

*These notes refer to the Corporation Tax Act 2009
(c.4) which received Royal Assent on 26 March 2009*

CORPORATION TAX ACT 2009

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Schedule 1: Minor and consequential amendments

Part 2: Other enactments

TMA

Section 12AE of TMA

3464. This Act legislates the “Crown Option”. So this section is not needed and is repealed. See *Change 55* in Annex 1.

Section 19(2) of TMA

3465. This subsection is obsolete because sections 34 to 36 of ICTA have not charged sums under Schedule D Case VI since 1 April 1998.

Section 31(3) of TMA

3466. This Act legislates the “Crown Option”. So this section is not needed and is repealed. See *Change 55* in Annex 1.

Section 42(7) of TMA

3467. A number of trading income rules which require a claim in the source legislation are rewritten without that requirement. As a consequence the references in this section to claims under sections 84, 91B and 101(2) of ICTA and section 43(5) of FA 1989 are removed without replacement. See *Changes 28, 38, 39 and 68* in Annex 1.

Section 109A of TMA

3468. The residence rules in section 66 of FA 1988 and section 249 of FA 1994 apply for the purposes of the Taxes Acts as defined in section 118 of TMA. This Act rewrites those rules for the purposes of the Corporation Tax Acts (Chapter 3 of Part 2). Because the Corporation Tax Acts are defined more narrowly (Schedule 1 to the Interpretation Act 1978) than the Taxes Acts, this new section is introduced into TMA to apply to that Act the rules given in Chapter 3 of Part 2.

IHTA

Section 91 of IHTA

3469. Section 91 of IHTA currently refers to Part 16 of ICTA for the meaning of “charges on residue”. This term is not rewritten in this Act and therefore the meaning is inserted into section 91 of IHTA. See the commentary on section 947.

FA 1988

Paragraph 3(1) of Schedule 12 to FA 1988

3470. This Schedule deals with the change of status of building societies. The rule in this paragraph prevents the change of status from being a discontinuance of the building society's trade for the purposes of CAA.
3471. The main rules about what is a discontinuance for the purposes of CAA are in section 577 of CAA (and sections 558 and 559 deal with, respectively, partnership changes and successions). This Act is drafted on the basis of a company starting or ceasing to carry on a trade etc, rather than on the basis of a trade etc commencing or being discontinued. So section 337(1)(a) of ICTA is not specially rewritten and there is no longer any rule that *treats* any event as the equivalent of the setting up, commencement or discontinuance of a trade etc. It follows that paragraph 3(1) of Schedule 12 to FA 1988 is no longer needed and this Act repeals it.

TCGA

Section 59 of TCGA

3472. This section is amended to rewrite section 115(5) to (5C) of ICTA so far as it applies to chargeable gains of a company. The addition of the words "so far as providing for that relief" make clear that the rule (for both capital gains tax and corporation tax) goes no further than removing any exemption for chargeable gains in a double taxation arrangement. See *Change 87* in Annex 1.

Sections 116A and 116B of TCGA

3473. These amendments insert two new provisions rewriting section 91G(1) of, and (2) and paragraph 5 of Schedule 10 to, FA 1996 respectively. These two provisions within the loan relationships regime (Chapter 2 of Part 4 of FA 1996) are, in essence, capital gains provisions.

Sections 151E to 151G of TCGA

3474. These amendments insert new provisions which rewrite parts of both the loan relationships regime (Chapter 2 of Part 4 of FA 1996) and the rules on alternative finance arrangements in FA 2005 (rewritten as part of the loan relationships regime in Part 6 of the Act). These provisions are, in essence, capital gains provisions.
3475. Section 151E, which rewrites section 84A(8) of FA 1996, is to be repealed from an appointed day (see Part 8 (loan relationships) of Schedule 2).

