

## [4.3.1] Short Lived Businesses

### Section 68 TCA 1997

#### 1. Cases to which Section 68 TCA 1997 applies

The section applies where:

- (i) a trade or profession commences and ceases within three tax years,
- and**
- (ii) the profits which would otherwise be assessed exceed the actual profits of the trade or profession for the period of its existence.

**Note:** For the provision to apply, the commencement and cessation must take place within a period of three **years of assessment**. Thus, the provision would not apply where, for example, a business commenced on 1/11/2010 and ceased on 30/6/2013. Although the life of the business in this case is less than three years, the commencement and cessation take place within four **tax years** i.e. years 2010 to 2013 inclusive.

#### 2. Rules governing basis of assessment of profits of a trade or profession

The normal rules governing the assessment of profits of a trade or profession (other than a short-lived business) are contained in **Sections 65, 66 and 67 TCA 1997**. These are summarised as follows:

<i><b>Tax Year</b></i>	<i><b>Basis of assessment</b></i>
Year 1 ( year of commencement)	Actual profits from commencement to following 31 December.
Year 2	Profits of first 12 months
Year 3	Profits of period of 12 months ending in the tax year; Where the profits assessed for year 2 exceed the actual profits for that tax year, the excess may be set as far as possible against the profits assessed for year 3 with any balance being carried forward as a trading loss for set-off against profits of the trade or profession assessable for later tax years.
Year of permanent cessation	Actual profits from 1 January to date of cessation. The assessment for the preceding year is increased to actual, subject to set-off of losses.

Where a trade or profession ceases in year 3, the profits assessable for year 3 may not be sufficient to absorb the excess of the profits assessed for year 2

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over the actual profits for that year. Since the trade or profession has ceased permanently, there are no profits available to absorb the balance of this excess in future years.

### 3. Effect of Section 68 TCA 1997

**Section 68** deals with the above problem by providing for a reduction in the amount of profits assessable for the tax year prior to the tax year in which the trade or profession ceases. In practice this will be year 2.

The following example illustrates the operation of the section.

#### Example

Trade commenced on 1 April 2011.  
Accounts are prepared annually to 31 March.  
Trade ceased on 30 September 2013.

#### Profits per accounts

Year ended 31 March 2012	€6,000
Year ended 31 March 2013	€3,000
6 months ended 30 September 2013	€ 0
Total profits earned during life of business	<u>€9,000</u>

(i) The profits assessable **but for Section 68** would be:

2011 (actual)	$6,000 \times 9/12$	€4,500	
2012 (first 12 months)		€6,000	(Note 1)
2013 (actual on cessation)			
	$3,000 \times 3/12 + 0 \times 6/6 =$	750	
	<b>Less excess of assessment year 2</b>		
	<b>over profits for that year</b>		
	$6,000 - 3,750^1 =$	<u>2,250</u>	
Total amount assessed		<u>€10,500</u>	(Note 2)

#### Note 1

Since the actual profits of the tax year 2012 do not exceed the assessed profits, there would be no revision of the assessment for that tax year, under the rules of cessation in **Section 67(1) TCA 1997**, to the actual basis of assessment.

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<sup>1</sup> Actual profits of 2012 is €3,750 i.e. €6000 x 3/12 plus €3000 x 9/12.

**Note 2**

The balance of the excess (€1,500) would be lost since the trade has ceased. If the trade had continued, set-off of this amount against future profits would have resulted in the profits assessed for the first three years being effectively equal to the profits of those three years.

(ii) Profits assessable **when Section 68 is applied** are:

In the above example, the total profits earned during the life of the trade are €9,000. However, the profits assessed, in the absence of **Section 68**, would total €10,500.

Under **Section 68**, the assessment for the tax year prior to the tax year in which the trade ceased, is reduced by the amount by which the profits assessed for that year exceed the actual profits of that year. Thus, in this case, the 2012 assessment would be on the actual amount i.e. €3,750 and the assessment for 2013 would also be on the actual amount i.e. €750.

**4. Deemed commencements and cessations**

The section applies where a trade or profession is deemed to have commenced or to have ceased permanently in accordance with **Section 69 TCA 1997** (change of proprietor).

**5. Notice required to be submitted to Revenue**

Chargeable persons must give notice in writing to the Inspector, on or before the return filing date for the tax year in which the business ceased, of their entitlement to have the profits of the business reduced in accordance with the provisions of **Section 68**.

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