

*These notes refer to the Income Tax Act 2007 (c.3)
which received Royal Assent on 20 March 2007*

INCOME TAX ACT 2007

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 15: Deduction of income tax at source

Overview

2555. This Part concerns the main rules about deduction of income tax at source.
2556. The Part sets out the various duties to deduct, apart from those arising in connection with PAYE (see Part 11 of ITEPA) and the Construction Industry Scheme (see Chapter 3 of Part 3 of FA 2004, which is taking over from Chapter 4 of Part 13 of ICTA).
2557. The Part retains the distinction in the source legislation between the deduction of “sums representing income tax” and the collection of the income tax which those sums represent. This reflects the conceptual distinction between income tax which is charged on a person’s income and income tax which is deducted at source (and not subject to a charge to tax). The Part also contains provisions which make clear the link between the sums deducted and the amount to be collected (eg section 951(2)).

Chapter 1: Introduction

Section 847: Overview of Part

2558. This section provides an overview to the Part. It is new.

Section 848: Income tax deducted at source treated as income tax paid by recipient

2559. This section treats sums representing income tax deducted (or treated as deducted) from a payment under this Part (other than under sections 966 (visiting performers) or 971 (non-resident landlords)) as tax paid by the recipient, and links such amounts with the provisions of TMA concerning payment of income tax. It is based on sections 348(1) and 349(1) of ICTA and sections 426, 550, 602, 618 and 686(1) of ITTOIA.

Section 849: Interaction with other Income Tax Acts provisions

2560. This section provides information about how this Part interacts with other provisions. It is new.
2561. *Subsection (1)* gives a signpost to regulations made under the provisions of ICTA about double taxation relief, such as the [Double Taxation Relief \(Taxes on Income\) \(General\) Regulations 1970 \(SI 1970/488\)](#). Under these regulations a duty to deduct may be disapplied or modified.
2562. *Subsection (3)* provides that anything covered by the general disregard in section 783 of ITTOIA is ignored for the purposes of the duties under this Part, subject to any contrary provision.

2563. *Subsection (4)* gives a signpost to paragraphs 11 to 13 of Schedule 2 to FA 2005 (alternative finance arrangements) inserted by this Act. Alternative finance return and profit share return are treated as interest (and therefore, if the arrangements meet the relevant conditions, yearly interest) for the purposes of this Part.

Chapter 2: Deduction by deposit-takers and building societies

Overview

2564. This Chapter requires the deduction of sums representing income tax from certain payments of interest made by deposit-takers and from certain payments of interest and dividends made by building societies. It is based on sections 477A and 480A to 482 of ICTA.
2565. Banks are the most obvious example of deposit-takers, but the definition of deposit-taker also includes other persons, for example individuals who have permission to accept deposits under Part 4 of FISMA.
2566. Many of the detailed provisions are in regulations, and this will remain the case.
2567. The main source rules for deposit-takers are in primary legislation, but all of the source rules for building societies are in regulations. For historical reasons, the two sets of rules adopt different approaches to identifying the payments subject to deduction of tax.
2568. A common basis for the split between primary and secondary legislation has resulted from the enactment in this Act of certain provisions of the [Income Tax \(Building Societies\) \(Dividends and Interest\) Regulations 1990 \(SI 1990/2231\)](#) (the building society regulations). See *Change 126* in Annex 1, which affects sections 852, 853, 871 and 872 in this Chapter and some sections in Chapter 15 of this Part.
2569. And, building on this, a common basis for identifying payments subject to deduction of tax has resulted from aligning the gross payment category rules for building societies with deposit-takers. See *Change 127* in Annex 1, which affects sections 851, 856, 858, 859 and 872.
2570. Those regulations not being rewritten will continue in force, as explained in *Change 126* in Annex 1. HMRC specialists are working on rationalising the remaining regulations.

Section 850: Overview of Chapter

2571. This section provides an overview of the Chapter. It is new.
2572. The section provides signposts to the sections dealing with the main features of the Chapter, including key definitions and rules about when investments are (or are not) relevant investments.
2573. It also makes it clear that:
- references to “interest” include a reference to “dividends” paid by building societies; and
 - crediting interest counts as paying it for all purposes of the Chapter.
2574. [Sections 858 to 870](#) (investments which are not relevant investments) are placed in order of their relative significance.

Section 851: Duty to deduct sums representing income tax

2575. This section sets out the general duty to deduct a sum representing the savings rate of income tax from interest payments made by deposit-takers and building societies on relevant investments. It is based on sections 4 and 480A of ICTA and regulation 3 of the building society regulations.

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2576. In accordance with section 850(6), “interest” includes dividend payments made by building societies.
2577. The definition of “relevant investment” for building societies has been aligned to the deposit-taker regime. See *Change 127* in Annex 1 and the overview commentary for this Chapter.

Section 852: Power to make regulations disapplying section 851

2578. This section allows the Commissioners for Her Majesty’s Revenue and Customs to make regulations so that section 851 will not apply in relation to an interest payment where certain prescribed conditions have been met. It is based on sections 477A(1) and (2) and 480B(1) to (3) of ICTA.
2579. As part of the process of enacting some of the building society regulations, the wide powers provided in section 477A(1) of ICTA have been replaced with specific regulation making powers. See *Change 126* in Annex 1 and the overview commentary for this Chapter.
2580. Regulations have been made under sections 477A(1) and 480B of ICTA which allow UK resident individuals to certify that they are not liable to income tax so that they may be paid gross.
2581. The regulations concerned are the [Income Tax \(Deposit-takers\) \(Interest Payments\) Regulations 1990 \(SI 1990/2232\)](#), and the building society regulations. The relevant parts of these regulations will continue to have effect under the general continuity of law provisions included in this Act.

Section 853: Meaning of “deposit-taker”

2582. This section defines “deposit-taker”. It is based on section 481(2) of ICTA.
2583. Article 39 of the [FISMA \(Consequential Amendments\) \(Taxes\) Order 2001 \(SI 2001/3629\)](#) (FISMA(CA)(T)O), amends the definition of deposit-taker in section 481(2) of ICTA. This amendment has been reflected in the rewritten legislation and consequently article 39 is revoked (see Schedule 3 to this Act).
2584. The persons prescribed as deposit-takers by orders made under the power in section 481(2)(f) of ICTA, namely firms with European Economic Area (EEA) passport rights and certain dealers in financial instruments, have also been included here. The two orders concerned (the [Income Tax \(Prescribed Deposit-takers\) Order 1992 \(SI 1992/3234\)](#) and the [Income Tax \(Prescribed Deposit-takers\) Order 2002 \(SI 2002/1968\)](#)) will be revoked (see Schedule 3 to this Act). See *Change 126* in Annex 1.

Section 854: Power to prescribe persons as deposit-takers

2585. This section provides that the Treasury may make orders prescribing persons or a member of a class of persons receiving deposits in the course of business or activities to be treated as a deposit-taker. It is based on sections 481(2)(f) and 482(10) of ICTA.
2586. The following Statutory Instruments made under section 481(2)(f) of ICTA are spent or obsolete and are revoked (see Schedule 3 to this Act):
- the [Income Tax \(Prescribed Deposit-takers\) \(No 1\) Order 1984 \(SI 1984/1801\)](#), which included the British Railways Board in the definition of deposit-taker; and
 - the [Income Tax \(Composite Rate\) \(Prescribed Deposit-takers\) Order 1985 \(SI 1985/1696\)](#), which listed various local authorities as being included in the definition of deposit-taker. The bodies referred to in this Order (and which are still in existence) are covered in the definition of “local authority” in section 999. As local authorities are already included in section 853(4), this Order is obsolete.

Section 855: Meaning of “investment” and “deposit”

2587. This section defines “investment” and “deposit” in preparation for the sections setting out which investments are, or are not, relevant investments. It is based on section 480A(1) and 481(3) of ICTA and regulations 2 and 3 of the building society regulations.
2588. This section also makes clear that, whether or not a deposit bears interest, it will still be treated as a deposit (although deduction of tax will be necessary only where interest is paid). As part of the alignment of the two regimes, the definition of deposit now also applies in relation to building societies.
2589. Under paragraph 6 of Schedule 2 to FA 2005, alternative finance arrangements are treated as if they were deposits for the purposes of the deposit-taker regime. A similar result is achieved for building societies through the operation of paragraph 5 of Schedule 2 to FA 2005.
2590. The alignment of the two regimes (so that the building society gross payment category rules are similar to deposit-takers, see *Change 127* in Annex 1 and the overview commentary for this Chapter), has prompted amendments of Schedule 2 to FA 2005 (see Schedule 1 to this Act).

Section 856: Investments which are relevant investments

2591. This section sets out the main rules about which investments are relevant investments. It is based on section 481(4) of ICTA and parts of regulations 3 and 4 of the building society regulations. See *Change 127* in Annex 1, and the overview commentary on this Chapter, for the effects of the alignment of the regimes.
2592. *Subsection (1)* sets out the four categories of investments which are relevant investments for the purposes of this Chapter. *Subsection (2)* makes clear that subsection (1) is subject to the general rules in sections 858 to 870 about when an investment will not be treated as a relevant investment.
2593. *Subsections (3) to (6)* set out the detail of the conditions governing the four categories of relevant deposits.
2594. With the exception of the personal representative category, each category is separate and does not overlap. Consequently, an investment will only be a relevant investment where *all* the persons entitled to the interest payment are either:
- individuals (*subsection (3)*),
 - a Scottish partnership where all the partners are individuals (*subsection (4)*), or
 - trustees of a discretionary or accumulation settlement (*subsection (6)*).
2595. Where a personal representative (*subsection (5)*) is entitled to *any* interest on the investment, the whole investment will be a relevant investment. So, where a personal representative is entitled to part of the interest on a joint account, all interest will be subject to deduction, unless a declaration has been made in accordance with the regulations made under section 852 in respect of the part of the investment which does not vest in the personal representative.
2596. Section 481(4)(c) of ICTA refers to a person receiving interest “as a personal representative [and] in his capacity as such.” As there is no distinction between a person receiving interest *as* a personal representative, and doing so in his capacity as such, the section simply refers to receiving interest “in that capacity”. This is in line with the approach used in relation to trustees.
2597. As a result of aligning the gross payment category rules for building societies with the deposit-taker rules and defining relevant investment by reference to the *beneficial*

owner of the payment, many of the gross payment categories in regulation 4 of the building society regulations do not need to be rewritten. This is because certain of those payments do not fall within any category of relevant investment in the first place. See *Changes 127* and *128* in Annex 1.

Section 857: Investments to be treated as being or as not being relevant investments

2598. This section sets out the rules governing when deposit-takers and building societies should treat investments as relevant (depending on the information they hold). It is based on section 482 of ICTA and regulation 11(4) of the building society regulations.
2599. *Subsection (1)* states that deposit-takers and building societies must treat an investment as a relevant investment unless they are satisfied that it is not a relevant investment.
2600. As part of the alignment of the two regimes, building societies will no longer need to obtain declarations from persons previously falling under the gross payment categories mentioned in regulation 4(1)(d) to (g), (k) and (r) of the building society regulations in order that payment can be made gross. See *Change 129* in Annex 1.

Section 858: Declarations of non-UK residence: individuals

2601. This section applies to investments satisfying the individual interest condition set out in section 856(3). It is based on sections 481(5) and 482(2), (2A) and (6) of ICTA and regulations 2, 4(1)(a) and (b) and 11 of the building society regulations.
2602. The section confirms that a declaration of non-UK residence in a prescribed or authorised format containing certain information is required if the investment is not to be treated as a relevant investment (*subsection (2)*). See *Change 130* in Annex 1.
2603. The section also makes clear that payments will be made gross only where all the individuals are non-UK resident. See *Change 127* in Annex 1.

Section 859: Declarations of non-UK residence: Scottish partnerships

2604. This section applies to investments satisfying the Scottish partnership condition set out in section 856(4). It is based on sections 481(5) and 482(2), (2A) and (6) of ICTA and regulations 2(1), 4(1)(a) and (b) and 11 of the building society regulations.
2605. This section confirms that a declaration of non-UK residence in a prescribed or authorised format containing certain information is required if the investment is not to be treated as a relevant investment (see *subsection (2)*). See *Change 130* in Annex 1.
2606. The section also ensures that a deposit will not be a relevant investment unless *all the partners* of the Scottish partnership are not ordinarily resident in the United Kingdom. See *subsection (3)* and *Changes 127* and *131* in Annex 1.

Section 860: Declarations of non-UK residence: personal representatives

2607. This section applies to investments satisfying the personal representative condition set out in section 856(5). It is based on sections 481(5) and 482(2) and (6) of ICTA and regulations 2(1), 4(1)(c) and 11 of the building society regulations.
2608. The section confirms that a declaration of non-UK residence in a prescribed or authorised format containing certain information is required if the investment is not to be treated as a relevant investment (see *subsection (2)*). See *Change 130* in Annex 1.

Section 861: Declarations of non-UK residence: settlements

2609. This section applies to investments satisfying the settlement condition set out in section 856(6). It is based on sections 481(5) and 482(2) and (6) of ICTA and regulations 2(1), 4(1)(bb) and 11 of the building society regulations.

2610. The section confirms that a declaration of non-UK residence in a prescribed or authorised format containing certain information is required if the investment is not to be treated as a relevant investment (see *subsection (2)*). See *Change 130* in Annex 1.
2611. See *Change 131* in Annex 1 and the commentary on section 859 for information on changes made in respect of Scottish partnerships in *subsections (2) to (4)*.

