



Finance Act 2009

2009 CHAPTER 10

PART 2

INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

Support for business

23 Temporary extension of loss carry back provisions

Schedule 6 contains provision for a temporary extension of provisions allowing the carrying back of losses.

24 First-year capital allowances for expenditure in 2009-2010

- (1) Part 2 of CAA 2001 (plant and machinery allowances) has effect as if—
- (a) in section 39 (first-year qualifying expenditure), a reference to this section were included in the list of provisions describing first-year qualifying expenditure, and
 - (b) in the Table in section 52(3) (amount of first-year allowances), there were inserted at the end—

“Expenditure qualifying under 40%”.
section 24 of FA 2009 (expenditure in
2009-2010)

- (2) Expenditure is first-year qualifying expenditure under this section if—
- (a) it is incurred in 2009-2010,
 - (b) it is not within any of the general exclusions in section 46(2) of CAA 2001 (subject to subsection (4)),
 - (c) it is not special rate expenditure (as defined by section 104A of CAA 2001), and

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- (d) it is not first-year qualifying expenditure under a provision of Chapter 4 of Part 2 of CAA 2001.
- (3) For the purposes of this section expenditure is incurred in 2009-2010—
 - (a) in the case of expenditure incurred by a person within the charge to corporation tax, if it is incurred on or after 1 April 2009 but before 1 April 2010, and
 - (b) in the case of expenditure incurred by a person within the charge to income tax, if it is incurred on or after 6 April 2009 but before 6 April 2010.
- (4) General exclusion 6 in section 46(2) of CAA 2001 (expenditure on provision of plant or machinery for leasing) does not prevent expenditure being first-year qualifying expenditure under this section if the plant or machinery is provided for leasing under an excluded lease of background plant or machinery for a building (as defined by section 70R of that Act).
- (5) Expressions used in this section and in Part 2 of CAA 2001 have the same meaning here as in that Part of that Act, subject to subsection (6).
- (6) In determining whether expenditure is incurred in 2009-2010, any effect of section 12 of CAA 2001 (expenditure incurred before qualifying activity carried on) on the time at which it is to be treated as incurred is to be disregarded.

25 Agreements to forgo tax reliefs

- (1) If—
 - (a) a person (“P”) makes arrangements under which P agrees (in whatever terms) to forgo (to any extent) tax relief or a right to tax relief (whenever arising), and
 - (b) the Treasury designates the arrangements for the purposes of this section, all relevant enactments are to have effect with such modifications as are necessary or expedient to give effect to the agreement.
- (2) The Treasury may not designate arrangements for the purposes of this section unless—
 - (a) the arrangements have been made with the Treasury, another government department or another public body, and
 - (b) under the arrangements, or under other arrangements, the Treasury, another government department or another public body—
 - (i) guarantees or assumes a loss or other liability of P or another person,
 - (ii) insures or indemnifies P or another person against a loss or other liability,
 - (iii) agrees to make a payment to P or another person in respect of a loss or other liability of any person (whether or not the person to whom the payment is to be made), or
 - (iv) gives other financial support or assistance to P or another person (whether in money or otherwise).
- (3) If P forgoes (to any extent) tax relief or a right to tax relief under subsection (1)—
 - (a) no tax relief is to be given to P or any other person by virtue of what is forgone or anything resulting from or representing what is forgone, and
 - (b) all relevant enactments are to have effect with such modifications as are necessary or expedient to give effect to paragraph (a).
- (4) In this section—

“relevant enactments” means—

- (a) the Corporation Tax Acts, and
- (b) the enactments relating to petroleum revenue tax;

“tax relief” means—

- (a) a reduction (by any means) of P’s liability to any tax, or
- (b) a payable tax credit.

- (5) This section has effect in relation to arrangements made on or after 22 April 2009; but that does not prevent subsections (1) and (3) from having effect in relation to times before 22 April 2009.

26 Contaminated and derelict land

Schedule 7 contains provision extending Part 14 of CTA 2009 (remediation of contaminated land) to derelict land and other provision amending that Part of that Act.

27 Venture capital schemes

Schedule 8 contains provision about venture capital schemes.

28 Group relief: preference shares

Schedule 9 contains provision about the treatment of certain preference shares for the purposes of group relief.

29 Sale of lessor companies etc: reforms

Schedule 10 contains provision amending Schedule 10 to FA 2006 (sale of lessor companies etc).

30 Tax relief for business expenditure on cars and motor cycles

Schedule 11 contains provision about tax relief for business expenditure on cars and motor cycles.

31 Reallocation of chargeable gain or loss within a group

Schedule 12 contains provision about the reallocation of chargeable gains and allowable losses between companies that are members of a group.

32 Stock lending: chargeable gains in event of insolvency etc of borrower

Schedule 13 contains provision amending TCGA 1992 in respect of stock lending arrangements in the event of the insolvency of the borrower.

33 FSCS payments representing interest

- (1) Chapter 2 of Part 4 of ITTOIA 2005 (interest) is amended as follows.
- (2) In section 369(2) (list of provisions extending what is treated as interest for certain purposes), after “bonds),” insert—

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“section 380A (FSCS payments representing interest),”.

