in later tax year),
- (b) a deduction is to be made for overlap profit under section 220 in calculating the profits of the notional business of the tax year, and
- (c) the amount to be deducted exceeds the amount which would otherwise be the amount of the profits of the notional business of the tax year.

(2) This section also applies if—

- (a) the basis period for a partner's notional business for a tax year is given by section 202 (final tax year),
- (b) a deduction is to be made for overlap profit under section 205 in calculating the profits of the notional business of the tax year, and
- (c) the amount to be deducted exceeds the amount which would otherwise be the amount of the profits of the notional business of the tax year.

(3) The amount of the excess is to be deducted in calculating the partner's income for the tax year.

#### *Firms with a foreign element*

### 857 Partners to whom the remittance basis [<sup>F20</sup>applies]

(1) This section applies if—

- (a) a firm carries on a trade wholly or partly outside the United Kingdom,
- (b) the control and management of the trade is outside the United Kingdom, and
- [<sup>F21</sup>(c) section 809B, 809D or 809E of ITA 2007 (remittance basis) applies to a partner for a tax year.]



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- (2) The partner's share of the profits of the trade arising in the United Kingdom is determined in accordance with sections 849 to 856.
- (3) The partner's share of the profits of the trade arising outside the United Kingdom is treated as relevant foreign income <sup>F22</sup>....

#### Textual Amendments

- F20** Word in s. 857 heading substituted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 70\(4\)](#)
- F21** S. 857(1)(c) substituted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 70\(2\)](#)
- F22** Words in s. 857(3) omitted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 70\(3\)](#)

### 858 Resident partners and double taxation agreements

- (1) This section applies if—
  - (a) a UK resident (“the partner”) is a member of a firm which—
    - (i) resides outside the United Kingdom, or
    - (ii) carries on a trade the control and management of which is outside the United Kingdom, and
  - (b) by virtue of any arrangements having effect under [<sup>F23</sup>section 2(1) of TIOPA 2010] (“the arrangements”) any of the income of the firm is relieved from income tax in the United Kingdom.
- (2) The partner is liable to income tax on the partner's share of the income of the firm despite the arrangements.

<sup>F24</sup>(3) .....

[<sup>F25</sup>(4) For the purposes of this section the members of a firm include any person entitled to a share of income of the firm.]

#### Textual Amendments

- F23** Words in s. 858(1)(b) 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. 70](#) (with [Sch. 9 paras. 1-9, 22](#))
- F24** S. 858(3) omitted (with effect in accordance with Sch. 1 para. 73 of the amending Act) by virtue of [Finance Act 2016 \(c. 24\)](#), [Sch. 1 para. 27](#)
- F25** S. 858(4) inserted (retrospectively) by [Finance Act 2008 \(c. 9\)](#), [s. 58\(3\)\(4\)](#)

#### Miscellaneous

### 859 Special provisions about farming and property income

- (1) The rule in section 9(2) (farming trades) operates in relation to firms so that—
  - (a) all farming in the United Kingdom which a firm carries on, other than farming carried on as part of another trade, is treated as one trade, but

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- (b) the farming carried on by a firm which is treated as one trade is not included in any farming trade of any partner in the firm.
- (2) Section 264 (UK property business) operates in relation to firms so that—
- (a) every business and transaction mentioned in that section carried on, or entered into, by a firm constitutes the firm's UK property business, but
  - (b) each business or transaction included in the firm's UK property business is not included in any UK property business of any partner in the firm.
- (3) Section 265 (overseas property business) operates in relation to firms so that—
- (a) every business and transaction mentioned in that section carried on, or entered into, by a firm constitutes the firm's overseas property business, but
  - (b) each business or transaction included in the firm's overseas property business is not included in any overseas property business of any partner in the firm.

## 860 Adjustment income

- (1) A change in the persons carrying on a trade from one period of account to the next does not prevent Chapter 17 of Part 2 (adjustment income) applying in relation to the trade so long as a person carrying on the trade immediately before the change continues to carry on the trade immediately after the change.

[<sup>F26</sup>(1A) A change in the persons carrying on a property business from one period of account to the next does not prevent Chapter 7 of Part 3 (adjustment income) applying in relation to the property business so long as a person carrying on the property business immediately before the change continues to carry on the property business immediately after the change.]