Section 862: Inspection of declarations

2612. This section gives an officer of Revenue and Customs power to inspect any declarations which have been made to the deposit-taker or building society. It is based on section 482(3) and (4) of ICTA and regulation 11(5) and (6) of the building society regulations.
2613. Regulation 8 of the [Income Tax \(Deposit-takers\) \(Non-residents\) Regulations 1992 \(SI 1992/14\)](#) and regulation 11(7) of the building society regulations provide a two year time limit for the retention of declarations.
2614. For deposit-takers, this section is a minor change in law, as the source legislation in section 482(3) of ICTA does not give flexibility in the selection of declarations to be inspected: it is all or none. See *Change 132* in Annex 1.

Section 863: General client account deposits

2615. This section provides that general client account deposits will not be treated as relevant investments and defines the circumstances in which an investment will be treated as a “general client account deposit”. It is based on section 481(5) and 482(6) of ICTA and regulations 2(1) and 4(1) of the building society regulations.

Section 864: Qualifying uncertificated eligible debt security units

2616. This section provides that an investment will not be treated as a relevant investment if a “qualifying uncertificated eligible debt security unit” has been issued in respect of the investment. It is based on section 481(5)(a) of ICTA and regulation 4(1)(j) of the building society regulations.
2617. References to deposit rights in sections 349(4), 477A and 481(5A) of ICTA and regulation 4(1)(j) of the building society regulations have not been rewritten as they are obsolete. See *Change 133* in Annex 1.

Section 865: Qualifying certificates of deposit

2618. This section provides that an investment will not be treated as a relevant investment if a “qualifying certificate of deposit” has been issued in respect of the investment. It is based on section 481(5)(a) of ICTA and regulation 4(1)(j) of the building society regulations.

Section 866: Qualifying time deposits

2619. This section provides that an investment will not be treated as a relevant investment if the deposit is a “qualifying time deposit”. It is based on sections 481(5)(a) and 482(6) of ICTA and regulation 4(1)(j) of the building society regulations.

Section 867: Lloyd’s premium trust funds

2620. This section provides that if an investment forms part of a Lloyd’s premium trust fund it will not be treated as a relevant investment. It is based on section 481(5) of ICTA, sections 183(2) and 184(1) of FA 1993 and regulations 2(1) and 4(1) of the building society regulations.

2621. *Subsection (1)* refers to a “premium trust fund” rather than a “premiums trust fund”, as per the source legislation (section 481(5)(f) of ICTA and regulation 4(1)(o) of the building society regulations). This new defined term follows the amendment made to section 184 of FA 1993 by articles 75 and 79 of FISMA(CA)(T)O, effective from 1 December 2001.
2622. The new definition of “premium trust fund” used in the main Lloyd’s legislation (section 184 of FA 1993) is applied by *subsection (2)*. This means that new rules relating to the Sourcebook made by the Financial Services Authority under FISMA will have effect for the purposes of defining a “premium trust fund” in respect of this Chapter.

Section 868: Investments held outside the United Kingdom

2623. This section sets out when an investment held outside the United Kingdom will not be treated as a relevant investment. It is based on sections 481(5)(h) and (j) and 482(7) of ICTA and regulation 4(1)(s) of the building society regulations.
2624. For the purposes of the section, *subsection (4)* sets out when an investment is to be treated as being held at a branch. As the source legislation does not define when an investment will be treated as being held at a branch for the purposes of building societies, subsection (4) has been extended to apply to building societies to clarify what is meant.

Section 869: Sale and repurchase of securities

2625. This section ensures that, in relation to building societies, certain investments arising in the context of sale and repurchase transactions are not treated as relevant investments. It is based on regulation 4(1)(t) and (u) of the building society regulations.
2626. The section does not apply in relation to deposit-takers. In the case of *subsection (1)* this is because loans do not fall within the definition of “deposit” (see section 855). So interest paid by deposit-takers on such loans is not subject to the duty to deduct under this Chapter.
2627. In the case of *subsection (2)* it is because the source legislation about deposit-takers does not exempt interest payments made in respect of cash payments made as security for the performance of the sale and repurchase agreements from the duty to deduct tax. Where interest is paid by deposit-takers on such deposits to individuals, Scottish partnerships, personal representatives or trustees of discretionary or accumulation settlement, it will be subject to the duty to deduct under this Chapter.

Section 870: Other investments

2628. This section collects together the remaining instances where an investment is not to be treated as a relevant investment.
2629. *Subsection (1)* sets out various investments with deposit-takers which are not relevant investments. It is based on section 481(5)(b), (c), and (d) of ICTA.
2630. *Subsection (2)* sets out various investments with building societies which are not relevant investments. It is based on section 477A(1A) and (10) of ICTA and regulations 3(2) and 4(1)(h) of the building society regulations.
2631. For the purposes of the section, bank is defined by reference to section 991 which is based on section 840A of ICTA. In the building society regulations, the reference to “bank” in regulation 4(1)(h) is not defined. In order to clarify the position for building society legislation, the definition of “bank” has been extended to apply to building societies.

Section 871: Power to make regulations to give effect to Chapter

2632. This section gives the Commissioners for Her Majesty's Revenue and Customs power to make regulations in relation to providing information, inspection of records by officers of Revenue and Customs, and generally giving effect to the Chapter. It is based on sections 477A, 482(11), (11A) and (12) of ICTA.
2633. As a number of the building society regulations will be enacted, the wide powers provided in section 477A(1) of ICTA have been replaced (in part) with specific regulation making powers. See *Change 126* in Annex 1.
2634. *Subsection (2)* has been aligned to the wording of similar provisions. In particular it now includes a reference to supplemental and transitional provision and savings.

Section 872: Power to make orders amending Chapter

2635. This section gives the Treasury power to provide that certain investments are or are not relevant investments. It is based on sections 477A(1), (1A) and (2) and 481(6) and 482(12) of ICTA.
2636. As a number of the building society regulations will be enacted, the wide powers provided in section 477A(1) of ICTA have been replaced (in part) with specific order making powers. The order making power in this section takes the place of the power in section 477A(1) of ICTA in relation to building societies. See *Changes 126 and 127* in Annex 1.
2637. *Subsection (2)* allows the Treasury, in the case of deposit-takers, to specify which deposit-takers an order under this section will apply to.
2638. *Subsection (4)* gives the Treasury power to amend all sections of the Chapter except section 852 (power to disapply section 851).

Section 873: Discretionary or accumulation settlements

2639. This section makes provision about when a settlement is to be regarded as a discretionary or accumulation settlement, and when a person is to be regarded as a beneficiary of such a settlement, for the purposes of the Chapter. It is based on sections 481(4A) and 482(5A) of ICTA and regulation 2 of the building society regulations.
2640. *Subsection (2)* ensures that the section applies in the same way that section 481(4A) of ICTA did before 6 April 2006. See *Change 85* in Annex 1.
2641. In regulation 2(1) of the building society regulations, part of the definition of discretionary and accumulation trust (which, following the enactment of paragraph 37 of Schedule 13 to FA 2006, is now a reference to "settlement") refers to "income of the settlor applied in defraying expenses of the trustees". These words have not been included as they are obsolete.

Chapter 3: Deduction from certain payments of yearly interest

Overview

2642. This Chapter requires the deduction of sums representing income tax from certain payments of yearly interest. It is based on section 349(2) and (3) of ICTA.
2643. Many yearly interest payments are not subject to deduction under this Chapter, either because they are subject to different rules (eg those for deposit-takers and building societies in Chapter 2) or because of exceptions (eg those for certain payments made between companies in Chapter 11). Others are excluded from the duty to deduct by sections 875 to 888.

Section 874: Duty to deduct from certain payments of yearly interest

2644. This section sets out the basic duty to deduct sums representing income tax from certain payments of yearly interest. It is based on sections 4 and 349 of ICTA.
2645. This section does not apply to interest paid by building societies. See the commentary on section 875 and *Change 134* in Annex 1.
2646. *Subsection (1)(d)* concerns payments made to persons whose “usual place of abode” is outside the United Kingdom.
2647. The term “usual place of abode” also occurs:
- in section 887 in this Chapter (industrial and provident societies);
 - in section 906 (certain royalties etc); and
 - in section 971 (non-resident landlords).
2648. The term “usual place of abode” is consciously retained, because it is a technical term, distinct from residence.
2649. The duty to deduct in *subsection (2)* applies to any yearly interest arising in the United Kingdom, subject to the exceptions mentioned in *subsections (3)* and *(4)*.
2650. The source legislation in section 349(2) of ICTA identifies yearly interest by referring both to interest falling within Chapter 2 of Part 4 of ITTOIA (income tax) and Case III of Schedule D (corporation tax). But before the amendment to section 349(2) was made by ITTOIA, the yearly interest concerned was identified simply by reference to section 18(3)(a) of ICTA (the income tax definition of interest chargeable under Case III of Schedule D).
2651. Here, in rewriting section 349(2) of ICTA, the opportunity is taken to revert to this single test, which amounts to the requirement that the income arises in the United Kingdom. The reference to “Schedule A” in section 18(3)(a) of ICTA is not included as this applied only to annual payments.
2652. *Subsection (2)* also makes it explicit that the rate at which deduction must be made is the savings rate, that being the rate applicable to income within Chapter 2 of Part 4 of ITTOIA.

Section 875: Interest paid by building societies

2653. This section provides an exception from the duty to deduct under this Chapter when interest is paid by a building society. It is based on section 349(2) of ICTA.
2654. This section removes a drafting defect in section 349(2) of ICTA. It reflects the fact that all duties to deduct sums representing income tax from payments made by building societies are dealt with in Chapters 2 and 4 of this Part (based on sections 349(3A) and (3B) of ICTA and regulations made under section 477A(1) of ICTA). See *Change 134* in Annex 1.

Section 876: Interest paid by deposit-takers

2655. This section provides an exception from the duty to deduct under this Chapter when interest is paid by a deposit-taker and there is a duty to deduct tax under Chapter 2 of this Part, or there would have been such a duty to deduct but for regulations made under section 852 (no liability to income tax), or the exceptions contained in sections 858 to 861 (non-UK resident declarations). It is based on section 349(3) of ICTA.

Section 877: UK public revenue dividends

2656. This section provides an exception from the duty to deduct under this Chapter for payments of UK public revenue dividends (although there may be a duty to deduct under Chapter 5 of this Part). It is new.

Section 878: Interest paid by banks

2657. This section provides an exception from the duty to deduct under this Chapter for interest paid by a bank in the ordinary course of its business. It is based on section 349(3) and (3AA) of ICTA.

2658. But this does not override any duty to deduct under Chapter 2 of this Part.

2659. Broadly, all interest is paid in the ordinary course of its business (see *subsection (1)*) unless:

- the borrowing relates to the capital structure of the bank; or
- the characteristics of the transaction giving rise to the interest are primarily attributable to an intention to avoid United Kingdom tax.

See in particular Statement of Practice 4/96.

Section 879: Interest paid on advances from banks

2660. This section provides an exception from the duty to deduct under this Chapter for interest payable to a bank in respect of an advance from that bank, if the person entitled to the interest (whether or not the bank itself) is within the charge to corporation tax. It is based on section 349(3), (3AA) and (3AB) of ICTA and articles 3 and 4 of the [European Investment Bank \(Designated International Organisation\) Order 1996 \(SI 1996/1179\)](#).

2661. If the advance is from the European Investment Bank there is no duty to deduct whether or not the payer is within the charge to UK corporation tax. This provision enacts article 4 of the Order. See *Change 135* in Annex 1. See also section 991 (which enacts article 3 of the Order).

2662. More generally, the section provides that the powers under section 991(2)(e) may, in designating an international organisation as a bank, modify this section. In particular, such an organisation may not be within the charge to UK corporation tax, but a designation may still result in there being no duty to deduct from interest on advances from that organisation.

Section 880: Interest paid on advances from building societies

2663. This section provides an exception from the duty to deduct under this Chapter for interest paid on an advance from a building society. It is based on section 477A(7) of ICTA.

Section 881: National Savings Bank interest

2664. This section provides an exception from the duty to deduct under this Chapter for interest on deposits with the National Savings Bank. It is based on section 349(3) of ICTA.

Section 882: Quoted Eurobond interest

2665. This section provides an exception from the duty to deduct under this Chapter for interest on quoted Eurobonds. It is based on section 349(3) of ICTA.

Section 883: Interest on loan to buy life annuity

2666. This section provides an exception from the duty to deduct under this Chapter for interest subject to the regime in section 369 of ICTA. It is based on section 349(3) of ICTA.

Section 884: Relevant foreign income

2667. This section provides an exception from the duty to deduct under this Chapter for interest which is chargeable to income tax as relevant foreign income. It is based on section 349(3) of ICTA.

Section 885: Authorised persons dealing in financial instruments

2668. This section provides an exception from the duty to deduct under this Chapter for a person authorised under FISMA whose business wholly or mainly involves dealing in financial instruments as principal. It is based on section 349(3) of ICTA.

Section 886: Interest paid by recognised clearing houses etc

2669. This section provides an exception from the duty to deduct under this Chapter for certain payments of interest made by recognised clearing houses (RCH) and recognised investment exchanges (RIE), as defined in FISMA. It is based on section 349(3) and (6) of ICTA.

