

## Singapore Income Tax Act section 12(7)

104-1-07 Imposition of Tax

1,735

~~messages, whether originating in Singapore or elsewhere, to places outside Singapore shall be deemed to accrue in Singapore.~~

~~12(4) Employment exercised in Singapore. The gains or profits from any employment exercised in Singapore shall be deemed to be derived from Singapore whether the gains or profits from such employment are received in Singapore or not.~~

~~12(5) Employment exercised outside Singapore on behalf of the Government. The gains or profits from any employment exercised outside Singapore on behalf of the Government of Singapore by any individual in the discharge of governmental functions shall be deemed to be derived from Singapore except where such individual is not a citizen or a resident of Singapore.~~

~~12(6) Interest. There shall be deemed to be derived from Singapore—~~

~~(a) any interest, commission, fee or any other payment in connection with any loan or indebtedness or with any arrangement, management, guarantee, or service relating to any loan or indebtedness which is—~~

~~(i) borne, directly or indirectly, by a person resident in Singapore or a permanent establishment in Singapore except in respect of any business carried on outside Singapore through a permanent establishment outside Singapore or any immovable property situated outside Singapore; or~~

~~(ii) deductible against any income accruing in or derived from Singapore; or~~

~~(b) any income derived from loans where the funds provided by such loans are brought into or used in Singapore.~~

~~12(7) Royalties, etc. There shall be deemed to be derived from Singapore—~~

~~(a) royalty or other payments in one lump sum or otherwise for the use of or the right to use any movable property;~~

~~(b) any payment for the use of or the right to use scientific, technical, industrial or commercial knowledge or information or for the rendering of assistance or service in connection with the application or use of such knowledge or information;~~

~~(c) any payment for the management or assistance in the management of any trade, business or profession; or~~

~~(d) rent or other payments under any agreement or arrangement for the use of any movable property,~~

~~which are borne, directly or indirectly, by a person resident in Singapore or a permanent establishment in Singapore (except in respect of any business carried on outside Singapore through a permanent establishment outside Singapore) or which are deductible against any income accruing in or derived from Singapore.~~

~~[CCB Note: The following is a press statement issued by the Ministry of Finance on 20 December 1977 for the purposes of clarification of sec. 12(6) and (7) of the Income Tax Act.~~

~~"1. The Income Tax Amendment Act, 1977 which came into effect on 7 July 1977 introduced certain provisions which have the effect of frustrating tax avoidance schemes in syphoning off Singapore profits, particularly between associated companies in Singapore and outside Singapore. However, some of these provisions have been given more than one possible interpretation, thus giving rise to doubt on the scope and amount of payments to non-residents subject to tax. For the purposes of clarification and ease of administration, where the following services are performed outside Singapore by persons outside Singapore for or on behalf of residents or permanent establishments in Singapore, or even between associated companies, and such transactions are at arm's length and not with intent of syphoning off Singapore income, the Commissioner of Inland Revenue has given the following rulings:—~~

## Malaysia Income Tax Act section 15

2,082

Income Tax Act, Part II

### ~~SECTION 14 GENERAL PROVISIONS AS TO DIVIDEND INCOME~~

~~14(1) [Dividends from resident company] Subject to this section, where a company resident for the basis year for a year of assessment pays, credits or distributes a dividend in the basis period for that year of assessment, the dividend shall be deemed to be derived from Malaysia.~~

~~History~~

~~S. 14(1) amended by Act A1093 of 2000, s. 3, effective for year of assessment 2001 and subsequent years of assessment, by substituting "the basis period for that year of assessment" for "that basis year".~~

~~14(2) [Dividends from company becoming resident] Where a company resident for the basis year for a year of assessment was not resident for the basis year for the year of assessment immediately preceding that year of assessment, only dividends paid, credited, or distributed by the company on or after the day on which the management and control of any business of the company (or, in the case of a company which does not carry on a business, the management and control of its affairs by its directors or other controlling authority) were first exercised in Malaysia in that first-mentioned basis year shall be deemed to be derived from Malaysia.~~

