

Foreign trades and professions

Part 04-09-02

This document should be read in conjunction with Part 4 of the Taxes Consolidation Act 1997

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Introduction

When looking at a taxpayer who has a foreign trade or profession, it is necessary to determine whether or not such trade or profession is taxed under Case III, as arising from a foreign possession, or under Case I/II.

1. Under which Case of Schedule D should these trades/professions be taxed?

Generally speaking, the following principles are relevant:

- Professions are always taxable under Case II¹. It is not possible to have a Case III profession.
- If a taxpayer is carrying on a trade both in Ireland and abroad, then that entire trade is taxed as a single trade carried on in Ireland and is taxable under Case I².
- If all of the activities of the trade are carried on outside of Ireland, then it is necessary to look to where those activities are controlled and directed from to determine if they are taxable under Case I or Case III.
 - The UK courts³ have found that general oversight in the UK of a business carried on abroad was enough to make that trade taxable as a UK trade. On that basis, where an Irish resident is carrying on a trade abroad, it is very likely it will fall to be taxed under Case I – as general oversight is likely to be carried on from Ireland – rather than Case III.
 - A passive partner or a limited partner in a foreign partnership is likely to have a Case III trade as they are unlikely to exercise even a small amount of general oversight from Ireland.

¹ Section 18(2) TCA 1997.

² *Davies v Braithwaite* [1931] 18 TC 198.

³ *Ogilvie v Kitton* [1908] 5 TC 338. While decisions of the UK courts are not binding in this jurisdiction, where the decision is made on similar legislation, as is the case here, then these decisions have persuasive authority and are generally followed by the Irish courts.

2. What loss relief is available for these trades/professions?

Section 381 and section 382 TCA 1997, which provide for relief for losses incurred in a trade or profession, apply to all trading or professional losses made by individuals. They do not differentiate between losses incurred in a trade or profession carried on in Ireland and losses incurred in a trade or profession carried on abroad.

Therefore, the same relief is available for all losses incurred in the course of a trade or a profession under sections 381 and 382 regardless of whether the trade/profession is assessable under Case I/II or Case III.