Sections 156ZA and 156ZB of TCGA

3476. These amendments insert new provisions which rewrite those parts of the intangible assets regime in Schedule 29 to FA 2002 which are, in essence, capital gains provisions.
3477. This includes those parts of paragraph 132 of Schedule 29 to FA 2002 which have permanent effect. Paragraph 132(2) to (4) provides rules of transition dealing only with a temporary overlap of the capital gains and intangible fixed assets regimes (unless there is an extension under section 152(3) of TCGA of the time limit) and can never be relevant to disposals after 31 March 2003. So they are not rewritten.

Section 158 of TCGA

3478. This Act is drafted on the basis of a company starting or ceasing to carry on a trade etc, rather than on the basis of a trade etc commencing or being discontinued. So section 337(1)(a) of ICTA is not specially rewritten and there is no longer any rule that requires an event to be *regarded* as the equivalent of the setting up, commencement

or discontinuance of a trade etc. It follows that the closing words of section 158(2) of TCGA are no longer needed and this Act omits them.

Section 286A of TCGA

3479. The residence rules in section 66 of FA 1988 and section 249 of FA 1994 apply for the purposes of the Taxes Acts as defined in section 118 of TMA. This Act rewrites those rules for the purposes of the Corporation Tax Acts (Chapter 3 of Part 2). Because the Corporation Tax Acts are defined more narrowly (Schedule 1 to the Interpretation Act 1978) than the Taxes Acts, this new section is introduced into TCGA to apply to that Act the rules given in Chapter 3 of Part 2.

FA 1995

Section 126 of FA 1995

3480. This section no longer applies for corporation tax purposes, following the amendment of it by FA 2003 and the enactment of the scheme of corporation tax for non-UK resident companies. In subsection (7A)(b) the reference to section 114 of ICTA would need amendment but the whole of paragraph (b) is no longer needed and so is repealed by this Act.

Section 127 of FA 1995

3481. This amendment is a consequence of removing the term “profit share return” from the provisions covering alternative finance arrangements. Refer to the commentary on section 513. Sub-paragraph (ca) is amended to include what is currently profit share return under section 49A of FA 2005 and sub-paragraph (cb) can be omitted.

FA 1998

Paragraph 84 of Schedule 18 to FA 1998

3482. Paragraph 84 of Schedule 18 to FA 1998 makes administrative provision for HMRC to operate the “Crown Option” under which they may determine which Case of Schedule D applies if an item falls within more than one Case of that Schedule.

3483. This Act provides priority rules for all such possible overlaps (see, for example, section 982 (provisions which must be given priority over Part 10)). These reflect how the Crown Option is applied. So the administrative provisions in paragraph 84 of Schedule 18 to FA 1998 are redundant. See *Change 55* in Annex 1.

FA 1999

Section 63 of FA 1999

3484. Section 63 of FA 1999 provides transitional relief to mitigate the effect on football and other sports clubs of new accounting standards for the treatment of intangible assets.

3485. Section 63 of FA 1999 applies only to contracts entered into before the beginning of the first accounting period in which a club adopts the new accounting standards. The new accounting rules are effective for accounting periods ending on or after 23 December 1998. So section 63 applies only to contracts entered into before 24 December 1999.

3486. It is unlikely that any contract entered into before 24 December 1999 is still in force when this Act comes into effect. So section 63 of FA 1999 is considered to be redundant. See *Change 103* in Annex 1.

FA 2000

Section 46 of FA 2000

3487. The amendments to this section include those needed to replace the references to Schedule D Case I or VI, as a result of the omission by this Act of the Schedules and the cases of Schedule D. The reference to section 834A of ICTA is to the provision inserted by this Schedule.
3488. A number of the references in subsection (2A) have been omitted as unnecessary. These are not within the provisions listed in section 834A of ICTA to which subsection (2) now refers. But they are not in fact relevant to the exemption in this section, which applies to income “applied solely for the purposes of the charitable company” (subsection (3)). The omitted references all provide for a recovery of tax or similar charge and therefore do not represent income of the charity that could be so applied.

CAA

Sections 108, 112, 115, 263 265, 559 and 577 of CAA

3489. This Act is drafted on the basis of a company starting or ceasing to carry on a trade etc, rather than on the basis of a trade etc commencing or being discontinued. The amendments to these sections reflect this change of approach. See *Change 104* in Annex 1.