~~14(3) [Dividends from company ceasing to be resident] Where---~~

- ~~(a) the management and control of the business of a company (or, if it has more than one business, of all its businesses); or~~
- ~~(b) in the case of a company which does not carry on a business, the management and control of its affairs by its directors or other controlling authority,~~

~~cease to be exercised in Malaysia in the basis year for a year of assessment and the company is not resident for the basis year for the year of assessment following that first-mentioned year of assessment, dividends paid, credited or distributed in that first-mentioned basis year after the cessation shall not be deemed to be derived from Malaysia.~~

~~14(4) [Where dividend not money] Where a dividend consists of property other than money, that dividend shall be taken to consist of an amount equal to the market value of the property at the time of the distribution of the dividend.~~

### SECTION 15 DERIVATION OF INTEREST AND ROYALTY INCOME IN CERTAIN CASES

15 Gross income in respect of interest or royalty shall be deemed to be derived from Malaysia—

- (a) if responsibility for payment of the interest or royalty lies with the Government or a State Government; or
- (b) (i) if responsibility for payment of the interest or royalty in the basis year for a year of assessment (the responsibility of any guarantor being disregarded in the case of interest) lies with a person who is resident for that basis year; and
- (ii) in the case of interest it is payable in respect of money borrowed by that person and employed in or laid out on assets used in or held for the production of any gross income of that person derived from Malaysia or the debt in respect of which the interest is paid is secured by any property or asset situated in Malaysia; or

Sec. 14(1)

CCH Asia Pte Limited

## Australia Tax Handbook 2002

### [3 080] RESIDENCE AND SOURCE

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If a DTA fails to allocate residency of a dual resident to one of the DTA partner countries, relief is not available under the DTA and double taxation may arise: eg see the USA agreement, which does not allocate residency for dual resident companies.

[ATP 6/1090]

### SOURCE

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#### [3 080] Introduction

The second pillar of Australian tax jurisdiction is "source of income". "Source" is used in 2 senses: the geographical source of certain income or the classification of certain income, such as dividends, interest, royalties or income from personal exertion. In this chapter "source" is used in the former sense, to identify that income which has such a clear geographic connection with Australia that it can be described as having a source in Australia.

The relevant source rules are a combination of both statutory rules (see [3 090]) and certain common law principles that have been established over a number of years (see [3 100]). As said in *Nathan v FCT* (1918) 25 CLR 183, source is a "practical hard matter of fact" and it is therefore difficult to generalise about the source of any given income without reference to the specific facts of any given case. Nevertheless, the cases have attempted to state some broad general principles.

[ATP 25/10]

#### [3 090] Statutory source rules

There are a few specific statutory source rules in ITAA 1936 (the definition of "Australian source" in s 995-1 of ITAA 1997 merely adopts the ITAA 1936 rules). Some of the classes of income for which specific rules are prescribed are considered below.

##### *Outgoing royalties*

Section 6C deems certain royalties (being broadly those that are paid by an Australian business to a non-resident) to have an Australian source. It should be noted that there is a substantial class of royalty payments not covered by this provision (eg inbound royalties) and, in order to ascertain the source of those royalties, the general principles described below need to be applied. The relevant definition of "royalty" in s 6(1) is extremely broad.

##### *Certain types of natural resource income*

The effect of s 6CA is that, for certain purposes, "natural resource income" (defined in s 6CA(1)) is deemed to have an Australian source. The section broadly follows the pattern of s 6C although, significantly, the geographic limitations in s 6C are not in s 6CA. Thus, the section may need to be read down as regards payments by one non-resident to another.

##### *Interest payments secured by a mortgage over Australian property*

Section 25(2) (which still applies despite s 25(1) being replaced by s 6-5 of ITAA 1997) gives interest a deemed source in Australia if the interest is on money secured by the mortgage of any property in Australia. There is an exception where interest is paid to a non-resident on company debentures and the payment of interest and issue of debentures takes place outside Australia.