- (2) A change in the persons carrying on a trade does not constitute the permanent cessation of the trade for the purposes of Chapter 17 of Part 2 so long as a person carrying on the trade immediately before the change continues to carry on the trade immediately after the change.
- (3) In the case of a trade [<sup>F27</sup>or property business] carried on by a firm the amount of any adjustment under Chapter 17 of Part 2 [<sup>F28</sup>, or Chapter 7 of Part 3,] is calculated as if the firm were a UK resident individual.
- (4) Each partner's share of any amount of adjustment income is determined according to the firm's profit-sharing arrangements for the 12 months ending immediately before the date on which the new basis was adopted.
- (5) Any election under Chapter 17 of Part 2 [<sup>F29</sup>, or under section 239B as applied to property businesses by section 334A,] must be made jointly by all the persons who have been members of the firm in that 12 month period.
- (6) For the purposes of this section—
- (a) “adjustment income” and “change of basis” have the same meaning as in Chapter 17 of Part 2, [<sup>F30</sup> or Chapter 7 of Part 3 (as the case requires)]
  - (b) “profit-sharing arrangements” means the rights of the partners to share in the profits of the trade [<sup>F31</sup> or property business (as the case requires)] , and
  - (c) references to the date on which a new basis was adopted are to the first day of the first period of account for which the new basis was adopted.
- (7) Sections 849 to 856 do not apply so far as this section applies.

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### Textual Amendments

- F26** S. 860(1A) inserted (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. 641\(2\)](#) (with Sch. 2 Pts. 1, 2)
- F27** Words in s. 860(3) inserted (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. 641\(3\)\(a\)](#) (with Sch. 2 Pts. 1, 2)
- F28** Words in s. 860(3) inserted (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. 641\(3\)\(b\)](#) (with Sch. 2 Pts. 1, 2)
- F29** Words in s. 860(5) inserted (16.11.2017) (with effect in accordance with Sch. 2 para. 64 of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\), Sch. 2 para. 34](#)
- F30** Words in s. 860(6)(a) inserted (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. 641\(4\)\(a\)](#) (with Sch. 2 Pts. 1, 2)
- F31** Words in s. 860(6)(b) inserted (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. 641\(4\)\(b\)](#) (with Sch. 2 Pts. 1, 2)

### [<sup>F32</sup>861 Sale of patent rights: effect of partnership changes

- (1) This section applies if each of the following conditions is met—
- a person (“the trader”) sells the whole or part of any patent rights in carrying on a trade,
  - tax is chargeable under section 587 of this Act or section 912 of CTA 2009 on the proceeds of the sale or on any instalment of those proceeds,
  - the tax is chargeable in one or more tax years or accounting periods (referred to in this section as “the tax charge periods”),
  - there is a change in the persons carrying on the trade at any time between the beginning of the first of those tax charge periods and the end of the last of them, and
  - the partnership condition and the continuity condition are met.
- (2) The partnership condition is that—
- the trader is a firm at the time of the sale, or
  - the trade is carried on in partnership at any time between the beginning of the first of the tax charge periods and the end of the last of them.
- (3) The continuity condition is—
- in the case of an amount chargeable under section 587, that a person who carried on the trade immediately before the change continues to carry it on after the change, or
  - in the case of an amount chargeable under section 912 of CTA 2009, that a company which carried on the trade in partnership immediately before the change continues to carry it on in partnership after the change.
- (4) Any amounts chargeable in respect of the proceeds or instalment that would (apart from this section) be treated in accordance with Chapter 2 of Part 5 of this Act or Chapter 3 of Part 9 of CTA 2009 as profits of the seller of the patent rights chargeable in tax charge periods falling wholly after the change are treated for income tax purposes—
- as proceeds, arising at a constant daily rate during the remainder of the relevant period, of a sale of patent rights by the person or persons carrying on the trade after the change, and