(3) After section 380 insert—

“380A FSCS payments representing interest

- (1) Any payment representing interest which is made under the FSCS is treated as interest for the purposes of this Act.
- (2) “Payment representing interest” means a payment calculated in the same way as interest which would have been paid to the recipient but for the circumstances giving rise to the making of payments under the FSCS.
- (3) Where a payment representing interest is made net of an amount equal to a sum representing income tax that would have been deducted on the payment of interest, the amount treated as interest by this section is the aggregate of the payment representing interest and that sum.
- (4) This section applies to payments made under the FSCS whether or not they are made (in whole or in part) on behalf of the Treasury or any other person.
- (5) In this section “the FSCS” means the Financial Services Compensation Scheme (established under Part 15 of the Financial Services and Markets Act 2000).”

(4) In ITA 2007, after section 979 insert—

“979A FSCS payments representing interest

- (1) This section applies where a payment is made under the FSCS representing interest net of an amount equal to a sum representing income tax that would have been deducted on the payment of interest but for the circumstances giving rise to the making of payments under the FSCS.
- (2) A payment of the relevant gross amount is treated as having been made under the FSCS after there has been deducted from it a sum representing income tax of that amount.
- (3) That sum is accordingly taken into account under section 59B of TMA 1970 in determining the income tax payable by, or repayable to, the recipient.
- (4) “The relevant gross amount” means the aggregate of the amount of the payment representing interest which is made and that sum.
- (5) If the recipient requests it in writing, the scheme manager of the FSCS must provide the recipient with a statement showing—
 - (a) the relevant gross amount,
 - (b) the amount of the sum treated as deducted, and
 - (c) the amount of the payment representing interest.
- (6) The duty to comply with a request under subsection (5) is enforceable by the recipient.
- (7) In this section—

“the FSCS” means the Financial Services Compensation Scheme (established under Part 15 of the Financial Services and Markets Act 2000);

“payment representing interest” has the same meaning as in section 380A of ITTOIA 2005.”

- (5) The amendments made by this section have effect in relation to payments made on or after 6 October 2008.

Foreign profits etc

34 Corporation tax treatment of company distributions received

Schedule 14 contains provision about the treatment for the purposes of corporation tax of dividends and other distributions.

35 Tax treatment of financing costs and income

Schedule 15 contains provision about the treatment for the purposes of corporation tax of certain financing costs and certain financing income of companies that are members of a group.

36 Controlled foreign companies

Schedule 16 contains provision about controlled foreign companies.

37 International movement of capital

Schedule 17 contains provision—

- (a) removing the existing requirements in relation to the international movement of capital in sections 765 to 767 of ICTA, and
- (b) imposing new reporting requirements on certain bodies corporate in relation to the international movement of capital.

38 Corporation tax: foreign currency accounting

Schedule 18 contains provision about foreign currency accounting.

39 Certain distributions of offshore funds taxed as interest

- (1) Chapter 2 of Part 4 of ITTOIA 2005 (interest) is amended as follows.
- (2) In section 369(2) (list of provisions extending what is treated as interest for certain purposes), after the entry relating to section 376 insert—
“section 378A (offshore fund distributions),”.
- (3) After section 378 insert—

“378A Offshore fund distributions

- (1) This section applies where—

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- (a) a dividend is paid by an offshore fund, and
 - (b) the offshore fund fails to meet the qualifying investments test at any time in the relevant period.
- (2) The dividend is treated as interest for income tax purposes.
- (3) For the purposes of this section, an offshore fund fails to meet the qualifying investments test if the market value of the fund’s qualifying investments exceeds 60% of the market value of all of the assets of the fund (excluding cash awaiting investment).
- (4) “The relevant period” means—
- (a) the relevant period of account of the offshore fund, or
 - (b) if longer, the period of 12 months ending on the last day of that period.
- (5) “The relevant period of account” means—
- (a) the last period of account ending before the dividend is paid, in a case in which the profits available for distribution at the end of that period (and not used since then by distribution or otherwise) equal or exceed the amount of the dividend (aggregated with any other distribution made by the offshore fund at the same time), and
 - (b) the period of account in which the dividend is paid, in any other case.
- (6) This section applies to a manufactured overseas dividend if, and only if, it is representative of a distribution to which this section would apply.
- (7) In this section—
- “dividend” includes any distribution that (but for this section) would be treated as a dividend for income tax purposes;
 - “manufactured overseas dividend” has the same meaning as in Chapter 2 of Part 11 of ITA 2007 (manufactured payments);
 - “offshore fund” has the same meaning as in Chapter 5 of Part 17 of ICTA (see sections 756A to 756C of that Act);
 - “qualifying investments” has the meaning given in section 494 of CTA 2009.”
- (4) Accordingly, in section 367 of ITTOIA 2005 (priority between Chapters within Part 4), in subsection (3)—
- (a) in paragraph (a), after “dividends” insert “, 378A (offshore fund distributions)”, and
 - (b) in paragraph (b), insert at the end “or Chapter 4 (or both)”.
- (5) The amendments made by this section have effect in relation to—
- (a) distributions arising on or after 22 April 2009, and
 - (b) manufactured overseas dividends that are representative of a distribution arising on or after that date.

40 Income tax credits for foreign distributions

Schedule 19 contains provision about income tax credits for foreign distributions.

Loan relationships and derivatives

41 Loan relationships involving connected parties

Schedule 20 contains provision about loan relationships involving connected parties.