##### *Certain dividends*

Section 44(1)(b) provides that the assessable income of a non-resident shareholder includes dividends paid by any company to the extent to which they are paid out of profits

*[Interpretation of section. Subsection 3(1) of Act No 146 of 1979 provides:*  
 "44) The amendments made by subsection (1) of Act No 146 of 1979 s 3] to s 61A are enacted for the purpose of doubt to interpreting section 61A of the *Income Tax Assessment Act 1936* for the purposes of the application of that section in cases where shares referred to in that section as bonus shares were allotted after 3 October 1978 and before the commencement of this section (28 November 1979) or are allotted after the commencement of this section (28 November 1979), but, in interpreting section 61A of the *Income Tax Assessment Act 1936* for the purposes of the application of that section in cases where shares referred to in that section as bonus shares were allotted on or before 3 October 1978, no regard shall be had to the preceding provisions of this section."*]*  
 Inserted by Act No 57 of 1978 s 3, applicable in every case where the bonus shares referred to in this section were allotted after 16 August 1977.  
 Amended by Act No 146 of 1979 s 3; 146 of 1981 s 24 and Sch 47 of 1984 s 4; 52 of 1986 s 4; 120 of 1995 s 3, Sch 1, Items 1-5; 121 of 1997 s 3 and Sch 5, Item 44; 63 of 1998 s 3 and Sch 4, Items 1-3; 58 of 2001 s 3 and Sch 8, Items 1-3; 103 of 2001 s 3 and Sch 1, Item 50; 107 of 2003 s 3 and Sch 6, Item 5.]

**6C Source of royalty income derived by a non-resident**

**6C (1) [Royalty income to which section applies]** This section applies to income that is derived on or after 1 July 1968, by a non-resident and consists of royalty that -

- (a) is paid or credited to the non-resident by the Commonwealth, by a State, by an authority of the Commonwealth or of a State or by a person who is, or by persons at least one of whom is, a resident and is not an outgoing wholly incurred by the Commonwealth, the State, the authority or that person or those persons in carrying on business in a country outside Australia at or through a permanent establishment of the Commonwealth, the State, the authority or that person or those persons in that country; or
- (b) is paid or credited to the non-resident by a person who is, or by persons each of whom is, a non-resident and is, or is in part, an outgoing incurred by that person or those persons in carrying on business in Australia at or through a permanent establishment of that person or those persons in Australia.

*[Subsection (1) amended by Act No 51 of 1973 s 22 and Sch; further amended by Act No 57 of 1980 s 3, applicable to income derived after 1 May 1980, by inserting "or credited" after "paid" (whenever occurring); 108 of 1981 s 24 and Sch.]*

**6C (1A) [Income deemed derived in Australia]** For the purposes of Division 5 and Division 6 of Part III, but subject to subsections (3) and (4), income to which this section applies shall be deemed to be attributable to sources in Australia.

*[Subsection (1A) inserted by Act No 3 of 1979 s 3, applicable to assessments for the year of income that commenced on 1 July 1978 and all subsequent years of income.]*

**6C (2) [Income deemed derived in Australia]** For the purposes of paragraph 23(r) of this Act and sections 6-5 and 6-10 of the *Income Tax Assessment Act 1997*, but subject to subsections (3) and (4), income to which this section applies shall be deemed to have been derived from a source in Australia.