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- (b) if the trade is carried on in partnership after the change, as arising to the partners in shares calculated in accordance with the firm's profit-sharing arrangements.
- (5) If the change occurs during the course of a tax charge period—
- (a) any person who would, but for this section, have been charged to income tax in that period on a sum (“S”) in respect of the proceeds or instalment is so charged on a fraction of S proportionate to the length of the part of the period before the change, and
  - (b) the balance of S not dealt with under paragraph (a) is treated for the purposes of this section and section 1271 of CTA 2009 (sale of patent rights: effect of partnership changes) as if it were an amount such as is described in subsection (4).
- (6) In this section “the remainder of the relevant period” means—
- (a) if one or more tax charge periods begins after the tax charge period in which the change occurs, the period beginning immediately after the change and ending 6 years after the beginning of the first of the tax charge periods, or
  - (b) otherwise, the period beginning immediately after the change and ending at the end of the tax charge period in which the change occurs.
- (7) In this section “profit-sharing arrangements” means the rights of the partners to share in the profits of the trade.]

#### Textual Amendments

**F32** S. 861 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. 642](#) (with [Sch. 2 Pts. 1, 2](#))

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

**C5** S. 861 modified (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), [ss. 1271\(5\)\(b\)](#), 1329(1) (with [Sch. 2 Pts. 1, 2](#))

## 862 Sale of patent rights: effect of later cessation of trade

- [<sup>F33</sup>(1) This section applies if—
- (a) a person (“the trader”) sells the whole or part of any patent rights in carrying on a trade,
  - (b) by virtue of section 861 amounts are chargeable to income tax under section 587 as profits of one or more persons for the time being carrying on the trade in partnership,
  - (c) a partner permanently ceases to carry on the trade after that, and
  - (d) no person who carried on the trade immediately before the cessation continues to carry on the trade immediately after the cessation.
- (2) Any amounts mentioned in subsection (1)(b) which would have been chargeable in any tax year later than that in which the cessation occurred are charged in the tax year in which the cessation occurred.]

<sup>F34</sup>(3) .....

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- (4) If an additional amount is chargeable under subsection (2), the person liable may elect that the amount of income tax payable should be reduced to the amount that would have been payable on the assumptions mentioned in subsection (5).
- (5) The assumptions are—
  - (a) that subsection (2) does not apply, and
  - (b) that the total of the amounts that would have been charged in later tax years is charged in equal instalments in each of the tax years—
    - (i) beginning with the year in which the trader received the proceeds of the sale or instalment of those proceeds, and
    - (ii) ending with the year in which the cessation occurs.
- (6) The election must be made on or before the first anniversary of the normal self-assessment filing date for the tax year in which the cessation occurred.

<sup>F35</sup>(7) .....

#### Textual Amendments

- F33** S. 862(1)(2) 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. 643(2)** (with Sch. 2 Pts. 1, 2)
- F34** S. 862(3) repealed (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. 643(3)**, **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)
- F35** S. 862(7) repealed (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. 643(3)**, **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

### 863 Limited liability partnerships

- (1) For income tax purposes, if a limited liability partnership carries on a trade, profession or business with a view to profit—
  - (a) all the activities of the limited liability partnership are treated as carried on in partnership by its members (and not by the limited liability partnership as such),
  - (b) anything done by, to or in relation to the limited liability partnership for the purposes of, or in connection with, any of its activities is treated as done by, to or in relation to the members as partners, and
  - (c) the property of the limited liability partnership is treated as held by the members as partnership property.

References in this subsection to the activities of the limited liability partnership are to anything that it does, whether or not in the course of carrying on a trade, profession or business with a view to profit.

- (2) For all purposes, except as otherwise provided, in the Income Tax Acts—
  - (a) references to a firm [<sup>F36</sup>or partnership] include a limited liability partnership in relation to which subsection (1) applies,
  - (b) references to members [<sup>F37</sup>or partners] of a firm [<sup>F38</sup>or partnership] include members of such a limited liability partnership,
  - (c) references to a company do not include such a limited liability partnership, and
  - (d) references to members of a company do not include members of such a limited liability partnership.

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- (3) Subsection (1) continues to apply in relation to a limited liability partnership which no longer carries on any trade, profession or business with a view to profit—
- (a) if the cessation is only temporary, or
  - (b) during a period of winding up following a permanent cessation, provided—
    - (i) the winding up is not for reasons connected in whole or in part with the avoidance of tax, and
    - (ii) the period of winding up is not unreasonably prolonged.

This is subject to subsection (4).