42 Release of trade etc debts

- (1) CTA 2009 is amended as follows.
- (2) In section 353 (introduction to Chapter 6 of Part 5)—
 - (a) omit subsection (3), and
 - (b) in subsection (6), after “loss” insert “and “release debit””.
- (3) In section 476(1) (definitions for purposes of Parts 5 and 6), after the definition of “profit sharing arrangements” insert—

““release debit”, in relation to a company, means a debit in respect of a release by the company of a liability under a creditor relationship of the company,”.
- (4) Section 479 (relevant non-lending relationships not involving discounts) is amended as follows.
- (5) In subsection (2)—
 - (a) omit the “and” at the end of paragraph (b),
 - (b) in paragraph (c), after “loss” insert “or release debit”, and
 - (c) insert at the end “, and
 - (d) a debt in relation to which a relevant deduction has been allowed to the company and which is released.”
- (6) In subsection (3), for “(2)” substitute “(2)(c)”.
- (7) After that subsection insert—

“(3A) In subsection (2)(d) “relevant deduction” means a deduction allowed in calculating the profits of a trade, UK property business or overseas property business.”
- (8) Section 481 (application of Part 5 to relevant non-lending relationships) is amended as follows
- (9) In subsection (3)—
 - (a) in paragraph (d), after “loss” insert “or release debit” and for “impairment, and” substitute “impairment or release,”, and
 - (b) insert at the end “and
 - (f) in the case of a debt in relation to which a relevant deduction has been allowed to the company and which is released, the release.”
- (10) In subsection (4), for “(3)” substitute “(3)(d) and (e)”.
- (11) After that subsection insert—

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“(4A) In subsection (3)(f) “relevant deduction” has the meaning given in section 479(3A).”

(12) The amendments made by this section are treated as having come into force on 22 April 2009.

43 Foreign exchange matching: anti-avoidance

Schedule 21 contains anti-avoidance provisions relating to exchange gains and losses arising from loan relationships and derivative contracts.

Collective investment

44 Tax treatment of participants in offshore funds

In Schedule 22—

Part 1 contains provision defining what is meant by an offshore fund for the purposes of section 41 of FA 2008 (tax treatment of participants in offshore funds), and

Part 2 contains provision about the treatment of participants in certain offshore funds under TCGA 1992.

45 Power to enable dividends of investment trusts to be taxed as interest

- (1) The Treasury may by regulations make provision for and in connection with—
- (a) the designation by a company that is an investment trust or a prospective investment trust of dividends made by the company, and
 - (b) the treatment of a designated dividend for the purposes of the Tax Acts, in specified circumstances and in the case of specified persons—
 - (i) as a payment of yearly interest, or
 - (ii) as interest under a loan relationship.
- (2) Regulations under this section may, in particular, make provision—
- (a) about the circumstances in which a dividend may, or may not, be designated,
 - (b) about limits on the amounts that may be designated or treated as a payment of yearly interest or as interest under a loan relationship,
 - (c) disapplying the duty under section 874 of ITA 2007 (deduction of sums representing income tax from payments of yearly interest) in specified circumstances,
 - (d) about the preparation of accounts and the keeping of records by investment trusts and prospective investment trusts, and
 - (e) about the provision by investment trusts and prospective investment trusts of information, whether to recipients of designated dividends or to other persons, including provision imposing a penalty not exceeding £3,000.
- (3) Regulations under this section may, in particular—
- (a) make provision applying enactments and instruments (with or without modification),
 - (b) make different provision for different cases or different purposes, and
 - (c) make incidental, consequential, supplementary or transitional provision.

- (4) Regulations under this section are to be made by statutory instrument.
- (5) A statutory instrument containing regulations under this section is subject to annulment in pursuance of a resolution of the House of Commons.
- (6) In this section—
- “company” has the same meaning as in section 842 of ICTA (investment trusts);
 - “investment trust” means an investment trust within the meaning of section 842(1) of ICTA;
 - “loan relationship” has the same meaning as in the Corporation Tax Acts (see section 302(1) and (2) of CTA 2009);
 - “prospective investment trust” means a company that—
 - (a) intends to seek approval under section 842 of ICTA (investment trusts), and
 - (b) has a reasonable belief that such approval will be obtained;
 - “specified” means specified in regulations under this section.

Insurance etc

46 Insurance companies

Schedule 23 contains provisions relating to insurance companies.

47 Equalisation reserves for Lloyd’s corporate and partnership members

- (1) The Treasury may by regulations provide for section 444BA of ICTA (equalisation reserves) to have effect, in such cases and subject to such modifications as may be specified in the regulations, in relation to equivalent Lloyd’s reserves as it has effect in relation to equalisation reserves maintained by virtue of equalisation reserves rules.
- (2) For this purpose a reserve is an equivalent Lloyd’s reserve if it is maintained by a corporate or partnership member for purposes, or in a manner, such as to make it equivalent to an equalisation reserve maintained by virtue of equalisation reserves rules.
- (3) The regulations may include—
- (a) provision having effect in relation to periods before they are made, and
 - (b) supplementary, incidental, consequential and transitional provision.
- (4) In this section—
- “corporate member” means a body corporate which is a member of Lloyd’s;
 - “equalisation reserves rules” has the same meaning as in section 444BA of ICTA (see subsection (11) of that section);
 - “member” means underwriting member;
 - “partnership member” means a limited partnership formed under the law of Scotland, or a limited liability partnership formed under the law of any part of the United Kingdom, which is a member of Lloyd’s.

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Simplification

48 Disguised interest

Schedule 24 contains provision about the corporation tax treatment of disguised interest.

49 Transfer of income streams

Schedule 25 contains provision about transfers of income streams.