*[Subsection (2) was amended by Act No 143 of 1976 s 5 by inserting the reference in paragraph (r) of section 23, applicable to income derived on or after 1 July 1968 other than income in respect of which an assessment was made before 5 July 1976. Further amended by Act No 51 of 1973 s 22 and Sch and Act No 126 of 1977 s 3, by inserting the reference to Division 13A of Part III, with effect from 10 November 1977. Further amended by Act No 108 of 1981 s 24 and Sch. Further amended by Act No 224 of 1992 s 60, with effect from 24 December 1992, applicable in relation to amounts derived by a taxpayer during the 1993-94 year of income of the taxpayer or during a later year of income of the taxpayer, by substituting "and section 25" for "section 25, Division 13A of Part III and section 255". Further amended by Act No 39 of 1997 s 3 and Sch 1, Item 4, with effect from 1 July 1997, applicable to assessments for the 1997-98 year of income and later years of income, by substituting "of this Act and sections 6-5 and 6-10 of the *Income Tax Assessment Act 1997*" for "and section 25."]*

**6C (3) [Payments to non-residents by Commonwealth, State or resident]** Where -

- (a) income to which this section applies is paid or credited to the non-resident by whom it is derived by the Commonwealth, by a State, by an authority of the Commonwealth or of a State or by a person who is, or by persons at least one of whom is, a resident; and
- (b) the royalty of which the income consists is, in part, an outgoing incurred by the Commonwealth, the State, the authority or that person or those persons in carrying on business in a country outside Australia at or through a permanent establishment of the Commonwealth, the State, the authority or that person or those persons in that country;

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s 6C

subsection (2) has effect in relation to so much only of the income as is attributable to so much of the royalty as is not an outgoing so incurred.

[Subsection (3) amended by Act No 57 of 1980 s 3, applicable to income derived after 1 May 1980, by inserting "or credited" after "paid" (wherever occurring); 109 of 1981 s 24 and Sch.]

**6C (4) [Payments to non-residents by non-residents]** Where -

- (a) income to which this section applies is paid or credited to the non-resident by whom it is derived by a person who, or by persons each of whom, is a non-resident; and
- (b) the royalty of which the income consists is, in part only, an outgoing incurred by the person or persons by whom it is paid or credited in carrying on business in Australia at or through a permanent establishment of that person or those persons in Australia,

subsection (2) has effect in relation to so much only of the income as is attributable to so much of the royalty as is an outgoing so incurred.

[Subsection (4) amended by Act No 51 of 1973 s 22 and Sch.

Further amended by Act No 57 of 1980 s 3, applicable to income derived after 1 May 1980, by inserting "or credited" after "paid" (wherever occurring).]

**6C (5) ["Relevant person" refers to a resident]** In subsection (6), a reference to a relevant person is a reference to the Commonwealth, a State, an authority of the Commonwealth or of a State or a person who is, or persons at least one of whom is, a resident.

[Subsection (5) added by Act No 26 of 1974 s 3 with effect from 4 April 1974.

Amended by Act No 58 of 1976 s 22 and Sch.]

**6C (6) [Royalty not an outgoing incurred in business outside Australia]** For the purposes of paragraphs (1)(a) and (3)(b), where -

- (a) royalty is paid or credited, after the commencement of this subsection, to a non-resident by a relevant person carrying on business in a country outside Australia; and
- (b) the royalty or a part of the royalty -
  - (i) is incurred by the relevant person in gaining or producing income that is derived by the relevant person otherwise than in carrying on business in a country outside Australia at or through a permanent establishment of the relevant person in that country or is incurred by the relevant person for the purpose of gaining or producing income to be so derived; or
  - (ii) is incurred by the relevant person in carrying on business for the purpose of gaining or producing income and is reasonably attributable to income that is derived, or may be derived, by the relevant person otherwise than in so carrying on business at or through a permanent establishment of the relevant person in a country outside Australia,

the royalty or the part of the royalty, as the case may be, is not an outgoing incurred by the relevant person in carrying on business in a country outside Australia at or through a permanent establishment of the relevant person in that country.

[Subsection (6) added by Act No 26 of 1974 s 3(1) with effect from 4 April 1974

Further amended by Act No 57 of 1980 s 3, applicable to income derived after 1 May 1980, by inserting "or credited" after "paid" (wherever occurring).

Further amended by Act No 108 of 1981 s 24 and Sch.]