2670. In relation to such payments of interest, two conditions have to be met.

2671. The first condition (*subsection (1)(a)*) requires that the RCH or RIE carry on the business of providing a service whereby there are contracts between each of the parties to a transaction and the RCH or RIE, instead of contracts directly between the parties. Such a service is called a “central counterparty clearing service” (as defined in *subsection (3)*).

2672. The second condition (*subsection (1)(b)*) requires that the payment is made in the ordinary course of that business to users of the service in respect of margin or other collateral deposited with the payer.

2673. *Subsection (2)* concerns cases where an RCH or RIE may be a party to contracts involving the sale and repurchase of securities, with or without a put option. In such cases the margins between the sale price and the repurchase price are treated for tax purposes as payments of interest, which may (or may not) be yearly interest.

Section 887: Industrial and provident society payments

2674. This section provides an exception from the duty to deduct under this Chapter where an interest payment is made by registered industrial and provident society to a person whose usual place of abode is in the United Kingdom, and a related requirement to make returns of such payments. It is based on section 486(2), (3), (6) and (12) of ICTA.

2675. For discussion of “usual place of abode”, see the commentary on section 874.

Section 888: Statutory interest

2676. This section provides an exception from the duty to deduct under this Chapter where statutory interest is paid under the Late Payment of Commercial Debts (Interest) Act 1998. It is new.

2677. Tax Bulletin 42 (August 1999) indicated that where statutory interest is paid, it would not be regarded as yearly and would not therefore be subject to deduction of tax under section 349(2) of ICTA. See *Change 136* in Annex 1.

Chapter 4: Deduction from payments in respect of building society securities

Overview

2678. This Chapter requires building societies to deduct sums representing income tax from payments of dividends and interest on certain securities which are listed or capable of being listed on a recognised stock exchange.
2679. Other payments of dividends and interest made by building societies are dealt with in Chapter 2 of this Part.

Section 889: Payments in respect of building society securities

2680. This section sets out the duty to deduct sums representing income tax from payments made in respect of certain building society shares or securities which are listed or capable of being listed on a recognised stock exchange. It is based on sections 4(1A) and (2) and 349(3A), (3B) and (4) of ICTA.
2681. *Subsection (3)* provides that qualifying certificates of deposit, qualifying uncertificated eligible debt security units and quoted Eurobonds are not subject to the duty to deduct under this Chapter.
2682. The references to qualifying deposit right in section 349(3A) and (4) of ICTA have not been rewritten as they are obsolete. See *Change 133* in Annex 1.
2683. *Subsection (4)* provides the duty to deduct a sum representing income tax, and makes it explicit that the rate at which tax is to be deducted is the savings rate, that being the rate applicable to income within Chapter 2 of Part 4 of ITTOIA.
2684. *Subsection (7)* defines “dividend” as including any distribution and defines “security” as including a share, including in particular a “permanent interest bearing share” as defined in section 117 of TCGA.

Chapter 5: Deduction from payments of UK public revenue dividends

Overview

2685. This Chapter requires the deduction of sums representing income tax from payments of UK public revenue dividends. It is based on sections 4, 50 to 51AA, 349(3C) and (4), 350 and 350A of ICTA.

Section 890: Overview of Chapter

2686. This section provides an overview of the Chapter. It is new.

Section 891: Meaning of “UK public revenue dividend”

2687. This section defines “UK public revenue dividend” as being any income from securities which is paid out of the public revenue of the United Kingdom or Northern Ireland, but excludes interest on local authority stock. It is based on section 349(4) of ICTA.
2688. The reference to “Northern Ireland” in the definition of “UK public revenue dividend” reflects the fact that amounts paid out of the public revenue of the United Kingdom to the Northern Ireland Exchequer Consolidated Fund (from which securities may be issued under section 11(1)(c) of the Exchequer and Financial Provisions Act (Northern Ireland) 1950) are not “public revenue of the United Kingdom”.

Section 892: Duty to deduct from certain UK public revenue dividends

2689. This section sets out the general duty to deduct a sum representing income tax from payments of UK public revenue dividends. It is based on sections 4, 50 and 349(3C) of ICTA.

*These notes refer to the Income Tax Act 2007 (c.3)
which received Royal Assent on 20 March 2007*

2690. *Subsection (2)* makes it explicit that the rate at which deduction must be made is the savings rate, that being the rate applicable to income within Chapter 2 of Part 4 of ITTOIA.

Section 893: Payments of UK public revenue dividends which are payable gross

2691. This section sets out an exception to the general duty to deduct in section 892. It is based on sections 50 and 51(1) of ICTA.
2692. *Subsection (1)* provides that there is no duty to deduct if a payment of interest is made in respect of “gross-paying government securities” and no application has been made for the interest to be paid net of tax.
2693. *Subsection (2)* defines “gross-paying government securities” as being “gilt-edged securities” or securities which are the subject of a Treasury direction.

Section 894: Treasury directions

2694. This section is based on sections 50, 51 and 51AA of ICTA.
2695. *Subsections (1)* and *(2)* allow the Treasury to direct that securities issued under the National Loans Acts 1939 and 1968 are “gross-paying government securities”.
2696. *Subsection (3)* deals with the issue of Northern Ireland securities and allows the Treasury, at the request of the Department of Finance and Personnel, to direct that securities issued under section 11(1)(c) of the Exchequer and Financial Provisions Act (Northern Ireland) 1950 are “gross-paying government securities”.
2697. Section 51(2) of ICTA sets out the provisions of section 11(1)(c) of the 1950 Act by including the words, “for money borrowed by the Department of Finance and Personnel for the purposes of making issues from the Consolidated Fund of Northern Ireland”. These words have not been included as they do not alter the scope of the reference to section 11(1)(c) of the 1950 Act and are, therefore, unnecessary.

Section 895: Deduction at source application

2698. This section allows the holder of registered gross-paying government securities to make an application for the securities to be subject to deduction of a sum representing income tax under section 892. It is based on section 50 of ICTA.
2699. The application must be made to the Registrar in such form as is prescribed by the Registrar with the approval of the Treasury. It is effective one month after the application has been made and ceases to be effective when the person who made it is no longer the registered owner or when the election ceases to have effect following its withdrawal under section 896.
2700. *Subsections (4)* and *(5)* confirm that where the registered holders are trustees they can make an application for sums representing income tax to be deducted under section 892 without the consent of any other person and despite anything in the trust instrument.
2701. *Subsection (6)* defines “registered” and “the Registrar” for the purposes of the Chapter (but see also section 894(4)).
2702. The definition of “registered” has been extended to include gilts which are “recorded” in the books of the Registrar. This change provides legislative support for deduction at source applications under this section in respect of gilts held in CREST. See *Change 137* in Annex 1.

Section 896: Withdrawal of application

2703. This section is about the withdrawal of an application for net payment under section 895. It is based on section 50(5) of ICTA.

2704. The section sets out that a withdrawal of an application may be made by the registered holder of the securities only by notice to the Registrar in such form as is prescribed by the Registrar with the approval of the Treasury. Such a withdrawal will have effect one month after the date the Registrar receives the notice.

Section 897: Power to make regulations

2705. This section enables the Commissioners for Her Majesty's Revenue and Customs to make regulations in relation to the Chapter. It is based on section 350A of ICTA.
2706. *Subsection (2)* allows regulations to be made which differentiate between different kinds of UK public revenue dividends and to make different provision for different circumstances. Subsection (2)(b) has been aligned to the wording of similar provisions. In particular it now includes a reference to incidental and consequential amendments.
2707. Section 350A(2)(b) of ICTA, which allowed regulations to be made in respect of the Bank of Ireland, has not been rewritten as it obsolete following the Bank of Ireland's decision to discontinue its stock registration business.
2708. As a result of that decision, the United Kingdom gilts registers managed by the Bank of Ireland were closed with effect from 25 October 2002 ([SI 2002/2521](#)). The holdings were transferred to the main United Kingdom gilts register managed by the Bank of England with effect from 28 October 2002. So the specific provisions in section 350A(2)(b) are no longer necessary. If the Commissioners for Her Majesty's Revenue and Customs were to wish to make similar provision in respect of a particular institution in future (including the Bank of Ireland) they could do so under the general power provided by section 897(2)(a).

Chapter 6: Deduction from annual payments and patent royalties

Overview

2709. This Chapter requires the deduction of sums representing income tax from certain annual payments and patent royalties. It is based on sections 4, 125, 347A, 348 and 349(1) of ICTA and section 727 of ITTOIA.
2710. These rules are coupled with those providing for relief for certain of the payments concerned in computing net income: see Chapter 4 of Part 8 and the related commentary. Together, the rewritten rules replace the scheme of the source legislation relating to charges on income (which owes its origins to the historic concept of alienation of income). See *Change 81* in Annex 1.
2711. Sections 348 and 349(1) of ICTA are at the heart of the material about deduction of tax in the source legislation and have a very long history. The basic structure is that a payment falls within section 348 if it is payable wholly out of income brought into charge on the payer, but falls within section 349(1) if it is not payable wholly out of such income. (Payments which are deductible in computing income from a given source are not made out of income charged to tax and therefore fall into section 349(1).)
2712. The main differences between those sections in relation to deduction of tax are that
- deduction is optional under section 348 of ICTA but mandatory under section 349(1) of ICTA; and
 - under section 348 the tax is in effect collected as part of the tax charged on the payer's income, but under section 349(1) the tax is directly assessed (section 350 of ICTA).
2713. As a result of *Change 81* deduction is made mandatory in all cases and the machinery for collecting the sums deducted has been changed, with direct assessment applying in fewer cases.

Section 898: Overview of Chapter

2714. This section provides an overview of the Chapter. It is new.

Section 899: Meaning of “qualifying annual payment”

2715. This section defines “qualifying annual payment”. It is based on sections 7(1), 125(1), 348(1A), 349(1A) and 687(1) of ICTA.

2716. Under the source legislation, for an annual payment to be within the scope of sections 348 and 349 of ICTA it had to be charged to tax:

- under Schedule D Case III;
- under Chapters 7 or 10 of Part 4, section 579, or Chapters 4 or 7 of Part 5 of ITTOIA (and not be relevant foreign income); or
- under sections 609 and 611 of ITEPA.

2717. This takes account of the amendments made by paragraph 62 of Schedule 10 to FA 2005 (pension schemes etc) with effect from 6 April 2007.

2718. *Subsection (2)* specifies that the payment must arise in the United Kingdom. This follows from the fact that historically Case III was limited to United Kingdom sources and it is necessary to introduce this specific condition because United Kingdom sources and foreign sources are dealt with together in ITTOIA.

2719. *Subsection (3)* addresses the case where the recipient is a person other than a company and identifies all the provisions in ITEPA and ITTOIA under which annual payments formerly within Case III may be chargeable.

2720. *Subsection (4)* addresses the case where the recipient is a company. If the company is liable to income tax then the income must be within the provisions set out in subsection (3). But if the company is liable to corporation tax Case III still applies.

2721. *Subsection (5)* excludes a number of types of payment from the provisions in this Chapter.

2722. Payments treated as made to unit holders from unauthorised unit trusts are not specifically excluded here. That is because they are dealt with in Chapter 13 of this Part and, following the approach adopted in Chapter 10 of Part 4 of ITTOIA, such amounts are no longer treated as annual payments. So it is irrelevant to consider whether they are “qualifying”.

2723. If an annual payment is made by a building society, it is subject to the rule that payment includes crediting: see the [Income Tax \(Building Societies\) \(Annual Payments\) Regulations 1991 \(SI 1991/512\)](#).

Section 900: Deduction from commercial payments made by individuals

2724. This section requires that individuals deduct sums representing income tax from qualifying annual payments made for commercial reasons. It is based on sections 4, 347A(2), 348(1) and 349(1) of ICTA and sections 727 and 728 of ITTOIA.

2725. These are the only qualifying annual payments made by individuals not taken out of taxation by section 347A(2) of ICTA and section 727 of ITTOIA.

2726. The section makes deduction mandatory and provides for the tax to be collected as part of the individual’s self-assessment (see Chapter 17), so there will be no direct assessments in such cases in future. See *Change 81* in Annex 1.

2727. It is made explicit that the rate at which deduction must be made is the basic rate.

2728. It is also provided that the basic rate concerned is to be the basic rate for the year of payment. See *Change 138* in Annex 1, which also affects sections 901, 902 and 903.
2729. The source legislation differentiates between cases where the individual is “liable to make the payment”, and cases where payments are made on behalf of someone else (through the formula “the person by or through whom the payment is made”). Since the tax in respect of all payments by individuals will in future be accounted for through the individual’s own self-assessment, this section simply says “the individual must, on making the payment, ...”.
2730. ESC A16 gives relief to a payer who fails to make a payment from which tax was deductible in the year in which it was due to be paid (and in which the payer had income to at least partly cover the payment), but who makes the payment in a later year. This gave rise to an assessment under section 350 of ICTA. The concession will be amended to reflect the new legislative structure relating to annual payments.