- (4) Subsection (1) ceases to apply in relation to a limited liability partnership—
- (a) on the appointment of a liquidator or (if earlier) the making of a winding-up order by the court, or
  - (b) on the occurrence of any event under the law of a territory outside the United Kingdom corresponding to an event specified in paragraph (a).

#### Textual Amendments

- F36** Words in s. 863(2)(a) inserted (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), ss. 1027, 1034, [Sch. 1 para. 580\(a\)](#) (with transitional provisions and savings in [Sch. 2](#))
- F37** Words in s. 863(2)(b) inserted (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), ss. 1027, 1034, [Sch. 1 para. 580\(b\)\(i\)](#) (with transitional provisions and savings in [Sch. 2](#))
- F38** Words in s. 863(2)(b) inserted (6.4.2007 with effect as stated in s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), ss. 1027, 1034, [Sch. 1 para. 580\(b\)\(ii\)](#) (with transitional provisions and savings in [Sch. 2](#))

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

- C6** S. 863 modified by 2010 c. 8, s. 259G(8) (as inserted (with effect in accordance with Sch. 10 paras. 18-21 of the amending Act) by [Finance Act 2016 \(c. 24\)](#), [Sch. 10 para. 1](#))
- C7** S. 863 modified by 2010 c. 8, s. 259GE(8) (as inserted (with effect in accordance with Sch. 10 paras. 18-21 of the amending Act) by [Finance Act 2016 \(c. 24\)](#), [Sch. 10 para. 1](#))

### [<sup>F39</sup> 863A] Limited liability partnerships: salaried members

- (1) Subsection (2) applies at any time when conditions A to C in sections 863B to 863D are met in the case of an individual (“M”) who is a member of a limited liability partnership in relation to which section 863(1) applies.
- (2) For the purposes of the Income Tax Acts—
- (a) M is to be treated as being employed by the limited liability partnership under a contract of service instead of being a member of the partnership, and
  - (b) accordingly, M's rights and duties as a member of the limited liability partnership are to be treated as rights and duties under that contract of service.
- (3) This section needs to be read with section 863G (anti-avoidance).

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### Textual Amendments

**F39** Ss. 863A-863G inserted (6.4.2014 for specified purposes, 18.7.2014 in so far as not already in force) by [Finance Act 2014 \(c. 26\)](#), [Sch. 17 paras. 1, 6](#)

## 863B Condition A

- (1) The question of whether condition A is met is to be determined at the following times—
- (a) if relevant arrangements are in place—
    - (i) at the beginning of the tax year 2014-15, or
    - (ii) if later, when M becomes a member of the limited liability partnership,  
at the time mentioned in sub-paragraph (i) or (ii) (as the case may be);
  - (b) at any subsequent time when relevant arrangements are put in place or modified;
  - (c) where—
    - (i) the question has previously been determined, and
    - (ii) the relevant arrangements which were in place at the time of the previous determination do not end, and are not modified, by the end of the period which was the relevant period for the purposes of the previous determination (see step 1 in subsection (3)),  
immediately after the end of that period.
- (2) “Relevant arrangements” means arrangements under which amounts are to be, or may be, payable by the limited liability partnership in respect of M's performance of services for the partnership in M's capacity as a member of the partnership.
- (3) Take the following steps to determine whether condition A is met at a time (“the relevant time”).
- Step 1* Identify the relevant period by reference to the relevant arrangements which are in place at the relevant time. “The relevant period” means the period—
- (a) beginning with the relevant time, and
  - (b) ending at the time when, as at the relevant time, it is reasonable to expect that the relevant arrangements will end or be modified.
- Step 2* Condition A is met if, at the relevant time, it is reasonable to expect that at least 80% of the total amount payable by the limited liability partnership in respect of M's performance during the relevant period of services for the partnership in M's capacity as a member of the partnership will be disguised salary. An amount within the total amount is “disguised salary” if it—
- (a) is fixed,
  - (b) is variable, but is varied without reference to the overall amount of the profits or losses of the limited liability partnership, or
  - (c) is not, in practice, affected by the overall amount of those profits or losses.
- (4) If condition A is determined to be met, or not to be met, at a time, the condition is to be treated as met, or as not met, at all subsequent times until the question is required to be re-determined under subsection (1)(b) or (c).

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- (5) In this section “arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable).