**6C (7) [Outgoing - incurred in carrying on business in Australia]** For the purposes of paragraphs (1)(b) and (4)(b), where -

- (a) royalty is paid or credited, after the commencement of this subsection, to a non-resident by another person or other persons (in this subsection referred to as "the payer"), being -
  - (i) another person who is carrying on business in Australia and is a non-resident; or
  - (ii) other persons who are carrying on business in Australia and each of whom is a non-resident; and
- (b) the royalty or a part of the royalty -
  - (i) is incurred by the payer in gaining or producing income that is derived by the payer in carrying on business in Australia at or through a permanent establishment of the payer in Australia or is incurred by the payer for the purpose of gaining or producing income to be so derived; or

**INCOME □ Generally**

**Principle of territoriality**

The extent to which the *Income Tax Act* should have extra-territorial effect was discussed in *Alcan New Zealand Ltd v C of IR* (1993) 15 NZTC 10,125 at p 10,134, where the High Court said:

"It is a general principle of statutory construction that the legislature intends Acts of Parliament not to have effect outside New Zealand. Adapting the general principle of the statement by Lord Scarman in *Clark (HMT) v Oceanic Contractors Inc* [1982] BTC 417; [1983] 2 AC 120 at p 145, unless the contrary is expressly enacted, or so plainly implied that the courts must give effect to it, New Zealand legislation is applicable only to New Zealand subjects or to foreigners who by coming to New Zealand, whether for a short or a long time, have made themselves subject to New Zealand jurisdiction. The principle is a rule of construction only. Presence not residence is the test."

This principle, as stated by the High Court, was affirmed in *C of IR v Alcan New Zealand Ltd* (1994) 16 NZTC 11,175 where the Court of Appeal dismissed the Commissioner's appeal from the judgment of the High Court.

For discussion of the residency tests, see ¶1-120-¶1-140.

**15-071 Income deemed to be derived in New Zealand** [see OE 4, OE 5]

The source rules specify the classes of income which are to be treated as having been derived in New Zealand. These are as follows:

- Income derived from any business wholly or partly carried on in New Zealand is deemed to be derived from New Zealand. See s OE 4(1)(a).
- Income derived from any business carried on outside New Zealand is subject to New Zealand income tax to the extent that the income is derived from—
  - The ownership of land in New Zealand (rents and so on).
  - A mortgage of land in New Zealand (interest and so on).
  - Shares in a New Zealand company or debentures issued by a New Zealand company, a public authority or a local authority.
  - New Zealand central government securities or debentures.
  - An ex gratia payment which is a pension within the meaning of s CC 1(2).
  - Money lent in New Zealand (being interest or a redemption payment).
  - Money lent outside New Zealand to a New Zealand resident (subject to the exceptions outlined below).
  - Certain royalties. See s OE 4(1)(r).
- All remuneration earned in New Zealand in an employment relationship is to be treated as having a source in New Zealand, ie, all salaries, wages, allowances and emoluments of any kind earned in New Zealand. See s OE 4(1)(c). This rule applies even though the employer or principal paying the salary may be a non-resident for New Zealand tax purposes. In the case of personal services income it may be earned in the place where—
  - the contract of employment is made;
  - payment for the services is made; or
  - the services are actually performed.
- Payments of compensation or allowances made under the *Accident Compensation Act 1992* and the *Accident Rehabilitation and Compensation Insurance Act 1992* as