Section 901: Deduction from annual payments made by other persons

2731. This section requires persons other than individuals to deduct sums representing income tax from annual payments. It is based on sections 4, 347A(3), 348(1) and 349(1) of ICTA and sections 727 to 728 of ITTOIA.
2732. For persons other than individuals the range of payments within sections 348(1) and 349(1) of ICTA is wider than it is for individuals because the provision that certain payments are not to be charges on income (section 347A(1) of ICTA and section 727 of ITTOIA) applies only to payments by individuals. Accordingly, while section 900 applies only to commercial payments, this section applies to any annual payment that is a qualifying annual payment within section 899.
2733. This section does not apply to a payment made by an individual’s personal representatives unless it would have constituted a commercial payment within section 900 if paid by the individual before the individual’s death.
2734. *Subsections (3) to (5)* set out the conditions that determine which method is used to collect the tax. Deduction at the applicable rate (see the commentary on section 902) is mandatory in all cases, but the method of recovery depends on whether the payer does, or does not, have any modified net income in the year in which payment is made.
2735. If the payer has some modified net income, then the tax is collected as part of the payer’s self-assessment by virtue of Chapter 17. If the payer has no modified net income, then the tax is collected under Chapter 15 if the payer is a UK resident company, and otherwise under Chapter 16. See *Changes 81 and 138* in Annex 1 and the commentary on section 900.
2736. Where the payer is not an individual and will not be accounting for the tax under Self Assessment, the term “the person by or through whom the payment is made” has been retained.

Section 902: Meaning of “applicable rate” in section 901

2737. This section defines “applicable rate” in section 901. It is based on section 4 of ICTA.
2738. Payments within section 900 are all subject to deduction at the basic rate. Deductions from annual payments made by persons other than individuals are also normally at the basic rate. The only exceptions, where the savings rate applies instead, are certain payments under purchased life annuities, namely those charged to tax under Chapter 7 of Part 4 of ITTOIA.
2739. *Subsection (4)(b)*, which is based on section 4(1A) of ICTA, caters, for example, for the case where the recipient is a company within the charge to corporation tax.

*These notes refer to the Income Tax Act 2007 (c.3)
which received Royal Assent on 20 March 2007*

2740. This section is subject to provisions requiring or permitting deduction at special rates - see Chapter 8 of this Part. It is also subject to regulation 3 of the [Double Taxation Relief \(Taxes on Income\) \(General\) Regulations 1970 \(SI 1970/488\)](#) which provides for a different rate of tax to be deducted from a gross payment if a notice under regulation 2(2) has been given.
2741. In all cases, the rate is determined by the year in which the payment is made. See *Change 138* in Annex 1 and the commentary on section 900.

Section 903: Deduction from patent royalties

2742. This section requires the deduction of sums representing income tax from patent royalties. It is based on sections 4, 7, 125, 348(2) and 349(1) of ICTA.
2743. In addition to annual payments, deduction applies to any royalty or other sum in respect of the use of a patent under sections 348(2) and 349(1)(b) of ICTA.
2744. If a payment in respect of a patent is also a qualifying annual payment then this section does not apply (*subsection (2)(a)*). This clarifies that deduction does not apply to a patent royalty which is an annual payment and is paid by an individual otherwise than in connection with the individual's trade. See *Change 139* in Annex 1.
2745. In the case of annual payments, the source legislation states explicitly that to be caught by the deduction rules a payment has to be assessable under Schedule D Case III. That rule carries with it the requirement that the payment should arise in the United Kingdom. There is no such explicit statutory rule covering patent payments that are not annual payments. Normally those payments are not assessable under Case III. But in practice it has always been the case that, for such a payment to be subject to the deduction rules, it must arise in the United Kingdom. *Subsection (3)* makes this explicit.
2746. *Subsection (4)* makes explicit that deduction is to apply only where the payment is charged to income or corporation tax. See *Change 140* in Annex 1.
2747. This section applies to payments by any person, but otherwise largely follows the format of section 901. If the payer is an individual or has some modified net income, then the tax is collected as part of the payer's self-assessment under Chapter 17. If the payer is not an individual and has no modified net income, then the tax is collected under Chapter 15 if the payer is a UK resident company, and under Chapter 16 otherwise. See *Changes 81* and *138* in Annex 1 and the commentary on section 900.

Section 904: Annual payments for dividends or non-taxable consideration

2748. This section provides a definition of "annual payment for dividends or non-taxable consideration". It is based on section 125 of ICTA.
2749. With certain exceptions, *subsection (3)* has the effect of excluding from the duties to deduct under this Chapter any annual payment that is made for consideration that is either:
- for a dividend or the right to receive a dividend; or
 - not taxable.
2750. The exceptions to that general rule are given in *subsections (4) to (7)*.
2751. The source legislation specifies that the payment must not be interest (section 125(2)(a) of ICTA). Annual payments within *subsection (2)* do not include interest, so this does not need to be stated explicitly. In addition, no specific reference is made to annuities (also mentioned in the source legislation) as these are simply one type of annual payment.

Section 905: Interpretation of Chapter

2752. This section clarifies that the references to an individual in this Chapter include a Scottish partnership if at least one partner is an individual. It is based on section 347A(6) of ICTA.

Chapter 7: Deduction from other payments connected with intellectual property

Overview

2753. This Chapter requires the deduction of sums representing income tax from certain payments connected with intellectual property. It is based on sections 4, 349(1), 349ZA, 524(3), 532, 533 and 536 to 537B of ICTA.

2754. The payments concerned are:

- royalties or periodical payments in respect of copyright and design rights, and payments in respect of public lending rights (“relevant intellectual property rights”) where the usual place of the owner or seller is outside the United Kingdom; and
- proceeds of sale by a non-UK resident of patent rights, if the proceeds of sale are, or include, a capital sum.

Section 906: Certain royalties etc where usual place of abode of owner is abroad

2755. This section requires the deduction of sums representing income tax from certain payments in respect of a “relevant intellectual property right” (see section 907). It is based on sections 4(1) and (2), 536(1) and (2), 537 and 537B(1) and (2) of ICTA.

2756. *Subsection (1)(b)* makes explicit that deduction is to apply only where the payment is charged to income or corporation tax. See *Change 140* in Annex 1.

2757. The payments concerned are those where the owner of the intellectual property right, or a past owner who has assigned the right but receives payments in respect of it, has a usual place of abode outside the United Kingdom.

2758. For discussion of “usual place of abode”, see the commentary on section 874.

2759. But the duty to deduct does not apply in cases where the payment is for copies of works or articles that have been exported from the United Kingdom for distribution elsewhere.

2760. *Subsection (5)* makes it explicit that the rate at which deduction must be made is the basic rate and imposes the duty to deduct on the person by or through whom the payment is made. But see the commentary on section 908 for special rules affecting some paying agents.

Section 907: Meaning of “relevant intellectual property right”

2761. This section defines “relevant intellectual property right” for the purposes of section 906. It is based on sections 536(1) and (2), 537 and 537B(1) and (2) of ICTA.

2762. *Subsection (2)* qualifies the basic categories by excluding copyrights in films and expanding the definition of “right in a design” to reflect the fact that although *registered* designs were protected in UK law from 1949, by the Registered Designs Act 1949, “design rights” in *unregistered* designs were not protected until Part III of the Copyright, Designs and Patents Act 1988 came into force in 1989.

Section 908: Royalty payments etc made through UK resident agents

2763. This section addresses issues that arise when a payment is made, not by the owner of the right, but by an agent who in turn is entitled to deduct a commission from the payment. It is based on sections 536(3) and (4) and 537B(3) and (4) of ICTA.

2764. The normal rule is that the payment is to be reduced by the amount of commission before calculating the amount that is to be deducted.
2765. But if the agent does not know the amount of commission, or does not know that it is payable, the sum representing income tax must be calculated on the gross amount of the payment, and that amount must be accounted for.

Section 909: Royalty payments: further provision

2766. This section supplements the provisions in section 906. It is based on sections 536(1), (5) and (6) and 537B(1), (5) and (6) of ICTA.

Section 910: Proceeds of a sale of patent rights: payments to non-UK residents

2767. This section requires the deduction of sums representing income tax from the proceeds of sale of patent rights where the seller is non-UK resident and the proceeds are, or include, a “capital sum”. It is based on sections 4, 349(1), 349ZA, 524(3), 532 and 533 of ICTA.
2768. Section 524(3) of ICTA will continue to apply for corporation tax.
2769. *Subsections (2) and (3)* give details of the duty to deduct, and make it explicit that the rate at which deduction must be made is the basic rate. Expenses of the sale, if deducted before payment is made, reduce the amount of the proceeds, as does any element of those proceeds not consisting of a capital sum. The income tax must then be calculated on the amount of the proceeds, as so reduced.
2770. *Subsection (4)* extends the provisions of this section to licences connected with patents, and rights to acquire future patent rights. This subsection is based on the interpretative provisions of section 533 of ICTA.
2771. *Subsection (5)* defines “capital sum” by reference to section 4 of CAA. It does not include any sum that is taken into account in computing trading profits or that constitutes earnings from an employment or office.
2772. Under section 588 of ITTOIA a seller of patent rights who originally paid a capital sum on acquisition of those rights (the capital sum on acquisition) can deduct it from the capital sum on which income tax is charged on the sale. But under section 595 of ITTOIA, when computing the amount of income tax to be deducted from the capital sum on sale, the capital sum on acquisition cannot be deducted from it (*subsection (6)(a)*).
2773. Nor is the amount of income tax to be deducted affected by the provisions about spreading of the capital sum, and payment of it by instalments, under section 524(9) of ICTA (*subsection (6)(b)*).

Chapter 8: Chapters 6 and 7: Special provision in relation to royalties

Overview

2774. This Chapter deals with two international aspects relating to the deduction of sums representing income tax from royalties paid by companies. It is based on section 349E of ICTA and section 101 of FA 2004.
2775. The first aspect concerns double tax arrangements (as defined in section 1023), whose provisions may lay down a rate other than the basic rate as the one to be applied to such payments. The Chapter provides that the paying company may deduct a sum representing income tax at the treaty rate (which in some cases is 0%) if it reasonably believes that the payee (as defined in section 913(2)) is entitled to double taxation relief on the payment.
2776. The second aspect concerns the provisions implementing the European Union Savings and Royalties Directive (Council Directive [2003/49/EC](#)) in sections 757 to 767 of

ITTOIA. These provide that a UK resident company, or a UK permanent establishment of a European Union company, may pay without deduction if it reasonably believes that the income arising from the payment will be exempt under section 758 of ITTOIA.

Section 911: Double taxation arrangements: deduction at treaty rate

2777. This section sets out the conditions under which a company may deduct sums representing income tax on the royalty payment at the treaty rate. It is based on section 349E(1), (2) and (5) of ICTA.

2778. *Subsection (3)* states that if, despite the reasonableness of the company's belief, the payee is not in fact entitled to double tax relief, the right to deduct at the treaty rate is treated as never having existed.

Section 912: Power to make directions disapplying section 911

2779. This section gives power to an officer of Revenue and Customs, if not satisfied that the payee will in fact be entitled to double taxation relief on a royalty payment, to direct that section 911 is not to apply. It is based on section 349E(3) and (4) of ICTA.

2780. If an officer so directs, the paying company will then have to deduct a sum representing income tax at the basic rate as required under Chapter 6 or 7.

2781. The reference in the source legislation to "the Board" is replaced with a reference to "an officer of Revenue and Customs". See *Change 5* in Annex 1.

Section 913: Interpretation of sections 911 and 912

2782. This section gives interpretations of "royalty" and "payee" in relation to sections 911 and 912. It is based on section 349E(1) and (5) of ICTA.

2783. *Subsection (1)* defines "royalty" widely, including in particular any proceeds of a sale of patent rights.

Section 914: EU companies: discretion to make payment gross

2784. This section provides that, if the paying company reasonably believes that section 758 of ITTOIA (exemption for certain interest and royalty payments) applies to the payment, it may pay without deducting a sum representing income tax. It is based on section 101(1) and (2) of FA 2004.

2785. Section 758 of ITTOIA gives exemption in respect of royalty payments by UK resident companies, or by a UK permanent establishment of a European Union company, to a European Union company (see sections 757 to 767 of ITTOIA).

2786. *Subsection (3)* states that if, despite the reasonableness of the company's belief, the payment is not in fact exempt under section 758 of ITTOIA, the right to pay without deduction is treated as never having existed.

Section 915: Power to make directions disapplying section 914

2787. This section gives power to an officer of Revenue and Customs, if not satisfied that payments will in fact be exempt under section 758 of ITTOIA, to direct that section 914 is not to apply. It is based on section 101(3) and (4) of FA 2004.

2788. If an officer so directs, the paying company will then have to deduct a sum representing income tax if this is required under sections 903(7) or 906.

2789. The reference in the source legislation to "the Board" is replaced with a reference to "an officer of Revenue and Customs". See *Change 5* in Annex 1.

Section 916: Duty of payee to notify if payment not exempt

2790. This section imposes a duty on the payee to notify an officer of Revenue and Customs and the paying company if it becomes aware that a condition for exemption under section 758 of ITTOIA is no longer met. It is based on section 101(5) of FA 2004.
2791. The reference in the source legislation to “the Board” is replaced with a reference to “an officer of Revenue and Customs”. See *Change 5* in Annex 1.

Section 917: Supplementary

2792. This section supplements the provisions in sections 914 to 916. It is based on section 101(8) and (9) of FA of 2004.

Chapter 9: Manufactured payments

Overview

2793. This Chapter deals with deduction of income tax at source from manufactured property income dividends, manufactured interest and manufactured overseas dividends (MODs). It is based on paragraphs 3 to 4 of Schedule 23A to ICTA and section 139 of, and paragraph 30 of Schedule 17 to, FA 2006.