50 SAYE schemes

- (1) Schedule 26 contains provision amending Chapter 4 of Part 6 of ITTOIA 2005 (SAYE interest).
- (2) The amendments made by that Schedule are treated as having come into force on 29 April 2009.

Residence and domicile

51 Remittance basis

Schedule 27 contains amendments about the remittance basis.

52 Exemption for certain non-domiciled persons

- (1) In Part 14 of ITA 2007 (income tax: miscellaneous rules), after Chapter 1 insert—

“CHAPTER 1A

EXEMPTION FOR PERSONS NOT DOMICILED IN UNITED KINGDOM

828A Introduction

This Chapter provides for an exemption from liability to income tax for an individual for a tax year if—

- (a) the individual is UK resident in the tax year but not domiciled in the United Kingdom in the tax year,
- (b) section 809B does not apply to the individual for the tax year, and
- (c) conditions A to F in section 828B are met.

828B Conditions to be met

- (1) Condition A is that in the tax year the individual has income from an employment the duties of which are performed wholly or partly in the United Kingdom.
- (2) Condition B is that, if the individual’s income for the tax year consists of or includes relevant foreign earnings—

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- (a) the amount of the relevant foreign earnings does not exceed £10,000, and
 - (b) all of that amount is subject to a foreign tax.
- (3) Condition C is that, if the individual's income for the tax year consists of or includes income that is relevant foreign income by virtue of section 830(2)(e) of ITTOIA 2005—
 - (a) the amount of that income does not exceed £100, and
 - (b) all of that amount is subject to a foreign tax.
- (4) Condition D is that the individual has no other foreign income and gains for the tax year.
- (5) Condition E is that the individual would not for the tax year be liable to income tax at a rate other than the basic rate or the starting rate for savings if this Chapter did not apply to the individual for the tax year.
- (6) Condition F is that the individual does not make a return under section 8 of TMA 1970 for the tax year.

828C The exemption

- (1) The exemption is given by deducting the relevant amount from what would otherwise be the amount of the individual's liability to income tax for the tax year under section 23.
- (2) "The relevant amount" is so much of the amount of the individual's liability to income tax as is attributable to the individual's foreign income or gains for the tax year.
- (3) But if for the tax year the individual's total income is reduced by any deductions which fall to be made at Step 3 of the calculation in section 23 from the individual's foreign income or gains for the tax year, subsection (2) has effect as if the individual's foreign income or gains for the tax year were reduced by the amount of the deductions.
- (4) And if the individual is entitled under—
 - (a) section 788 of ICTA (double taxation arrangements: relief by agreement), or
 - (b) section 790(1) of that Act (relief for foreign tax where no double taxation arrangements),to a tax reduction in respect of the individual's foreign income or gains for the tax year, what would otherwise be the relevant amount is reduced by the amount of that reduction.

828D Interpretation of Chapter

- (1) This section applies for the purposes of this Chapter.
- (2) "Employed" and "employment" have the same meaning as in the employment income Parts of ITEPA 2003: see Chapter 1 of Part 2 of that Act.

Status: This is the original version (as it was originally enacted).

- (3) “Foreign income and gains”, in relation to an individual, means what would be the individual’s foreign income and gains for the purposes of Chapter A1 of this Part if section 809B applied to the individual (see section 809Z7(2)).
 - (4) “Foreign tax” means any tax chargeable under the law of a territory outside the United Kingdom.
 - (5) “Relevant foreign earnings”, in relation to an individual, means what would be the individual’s relevant foreign earnings for the purposes of Chapter A1 of this Part if section 809B applied to the individual (see section 809Z7(3)).”
- (2) In section 2(14) of ITA 2007 (overview), after paragraph (a) insert—
- “(aa) exemption for persons not domiciled in United Kingdom (Chapter 1A),”.
- (3) The amendments made by this section have effect for the tax year 2008-09 and subsequent tax years.

Employment income

53 Taxable benefits: cars

Schedule 28 contains provision about taxable benefits arising from cars made available to employees etc by reason of employment.

54 Taxable benefit of cars: price of automatic car for disabled employee

- (1) Chapter 6 of Part 3 of ITEPA 2003 (taxable benefits: cars etc) is amended as follows.
- (2) In section 116(3) (meaning of when car is available), after “to section” insert “124A or”.
- (3) In section 121(1) (method of calculating cash equivalent of benefit of car), in step 1, for “124” substitute “124A”.
- (4) In section 122 (price of car), the existing provision becomes subsection (1) of that section and after that subsection insert—
 - “(2) This is subject to section 124A (automatic car for a disabled employee).”
- (5) After section 124 insert—

“124A Automatic car for a disabled employee

- (1) This section applies where—
 - (a) a car has automatic transmission (“the automatic car”),
 - (b) at any time in the year when the automatic car is available to the employee (“E”), E holds a disabled person’s badge, and
 - (c) by reason of E’s disability, E must, in the event of wanting to drive a car, drive a car which has automatic transmission.
- (2) If, under section 122 to 124, the price of the automatic car is more than it would have been if the automatic car had been an equivalent manual car, the price of the automatic car is to be the price of an equivalent manual car.

