Corporation Tax Act 2010

2010 CHAPTER 4

PART 1

INTRODUCTION

1 Overview of Act

(1) Part 2 is about calculation of the corporation tax chargeable on a company's profits, in particular—

(a) the rates at which corporation tax on profits is charged (see Chapter 2),

(b) ascertaining the amount of profits to which the rates of tax are applied (see Chapter 3), and

(c) the currency in which profits are to be calculated and expressed (see Chapter 4).

(2) Parts 3 to 7 make provision for the following reliefs—

(a) relief for companies with small profits (see Part 3),

(b) relief for trade losses (see Chapters 2 and 3 of Part 4),

(c) relief for losses from property businesses (see Chapter 4 of Part 4),

(d) relief for losses on a disposal of shares (see Chapter 5 of Part 4),

(e) relief for losses from miscellaneous transactions (see Chapter 6 of Part 4),

(f) group relief (see Part 5),

(g) relief for qualifying charitable donations (see Part 6), and

(h) community investment tax relief (see Part 7).

(3) Parts 8 to 13 make provision about special types of business and company etc, in particular—

(a) oil activities (see Part 8),

[[F1](aa) oil contractor activities (see Part 8ZA),

(ab) profits arising from the exploitation of patents etc (see Part 8A),**]**

(b) leasing plant or machinery (see Part 9),

(c) close companies (see Part 10),

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(d) charitable companies etc (see Part 11),
(e) Real Estate Investment Trusts (see Part 12),
(f) corporate beneficiaries under trusts (see Chapter 1 of Part 13),
(g) open-ended investment companies, authorised unit trusts and court investment funds (see Chapter 2 of Part 13),
(h) unauthorised unit trusts (see Chapter 3 of Part 13),
(i) securitisation companies (see Chapter 4 of Part 13),
(j) companies in liquidation or administration (see Chapter 5 of Part 13),
(k) banks etc in compulsory liquidation (see Chapter 6 of Part 13),
(l) co-operative housing associations and self-build societies (see Chapters 7 and 8 of Part 13), and
(m) community amateur sports clubs (see Chapter 9 of Part 13).

(4) Parts 14 to **[**[F2]21C**]** contain provisions relating to tax avoidance, in particular with respect to—
(a) change in company ownership (see Part 14),
[[F3](aa) transfer of deductions (see Part 14A),**]**
(b) transactions in securities (see Part 15),
(c) factoring of income (see Part 16),
[F4](d) . . . . . .
[[F5](da) manufactured dividends (see Part 17A),**]**
(e) transactions in land (see Part 18),
(f) the sale and lease-back of assets (see Part 19),
(g) leasing plant or machinery (see Part 20), [F6]...
(h) other arrangements involving asset leasing (see Part 21) [F7]...
[[F8](i) risk transfer schemes (see Part 21A).**]**
[[F9](j) group mismatch schemes (see Part 21B).**][**[F10], and
[[F11](ja) tax mismatch schemes (see Part 21BA),**]**
(k) tainted donations made to charities (see Part 21C).**]**

(5) Part 22 contains miscellaneous provisions, including provision with respect to—
(a) transfers of trade without a change of ownership (see Chapter 1),
(b) transfers of trade to obtain balancing allowances (see Chapter 2),
(c) transfer of relief within partnerships (see Chapter 3),
(d) the surrender of tax refunds within groups of companies (see Chapter 4),
(e) the set off of income tax deductions against corporation tax (see Chapter 5),
(f) the assessment, collection and recovery of corporation tax from UK representatives of non-UK resident companies (see Chapter 6),
(g) the recovery of unpaid corporation tax due from non-UK resident companies (see Chapter 7), and
(h) exemptions (see Chapter 8).

(6) Part 23 contains provisions about the meaning of "distribution" and certain associated matters.

(7) Part 24 contains definitions that apply for the purposes of the Corporation Tax Acts and other general provisions that have effect for the purposes of those Acts.

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(8) Part 25 contains provisions of general application, including definitions for the purposes of the Act.

(9) For abbreviations and defined expressions used in this Act, see section 1174 and Schedule 4.