- referred to in s CC 1(a), (b) are to be treated as having a source in New Zealand. See s OE 4(1)(d).
- Income derived from the ownership of land in New Zealand is deemed to be derived from New Zealand (this covers not only the straightforward case of receipts of rent but also other receipts such as fines and premiums deemed to be receipts of an income nature by s CE 1(1)(e)). See s OE 4(1)(e).
  - Income derived under any mortgage of land in New Zealand is regarded as having a source in New Zealand (mortgage interest would be the most common receipt falling within this category). See s OE 4(1)(f).
  - Income derived from shares in or membership of a company resident in New Zealand or from debentures issued by a company resident in New Zealand or by a local or public authority. See s OE 4(1)(g).
  - Income from debentures or other securities issued by the New Zealand Government is deemed to be derived from New Zealand. See s OE 4(1)(h).
  - Any pension or annuity paid out of any superannuation fund established in New Zealand is to be treated as derived in New Zealand (the same treatment applies to any pension or annuity paid by the New Zealand Government). See s OE 4(1)(i).
  - An ex gratia payment that is a pension within the meaning of s CC 1(2) of the Act. See s OE 4(1)(j).
  - Income from funds invested in the Common Fund of the Public Trust Office or the Maori Trust Office has a New Zealand source. See s OE 4(1)(k).
  - Income from the disposition of property situated in New Zealand (this rule applies to tangible and intangible forms of property — in the case of profits from the sale of real estate, the profits would have to be of an income nature by virtue of the provisions of s CD 1). See s OE 4(1)(l).
  - Income from money lent (on or after 29 July 1983) in New Zealand has a New Zealand source (that income may be in the form of interest, which may include a premium, or a redemption payment). See ss CZ 2, OE 4(1)(m).
  - Income (being interest or a redemption payment) from money lent outside of New Zealand (on or after 1 July 1983) has a New Zealand source only when it is lent to:
    - a New Zealand resident unless the loan is used in respect of business activities carried on by him or her outside New Zealand through a fixed establishment overseas; or
    - a non-resident for use in respect of business activities carried on in New Zealand through a fixed establishment in New Zealand: see ss CZ 2, OE 4(1)(n).
  - Income derived from insurance premiums on insurance contracts:
    - offered or entered into in New Zealand, whether or not executed in New Zealand, and whether or not the insurer has an agent or a fixed establishment in New Zealand; or
    - where the insured person is resident in New Zealand; or
    - where the insured person is a non-resident and the contract is entered into for the purposes of that person's business in New Zealand which is carried on through a fixed establishment in New Zealand: see s OE 4(1)(o).
  - Income derived by a beneficiary under a trust is New Zealand sourced income to the extent that the income of the trust fund is derived from New Zealand (this means that the other source rules must be applied to determine whether any item of

- trust income is to be regarded as having a source in New Zealand). See s OE 4(1)(p).
- Income derived from contracts made or wholly or partly performed in New Zealand are to be treated as derived from New Zealand. See s OE 4(1)(q).
  - Royalties of the following sorts are deemed to be derived from New Zealand:
    - royalties paid by a New Zealand resident which are not paid in respect of a business carried on by him or her overseas through an overseas fixed establishment; or
    - royalties paid by a non-resident which are deductible when calculating assessable income for New Zealand tax purposes: see s OE 4(1)(r).
  - Payments of any kind to the extent to which they are paid as consideration for the use of (or the right to use) any personal property in New Zealand are to be treated as income having a source in New Zealand. This rule does not, however, apply to royalties having a New Zealand source under the paragraph above — since this rule applies only to rent for personal property it does not cover rents for land and buildings. See s OE 4(1)(s).
  - Income derived from carrying merchandise, goods, livestock, mail or passengers with the point of departure being in New Zealand is to be treated as having a source in New Zealand. See s OE 4(1)(t).
  - Life insurer base income derived by a New Zealand branch of a non-resident life insurer is deemed under s CN 3 to have a source in New Zealand. The same proposition applies in respect of the policyholder income of a non-resident life insurer.

As a catch-all provision, income derived directly or indirectly from any other source in New Zealand is also deemed to have a source in New Zealand. See s OE 4(1)(u).

In the case of a commission agent in business in New Zealand entering into a contract authorising the sale of any goods or merchandise outside of New Zealand, on behalf of a resident taxpayer, all income derived from such a contract is deemed to be derived from a business carried on in New Zealand. When income is derived partly in New Zealand and partly outside New Zealand, an apportionment may be made. See s OE 5. (This applies only to income from business and income derived from contracts contained in s OE 4.)