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- (3) In subsection (2) “an equivalent manual car” means a car which—
 - (a) is first registered at or about the same time as the automatic car, and
 - (b) does not have automatic transmission, but otherwise is the closest variant available of the make and model of the automatic car.
- (4) For the purposes of this section a car has automatic transmission if—
 - (a) the driver of the car is not provided with any means by which the driver may vary the gear ratio between the engine and the road wheels independently of the accelerator and the brakes, or
 - (b) the driver is provided with such means, but they do not include—
 - (i) a clutch pedal, or
 - (ii) a lever which the driver may operate manually.
- (5) For the purposes of this section a car is available to an employee at a particular time if it is then made available, by reason of the employment and without any transfer of the property in it, to the employee.”
- (6) The amendments made by this section have effect for the tax year 2009-10 and subsequent tax years.

55 Exemption of benefit consisting of health-screening or medical check-up

- (1) Part 4 of ITEPA 2003 (employment income: exemptions) is amended as follows.
- (2) In section 266(3) (exemption of non-cash vouchers for exempt benefits), omit the “or” at the end of paragraph (e) and insert at the end “or
 - (g) section 320B (health screening and medical check-ups).”
- (3) In section 267(2) (exemption of credit-tokens used for exempt benefits), omit the “and” at the end of paragraph (g) and insert at the end “and
 - (i) section 320B (health screening and medical check-ups).”
- (4) After section 320A insert—

“Health-screening and medical check-ups

320B Health-screening and medical check-ups

- (1) No liability to income tax arises in respect of the provision for an employee, on behalf of an employer, of a health-screening assessment or a medical check-up.
- (2) Subsection (1) does not apply—
 - (a) to more than one health-screening assessment provided in a tax year by any one employer or by any of a number of persons who are employers of the employee at the same time, or
 - (b) to more than one medical check-up so provided.
- (3) In this section—
 - “health-screening assessment” means an assessment to identify employees who might be at particular risk of ill-health, and

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“medical check-up” means a physical examination of the employee by a health professional for (and only for) determining the employee’s state of health.”

- (5) The amendments made by this section have effect for the tax year 2009-10 and subsequent tax years.

56 MEPs' pay, allowances and pensions under European Parliament Statute

- (1) Part 18 of ICTA (double tax relief) has effect as if tax for the benefit of the Communities payable in respect of any income under—
- (a) Articles 9.1 and 10 (salaries),
 - (b) Article 13 (transitional allowances), or
 - (c) Article 14, 15 or 17 (pensions for old-age, incapacity and survivors),
- of the Statute for Members of the European Parliament (2005/684/EC, Euratom) were payable under the law of a territory outside the United Kingdom.
- (2) In section 291(2)(c) of ITEPA 2003 (termination payments under section 3 of European Parliament (Pay and Pensions) Act 1979), insert at the end “or under Article 13 of the Statute for Members of the European Parliament (transitional allowances),”.
- (3) This section has effect for the tax year 2009-10 and subsequent tax years.

Double taxation

57 Tax underlying dividends

- (1) In section 799(1A) of ICTA (computation of foreign tax on dividends), for “in force when the dividend was paid” substitute “applicable to profits of the company by which the dividend is received for the accounting period in which it is received or, where there is more than one such rate, the average rate over the whole of that accounting period”.
- (2) Section 801 of ICTA (dividends paid between related companies) is amended as follows.
- (3) In subsection (2), after “had been paid” insert “(at the time when the dividend mentioned in subsection (1) above is received)”.
- (4) In the version of section 799(1A) set out in subsection (2B), for “in force when the dividend was paid” substitute “applicable to profits of the company by which the dividend is received for the accounting period in which it is received or, where there is more than one such rate, the average rate over the whole of that accounting period”.
- (5) The amendment made by subsection (3) has effect in relation to dividends paid to a company falling within section 801(1A) of ICTA if they are paid on or after 22 April 2009.
- (6) The other amendments made by this section have effect in relation to dividends paid on or after 1 April 2008.

58 Manufactured overseas dividends

Schedule 29 contains provision about the amount of overseas tax treated as withheld in relation to certain manufactured overseas dividends.

59 Payments by reference to foreign tax etc

(1) Part 18 of ICTA (double taxation relief) is amended as follows.

(2) Before section 805 insert—

“804G Reduction in credit: payment by reference to foreign tax

(1) This section applies if—

- (a) credit for foreign tax falls to be allowed to a person (“P”) under any arrangements, and
- (b) a payment is made by a tax authority to P, or any person connected with P, by reference to the foreign tax.

(2) The amount of that credit is to be reduced by an amount equal to that payment.

(3) Section 839 applies for the purposes of determining whether or not a person is connected with P.”

(3) Section 806 (time limit for claims etc) is amended as follows.

(4) In subsection (2)—

- (a) after “arrangements” insert “is reduced under section 804G, or”,
- (b) for “to which the adjustment gives rise” substitute “to which the reduction or adjustment gives rise”, and
- (c) for “all such assessments, adjustments” substitute “all such assessments, reductions, adjustments”.

(5) In subsection (3)—

- (a) in paragraph (b), after “subsequently” insert “reduced under section 804G or”, and
- (b) in the words after paragraph (b), after “Board that” insert “a reduction has been made or that”.

(6) In subsections (4) and (5), for “the adjustment” substitute “the reduction or adjustment”.

(7) In subsection (6)—

- (a) for “any adjustment” substitute “any reduction or adjustment”, and
- (b) after “allowed” insert “has been reduced or”.

(8) Section 811 (deduction for foreign tax where no credit allowable) is amended as follows.