**Textual Amendments**

**F39** Ss. 863A-863G inserted (6.4.2014 for specified purposes, 18.7.2014 in so far as not already in force) by [Finance Act 2014 \(c. 26\)](#), [Sch. 17 paras. 1, 6](#)

**863C Condition B**

Condition B is that the mutual rights and duties of the members of the limited liability partnership, and of the partnership and its members, do not give M significant influence over the affairs of the partnership.

**Textual Amendments**

**F39** Ss. 863A-863G inserted (6.4.2014 for specified purposes, 18.7.2014 in so far as not already in force) by [Finance Act 2014 \(c. 26\)](#), [Sch. 17 paras. 1, 6](#)

**863D Condition C**

- (1) Condition C is that, at the time at which it is being determined whether the condition is met (“the relevant time”), M's contribution to the limited liability partnership (see sections 863E and 863F) is less than 25% of the amount given by subsection (2) (subject to subsection (7)).
- (2) That amount is the total amount of the disguised salary which, at the relevant time, it is reasonable to expect will be payable by the limited liability partnership in respect of M's performance during the relevant tax year of services for the partnership in M's capacity as a member of the partnership.

In this section “the relevant tax year” means the tax year in which the relevant time falls and an amount is “disguised salary” if it falls within any of paragraphs (a) to (c) at step 2 in section 863B(3).

- (3) The question of whether condition C is met is to be determined—
- (a) at the beginning of the tax year 2014-15 or, if later, the time at which M becomes a member of the limited liability partnership;
  - (b) after that, at the beginning of each tax year.
- (4) If in a tax year—
- (a) there is a change in M's contribution to the limited liability partnership, or
  - (b) there is otherwise a change of circumstances which might affect the question of whether condition C is met,
- the question of whether the condition is met is to be re-determined at the time of the change.

This subsection is subject to section 863F(3).

- (5) If condition C is determined to be met (including by virtue of subsection (7)), or not to be met, at the relevant time, the condition is to be treated as met, or as not



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met, at all subsequent times until the question is required to be re-determined under subsection (3)(b) or (4).

- (6) Subsection (7) applies if—
- (a) the relevant time coincides with an increase in M's contribution to the limited liability partnership, and
  - (b) apart from subsection (7), that increase would cause condition C not to be met at the relevant time.
- (7) Condition C is to be treated as met at the relevant time unless, at that time, it is reasonable to expect that condition C will not be met for the remainder of the relevant tax year (ignoring this subsection).
- (8) If there are any excluded days in the relevant tax year (see subsections (9) to (11)), in subsection (1) the reference to M's contribution to the limited liability partnership is to be read as a reference to that contribution multiplied by the following fraction—
- where—
- D is the number of days in the relevant tax year, and
- E is the number of excluded days in the relevant tax year.
- (9) Any day in the relevant tax year—
- (a) which is before the day on which the relevant time falls, and
  - (b) on which M is not a member of the limited liability partnership,
- is an “excluded” day for the purposes of subsection (8).
- (10) If, at the relevant time, it is reasonable to expect that M will not be a member of the limited liability partnership for the remainder of the relevant tax year, any day in the relevant tax year—
- (a) which is after the day on which the relevant time falls, and
  - (b) on which it is reasonable to expect that M will not be a member of the limited liability partnership,
- is an “excluded” day for the purposes of subsection (8).
- (11) If the relevant time coincides with an increase in M's contribution to the limited liability partnership, any day in the relevant tax year—
- (a) which is before the day on which the relevant time falls, and
  - (b) on which condition C is met,
- is an “excluded” day for the purposes of subsection (8).
- (12) In subsections (6) and (11) references to an increase in M's contribution to the limited liability partnership include (in particular)—
- (a) the making of M's first contribution to the capital of the limited liability partnership, and
  - (b) M being treated as having made a contribution by section 863F(2).