FA 2002

Paragraph 141 of Schedule 29 to FA 2002

3490. Paragraph 141 of Schedule 29 to FA 2002 is not rewritten. Paragraph 141(2) provides that references in Schedule 29 to the Inland Revenue are, subject to stated exceptions, references to any officer of the Board. The exceptions mentioned in paragraph 141(1) are in relation to the discretionary extension of the time limits for group relief under Part 6 of Schedule 29 and for reinvestment relief under Part 7 of Schedule 29 and in relation to clearance applications in respect of specified provisions in Part 11 of Schedule 29. In the case of these exceptions “Inland Revenue” means the Board. Matters to be dealt with by the Board are traditionally those requiring the exercise of judgement and discretion in particularly sensitive areas. The “Board” here is stated to mean the Commissioners for Inland Revenue reflecting directly the defined usage of terms in section 1(1) of TMA.
3491. Paragraph 141 of Schedule 29 to FA 2002 provides a way for Schedule 29 to make the necessary references to Revenue officers while preserving the distinction between functions that could be performed at an “ordinary” level in the department and those that could not. The terminology has however been overtaken by the creation of HMRC and the provisions of CRCA. If paragraph 141 were rewritten, it would be necessary to translate there the references to “Board”, “Inland Revenue” and “Commissioners for Inland Revenue” into the post-CRCA equivalents while preserving the “special treatment” in respect of the provisions referred to in paragraph 141(1).
3492. However this is not necessary. A general interpretative provision is appropriate when the intangible fixed assets rules are set out in a separate Finance Act Schedule. But in this Act, these rules are part of the main body of the corporation tax rules. So the appropriate post-CRCA term is simply inserted into each provision.
3493. For intended references to “any officer of the Board” under the general rule in paragraph 141(2) of Schedule 29 to FA 2002, the post-CRCA term is “any officer of Revenue and Customs” (section 50(1) of CRCA).
3494. For intended references to the “Commissioners for Inland Revenue” under the specific rule in paragraph 141(1) and (3) of Schedule 29 to FA 2002, the post CRCA term is the

“Commissioners for Her Majesty’s Revenue and Customs” (sections 1(1) and 50(1) of CRCA). However, as explained in the notes relating to the sections involved, changes are proposed in respect of paragraph 35(2) of Schedule 29 to FA 2002 (rewritten as section 753(2)) and paragraph 39(1)(a) of Schedule 29 to FA 2002 (rewritten as section 756(1)) to reflect the fact that the power attributed there to the Commissioners for HMRC is, in practice, exercised by an officer of HMRC (see also *Change 1* in Annex 1).

3495. It is not necessary to rewrite the final sentence in paragraph 141(1) of Schedule 29 to FA 2002 which refers to the authority to delegate Board’s functions. Under section 13 of CRCA practically all functions of the Commissioners are stated to be delegable to an officer of the Department. The established rewrite approach to denoting a function as proper to the Commissioners for HMRC is to leave section 13 of CRCA to spell out that it need not be carried out by the Commissioners personally.

Energy Act 2004

Sections 28 and 44 of the Energy Act 2004

3496. The reference to section 834A of ICTA is to the provision inserted by this Schedule.

ITTOIA

Section 48 of ITTOIA

3497. Section 48 of ITTOIA restricts the amount which can be deducted in calculating the profits of a trade for income tax purposes in respect of the cost of the hire of a car or motor cycle with a retail price (when new) of more than £12,000 other than “a qualifying hire car or motor cycle”.
3498. The amendments in this paragraph remedy two errors in section 48 of ITTOIA.
3499. Section 578A(4) of ICTA restricts a recovery charge if *any* deduction has been restricted under section 578A(3). Section 48(3) of ITTOIA deals only with a previous restriction under section 48(2). The amendment extends the restriction on the recovery charge to cases where the original restriction was made to any other deduction.
3500. Section 48(4) of ITTOIA refers to a “rebate or release” but neither paragraph of the subsection deals with a rebate. The amendment to paragraph (a) ensures that the subsection applies to rebates as well as to releases of debts.
3501. See *Change 83* in Annex 1.