(9) After subsection (3) insert—

“(3A) If—

- (a) income of any person (“P”) is treated under subsection (1) as reduced by a sum paid in respect of tax on that income in the place where the income has arisen (“foreign tax”), and

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- (b) a payment is made by a tax authority to P, or any person connected with P, by reference to the foreign tax,
the amount of P's income is to be increased by an amount equal to the payment made to P or the connected person.
- (3B) Section 839 applies for the purposes of determining whether or not a person is connected with P.”
- (10) In subsection (4)—
- (a) before “nothing” insert “or the amount of P's income is increased under subsection (3A),”,
 - (b) for “adjustment gives rise” substitute “adjustment or increase gives rise”,
 - (c) for “all such assessments, adjustments” substitute “all such assessments, adjustments, increases”, and
 - (d) insert at the end “or increase under subsection (3A) falls to be made”.
- (11) In subsection (5)—
- (a) in paragraph (b), after “United Kingdom” insert “or an increase under subsection (3A)”, and
 - (b) in the words after paragraph (b), after “adjustment” insert “or increase”.
- (12) In subsections (6), (7) and (8), after “adjustment” insert “or increase”.
- (13) The amendments made by this section have effect in relation to payments made on or after 22 April 2009.

60 Anti-fragmentation

- (1) Part 18 of ICTA (double taxation relief) is amended as follows.
- (2) In section 798A (section 797: trade income), after subsection (3) insert—
- “(3A) Subsection (3) is subject to subsection (3B) if—
- (a) the taxpayer is a bank or a company connected with a bank, and
 - (b) the amount of the included funding costs is significantly less than the amount of the notional funding costs.
- (3B) The amount of the notional funding costs is to be included in the subsection (3) total, but only to the extent that it exceeds the amount of the included funding costs.
- (3C) In subsections (3A) and (3B) and this subsection—
- “bank” has the meaning given by section 840A;
 - “connected” has the meaning given by section 839;
 - “included funding costs” means the total of the funding costs that are—
- (a) incurred by the taxpayer, or any company connected with the taxpayer, in respect of capital used to fund the relevant transaction, and
 - (b) included in the subsection (3) total (before the application of subsection (3B));
- “notional funding costs” means the funding costs that the relevant bank would incur (on the basis of its average funding costs) in respect

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of the capital that would be needed to wholly fund the relevant transaction if that transaction were funded in that way (and for this purpose “relevant bank” means the bank that is the taxpayer, or with which the taxpayer is connected);

“relevant transaction” means the transaction, arrangement or asset from which the income or gain arises;

“subsection (3) total” means the amount to be taken into account under subsection (3) for the purposes of section 797(1).”

(3) Section 798B (section 798A: special cases), after subsection (4) insert—

“(4A) Income of a person (“D”) is to be treated for the purposes of section 798A as trade income (if it is not otherwise trade income) of D in a case where—

- (a) the income is received by D as part of a scheme or arrangement entered into by D and a connected person (“C”),
- (b) if C had received the income, it would be reasonable to assume that it would be trade income of C, and
- (c) a main purpose of the scheme or arrangement is to produce the result that section 798A will not have effect in relation to the income because it is received by D.

(4B) For the purposes of subsection (4A)(b) it is to be assumed that, in the case of any relevant transaction to which a relevant person is a party, C were that party to that transaction.

(4C) In subsections (4A) and (4B) and this subsection—

“connected person” means a person with whom D is connected (within the meaning of section 839);

“relevant person” means—

- (a) D, or
- (b) any other connected person who is a party to the scheme or arrangement;

“relevant transaction” means any of the transactions giving rise to the income.”

(4) The amendments made by this section have effect in relation to a credit for foreign tax which relates to—

- (a) a payment of foreign tax on or after 22 April 2009, or
- (b) income received on or after that date in respect of which foreign tax has been deducted at source.

Miscellaneous anti-avoidance provisions

61 Financial arrangements avoidance

Schedule 30 contains provision to counter avoidance involving financial arrangements.

62 Transfers of trade to obtain terminal loss relief

(1) In section 393A of ICTA (set off of losses against profits of same or earlier accounting period), after subsection (2D) insert—

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“(2E) But subsection (2A) above does not apply by reason of a company ceasing to carry on a trade if—

- (a) on the company ceasing to carry on the trade, any of the activities of the trade begin to be carried on by a person who is not (or by persons any or all of whom are not) within the charge to corporation tax, and
- (b) the company’s ceasing to carry on the trade is part of a scheme or arrangement the main purpose, or one of the main purposes, of which is to secure that subsection (2A) above applies to a loss by reason of the cessation.”

(2) The amendment made by subsection (1) has effect in relation to cessations of a trade on or after 21 May 2009.

63 Sale of lessor companies etc: anti-avoidance

Schedule 31 contains provision amending Schedule 10 to FA 2006 (sale of lessor companies etc) to prevent avoidance.

64 Leases of plant or machinery

Schedule 32 contains provision about leases of plant or machinery.

65 Long funding leases of films

Schedule 33 contains provision about long funding leases of films.

66 Real Estate Investment Trusts

Schedule 34 contains provision about Real Estate Investment Trusts.

67 Deductions for employee liabilities

(1) ITEPA 2003 is amended as follows.

(2) In section 346 (deduction for employee liabilities), after subsection (2) insert—

“(2A) Nor is a deduction allowed for a payment which falls within paragraph A, B or C if the payment is made in pursuance of arrangements the main purpose, or one of the main purposes, of which is the avoidance of tax.”