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#### Textual Amendments

**F39** Ss. 863A-863G inserted (6.4.2014 for specified purposes, 18.7.2014 in so far as not already in force) by [Finance Act 2014 \(c. 26\)](#), [Sch. 17 paras. 1, 6](#)

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### **863E M's contribution to the limited liability partnership: the basic calculation**

- (1) For the purposes of condition C in section 863D M's contribution to the limited liability partnership at a time is amount A.
- (2) Amount A is the total amount which M has contributed to the limited liability partnership as capital less so much of that amount (if any) as is within subsection (6).
- (3) In particular, M's share of any profits of the limited liability partnership is to be included in the amount which M has contributed to the partnership as capital so far as that share has been added to the partnership's capital.
- (4) In subsection (3) the reference to profits is to profits calculated in accordance with generally accepted accounting practice (before any adjustment required or authorised by law in calculating profits for income tax purposes).
- (5) Subsection (3) applies as well for the purpose of construing references to contributions to the capital of the limited liability partnership in sections 863D(12)(a) and 863F.
- (6) An amount of capital is within this subsection if it is an amount which—
  - (a) M has previously drawn out or received back,
  - (b) M is or may be entitled to draw out or receive back at any time when M is a member of the limited liability partnership, or
  - (c) M is or may be entitled to require another person to reimburse to M.
- (7) In subsection (6) any reference to drawing out or receiving back an amount is to doing so directly or indirectly.

#### **Textual Amendments**

**F39** Ss. 863A-863G inserted (6.4.2014 for specified purposes, 18.7.2014 in so far as not already in force) by [Finance Act 2014 \(c. 26\)](#), [Sch. 17 paras. 1, 6](#)

### **863F M's contribution to the limited liability partnership: deemed contributions**

- (1) This section applies if—
  - (a) by the time mentioned in section 863D(3)(a), M has given an undertaking (whether or not legally enforceable) to make a contribution to the capital of the limited liability partnership but has not made the contribution,
  - (b) the undertaking requires M to make the contribution by the end of—
    - (i) the period of 3 months ending with 5 July 2014, or
    - (ii) if it ends after that date, the period of 2 months beginning with the date on which M becomes a member of the limited liability partnership, and
  - (c) when it is made, the contribution will be included in amount A under section 863E.

In the following subsections “the relevant period” means the period mentioned in paragraph (b)(i) or (ii) (as the case may be).
- (2) For the purpose of determining whether condition C in section 863D is met—
  - (a) at the time mentioned in section 863D(3)(a), or
  - (b) at any subsequent time during the relevant period,

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M is to be treated as having made the contribution at the time mentioned in section 863D(3)(a) (so far as M has not (actually) made the contribution at the time at which it is being determined whether condition C is met).

- (3) If M (actually) makes the contribution (in whole or in part) during the relevant period, the question of whether condition C is met is not to be re-determined under section 863D(4) just because of the making of the contribution (in whole or in part).
- (4) If M does not (actually) make the contribution (in whole or in part) by the end of the relevant period, any determination in relation to which subsection (2) applied is to be made again (as at the time at which it was originally made).
- (5) In making a determination again—
  - (a) if it is the whole of the contribution which M does not make by the end of the relevant period, subsection (2) is to be ignored;
  - (b) if M makes part of the contribution by the end of the relevant period, in subsection (2) references to the contribution are to be read as references to that part of it.

#### Textual Amendments

**F39** Ss. 863A-863G inserted (6.4.2014 for specified purposes, 18.7.2014 in so far as not already in force) by [Finance Act 2014 \(c. 26\)](#), [Sch. 17 paras. 1, 6](#)

### 863G Anti-avoidance

- (1) In determining whether section 863A(2) applies in the case of an individual who is a member of a limited liability partnership, 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 863A(2) does not apply in the case of—
  - (a) the individual, or
  - (b) the individual and one or more other individuals.
- (2) Subsection (4) applies if—
  - (a) an individual (“X”) personally performs services for a limited liability partnership at a time when X is not a member of the partnership,
  - (b) X performs the services under arrangements involving a member of the limited liability partnership (“Y”) who is not an individual,
  - (c) the main purpose, or one of the main purposes, of those arrangements is to secure that section 863A(2) does not apply in the case of X or in the case of X and one or more other individuals, and
  - (d) in relation to X's performance of the services, an amount falling within subsection (3) arises to Y in respect of Y's membership of the limited liability partnership.
- (3) An amount falls within this subsection if—
  - (a) were X performing the services under a contract of service by which X were employed by the limited liability partnership, and
  - (b) were the amount to arise to X directly from the limited liability partnership, the amount would be employment income of X in respect of the employment.