Section 918: Manufactured dividends on UK shares: Real Estate Investment Trusts

2794. This section imposes an obligation to deduct income tax at source on payers of manufactured dividends (manufactured property income dividends or MPIDs) which are representative of dividends (property income dividends or PIDs) paid by Real Estate Investment Trust companies or by principal companies of Real Estate Investment Trust groups. It is based on section 139 of, and paragraph 30 of Schedule 17 to, FA 2006.
2795. *Subsection (1)* sets the conditions for the section to apply. First, the person must pay a “manufactured dividend” as mentioned in section 573. Second, the manufactured dividend must be representative of a PID.
2796. A dividend may be partly but not wholly a PID. *Subsection (2)* provides that the section applies only so far as the manufactured dividend is representative of a PID.
2797. *Subsection (3)* ensures that, if the payer of the MPID is either UK resident or paying the MPID through a UK branch or agency, the rules on deducting income tax at source from PIDs apply, with any necessary modifications, to the MPID.
2798. *Subsections (4) and (5)* enable regulations to be made subjecting MPIDs, if they fall outside subsection (3) to a reverse charge. This provision is analogous to sections 920 and 923, which impose reverse charges on manufactured interest on UK securities and MODs and are discussed in detail below.
2799. *Subsections (6) and (7)* provide that the amount of income tax to be accounted for and paid is equal to the amount which the payer would have been required to deduct if the payment had been an actual PID.

Section 919: Manufactured interest on UK securities: payments by UK residents etc

2800. This section imposes an obligation on payers of manufactured interest to deduct income tax at source. It is based on section 4(1A) of, and paragraph 3 of Schedule 23A to, ICTA.
2801. It is the first of a group of sections about manufactured interest on UK securities (sections 919 to 921).
2802. *Subsection (1)* sets out three conditions for the section to apply. First, the person must pay “manufactured interest” as defined in section 578. Second, the manufactured interest must be paid in the circumstances set out in section 578(1). Third, the payer

must be either (a) UK resident or (b) paying the manufactured interest in the course of a trade carried on in the United Kingdom through a branch or agency.

2803. *Subsection (2)* is based on paragraph 3(2) of Schedule 23A to ICTA. Paragraph 3(2)(a), so far as relevant, provides that “the manufactured interest shall be treated ... as if it (i) were an annual payment to the recipient, but (ii) were neither yearly interest nor an amount payable wholly out of profits or gains brought into charge for income tax.” This deeming provision brings the manufactured interest within section 349(1)(a) of ICTA.
2804. Section 349(1)(a) of ICTA is rewritten in Chapter 6 of this Part (deduction from annual payments and patent royalties). But paragraph 3 of Schedule 23A to ICTA applies section 349(1)(a) to manufactured interest with important modifications: see paragraph 3(2)(b), (4) and (5). This Chapter therefore rewrites paragraph 3 of Schedule 23A separately from Chapter 6.
2805. This is done without the use of deeming. Subsection (2) spells out that the payer of the manufactured interest must, on making the payment, deduct from the gross amount of the manufactured interest a sum representing income tax on it.
2806. The rate applicable under subsection (2) is the savings rate in force for the tax year in which the payment is made (and not, as in Chapter 6, the basic rate). This follows from section 4(1A) and (2)(b) of, and paragraph 3(2)(b)(ii) of Schedule 23A to, ICTA.
2807. *Subsection (3)* defines the “gross amount” of manufactured interest.
2808. *Subsection (4)* explains that this section is subject to certain other provisions:
- sections 583 and 585 in Part 11 (Manufactured payments and repos);
 - section 921 (cases where interest on underlying securities paid gross) in this Chapter; and
 - Chapter 11 of this Part (payments between companies etc: exception from duties to deduct) – see section 930(2)(g), which is based on section 349A(3) of ICTA.
2809. *Subsection (5)* is a signpost to the collection provisions. If the payer has to deduct tax from the manufactured interest under section 349(1)(a) of ICTA, and the payer is a company, the tax is collected under section 350(4) of, and Schedule 16 to, ICTA. Under paragraph 3(7) of Schedule 23A to ICTA, this applies whether or not the company is UK resident. These provisions are rewritten in Chapter 15 of this Part. Chapter 15 includes some minor changes to the law which are potentially relevant to payments within section 919:
- *Change 143* makes it clear that a return need be submitted only where a relevant payment was made in that particular return period. It also clarifies related points.
 - *Change 144* brings into line the information required to be included on a return where a payment is made otherwise than in an accounting period with the information which is required where the payment is made in an accounting period.
 - *Change 147* removes the charging provision in section 350(1) of ICTA, to bring this legislation into line with the approach taken in other legislation about collection of income tax deducted at source. So a person will not be chargeable in cases falling within Chapters 3 to 7, 10, 12, 13 and 18 of this Part.
2810. If the payer is not a company, the tax is collected under section 350(1) of ICTA, which is rewritten in Chapter 16 of this Part. Chapter 16 also includes *Change 147*.

Section 920: Foreign payers of manufactured interest: the reverse charge

2811. This section imposes an obligation on certain recipients to account for and pay income tax on manufactured interest received. It is based on paragraphs 3 and 3A of Schedule 23A to ICTA.

2812. By analogy with section 8 of the Value Added Tax Act 1994, specialists refer to this obligation as the reverse charge. This expression does not appear in the legislation itself but is commonly used. So it has been included in the sidenote to this section.
2813. Although this section is not about deduction of income tax at source, it is included in this Chapter because it applies in circumstances in which there would be a requirement to deduct income tax at source if the payer was UK resident.
2814. *Subsection (1)* sets out three conditions for the section to apply. First, the person must pay “manufactured interest” as defined in section 578. Second, the manufactured interest must be paid in the circumstances set out in section 578(1). These conditions are identical to those in section 919(1). The third condition contrasts with the third condition in section 919(1): the payer must be non-UK resident and not paying the manufactured interest in the course of a trade carried on in the United Kingdom through a branch or agency.
2815. If these conditions are satisfied, *subsection (2)* sets out the circumstances in which the recipient must account for and pay income tax in respect of the manufactured interest.
2816. *Subsection (3)* provides that the amount of income tax to be accounted for and paid is equal to the amount which the payer would have been required to deduct if the case had been within section 919.
2817. *Subsection (4)* provides that, if the payer would not have been required to deduct any sum under section 919, the recipient is not required to account for and pay any income tax under subsection (3). For the convenience of users, *subsection (5)* highlights important cases in which subsection (4) applies.
2818. The collection rule for all recipients, whether or not they are companies and whether or not they are UK resident, is given by secondary legislation: regulation 3(1) and (2) of [SI 1997/992](#), made under paragraph 8 of Schedule 23A to ICTA. The relevant provisions of paragraph 8 are rewritten in section 586, which refers to this Chapter.

Section 921: Cases where interest on underlying securities paid gross

2819. This section is an exception to the withholding provisions of sections 919 and 920. It is based on paragraphs 1 and 3A of Schedule 23A to ICTA. Broadly speaking, if the interest itself mentioned in *subsection (1)* is payable gross, the manufactured interest representative of it is also payable gross.

Section 922: Manufactured overseas dividends: payments by UK residents etc

2820. This section imposes an obligation on the payer of a MOD to deduct income tax from the gross amount of the MOD. It is based on paragraphs 4(1) and 4(2) of Schedule 23A to ICTA. It is the first of a group of sections concerned with MODs (sections 922 to 925).
2821. *Subsection (1)* sets out three conditions for the section to apply. First, the person must pay a MOD as defined in section 581. Second, the MOD must be paid in the circumstances set out in section 581(1). Third, the payer must be either (a) UK resident or (b) paying the MOD in the course of a trade carried on through a branch or agency in the United Kingdom.
2822. Paragraph 4(2) of Schedule 23A to ICTA deems the MOD to be an annual payment within section 349 of ICTA. This section avoids the use of deeming. *Subsection (2)* spells out that the payer of the MOD must, on making the payment, deduct from the gross amount of the manufactured overseas dividend a sum equal to the relevant withholding tax on the gross amount.
2823. *Subsection (3)* explains that this section is subject to certain other provisions. Unlike section 919, this section is not subject to Chapter 11 of this Part (payments between

companies etc: exception from duties to deduct), because section 349A(4)(b) of ICTA excludes MODs from the provisions of sections 349A to 349D of that Act.

2824. *Subsection (4)* is a signpost to the powers in sections 586 and 925 to make regulations about collection of tax. The collection rules about MODs, and the rules about tax vouchers for MODs, are given by secondary legislation: regulations 11 and 15 respectively of [SI 1993/2004](#), made under paragraph 8 of Schedule 23A to ICTA. The relevant provisions of paragraph 8 are rewritten in section 586.

Section 923: Foreign payers of manufactured overseas dividends: the reverse charge

2825. This section imposes an obligation on certain recipients to account for and pay income tax on MODs received. It is based on paragraphs 4 and 3A of Schedule 23A to ICTA. By analogy with section 8 of the Value Added Tax Act 1994, specialists refer to this as the reverse charge. This expression does not appear in the legislation itself but is commonly used. So it has been included in the sidenote to this section.
2826. Although this section is not about deduction of income tax at source, it is included in this Chapter because it applies in circumstances in which there would be a requirement to deduct income tax at source if the payer was UK resident.
2827. *Subsection (1)* sets out three conditions for the section to apply. First, the person must pay a MOD as mentioned in section 581. Second, the MOD must be paid in the circumstances set out in section 581(1). These conditions are identical to those in section 922(1). The third condition contrasts with the third condition in section 922(1): the payer must be non-UK resident and not paying the MOD in the course of a trade carried on in the United Kingdom through a branch or agency.
2828. If these conditions are satisfied, *subsection (2)* sets out the circumstances in which the recipient must account for and pay income tax in respect of the MOD.
2829. *Subsection (3)* provides that the amount of income tax to be accounted for and paid is equal to the amount which the payer would have been required to deduct if the case had been within section 922.

Section 924: Power to reduce section 923 liability

2830. This section supplements section 923. It is based on paragraph 4(3B) of Schedule 23A to ICTA.

Section 925: Power to provide set-off entitlement

2831. This section is a power to make regulations dealing with the interaction between Chapter 9 and double taxation relief. It is based on paragraph 4(3), 4(7) and 4(7AA) of Schedule 23A to ICTA.
2832. This section also brings into line with practice the law on the periods by reference to which overseas dividend manufacturers may set amounts of overseas tax off against their UK tax liabilities. See *Change 141* in Annex 1.
2833. This section uses the labels “relevant amounts of tax suffered” and “relevant tax liabilities”. These labels are defined in *subsections (3)* and *(4)* respectively.
2834. *Subsection (5)* makes it clear that the credit mentioned in *subsection (1)* which a person can claim includes credit against corporation tax. So paragraph 4(7) and (7AA) of Schedule 23A to ICTA are repealed.

Section 926: Interpretation of Chapter

2835. This section provides that expressions used both in this Chapter and in Chapter 2 of Part 11 (manufactured payments and repos: manufactured payments) have the same

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meaning in this Chapter as they do in the earlier Chapter, so avoiding the need to duplicate definitions. It is based on paragraphs 1(1), 2(1), 3(1) and (10), 4(1) and (2A) and 7(1) of Schedule 23A to ICTA and section 153(2) of FA 2003.

2836. *Subsection (2)* provides that references in this Chapter to a trade carried on through a branch or agency are to be read, in relation to a company, as references to a trade carried on through a permanent establishment. This may make a difference in some cases as it is possible for a non-UK resident company to be trading in the UK through a branch or agency but not through a permanent establishment.

Section 927: Regulation-making powers: general

2837. This section provides that regulations under this Chapter may make different provision for different cases. It is based on paragraph 8(4) of Schedule 23A to ICTA.

Chapter 10: Deduction from non-commercial payments by companies

Section 928: Chargeable payments connected with exempt distributions

2838. This section requires the deduction of sums representing income tax from chargeable payments connected with exempt distributions. It is based on sections 4, 214(1) and 349(1) of ICTA.
2839. Section 214(1) of ICTA makes provision concerning payments made by a company after an exempt distribution (such as a demerger that meets the conditions in section 213 of ICTA). The other provisions of sections 213 and 214 of ICTA are basically concerned with corporation tax.
2840. The section makes it explicit that the rate at which deduction must be made is the basic rate.

Chapter 11: Payments between companies etc: exception from duties to deduct

Overview

2841. This Chapter allows “excepted payments” made by companies, local authorities and “qualifying partnerships” to be made without deducting a sum representing income tax. It is based on sections 349A to 349D of ICTA.
2842. Power is given to officers of Revenue and Customs to reimpose a duty to deduct if they have reasonable grounds for believing that the conditions for payment to be made without deduction are not met. The Chapter also provides that, if a paying company reasonably believes that a payment is excepted but that proves not to be true, the duty to deduct is treated as always having existed.

Section 929: Overview of Chapter

2843. This section provides an overview of the Chapter. It is new.

Section 930: Exception from duties to deduct sums representing income tax

2844. This section disapplies various duties on companies, local authorities and qualifying partnerships to deduct sums representing income tax if they reasonably believe that the payments concerned are “excepted payments”. It is based on section 349A of ICTA.

Section 931: Power to make directions disappling section 930

2845. This section gives power to an officer of Revenue and Customs to direct that section 930 is not to apply if the officer has reasonable grounds for believing that the payment will be an excepted payment. It is based on section 349C of ICTA.