(3) After section 556 insert—

“556A Deductible payments made pursuant to tax avoidance arrangements

No deduction may be made under section 555 if the deductible payment is made in pursuance of arrangements the main purpose, or one of the main purposes, of which is the avoidance of tax.”

(4) The amendments made by this section have effect in relation to payments made on or after 12 January 2009 (irrespective of when the arrangements are made).

68 Employment loss relief

- (1) In section 128 of ITA 2007 (employment loss relief against general income), after subsection (5) insert—

“(5A) No claim may be made in respect of the loss if and to the extent that it is made as a result of anything done in pursuance of arrangements the main purpose, or one of the main purposes, of which is the avoidance of tax.”

- (2) The amendment made by subsection (1)—

- (a) has effect in relation to a loss made in the tax year 2009-10 or a subsequent tax year, and
- (b) has effect in relation to a loss made in the tax year 2008-09 if or to the extent that it is occasioned by an act or omission occurring on or after 12 January 2009.

- (3) Where a person has made a claim under section 128 of ITA 2007 during the relevant period, no penalty is payable by the person on the ground that any return, statement or declaration made in connection with the claim contained an inaccuracy if it would not have done so but for the amendment made by subsection (1).

For this purpose “the relevant period” is the period—

- (a) beginning with 12 January 2009, and
- (b) ending with 1 April 2009.

- (4) Subsection (2) of section 59C of TMA 1970 (surcharge on unpaid tax) has effect in relation to tax which would not be payable but for the amendment made by subsection (1) as if the reference in that subsection to the due date were to the later of 1 April 2009 and the due date.

69 No loss relief for losses from contracts for life insurance etc

- (1) In section 152(8) of ITA 2007 (losses from miscellaneous transactions: cases that are not “section 1016 income”), after “ICTA” insert “or Chapter 9 of Part 4 of ITTOIA 2005”.

- (2) The amendment made by subsection (1) has effect in relation to losses made in the tax year 2009-10 or a subsequent tax year.

- (3) That amendment also has effect for the tax year 2008-09 in relation to a loss arising to a person under a policy of life insurance, a contract for a life annuity or a contract constituting a capital redemption policy if—

- (a) the policy is issued in respect of an insurance made, or the contract is made, on or after 1 April 2009,
- (b) the policy or contract is varied on or after that date so as to increase the benefits secured (any exercise of rights conferred by the policy or contract being regarded for this purpose as a variation),
- (c) there is an assignment (or assignation) to the person (whether or not for money or money’s worth) on or after that date of the rights, or a share of the rights, conferred by the policy or contract, or
- (d) all or part of the rights conferred by the policy or contract become held on or after that date as a security for a debt of the person.

- (4) Where—

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- (a) a person has made a claim under section 152 of ITA 2007 for the tax year 2008-09 or an earlier tax year in respect of a loss, and
 - (b) by virtue of the amendment made by subsection (1) no claim could have been made in respect of the loss had it been made in the tax year 2009-10,
- no deduction may be made for the tax year 2009-10 or a subsequent tax year in accordance with step 2 or 3 in section 153 of ITA 2007 in respect of the loss.

70 Intangible fixed assets and goodwill

- (1) Part 8 of CTA 2009 (intangible fixed assets) is amended as follows.
- (2) In section 712(1) (meaning of “intangible asset”), insert at the end “(and includes an internally-generated intangible asset)”.
- (3) In section 715 (application of Part 8 to goodwill)—
 - (a) in subsection (3), insert at the end “(and includes internally-generated goodwill)”, and
 - (b) insert at the end—
 - “(4) For the purposes of this Part, goodwill is treated as created in the course of carrying on the business in question.”
- (4) In section 883 (assets treated as created or acquired when expenditure incurred)—
 - (a) in subsection (1), for paragraph (b) substitute—
 - “(b) has effect subject to the provisions specified in subsection (2).”
 - (b) in subsection (2)(a), omit “internally-generated”,
 - (c) in subsection (2)(b), for “certain other internally-generated assets” substitute “assets representing non-qualifying expenditure”, and
 - (d) in subsection (3), omit “to which this section applies”.
- (5) In section 884 (internally-generated goodwill: time of creation)—
 - (a) omit “internally-generated”,
 - (b) for the words from “before” to the end substitute “—
 - (a) before (and not on or after) 1 April 2002 in a case in which the business in question was carried on at any time before that date by the company or a related party, and
 - (b) on or after 1 April 2002 in any other case.”, and
 - (c) in the heading, omit “**Internally-generated**”.
- (6) In section 885 (certain other internally-generated assets: time of creation)—
 - (a) in subsection (1)(b), omit “internally-generated”,
 - (b) in subsection (7), for the words from “before” to the end substitute “—
 - (a) before (and not on or after) 1 April 2002 in a case in which the asset in question was held at any time before that date by the company or a related party, and
 - (b) on or after 1 April 2002 in any other case.”, and
 - (c) in the heading, for “**Certain other internally-generated assets**” substitute “**Assets representing non-qualifying expenditure**”.

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- (7) The amendments made by this section have effect in relation to accounting periods beginning on or after 22 April 2009 (and, in relation to those accounting periods, are to be treated as always having had effect).
- (8) For the purposes of subsection (7) an accounting period beginning before, and ending on or after, 22 April 2009 is to be treated as if so much of the period as falls before that date, and so much of the period as falls on or after that date, were separate accounting periods.