Textual Amendments

F1 S. 1(3)(aa)(ab) inserted (retrospective to 1.4.2014) by Finance Act 2014 (c. 26), **Sch. 16 paras. 2**, 6

F2 Figure in s. 1(4) substituted (with effect in accordance with Sch. 3 para. 27 of the amending Act) by Finance Act 2011 (c. 11), **Sch. 3 para. 20(a)**

F3 S. 1(4)(aa) inserted (with effect in accordance with Sch. 14 para. 3 of the amending Act) by Finance Act 2013 (c. 29), **Sch. 14 para. 2(1)**

F4 S. 1(4)(d) omitted (1.1.2014) by virtue of Finance Act 2013 (c. 29), **Sch. 29 paras. 42**, 52(a)

F5 S. 1(4)(da) inserted (1.1.2014) by Finance Act 2013 (c. 29), **Sch. 29 paras. 42(b)**, 52

F6 Word in s. 1(4)(g) omitted (with effect in accordance with Sch. 16 para. 5 of the amending Act) by virtue of Finance Act 2010 (c. 13), **Sch. 16 para. 2**

F7 Word in s. 1(4)(h) omitted (with effect in accordance with Sch. 5 para. 6 of the amending Act) by virtue of Finance Act 2011 (c. 11), **Sch. 5 para. 1**

F8 S. 1(4)(i) inserted (with effect in accordance with Sch. 16 para. 5 of the amending Act) by Finance Act 2010 (c. 13), **Sch. 16 para. 2**

F9 S. 1(4)(j) inserted (with effect in accordance with Sch. 5 para. 6 of the amending Act) by Finance Act 2011 (c. 11), **Sch. 5 para. 1**

F10 S. 1(4)(k) and word inserted (with effect in accordance with Sch. 3 para. 27 of the amending Act) by Finance Act 2011 (c. 11), **Sch. 3 para. 20(b)**

F11 S. 1(4)(ja) inserted (with effect in accordance with Sch. 20 para. 6(1) of the amending Act) by Finance Act 2013 (c. 29), **Sch. 20 para. 2**

PART 2

CALCULATION OF LIABILITY IN RESPECT OF PROFITS

CHAPTER 1

INTRODUCTION

2 Overview of Part

(1) This Part contains provisions that relate to the calculation of the corporation tax chargeable on a company's profits of an accounting period.

(2) Chapter 2 is about the rates at which corporation tax on profits is charged.

(3) Chapter 3 is about ascertaining the amount of a company's profits of an accounting period to which the rates of corporation tax applicable to the company are applied.

(4) Chapter 4 makes provision about the currency in which a company must calculate and express its profits for corporation tax purposes.

(5) For provision about the calculation of the corporation tax payable for an accounting period see paragraph 8 of Schedule 18 to FA 1998.

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CHAPTER 2

RATES AT WHICH CORPORATION TAX ON PROFITS CHARGED

3 Corporation tax rates

(1) Corporation tax is charged at the rate set by Parliament for the financial year ("the main rate").

(2) Section 18 provides for tax to be charged at the small profits rate instead of the main rate in certain cases.

(3) In this Act "the small profits rate" means a rate that is—
  (a) lower than the main rate, and
  (b) set by Parliament as the small profits rate.

CHAPTER 3

CALCULATION OF AMOUNT TO WHICH RATES APPLIED

4 Amount of profits to which corporation tax rates applied

(1) In the calculation under paragraph 8(1) of Schedule 18 to FA 1998 of the amount of corporation tax payable for an accounting period of a company, the first step is to apply the rate or rates of corporation tax applicable to the profits of the company of the period on which tax is chargeable.

(2) The profits of a company of an accounting period on which corporation tax is chargeable (in this Act referred to as the company's taxable total profits of the period) are found as follows—

Step 1

Find the company's total profits of the period (see subsection (3)).

Step 2

Deduct from the result of Step 1 any amounts which can be relieved against the company's total profits of the period.

(3) To find a company's total profits of an accounting period take the following steps.

Step 1

Find the amount in respect of which the company is chargeable for the period under the charge to corporation tax on income after any reduction required to give effect to relief from tax.