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2846. The reference in the source legislation to “the Board” is replaced by a reference to “an officer of Revenue and Customs”. See *Change 5* in Annex 1.

Section 932: Meaning of “qualifying partnership”

2847. This section defines “qualifying partnership” for the purposes of the Chapter. It is based on sections 349A(6), 349C(4) and 349D(2) of ICTA.

Section 933: UK resident companies

2848. This section is the first of a number of sections setting out those payments which are excepted payments and provides that a payment is an excepted payment if the beneficiary is a UK resident company. It is based on section 349B(1) of ICTA.

Section 934: Non-UK resident companies

2849. This section states the conditions under which a payment to a non-UK resident company is an excepted payment. It is based on section 349B(2) of ICTA.

Section 935: PEP and ISA managers

2850. This section provides that a payment to a plan manager of a personal equity plan or an individual savings account, or to the manager’s nominee, is an excepted payment if it is received in respect of investments under the plan. It is based on section 349B(4) of ICTA.

Section 936: Recipients who are to be paid gross

2851. This section provides that payments to various specific types of recipient are excepted payments. It is based on section 349B(3) and (8) of ICTA.

2852. The Treasury may by order amend the list of such recipients.

Section 937: Partnerships

2853. This section sets out the conditions under which payments made to certain partnerships are excepted payments. It is based on section 349B(6), (7) and (8) of ICTA.

2854. The Treasury may by order vary the types of recipient covered by this section, other than those mentioned in section 936 (which is covered by the power provided in that section).

Section 938: Consequences of reasonable but incorrect belief

2855. This section provides that if, despite the reasonableness of the payer’s belief, the payment is not an excepted payment at the time it is made, the right to pay without deduction is treated as never having existed. It is based on section 349D of ICTA.

Chapter 12: Funding bonds

Overview

2856. This Chapter adapts the requirement to deduct sums representing income tax from certain payments of interest to deal with cases where the debtor has issued securities (“funding bonds”) instead of paying the interest. It is based on section 582 of ICTA.

2857. Sections 582(1) of ICTA and 380 of ITTOIA provide that the recipient of such bonds is treated as receiving an amount of interest equal to the market value of the bonds. This Chapter deals with the effect of that provision on the duty to deduct at source. This is usually to require the debtor to retain bonds to cover the amount of the deduction. But if that is impracticable, there is alternative provision.

Section 939: Duty to retain bonds where issue treated as payment of interest

2858. This section requires a debtor who issues funding bonds to retain bonds instead of deducting sums representing income tax. It is based on section 582(2), (2A) and (4) of ICTA.
2859. *Subsection (2)* makes it explicit that the rate by reference to which bonds are to be retained is the savings rate. The debtor is then treated as having complied with the duty to deduct at source (*subsection (3)*).
2860. The bonds themselves may be tendered in satisfaction of any income tax due from the debtor under Chapter 15 or 16 of Part 15 of this Act. Because the source legislation links into the deduction and collection requirements of sections 349 and 350 of ICTA, this provision is affected by the removal of the charge to income tax in section 350(1) of ICTA. See *Change 147* in Annex 1 and the commentary on section 963.

Section 940: Exception from duty to retain bonds

2861. This section makes provision for cases where it is impracticable for the debtor to retain bonds. It is based on section 582(2) of ICTA.
2862. The duty to deduct (which under section 939 becomes a duty to retain bonds) does not apply if the debtor notifies the Commissioners for Her Majesty's Revenue and Customs of the details required by *subsection (2)*.

Chapter 13: Unauthorised unit trusts

Overview

2863. This Chapter provides the rules about deduction of tax at source in relation to distributions treated as made from unauthorised unit trusts (UUTs) to their unit holders. It is based on sections 348, 349(1) and (1A) and 469 of ICTA.
2864. A unit trust is "unauthorised" if it does not have authorisation under FISMA to seek investment directly from members of the public. Nor is such a trust regulated under FISMA. "Unauthorised unit trust" is defined in section 989.
2865. The rules for UUTs differ from the rules relating to annual payments (with which they are related in the source legislation) in that the amount shown by the trust's accounts as income for a distribution period is treated as having been paid to unit holders on the date prescribed by Chapter 10 of Part 4 of ITTOIA, regardless of whether it has been so paid in whole or in part. Any actual payments to unit holders are ignored.
2866. Chapter 10 of Part 4 of ITTOIA does not deal with these amounts treated as paid to unit holders by charging them as a type of annual payment. Instead, that Act imposes a separate charge to income tax on the unit holder. In accordance with that approach, Chapter 9 of Part 9 of this Act gives relief to the trustees of the UUT for such amounts.
2867. This Chapter deals with the payments treated as having been made as regards the deduction at source rules. In particular, such amounts are treated as having been paid under deduction of a sum representing income tax at the basic rate for the applicable tax year; there is no actual duty to deduct as in other Chapters of this Part.
2868. This Chapter also requires the tax to be collected under Self Assessment. Since the trustees of the UUT will have obtained relief by deduction from their taxable income for the amount of any grossed-up amounts treated as paid to unit holders, this tax will normally be most of the tax that they have to pay.
2869. Additionally, if the deemed payments in a tax year cannot be fully relieved because their taxable income is insufficient, there is provision for the trustees to take account of any excess of modified net income (defined in section 1025) in earlier tax years over the payments they are treated as having made in those years.

Section 941: Deemed payments to unit holders and deemed deductions of income tax

2870. This section sets out the framework of the deduction at source regime for UUTs. It is based on sections 348(1A), 349(1A) and 469 of ICTA.
2871. If the unit holder is subject to income tax, the section:
- treats as a payment by the UUT trustees to the unit holder any grossed-up amount (for which see section 548 of ITTOIA) which is charged to tax on the unit holder under Chapter 10 of Part 4 of ITTOIA (*subsection (2)*); and
 - treats the trustees as having deducted, at the basic rate for the tax year, a sum representing income tax (*subsection (3)*).
2872. If the unit holder is subject to corporation tax, the section treats the trustees as having deducted, at the basic rate for the year, a sum representing income tax from the deemed annual payment to the unit holder (see section 469(4A) to (4D) of ICTA, inserted by Schedule 1 to this Act) (*subsections (4) and (5)*).

Section 942: Income tax to be collected from trustees

2873. This section sets out the method of collection, and the amount of income tax to be collected. It is based on sections 348(1), 349(1), and 469(5A) and (5B) of ICTA.
2874. *Subsection (2)* requires the tax to be collected through the self-assessment tax return of the trustees of the UUT. The source legislation refers (section 469(5A)(a) of ICTA) to a charge under section 350 of ICTA. But in practice the tax is collected through the trustees' self-assessment return, and the law is now brought into line with that practice, in keeping with the approach in relation to charges on income generally. See *Change 81* in Annex 1.
2875. So, where the source legislation provides for the amount to be charged under section 350 of ICTA, this and the following sections are drafted in terms of an amount of income tax to be collected.
2876. The default rule is that the amount to be collected under Self Assessment is the amount treated as deducted under section 941, which refers to the formula given in section 548(2) of ITTOIA.
2877. *Subsections (4) and (5)* deal with the adjustment for the "income pool". This applies when, in a tax year, the gross amounts of the payments treated as made exceed the trustees' modified net income (so that, under the source legislation, not all the tax treated as deducted could be retained by way of relief under section 348 of ICTA).
2878. In that case, the income pool as at the start of the tax year (for the computation of which see section 943) is deducted from the total of the amounts treated for the tax year as having been paid to unit holders, but not so as to reduce it below the amount of the trustees' modified net income. The resulting amount is then multiplied by the basic rate of income tax for the year, and that constitutes the amount of income tax payable by the trustees.

Section 943: Calculation of trustees' income pool

2879. This section prescribes the method of calculating the "income pool", which is to be applied in any tax year in which the grossed-up amounts treated as paid to unit holders by the trustees exceed their modified net income. It is based on section 469(5C) of ICTA.
2880. An income pool consists of a running total of the amount by which, taking one tax year with another, the trustees' modified net income has exceeded the grossed-up amounts treated as paid by them. In each tax year when this has occurred, the amount of any such

excess is to be calculated. And if in any tax year the amounts treated as paid exceed the modified net income, any such excess must be deducted from the income pool.

2881. So the income pool as at the start of any tax year (“the current tax year”) is calculated according to whether in the previous tax year the trustees’ modified net income exceeded the amounts treated as paid (*Case 1*), was less than them (*Case 2*) or equalled them (*Case 3*).
2882. The amount so calculated is available to set against any excess of payments treated as made over modified net income in the current tax year.
2883. *Subsections (2) and (3)* deal with cases where the UUT trustees have been non-UK resident. For any year of non-residence there may be modified net income, but there is no adjustment to the income pool.
2884. Subsection (3) also provides that the income pool is nil as at the start of the tax year in which a UUT is established.

Chapter 14: Tax avoidance: directions for duty to deduct to apply

Section 944: Directions for deduction from payments to non-UK residents

2885. This section enables HMRC to require certain payments to non-UK residents to be paid under deduction of basic rate income tax. It is based on section 777(9) of ICTA.
2886. In *Pardoe v Entergy Power Development Corporation* (2000), 72 TC 617 ChD¹, the High Court held that a direction under section 777(9) of ICTA could be given if, and only if, at the time of the direction, HMRC were satisfied that there was a present entitlement to a relevant payment; a direction could not be given where there was only a prospect (however imminent) of future entitlement.
2887. But, following *Pardoe*, it is still open to HMRC to give a direction under section 777(9) of ICTA in a case in which a non-UK resident is entitled to payment of consideration by instalments. It is therefore rewritten in this Part.
2888. Section 777(9) of ICTA deems the payment in question to be an annual payment within section 349(1) of ICTA. This section spells out the implications of this.
2889. This section replaces the references to “the Board” with a reference to “an officer of Revenue and Customs” (namely, the officer dealing with the case). See *Change 5* in Annex 1.
2890. The HMRC Business Income Manual tells officers (BIM 60390):
- “No attempt to invoke [section 777(9) of ICTA] in a working case should be made without prior specific reference to Business Tax (Technical), who will consider such cases on an individual basis and decide whether to seek a direction from the Board.
2891. *Change 5* will have no effect on this practice.
2892. The collection mechanisms of section 350(1) of, and Schedule 16 to, ICTA apply to tax deducted at source under section 349(1) of that Act from payments subject to section 777(9) directions. Schedule 16 and section 350(1) are rewritten in Chapters 15 and 16 respectively of this Part, and *subsection (5)* gives signposts to those Chapters.
2893. In rewriting Schedule 16, Chapter 15 makes some minor changes to the law. Three of them are potentially relevant to the collection of tax deducted at source under section 777(9) directions:
- *Change 143* makes it clear that a return need be submitted only where a relevant payment was made in that particular return period. It also clarifies related points.

1 [2000] STC 286.

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- *Change 144* brings into line the information required to be included on a return where a payment is made otherwise than in an accounting period with the information which is required where the payment is made in an accounting period.
- *Change 147* removes the charging provision in section 350(1) of ICTA, to bring this legislation into line with the approach taken in other legislation about collection of income tax deducted at source. So a person will not be chargeable in cases falling within Chapters 3 to 7, 10, 12, 13 and 18 of this Part.

Chapter 15: Collection: deposit-takers, building societies and certain companies

Overview

2894. This Chapter provides for the collection of income tax deducted at source from the payments listed in section 946. It is based on sections 350, 477A and 480A of, and Schedules 16 and 23A to, ICTA, Schedule 11 to FA 1991 and regulation 10 of the [Income Tax \(Building Societies\) \(Dividend and Interest\) Regulations 1990 \(SI 1990/2231\)](#) (the building society regulations).
2895. See Schedule 1 to this Act for commentary explaining why paragraph 8 and part of paragraph 10(2) of Schedule 16 to ICTA are otiose and have accordingly not been rewritten.

Section 945: Overview of Chapter

2896. This section provides an overview of the Chapter and also defines “section 946 payments”. It is new.

Section 946: Payments within this section

2897. This section sets out which payments are subject to the collection mechanism described in this Chapter. It is based on sections 350, 477A(1) and 480A of, and Schedules 16 and 23A to, ICTA and regulation 10 of the building society regulations.
2898. As part of the alignment of the building society and deposit-taker regimes for deduction of tax at source, various regulations in the building society regulations are enacted. See *Change 126* in Annex 1 and the overview commentary on Chapter 2 of this Part.
2899. Under the provisions of this Act, tax deducted from certain annual payments and other patent royalty payments made by individuals will be collected through the individual’s self-assessment return (see Chapter 17 of this Part), rather than by direct assessment (see Chapter 16 of this Part, based on section 350(1) of ICTA). See in particular the commentary on section 900. As a result, where such payments are made by companies on behalf of individuals they will not be subject to collection under the provisions of this Chapter. See *Change 81* in Annex 1 and the overview commentary on Chapter 4 of Part 8 of this Act.
2900. Because the source legislation links into the collection requirements of section 350 of ICTA, this provision is affected by the removal of the charge to income tax in section 350(1) of ICTA. See *Change 147* in Annex 1 and the commentary on section 963.

Section 947: Return periods

2901. This section sets out the return periods which fall into an accounting period by reference to “quarter dates”. It is based on paragraph 2(2) of Schedule 16 to ICTA, paragraph 3(1) of Schedule 11 to FA 1991 and regulation 10(3) of the building society regulations. See *Change 126* in Annex 1 and the overview commentary on Chapter 2 of this Part.