The wording of s OE 5 is amended to reflect taxpayer self-assessment from the 2002/03 income year. However, the principle remains the same.

A similar tax treatment applies to income derived by non-resident shipping operators operating within New Zealand coastal waters. Income generated from cargo embarked on any ship at a port outside New Zealand for carriage to any New Zealand port is deemed to be derived from New Zealand under s OE 4(1)(a), s OE 4(1)(q) or s OE 4(1)(u). The income deemed to be derived from New Zealand under s OE 4(1)(a) and (q) may be apportioned under s FB 2. See *Tax Information Bulletin* Vol 6, No 14, June 1995, p 14.

#### ¶5-076 Personal services — source of income [s OE 4(1)(e)]

The source of income is not a legal concept but something which a practical person would regard as a real source of income: the ascertaining of the actual source is a matter of fact. See *Nathan v FC of T* (1918) 25 CLR 183. In *C of IR v Philips' Gloeilampenfabrieken* [1955] NZLR 868 the Court of Appeal accepted that that



## UK Income and Corporation Taxes Act 1988, section 74

TA 1988 s 71

Income and Corporation Taxes Act 1988

~~the year of assessment, tax as so computed shall be charged for that year of assessment notwithstanding that no profits or gains or income arise from that source for or within that year.~~

~~Commentary—E1.303, 304.~~

~~Definitions—“Income tax”, s 832(4); “Income Tax Acts”, s 931(1)(b); “profits or gains”, s 833(1); “Schedule D”, s 18(1); “tax”, s 832(3); “year of assessment”, s 832(1).~~

### ~~72 Apportionments etc for purposes of Cases I, II and VI~~

~~(1) Where in the case of any profits or gains chargeable under Case I, II or VI of Schedule D it is necessary in order to arrive for the purposes of income tax or corporation tax at the profits or gains or losses of any year of assessment, accounting period or other period, to divide and apportion to specific periods the profits or gains or losses for any period for which the accounts have been made up, or to aggregate any such profits, gains or losses or any apportioned parts thereof, it shall be lawful to make such a division and apportionment or aggregation.~~

~~(2) Any apportionment under this section shall be made in proportion to the number of [days]<sup>1</sup> in the respective periods.~~

~~Commentary—D1.208; E1.202.~~

~~Regulations—IT (Entertainers and Sportsmen) Regulations, SI 1987/530 reg 16 which supplements the provisions of this section. See Part H2.~~

~~Revenue Interpretation RI 193—Use of apportionments in calculation of transitional overlap profits under FA 1994 Sch 20 para 2(4). See Division H5.4.~~

~~Simon's Tax Cases—*Lynn v Kelly (Insp of Taxes)* [2002] STC (SCD) 455.~~

~~s 72(1), *Marshall Hus & Partners Ltd v Bolton* [1981] STC 18.~~

~~Definitions—“Accounting period”, s 834(1); “income tax”, s 832(4); “profits or gains”, s 833(1); “Schedule D”, s 18(1); “year of assessment”, s 832(1).~~

~~Amendments—<sup>1</sup> Word in sub-s (2) substituted by FA 1995 s 121.~~

### ~~73 Single assessments for purposes of Cases III, IV and V~~

~~Commentary—E1.302.~~

~~Amendments—This section repealed by FA 1995 ss 103(7), 115(9), Sch 29 Pt VIII(14), with effect, so far as relating to income tax and capital gains tax from the year 1996-97, and so far as relating to corporation tax as respects accounting periods ending after 30 June 1999 (by virtue of Finance Act 1994, Section 199, (Appointed Day) Order, SI 1998/3173 art 2).~~

## CHAPTER V COMPUTATIONAL PROVISIONS

### *Deductions*

#### 74 General rules as to deductions not allowable

[(1)]<sup>1</sup> Subject to the provisions of the Tax Acts, in computing the amount of the [profits]<sup>2</sup> to be charged under Case I or Case II of Schedule D, no sum shall be deducted in respect of—