Section 49 of ITTOIA

3502. Section 48 of ITTOIA restricts the amount which can be deducted in calculating the profits of a trade for income tax purposes in respect of the cost of the hire of a car or motor cycle with a retail price (when new) of more than £12,000 other than “a qualifying hire car or motor cycle”.
3503. This amendment remedies a small omission in the definition in section 49 of ITTOIA of “qualifying hire car” for the purpose of section 48 of ITTOIA. See *Change 105* in Annex 1.

Sections 79, 79A and 80 of ITTOIA

3504. These amendments clarify the operation of ITTOIA in cases where there is a change in the persons carrying on a trade etc. See *Change 17* in Annex 1.

Sections 155 of ITTOIA

3505. This amendment allows as a deduction all levies and costs under FISMA. See *Change 22* in Annex 1.

Sections 175 to 184 of ITTOIA

3506. These amendments cater for the possibilities that trading stock is transferred to a person carrying on a profession or vocation or that work in progress is transferred to a person carrying on trade. See *Change 39* in Annex 1.

Section 303 of ITTOIA

3507. This amends Rule 1 in section 303 of ITTOIA so that the rule remains the same for income tax as it is for corporation tax. See *Change 50* in Annex 1.

Section 860 of ITTOIA

3508. This amendment makes clear that the section applies to property businesses. See *Change 88* in Annex 1.

Section 749A of ITTOIA

3509. Section 749A of ITTOIA rewrites section 826(5) of ICTA which was overlooked in the preparation of ITTOIA. It exempts from income tax interest on corporation tax repayments.

Sections 861 and 862 of ITTOIA

3510. These amendments make clear how the rules about spreading receipts from the sale of patent rights apply when there is a change in persons carrying on a trade. See *Change 89* in Annex 1.

FA 2005

Section 49(2) of FA 2005

3511. This amendment is a consequence of replacing the term “profit share return” with “alternative finance return”. Refer to the commentary on section 513. Amendments for the same reason are also required for sections 49A, 51, 52, 56 and 57 of FA 2005.

FA 2006

Sections 46 and 47 of FA 2006

3512. The provisions about film production companies, film tax relief and supporting definitions in sections 31 to 36 of FA 2006 are rewritten. Those definitions are repealed along with the other provisions that are rewritten. But since those FA 2006 definitions also apply for the purposes of sections 46 and 47 of FA 2006 (withdrawal of existing reliefs), this amendment ensures that the rewritten definitions apply for the purposes of sections 46 and 47 of FA 2006.

Section 121 of FA 2006

3513. Section 114(1)(a) of ICTA does not apply to payments received by companies carrying on a trade etc in partnership. So subsection (4) of this section is repealed. See *Change 85* in Annex 1.

Paragraph 28 of Schedule 10 to FA 2006

3514. This paragraph determines a company's share in the profits or losses of a business. Sub-paragraph (2) refers to section 114(2) of ICTA. That reference is replaced by one to section 1262 of this Act.
3515. [Sections 1263](#) and [1264](#) legislate a non-statutory practice (see *Change 86* in Annex 1). The rules in those sections would not have been taken into account for the purposes of Schedule 10 to FA 2006. So they are excluded by the amendment.
3516. The reference in sub-paragraph (2)(b) to a share in capital allowances and balancing charges has no effect because such allowances and charges are taken into account in calculating the profits or losses of the business. So paragraph (b) is not reproduced in the amendment.

ITA

Section 835A of ITA

3517. The residence rules in section 66 of FA 1988 and section 249 of FA 1994 apply for the purposes of the Taxes Acts as defined in section 118 of TMA. This Act rewrites those rules for the purposes of the Corporation Tax Acts (Chapter 3 of Part 2). Because the Corporation Tax Acts are defined more narrowly (Schedule 1 to the Interpretation Act 1978) than the Taxes Acts, this new section is introduced into ITA to apply the rules given in Chapter 3 of Part 2 for the purposes of income tax.