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- (4) If this subsection applies, in relation to X's performance of the services, X is to be treated on the following basis—
- (a) X is a member of the limited liability partnership in whose case section 863A(2) applies,
  - (b) the amount arising to Y arises instead to X directly from the limited liability partnership,
  - (c) that amount is employment income of X in respect of the employment under section 863A(2) accordingly, and
  - (d) neither that amount, nor any amount representing that amount, is to be income of X for income tax purposes on any other basis.
- (4A) Section 863A(2) does not apply in the case of a member of a limited liability partnership if, apart from this subsection, it would apply in consequence of arrangements the main purpose, or one of the main purposes, of which is to secure that section 850C does not apply for one or more periods of account in relation to—
- (a) the member, or
  - (b) the member and one or more other members of the limited liability partnership.
- (5) In this section “arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable).]

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**Textual Amendments**

**F39** Ss. 863A-863G inserted (6.4.2014 for specified purposes, 18.7.2014 in so far as not already in force) by [Finance Act 2014 \(c. 26\)](#), [Sch. 17 paras. 1, 6](#)

*<sup>F40</sup>Alternative investment fund managers*

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**Textual Amendments**

**F40** Ss. 863H-863L and cross-heading inserted (with effect in accordance with Sch. 17 para. 21 of the amending Act) by [Finance Act 2014 \(c. 26\)](#), [Sch. 17 para. 15](#)

**863H Election for special provision for alternative investment fund managers to apply**

- (1) Section 863I applies in relation to an AIFM trade of an AIFM firm if the AIFM firm elects for that section to apply.
- (2) An election under this section must be made within 6 months after the end of the first period of account for which the election is to have effect.
- (3) An “AIFM firm” is a firm—
  - (a) the regular business of which is managing one or more AIFs, or
  - (b) which carries out one or more functions of managing one or more AIFs—
    - (i) as the delegate of, or
    - (ii) as the sub-delegate of a delegate of,
 a person whose regular business is managing one or more AIFs.

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- (4) An “AIFM trade” is a trade of an AIFM firm which involves the firm's activities mentioned in subsection (3)(a) or (b).
- (5) Subsection (3)(a) and (b) is to be construed as if it were contained in regulation 4 of the Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773).

### **863I Allocation of profit to the AIFM firm**

- (1) This section applies for a period of account of the AIFM trade if—
  - (a) the calculation under section 849 in relation to a partner (“P”) in the AIFM firm produces a profit, and
  - (b) P's share of that profit determined under section 850, 850A or 850C would, apart from this section, be a profit consisting (wholly or partly) of relevant restricted profit (see subsections (6) to (9)) chargeable to income tax under Chapter 2 of Part 2.
- (2) P may allocate all or a part of the relevant restricted profit (“the allocated profit”) to the AIFM firm itself.
- (3) If P does so—
  - (a) the allocated profit is to be excluded from P's share of the AIFM firm's profit mentioned in subsection (1)(b),
  - (b) the AIFM firm is to be treated in accordance with subsection (4) as if it were itself a person who is a partner in the AIFM firm (and for this purpose, in the case of a limited liability partnership, it is the body corporate which is to be treated as that person), and
  - (c) all enactments applying generally to income tax are to apply accordingly with any necessary modifications (subject to subsection (5)).
- (4) The AIFM firm is treated on the following basis—
  - (a) the calculation under section 849 in relation to the AIFM firm for the period of account produces the profit mentioned in subsection (1)(a),
  - (b) the AIFM firm's share of that profit determined under section 850 is the allocated profit (and sections 850A and 850C are to be ignored),
  - (c) that share is chargeable to tax under Chapter 2 of Part 2 for the tax year in which the period of account ends (with the person liable for the tax charged being the AIFM firm), and
  - (d) the tax is charged at the additional rate.
- (5) The Commissioners for Her Majesty's Revenue and Customs may make regulations modifying any of the following enactments applying to income tax as they apply by virtue of this section in relation to the AIFM firm—
  - (a) those relating to returns of information and supply of accounts, statements and reports,
  - (b) those relating to the assessing, collecting and receiving of income tax,
  - (c) those conferring or regulating a right of appeal, and
  - (d) those concerning administration, penalties, interest on unpaid tax and priority of tax in cases of insolvency under the law of any part of the United Kingdom.
- (6) P's profit determined under section 850, 850A or 850C is “relevant restricted profit” so far as it represents variable remuneration awarded to P—