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2902. The quarter dates are the last days of March, June, September and December except where the payer is a building society, in which case they are the last days of February, May, August and November.
2903. Under the source legislation, all section 946 payments made by building societies are accounted for by reference to the February, May, August or November quarter dates by virtue of paragraph 3(1) of Schedule 11 to FA 1991 (in respect of payments caught by section 350(4) of ICTA) and regulation 10 of the building society regulations (in respect of payments caught by section 477A of ICTA).
2904. In keeping with the alignment of the rules on deduction of tax at source for deposit-takers and building societies, *subsections (2) to (4)* embrace building societies. See *Change 142* in Annex 1 and the overview commentary on Chapter 2 of this Part.

Section 948: Meaning of “accounting period”

2905. This section defines “accounting period” for deposit-takers who are not companies. It is based on section 480A(4) of ICTA.

Section 949: Payments in an accounting period

2906. This section contains the main provisions regarding the delivery of returns for section 946 payments made in an accounting period. It is based on paragraphs 2 and 3 of Schedule 16 to ICTA.
2907. This section sets out when a return needs to be delivered and the information which must be included (the amount of any section 946 payment and the amount of income tax payable).
2908. This section clarifies that a return needs to be delivered for a return period only when a section 946 payment is made in the return period. See *Change 143* in Annex 1.
2909. As part of this change, other sections clarify when and how a set-off claim can be made (see sections 952 and 953), when an assessment may be made (see section 957(1)) and when the payer is under a duty to correct a return (see section 958(1)).

Section 950: Payments otherwise than in an accounting period

2910. This section contains the main provisions regarding section 946 payments made otherwise than in an accounting period. It is based on paragraphs 3 and 9 of Schedule 16 to ICTA.
2911. *Subsection (3)* specifies the information required to be included in such a return, bringing this requirement into line with the position for returns where a section 946 payment is made in an accounting period. See *Change 144* in Annex 1.

Section 951: Collection and payment of income tax

2912. This section sets out when income tax is due and that the amount is payable without the making of an assessment. It is based on paragraphs 4(1) and 9 of Schedule 16 to ICTA.

Section 952: Conditions for a set-off claim

2913. This section sets out the conditions for a claim to be made to set off income tax suffered by deduction at source against income tax payable under this Chapter. It is based on paragraph 5 of Schedule 16 to ICTA and paragraph 4 of Schedule 11 to FA 1991.
2914. *Subsection (2)* clarifies that in order for a set-off claim to be made at the end of a return period, the payer must have either made a section 946 payment or received a payment on which it has suffered deduction of income tax during the return period. Under the source legislation it is unclear whether a set-off claim can only be made when a section 946

payment has been made in the return period concerned. See *Change 143* in Annex 1 and the commentary on section 949.

2915. Further, at the end of the return period, there must be both a net amount of income tax suffered and a net amount of income tax payable in order for a set-off claim to be made.
2916. There is a net amount of income tax suffered or payable if, on a cumulative basis running from the beginning of the accounting period to the end of the return period in question, there is an excess amount of one over the other. *Subsections (4) and (5)* explain how to calculate the net amounts.

Section 953: How a set-off claim works

2917. This section sets out the effects of a claim to set off income tax suffered against income tax payable. It is based on section 480A(3) and (4) of, and paragraphs 5 and 7 of Schedule 16 to, ICTA, and paragraph 4 of Schedule 11 to FA 1991.
2918. *Subsection (2)* confirms that, to the extent of the set-off, income tax which has been suffered is treated as repaid. This ensures that the amount of income tax suffered and used in the set-off claim cannot be used again in another claim. Further, to the extent of the set-off, income tax payable is treated as paid.
2919. *Subsection (3)* sets out further results of any set-off claim. Where a claim is allowed, the liability to pay income tax treated as paid is discharged. Where income tax has already been paid and the set-off is allowed, the amount will be repaid.
2920. *Subsections (4) and (5)* require the claim to be made on a return for the return period under section 949 whether or not a section 946 payment has been made in the return period in question. See *Change 143* in Annex 1 and the commentary on section 949.
2921. *Subsection (7)* confirms that a claim for set-off by a deposit-taker can be made only where the claimant is subject to corporation tax. So set-off claims cannot be made by deposit-takers who are not companies.

Section 954: Proceedings begun after a set-off claim is made

2922. This section makes provision about what happens when proceedings for collection of income tax are brought after a set-off claim is made. It is based on paragraph 6 of Schedule 16 to ICTA.

Section 955: Proceedings begun before a set-off claim is made

2923. This section makes provision about what happens when proceedings for collection of income tax or interest are brought before a set-off claim is made. It is based on paragraph 6 of Schedule 16 to ICTA.

Section 956: Assessments where section 946 payment included in return

2924. This section allows assessments to be made where income tax has not been paid by the date by which the return must be delivered. It is based on paragraph 4(1) of Schedule 16 to ICTA.
2925. *Subsection (3)* confirms that an assessment may be made whether or not the tax due has been paid by the time the assessment is made.

Section 957: Assessments in other cases

2926. This section deals with assessments made because of incomplete or incorrect returns. It is based on paragraph 4(2) of Schedule 16 to ICTA.

*These notes refer to the Income Tax Act 2007 (c.3)
which received Royal Assent on 20 March 2007*

2927. *Subsection (1)* makes it clear that an assessment may be made in relation to any returns made under the Chapter (including returns made only in order to make a set-off claim). See *Change 143* in Annex 1 and the commentary on section 949.

Section 958: Payer's duty to deliver amended return

2928. This section sets out the payer's duty to deliver an amended return when an error is discovered. It is based on paragraph 7A of Schedule 16 to ICTA.
2929. *Subsection (1)* clarifies the point that the payer is under a duty to correct all returns made under the Chapter for a return period, including those made only in order to make a set-off claim. See *Change 143* in Annex 1 and the commentary on section 949.
2930. Subsection (1)(c) goes further than paragraph 7A of Schedule 16 to ICTA, so that it applies to any return made under the Chapter, rather than just those relating to return periods. See *Change 145* in Annex 1.

Section 959: Application of Income Tax Acts provisions about time limits for assessments

2931. This section confirms that, for the purposes of the time limits set out in the Income Tax Acts applying to assessments, assessments made under this Chapter should be treated as made for the tax year in which the return period ends or, in the case of payments made outside an accounting period, the date on which the payment is made. It is based on paragraphs 10(1) and 11 of Schedule 16 to ICTA.
2932. Paragraph 10(1) of Schedule 16 to ICTA contained a specific reference to section 36 of TMA. But this section makes no such reference. This is because the reference has been unnecessary since the time limit in section 36 of TMA was amended, and section 37 of TMA repealed, by FA 1989.

Section 960: Further provisions about assessments

2933. This section sets out further provisions about assessments, in particular that income tax assessed is due on the date it was due under section 951. It is based on paragraph 10 of Schedule 16 to ICTA.

Section 961: Relationship between Chapter and Income Tax Acts powers

2934. This section confirms that nothing in the Chapter affects any powers in the Income Tax Acts about the recovery of income tax. It is based on paragraph 11 of Schedule 16 to ICTA.
2935. This section applies both to the payer and the recipient. This point was confirmed in *Grosvenor Place Estates Ltd v Roberts* (1960), 39 TC 433 CA where it was held that the recipient could be assessed to tax where the payer failed to deduct tax, notwithstanding the express rights of Her Majesty's Revenue and Customs to assess the payer (*Donovan LJ* at page 453).

Section 962: Power to make regulations modifying Chapter

2936. This section allows the Commissioners for Her Majesty's Revenue and Customs to make regulations for the collection of income tax in respect of section 946 payments. It is based on sections 350 and 477A of ICTA.
2937. The section also confirms that this power applies to payments made by deposit-takers and building societies. See *Change 146* in Annex 1.
2938. *Subsection (4)* has been aligned to the wording of similar provisions. In particular it now includes a reference to incidental and consequential amendments.

Chapter 16: Collection: certain payments by other persons

Overview

2939. This Chapter provides the main collection procedure for income tax deducted at source by persons other than those catered for by Chapter 15.

Section 963: Collection of income tax on certain payments by other persons

2940. This section is based on section 350 of ICTA.

2941. The source legislation makes payers “assessable and chargeable”. But charging a payment is a step that many other collection mechanisms for income tax deducted at source, such as PAYE, do not use. This charge to tax has been removed to bring this provision into line with parallel collection mechanisms. See *Change 147* in Annex 1.

2942. *Subsection (2)* requires the payer to give details of the payment to an officer of Revenue and Customs. There is no authorised return form on which the details are to be supplied. The subsection also requires the account of the payment to be delivered “without delay”. This corresponds to “forthwith” in the source legislation.

2943. Section 350(2) of ICTA has not been rewritten. That subsection makes provision about the cases in which a payment is, or is not, made out of taxed income, in order to impose a duty on the Crown to deduct income tax in appropriate cases. It was introduced by section 39 of FA 1960 to deal with a lacuna which came to light in *CIR v Whitworth Coal Co Ltd* (1959), 38 TC 531 HL. Under the approach adopted in relation to the provisions about charges on income (see *Change 81* in Annex 1), it is no longer necessary.

Chapter 17: Collection through self-assessment return

Overview

2944. This Chapter provides for collection of income tax, in certain cases, through the self-assessment return of the person making the payment concerned.

Section 964: Collection through self-assessment return

2945. This section is based on sections 348 and 350 of ICTA.

2946. The section arises as a direct result of *Change 81* in Annex 1. See the commentary on Chapter 6 of this Part.

2947. See also *Change 147* in Annex 1 and the commentary on section 963.

2948. The amount to be collected is equal to the sums required to be deducted under the provisions referred to in *subsections (1)(b)* and *(2)*.

2949. *Subsections (3)* to *(5)* make related provision to ensure that TMA provisions apply as necessary to support this.

2950. The liability does not arise in respect of a person’s own income tax affairs, but in relation to sums representing income tax deducted from payments a person makes. That is why, as indicated in *subsection (4)*, it does not form part of the calculation of a person’s own liability to income tax as such.

Chapter 18: Other regimes involving the deduction of income tax at source

Overview

2951. This Chapter deals with three further deduction of income tax at source regimes.

2952. The first provides for a duty to deduct and account for “sums representing income tax” from certain prescribed payments and transfers to non-UK resident entertainers, sportsmen and sportswomen. It is based on sections 555 and 558 of ICTA. The Income Tax (Entertainers and Sportsmen) Regulations 1987 in [SI 1987/530](#) have been made under these sections.
2953. The second enables the Commissioners for Her Majesty’s Revenue and Customs to make regulations providing for the collection, assessment and recovery of “prescribed amounts of income tax” in respect of Schedule A and UK property business income of persons whose usual place of abode is outside the United Kingdom. It is based on section 42A of ICTA. [The Taxation of Income from Land \(Non-residents\) Regulations 1995 \(SI 1995/2902\)](#) have been made under this section.
2954. The third enables the Treasury to make regulations providing for the assessment, collection and recovery of income tax from distributions made by a Real Estate Investment Trust in respect of a property rental business. It is based on sections 105, 122, 134 and 144 of, and paragraphs 3, 19 and 32 of Schedule 17 to, FA 2006. [The Real Estate Investment Trusts \(Assessment and Recovery of Tax\) Regulations 2006 \(SI 2006/2867\)](#) were made on 1 November 2006 and are effective for accounting periods beginning on or after 1 January 2007.

Section 965: Overview of sections 966 to 970

2955. This section gives an overview of sections 966 to 970, which provide for the payment of sums representing income tax to the Commissioners for Her Majesty’s Revenue and Customs where certain payments and transfers are made in connection with United Kingdom performances by non-UK resident entertainers, sportsmen and sportswomen (visiting performers).
2956. Following the House of Lords decision in *Agassi v Robinson* [2006 UKHL 23]², Schedule 1 to this Act amends section 556 of ICTA and section 13 of ITTOIA to make explicit that these sections will have effect regardless of whether there is a duty to deduct income tax under section 555 of ICTA. See *Change 156* in Annex 1.
2957. Section 48(2)(b) of ITEPA has been amended by Schedule 1 to this Act to make it explicit that a transfer which is subject to deduction under the rules about visiting performers, is not also subject to the rules about the provision of services through intermediaries in Chapter 8 of Part 2 of ITEPA. See *Change 161* in Annex 1.

Section 966: Duty to deduct and account for sums representing income tax

2958. This section sets the general duty to deduct and account for sums representing income tax where a payment or transfer is made in connection with a “relevant activity” carried out by a prescribed visiting performer. It is based on section 555(1), (2), (3) and (6) of ICTA.

Section 967: Calculation of sums representing income tax

2959. This section sets out how to calculate the sums which are required to be deducted and or accounted for under section 966. It is based on sections 555(4) and 558(2) and (3) of ICTA.
2960. *Subsection (2)* provides that the sums cannot exceed a maximum proportion equivalent to basic rate income tax.
2961. *Subsections (3) and (4)* allow the Treasury to make regulations in order to calculate the value of a transfer to which section 966 applies. In particular, the regulations may provide for that amount to be treated as a net amount corresponding to a gross amount from which income tax at the basic rate has been deducted.