Step 2

Add to the result of Step 1 any amount to be included in respect of chargeable gains in the company's total profits of the accounting period (see section 8 of TCGA 1992) after any reduction required to give effect to relief from tax.

(4) Subsections (2) and (3) are subject to the provisions of the Corporation Tax Acts.

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CHAPTER 4

CURRENCY

The currency to be used in tax calculations

5 Basic rule: sterling to be used

(1) For corporation tax purposes the income and chargeable gains of a company for an accounting period must be calculated and expressed in sterling.

(2) See the following sections for provision about the application of subsection (1) in certain cases where profits or losses fall to be calculated in accordance with generally accepted accounting practice—

section 6 (UK resident company operating in sterling and preparing accounts in another currency),

section 7 (UK resident company operating in currency other than sterling and preparing accounts in another currency),

section 8 (UK resident company preparing accounts in currency other than sterling),

section 9 (non-UK resident company preparing accounts in currency other than sterling).

[[F12](3) See section 9C for provision about the application of subsection (1) so far as it relates to calculating chargeable gains.**]**

Textual Amendments

F12 S. 5(3) inserted (1.9.2013) by Finance Act 2013 (c. 29), **s. 66(2)**(4); S.I. 2013/1815, art. 2

6 UK resident company operating in sterling and preparing accounts in another currency

(1) This section applies if, for a period of account, in accordance with generally accepted accounting practice, a UK resident company **[**[F13](other than a UK resident investment company)**]**—

(a) prepares its accounts in a currency other than sterling, and

(b) in those accounts identifies sterling as its functional currency.

[[F14](1A) This section also applies if, for a period of account, a UK resident investment company—

(a) in accordance with generally accepted accounting practice, prepares its accounts in a currency other than sterling, and

(b) either—

(i) has sterling as its designated currency for that period of account (see sections 9A and 9B), or

(ii) if it does not have a designated currency for that period, in those accounts identifies sterling as its functional currency in accordance with generally accepted accounting practice.**]**

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(2) Profits or losses of the company for the period that fall to be calculated in accordance with generally accepted accounting practice for corporation tax purposes must be calculated in sterling as if the company prepared its accounts in sterling.

Textual Amendments

F13 Words in s. 6(1) inserted (with effect in accordance with Sch. 7 para. 8 of the amending Act) by Finance Act 2011 (c. 11), **Sch. 7 para. 1(2)**

F14 S. 6(1A) inserted (with effect in accordance with Sch. 7 para. 8 of the amending Act) by Finance Act 2011 (c. 11), **Sch. 7 para. 1(3)**

Modifications etc. (not altering text)

C1 S. 6 applied (with modifications) by 2010 c. 8, s. 371SI(2) (as inserted (17.7.2012) by Finance Act 2012 (c. 14), **Sch. 20 para. 1**)

7 UK resident company operating in currency other than sterling and preparing accounts in another currency

(1) This section applies if, for a period of account, in accordance with generally accepted accounting practice—

(a) a UK resident company **[**[F15](other than a UK resident investment company)**]** prepares its accounts in one currency,

(b) in those accounts it identifies another currency as its functional currency, and

(c) that other currency is not sterling.

[[F16](1A) This section also applies if, for a period of account, a UK resident investment company—

(a) in accordance with generally accepted accounting practice, prepares its accounts in one currency,

(b) either—

(i) has another currency as its designated currency for that period (see sections 9A and 9B), or

(ii) if it does not have a designated currency for that period, in those accounts identifies another currency as its functional currency in accordance with generally accepted accounting practice, and

(c) that other currency is not sterling.**]**

(2) Profits or losses of the company for the period that fall to be calculated in accordance with generally accepted accounting practice for corporation tax purposes must be calculated in sterling as follows—

Step 1

Calculate those profits or losses in the **[**[F17]relevant**]** currency as if the company prepared its accounts in that currency.

Step 2

Take the sterling equivalent of those profits or losses (see section 11).

(3) If this section applies, assume that any sterling amount mentioned in the Corporation Tax Acts is its equivalent expressed in the **[**[F18]relevant**]** currency of the company.