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- (a) as deferred remuneration (including deferred remuneration which, if it vests in P, will vest in the form of instruments), or
  - (b) as upfront remuneration which vests in P in the form of instruments with a retention period of at least 6 months.
- (7) In order for any variable remuneration to count for the purposes of subsection (6) it must be awarded to P in accordance with arrangements which are consistent with the AIFMD remuneration guidelines (see section 863L).
- (8) In the case of a firm which is an AIFM firm by virtue of section 863H(3)(b) only, this section applies only in relation to partners who fall within a category of staff which is classified as identified staff.
- (9) Terms used in subsections (6) to (8) have the same meaning as in the AIFMD remuneration guidelines.

### **863J Vesting of remuneration represented by the allocated profit**

- (1) Subsection (2) applies if all or a part of the variable remuneration represented by the allocated profit vests in P at a time when P is carrying on the AIFM trade (whether as a partner in the AIFM firm or otherwise).
- (2) The amount given by subsection (5) is treated as a profit of the relevant tax year (see subsection (7)) made by P in the AIFM trade chargeable to income tax under Chapter 2 of Part 2.
- (3) Subsection (4) applies if all or a part of the variable remuneration represented by the allocated profit vests in P at a time when P is no longer carrying on the AIFM trade (whether as a partner in the AIFM firm or otherwise).
- (4) If this subsection applies—
- (a) P is treated as receiving, in the relevant tax year (see subsection (7)), income of the amount given by subsection (5),
  - (b) income tax is charged under this subsection on that income, and
  - (c) P is the person liable for that tax.
- (5) The amount to be treated as a profit or as income received by P is—
- (a) the amount of the allocated profit, or the part of it representing the part of the variable remuneration, net of the income tax for which the AIFM firm is liable by virtue of section 863I in respect of the allocated profit or the part of it, plus
  - (b) an amount equal to—
    - (i) so much of the income tax mentioned in paragraph (a) as is paid by the AIFM firm by the time the vesting occurs, or
    - (ii) if the vesting occurs in the tax year for which the allocated profit is chargeable to tax under Chapter 2 of Part 2 by virtue of section 863I, so much of the income tax mentioned in paragraph (a) as is paid by the AIFM firm.
- (6) Further—
- (a) P is treated as paying, when the vesting occurs, an amount of income tax equal to the amount given by subsection (5)(b), and
  - (b) that amount is accordingly to be taken into account in determining the income tax payable by, or repayable to, P.

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- (7) “The relevant tax year” is—
- (a) if the variable remuneration or the part of it is deferred remuneration, the tax year in which the vesting occurs, or
  - (b) if the variable remuneration or the part of it is upfront remuneration, the tax year for which the allocated profit would have been chargeable to income tax under Chapter 2 of Part 2 as mentioned in section 863I(1)(b).
- (8) Terms used in this section have the same meaning as in the AIFMD remuneration guidelines (see section 863L).
- (9) Section 850E (payment from B to other persons after application of section 850C(4) or 850D(4)) is to be ignored for the purposes of this section.

### **863K Vesting statements**

- (1) This section applies if all or a part of the variable remuneration represented by the allocated profit vests in P.
- (2) If P requests it in writing, the AIFM firm must provide P with a statement showing—
- (a) the amount of the allocated profit, or the part of it representing the part of the variable remuneration, gross of the income tax for which the AIFM firm is liable by virtue of section 863I in respect of the allocated profit or the part of it,
  - (b) the amount of the income tax for which the AIFM firm is liable, and
  - (c) so much of that amount of income tax as is paid by the AIFM firm by the time the vesting occurs or, if section 863J(5)(b)(ii) applies, as is paid by the AIFM firm.
- (3) The duty to comply with a request under this section is enforceable by P.
- (4) In the case of a limited liability partnership, the duty is enforceable against the body corporate.

### **863L The AIFMD remuneration guidelines**

In sections 863I to 863K “the AIFMD remuneration guidelines” means the “Guidelines on Sound Remuneration Policies under the AIFMD” issued by the European Securities and Markets Authority on 3 July 2013 (ESMA/2013/232).]

**Changes to legislation:**

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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\(7\)\(a\)](#)