Section 968: Treatment of sums representing income tax

2962. This section sets out the income tax treatment of any sums paid to the Commissioners for Her Majesty's Revenue and Customs under section 966(3) or (4). It is based on section 555(8) to (11) of ICTA.
2963. *Subsections (2) and (3)* confirm that any payment made to the Commissioners is treated as made on account of the liability of another person to income tax or corporation tax and that the liability and the other person are to be found in accordance with prescribed rules.
2964. The regulations (regulation 12(1) of [SI 1987/530](#)) provide that the other person is the recipient of the payment or transfer. But where the recipient is of a "prescribed description" (for example the recipient is connected with the performer, see regulation 7 of [SI 1987/530](#)) then, under section 13(5) of ITTOIA, the other person will be the performer.
2965. *Subsection (4)* confirms that if the sum paid to the Commissioners exceeds the liability of the other person, then the Commissioners will repay so much of the amount as is appropriate to the other person. Again, the regulations provide that the other person is the recipient of the payment or transfer or, if the recipient is connected with the performer, the other person is the performer.
2966. *Subsections (5) and (6)* confirm that if there is no liability to make a payment under section 966 then the Commissioners will repay the sum to the recipient of the payment or transfer.

Section 969: Regulations

2967. This section provides that the Treasury may make various regulations regarding the sums to be paid, in particular provision for information, collection, assessment and recovery. It is based on sections 555(7) and 558(5) of ICTA.

Section 970: Supplementary

2968. This section sets out various supplementary provisions and is based on sections 555(5) and 558(1), (4), and (6) of ICTA.
2969. *Subsections (2) and (3)* state that an officer of Revenue and Customs may disclose certain information to others, without being precluded from doing so by any obligation as to secrecy.
2970. Under the source legislation (section 558(4) of ICTA) it is "the Board" who must decide whether to make any disclosure. But in practice it is an officer of Revenue and Customs who takes the decision. The references in section 558(4) of ICTA to "the Board" (and to "authorised" officer) have therefore been omitted. See *Change 5* in Annex 1.

Section 971: Income tax due in respect of income of non-resident landlords

2971. This section enables regulations to be made about the collection of "prescribed amounts of income tax" in relation to "non-resident landlord income". It is based on section 42A(1) to (3) of ICTA.
2972. *Subsection (1)* allows the Commissioners for Her Majesty's Revenue and Customs to make regulations for the collection, assessment and recovery of "prescribed amounts of income tax" from "non-resident landlord representatives" in respect of "non-resident landlord income". Regulation 8 of [SI 1995/2902](#) provides that the amount is to be calculated at the basic rate of tax.
2973. *Subsection (2)* defines "non-resident landlord income" as income of a person whose usual place of abode is outside the United Kingdom, which is or may be chargeable to corporation tax under Schedule A or to income tax as profits of a UK property business

under Chapter 3 of Part 3 of ITTOIA. This section applies regardless of whether any payment is actually made to the non-resident landlord.

2974. As the tax deducted will, in all cases, be income tax, all these regulation-making powers have been rewritten together, in this Act.
2975. Currently the regulations in [SI 1995/2902](#) do not provide for payments to be made to the Commissioners in respect of Schedule A income (see regulations 8(3) and 9(3)). If in the future regulations were to be made, requiring amounts to be paid to the Commissioners in respect of Schedule A income, the amount paid would be a “prescribed amount of income tax” and would be capable of being set off against the non-resident landlord’s corporation tax liability by virtue of section 11(3) of ICTA.
2976. The source legislation makes reference to the charging of prescribed amounts. This reference to charging is removed to bring the rewritten version of section 42A of ICTA into line with other collection mechanisms. See *Change 147* in Annex 1 and the commentary on section 963.
2977. For discussion of “usual place of abode”, see the commentary on section 874.

Section 972: Regulations under section 971

2978. This section makes further provisions about the regulations which can be made. It is based on section 42A(4) to (7) of ICTA.
2979. *Subsection (3)(b)* has been aligned to the wording of similar provisions. In particular it now includes a reference to savings.

Section 973: Income tax due in respect of distributions

2980. This section enables the Treasury to make regulations about the assessment, collection and recovery of income tax where a distribution is made by Real Estate Investment Trusts in respect of property rental business. It is based on sections 105, 122 and 134 of, and paragraphs 2, 3, 19 and 32(8) of Schedule 17 to, FA 2006.

Section 974: Regulations under section 973

2981. This section makes further provision about the regulations which can be made under section 973. It is based on sections 122 and 144 of, and paragraph 19 of Schedule 17 to, FA 2006.
2982. *Subsection (1)(a)* provides that regulations may be made requiring Real Estate Investment Trusts to deduct sums representing income tax at the basic rate.
2983. Paragraph 19(2) of Schedule 17 to FA 2006 has not been rewritten as it is unnecessary. Paragraph 19(2) modifies section 122(2) of FA 2006. Since this section is purely illustrative of the extent of the powers provided by section 973 (based on section 122(1) of FA 2006) it is not necessary to expand the provisions in this section.
2984. Previously, the power to make regulations in respect of a principal company was in Schedule 17 to FA 2006 (not in section 122). But as all the regulation making powers have been rewritten in one place (in section 973) it is not necessary to have a specific reference to a principal company of a group in this section. By not including a specific reference to the principal company (in this section), the power to make regulations in respect of such principal companies (under section 973) will not be limited.

Chapter 19: General

Overview

2985. This Chapter brings together a number of supplementary provisions relating to deduction at source, and gives definitions of certain terms used in this Part.

Section 975: Statements about deduction of income tax

2986. This section imposes a duty on certain persons who are required to make payments under deduction of income tax to provide, on request, a statement of the gross amount of the payment, the sum deducted and the net amount paid. It is based on section 352 of, and paragraph 3(8) and (9) of Schedule 23A to, ICTA.
2987. The section brings the rules for statements about manufactured interest on UK securities into line with the rules for statements about actual interest on UK securities. See *Change 148* in Annex 1.
2988. The section also contains specific provisions of a similar nature relating to unauthorised unit trusts.
2989. *Subsection (5)* requires that the statement be in writing. Electronic statements are provided for by regulations 3 and 4 of the [Income and Corporation Taxes \(Electronic Certificates of Deduction of Tax and Tax Credit\) Regulations 2003 \(SI 2003/3143\)](#).
2990. Section 352 of ICTA is theoretically capable of applying to MODs within paragraph 4(2) of Schedule 23A to ICTA, as they are treated as annual payments within section 349 of ICTA. But specific rules for statements about MODs are given by regulation 15 of the [Income Tax \(Manufactured Overseas Dividends\) Regulations 1993 \(SI 1993/2004\)](#). So this section has not been extended to cover payments within section 922, which rewrites paragraph 4(2). See the commentary on that section.

Section 976: Arrangements for payments of interest less tax or at specified net rate

2991. This section clarifies how a provision for the payment of interest “less tax” is to be interpreted if there is no duty to deduct a sum representing income tax. It is based on section 818 of ICTA.
2992. In this section the word “provision” relates to arrangements for the payment of interest as well as to any other context. It applies very widely to primary and secondary legislation, contracts, wills, deeds and any other arrangements, whether in writing or not.
2993. If any such provision is for the payment of interest “less tax”, the words “less tax” are to be ignored.
2994. If the provision is for payment of interest chargeable as mentioned in *subsection (6)*, any provision that purports to require grossing up from a prescribed net rate of interest is to be interpreted as requiring payment at the “gross rate”.

Section 977: Payments to companies

2995. This section provides that, even if the payment is not chargeable to income tax in a company’s hands, this does not affect whether a payment to a company should be subject to deduction of a sum representing income tax. It is based on section 7(1) and (4) of ICTA.
2996. *Subsection (2)* clarifies that receipt by another person on behalf of, or in trust for, the company is to be treated as receipt by the company. Conversely, if a company receives a payment on behalf of, or in trust for another person, that does not require that the payment be treated as received by that company. If company A receives a payment on behalf of company B, the payment is treated as received by company B.

Section 978: Application to public departments

2997. This section ensures that the rules in this Part regarding deduction at source and collection of income tax apply to payments made by United Kingdom government departments. It is based on section 829(1) and (3) of ICTA.

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which received Royal Assent on 20 March 2007*

2998. Without this section, the principle of Crown exemption would apply so that annual payments by UK government departments would not be subject to the provisions of this Part.
2999. *Subsection (2)* ensures that the section is limited to United Kingdom government departments.
3000. Section 829(2) of ICTA has not been rewritten. That subsection was only necessary because section 829(1) was widely drafted and could have imposed liability on income received by a department. As this section is restricted to annual payments made by departments, section 829(2) of ICTA is unnecessary and is repealed.
3001. No deduction is required from annual payments by one government department to another. In the source legislation, section 829(2) of ICTA addressed this point. But specific provision is not necessary.
3002. Crown exemption does not apply if it is clear from the legislation in question that the provisions concerned do apply to the Crown. For example, it is clear from the legislation about PAYE that the Crown must operate PAYE. Accordingly, section 829(2A) of ICTA is unnecessary and is repealed.

Section 979: Designated international organisations: exceptions from duties to deduct

3003. This section provides that certain payments made by international organisations which are designated by the Treasury are not subject to deduction at source under this Part. It is based on section 582A ICTA.
3004. This section applies to:
- payments of yearly interest under section 874 by such a designated organisation or a partnership of which such an organisation is a member;
 - annual payments, patent royalties and other payments connected with intellectual property under Chapters 6 or 7 of this Part (see *Change 81* in Annex 1);
 - payments under Chapter 14 of this Part (tax avoidance); and
 - payments of manufactured interest or overseas dividends under sections 919(2) and 922(2).

Section 980: Derivative contracts: exception from duties to deduct

3005. This section provides that nothing in this Part imposes a duty on a company to deduct at source if it is making a payment under certain derivative contracts. It is based on paragraph 51 of Schedule 26 to FA 2002.
3006. The derivative contracts concerned are those to which the calculation rules in Schedule 26 to FA 2002 apply, which are those the company either enters into or acquires. See paragraph 53 of that Schedule.

Section 981: Foreign currency securities etc: exception from duties to deduct

3007. This section provides that nothing in this Part imposes a duty to deduct at source on interest payments within section 755(1) of ITTOIA. It is based on section 581A of ICTA.

Section 982: Income tax is calculated by reference to gross amounts

3008. This section provides that the amount on which tax is to be calculated is the gross amount in each case. It is new.

Section 983: Meaning of “deposit”

3009. This section defines the meaning of “deposit” for the purposes of this Chapter. It is based on section 481(3) of ICTA.
3010. Section 481(3) of ICTA applies to deposit-takers and is also rewritten in Chapter 2 of this Part (deduction by deposit-takers and building societies). By including the definition of “deposit” in this Chapter the application of the definition has been extended to building society deposits. This will ensure that the definitions of “qualifying certificate of deposit” (section 985) and “qualifying uncertificated eligible debt security unit” (section 986) are the same for deposit-takers and building societies.

Section 984: Meaning of “financial instrument”

3011. This section gives the definition of “financial instrument” which occurs in the context of this Part in relation to persons authorised under FISMA who deal in financial instruments as principal. It is based on section 349(5) and (6) of ICTA.

Section 985: Meaning of “qualifying certificate of deposit”

3012. This section defines “qualifying certificate of deposit”. It is based on sections 349(4) and 482(6) of ICTA.
3013. Interest (and, in the case of building societies, dividends) paid by a deposit-taker or building society in respect of a deposit in respect of which a “qualifying certificate of deposit” has been issued is payable gross (see sections 865 and 889).
3014. In order for a “certificate of deposit” (defined in section 1019) to be a “qualifying certificate of deposit”, the certificate must require the issuer to pay an amount of at least £50,000 (or equivalent if made in a foreign currency) at a specified time within five years of the deposit being made.
3015. The definition of “qualifying certificate of deposit” has been aligned to the wording of the definition of “qualifying time deposit” (see section 866) so that it is clear that a “qualifying certificate of deposit” can only be paid in one tranche “at a specified time”. See *Change 149* in Annex 1.

Section 986: Meaning of “qualifying uncertificated eligible debt security unit”

3016. This section defines “qualifying uncertificated eligible debt security unit”. It is based on sections 349(4) and 482(6) of ICTA and section 552(2) of ITTOIA.
3017. Interest (and, in the case of building societies, dividends) paid by a deposit-taker or building society in respect of qualifying uncertificated eligible debt security units is payable gross. See sections 864 and 889.
3018. For an uncertificated eligible debt security to be “qualifying” there has to be a right to receive an amount of at least £50,000 (or equivalent if made in a foreign currency) at a specified time within five years of the deposit being made.
3019. The definition of “qualifying uncertificated eligible debt security unit” has been aligned to the wording of the definition of “qualifying time deposit” (see section 866) so that it is clear that a “qualifying uncertificated eligible debt security unit” can only be paid in one tranche “at a specified time”. See *Change 149* in Annex 1.
3020. *Subsection (4)* defines various terms in the definition of “uncertificated eligible debt security units” by reference to the [Uncertificated Securities Regulations 2001 \(SI 2001/3755\)](#).

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which received Royal Assent on 20 March 2007*

Section 987: Meaning of “quoted Eurobond”

- 3021. This section defines “quoted Eurobond”. It is based on the definition in section 349(4) of ICTA.
- 3022. Interest on a quoted Eurobond is not subject to deduction at source. See sections 882 and 889.