71 Taxable benefit of living accommodation: lease premiums

- (1) Chapter 5 of Part 3 of ITEPA 2003 (taxable benefits: living accommodation) is amended as follows.
- (2) In section 105 (cash equivalent: cost of accommodation not over £75,000)—
 - (a) in subsection (3), after “is” insert “(subject to subsections (4) and (4A))”, and
 - (b) for subsection (4) substitute—
 - “(4) Subsection (4A) applies where—
 - (a) a rental amount is payable by the person (“P”) at whose cost the accommodation is provided in respect of the whole or part of the taxable period (“the relevant period”), and
 - (b) the amount so payable is payable at an annual rate greater than the annual value.
 - (4A) Where this subsection applies—
 - (a) subsection (3) does not apply to the relevant period, and
 - (b) instead the “rental value of the accommodation” for the relevant period is the rental amount payable by P in respect of the relevant period.
 - (4B) A reference in subsection (4) or (4A) to a rental amount payable by P in respect of the relevant period is to the sum of—
 - (a) any rent for the period payable by P, and
 - (b) any amount attributed to the period in respect of a lease premium (see sections 105A and 105B).”
- (3) After that section insert—

“105A Lease premiums

- (1) For the purposes of section 105(4B)(b) an amount is attributed to the relevant period “in respect of a lease premium” if—
 - (a) the property consists of premises, or a part of premises, that are subject to a lease,
 - (b) the premises are not mainly used by P for a purpose other than the provision of living accommodation to which this Chapter applies,
 - (c) the lease is for a term of 10 years or less, and
 - (d) the net amount payable by P in relation to the lease by way of lease premium is greater than zero.
- (2) The amount so attributed is—

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$$\frac{A}{B} \times C$$

where—

A is the relevant period (in days),

B is the term of the lease (in days), and

C is the net amount payable by P in relation to the lease by way of lease premium.

- (3) For provision about the application of this section in relation to certain leases with break clauses, see section 105B.
- (4) For the purposes of this section the net amount payable by P in relation to a lease by way of lease premium is—
 - (a) the total amount (if any) that has been paid, or is or will become payable, by P in relation to the lease by way of lease premium, less
 - (b) any amount within paragraph (a) that has been repaid or is or will become repayable.
- (5) In this section and section 105B “lease premium” means any premium payable—
 - (a) under a lease, or
 - (b) otherwise under the terms on which a lease is granted.
- (6) In the application of this section to Scotland “premium” includes a grassum.

105B Lease premiums in the case of leases with break clauses

- (1) This section applies to a lease (“the original lease”) that contains one or more relevant break clauses.
- (2) For the purposes of this section—
 - (a) “break clause” means a provision of a lease that gives a person a right to terminate it so that its term is shorter than it otherwise would be, and
 - (b) a break clause contained in the original lease is “relevant” if the right to terminate the lease that it confers is capable of being exercised in such a way that the term of the original lease is 10 years or less.
- (3) For the purposes of section 105A—
 - (a) the term of the original lease, and
 - (b) the net amount payable by P in relation to the lease by way of lease premium,
 are to be determined on the assumption that any relevant break clause is exercised in such a way that the term of the lease is as short as possible.
- (4) If a relevant break clause is not in fact exercised in such a way that the term of the original lease is as short as possible, the parties to the lease are treated for the purposes of section 105A as if they were parties to another lease (a “notional lease”) the term of which—

- (a) begins immediately after the time at which the term of the original lease would have ended, if that break clause had been so exercised, and
- (b) ends at the time mentioned in subsection (5).
- (5) The term of a notional lease ends—
- (a) at the time the term of the original lease would end, on the assumption that any relevant break clause that is exercisable only after the beginning of the term of the notional lease is exercised in such a way that the term of the original lease is as short as possible, or
- (b) if earlier, the tenth anniversary of the beginning of the term of the original lease.
- (6) For the purposes of section 105A the net amount payable by P in relation to a notional lease by way of lease premium is, in the case of a notional lease the term of which ends under paragraph (a) of subsection (5)—
- (a) the net amount that would be payable by P in relation to the original lease by way of lease premium on the assumption mentioned in that paragraph, less
- (b) any part of that amount that has already been attributed to a period in respect of a lease premium under section 105(4B)(b).
- (7) For the purposes of section 105A the net amount payable by P in relation to a notional lease by way of lease premium is, in the case of a notional lease the term of which ends under paragraph (b) of subsection (5), the relevant proportion of—
- (a) the net amount that would be payable by P in relation to the original lease by way of lease premium, on the assumption that no break clause is exercised, less
- (b) any part of that amount that has already been attributed to a period in respect of a lease premium under section 105(4B)(b).
- (8) In subsection (7) “the relevant proportion” means—
- $$\frac{D}{E}$$
- where—
- D is the term of the notional lease (in days), and
- E is the sum of—
- (a) the term of the notional lease (in days), and
- (b) the number of days by which the term of the original lease would exceed 10 years, on the assumption that no break clause is exercised.”
- (4) The amendments made by this section have effect in relation to—
- (a) any lease entered into on or after 22 April 2009, and
- (b) subject to subsection (5), any lease entered into before that date the term of which is extended on or after that date.
- (5) In relation to a lease of the kind mentioned in subsection (4)(b) the amendments made by this section have effect—

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- (a) as if the additional term of the lease created by the extension were the whole of the term of the lease, and
 - (b) ignoring any lease premium payable in respect of the unextended term of the lease.
- (6) In this section “lease premium” has the same meaning as in sections 105A and 105B of ITEPA 2003.