- (a) any disbursements or expenses, not being money wholly and exclusively laid out or expended for the purposes of the trade, profession or vocation;
- (b) any disbursements or expenses of maintenance of the parties, their families or establishments, or any sums expended for any other domestic or private purposes distinct from the purposes of the trade, profession or vocation;
- (c) the rent of the whole or any part of any dwelling-house or domestic offices, except any such part as is used for the purposes of the trade, profession or vocation, and where any such part is so used, the sum so deducted shall not, unless in any particular case it appears that having regard to all the circumstances some greater sum ought to be deducted, exceed two-thirds of the rent bona fide paid for that dwelling-house or those offices;

- (d) any sum expended for repairs of premises occupied, or for the supply, repairs or alterations of any implements, utensils or articles employed, for the purposes of the trade, profession or vocation, beyond the sum actually expended for those purposes;
- (e) any loss not connected with or arising out of the trade, profession or vocation;
- (f) any capital withdrawn from, or any sum employed or intended to be employed as capital in, the trade, profession or vocation, but so that this paragraph shall not be treated as disallowing the deduction of any interest;
- (g) any capital employed in improvements of premises occupied for the purposes of the trade, profession or vocation;
- (h) any interest which might have been made if any such sums as aforesaid had been laid out at interest;
- (i) any debts except—
- (i) a bad debt ..<sup>6</sup>;
  - (ii) a debt or part of a debt released by the creditor wholly and exclusively for the purposes of his trade, profession or vocation as part of a relevant arrangement or compromise; and
  - (iii) a doubtful debt to the extent estimated to be bad, meaning, in the case of the bankruptcy or insolvency of the debtor, the debt except to the extent that any amount may reasonably be expected to be received on the debt;<sup>2</sup>
- (k) any average loss beyond the actual amount of loss after adjustment;
- (l) any sum recoverable under an insurance or contract of indemnity;
- (m) any annuity or other annual payment (other than interest) payable out of the [profits]<sup>7</sup>;
- (n) any interest paid to a person not resident in the United Kingdom if and so far as it is interest at more than a reasonable commercial rate;
- [(o) any interest in so far as the payment of that interest is or would be, otherwise than by virtue of section 375(2), either—
- (i) a payment of interest to which section 369 applies, or
  - (ii) a payment of interest to which that section would apply but for section 373(5);]<sup>4</sup>
- (p) any royalty or other sum paid in respect of the user of a patent;
- (q) ..<sup>5</sup>

[(2) In paragraph (j) of subsection (1) above "relevant arrangement or compromise" means—

- (a) a voluntary arrangement which has taken effect under or by virtue of the Insolvency Act 1986 or the Insolvency (Northern Ireland) Order 1989; or
- (b) a compromise or arrangement which has taken effect under section 425 of the Companies Act 1985 or Article 418 of the Companies (Northern Ireland) Order 1986.]<sup>3</sup>

**Commentary—B3.1202.**

**Regulations—European Single Currency (Taxes) Regulations, SI 1990/3177** (Deduction allowable for costs incurred by trading company in respect of euroconversion of its shares or other securities). See Part H2.

**Concession B7—**The costs of benevolent gifts to a trader's local trade or charitable association is allowed as a deduction if specified conditions are satisfied. See Division H4.2.

**B38—**Relief for trade receipts and trade debts, the proceeds of which cannot be remitted to the UK (under para (j) above unremitable debt proceeds are not relieved). See Division H4.2.

**Statement of Practice SP A16—**Living expenses for longer periods abroad for the purposes of UK trade or profession are allowable deductions. See Part H3.

**SP A32—***Sharkey v Wether* principle not to apply in cases where para (b) above applies. See Part H3.

**SP C10—**Valuation fees for providing in the directors' report particulars of significant changes in the fixed assets of a company are allowable deductions. See Part H3.

**SP 5/81—**Subject to certain conditions, expenses incurred in restoring drainage on waterlogged land are admitted as revenue expenditure in farm accounts. See Part H3.