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[[F19](4) In subsections (2) and (3) " the relevant currency " means the currency other than sterling referred to in subsection (1)(c) or (1A)(c). **]**

Textual Amendments

F15 Words in s. 7(1)(a) inserted (with effect in accordance with Sch. 7 para. 8 of the amending Act) by Finance Act 2011 (c. 11), **Sch. 7 para. 2(2)**

F16 S. 7(1A) inserted (with effect in accordance with Sch. 7 para. 8 of the amending Act) by Finance Act 2011 (c. 11), **Sch. 7 para. 2(3)**

F17 Word in s. 7(2) substituted (with effect in accordance with Sch. 7 para. 8 of the amending Act) by Finance Act 2011 (c. 11), **Sch. 7 para. 2(4)**

F18 Word in s. 7(3) substituted (with effect in accordance with Sch. 7 para. 8 of the amending Act) by Finance Act 2011 (c. 11), **Sch. 7 para. 2(5)**

F19 S. 7(4) inserted (with effect in accordance with Sch. 7 para. 8 of the amending Act) by Finance Act 2011 (c. 11), **Sch. 7 para. 2(6)**

Modifications etc. (not altering text)

C2 S. 7 applied (with modifications) by 2010 c. 8, s. 371SI(3) (as inserted (17.7.2012) by Finance Act 2012 (c. 14), **Sch. 20 para. 1**)

8 UK resident company preparing accounts in currency other than sterling

(1) This section applies if, for a period of account—

(a) a UK resident company prepares its accounts in a currency other than sterling (the "accounts currency"), and

(b) neither section 6 nor section 7 applies.

(2) Profits or losses of the company for the period that fall to be calculated in accordance with generally accepted accounting practice for corporation tax purposes must be calculated in sterling as follows—

Step 1

Calculate those profits or losses in the accounts currency.

Step 2

Take the sterling equivalent of those profits or losses (see section 11).

(3) If this section applies, assume that any sterling amount mentioned in the Corporation Tax Acts is its equivalent expressed in the accounts currency of the company.

9 Non-UK resident company preparing return of accounts in currency other than sterling

(1) This section applies if—

(a) a non-UK resident company carries on a trade in the United Kingdom through a permanent establishment in the United Kingdom, and

(b) for a period of account, the company prepares its return of accounts in a currency other than sterling (the "accounts currency").

(2) Profits or losses of the company for the period that fall to be calculated in accordance with generally accepted accounting practice for corporation tax purposes must be calculated in sterling as follows—

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Step 1

Calculate those profits or losses in the accounts currency.

Step 2

Take the sterling equivalent of those profits or losses (see section 11).

(3) If this section applies, assume that any sterling amount mentioned in the Corporation Tax Acts is its equivalent expressed in the accounts currency of the company.

(4) The reference in subsection (1) to the company's "return of accounts" is to a return of such accounts of its permanent establishment in the United Kingdom as may be required under paragraph 3 of Schedule 18 to FA 1998 (company tax returns).

[F20 9A Designated currency of a UK resident investment company

(1) The designated currency of a UK resident investment company is the currency which the company elects as its designated currency.

(2) A company ("X") may elect a currency as its designated currency only if—
- (a) at the time the election is made condition A or B is met, or
- (b) the election is made in the period (if any) beginning with the company's incorporation and ending immediately before its first accounting period.

(3) But an election made under subsection (2)(b) is void if, at the time X's first accounting period begins, neither condition A nor condition B is met.

(4) Condition A is that a significant proportion of X's assets and liabilities are denominated in the currency.

(5) Condition B is that—
- (a) the currency is the functional currency of another company, and
- (b) it is reasonable to assume that the two companies will meet the consolidation condition.

(6) X and another company ("Y") meet the consolidation condition at any time if—
- (a) for a period which includes that time, the financial results of X are comprised in financial statements of Y's group prepared in accordance with acceptable accounting practice, or
- (b) if no financial statements of the group are prepared in accordance with acceptable accounting practice for a period which includes that time, the financial results of X would be comprised in financial statements of Y's group for a period which includes that time if such statements were prepared in accordance with international accounting standards.

(7) In subsection (6)—

" financial statements of the group " means consolidated financial statements of Y and its subsidiaries (within the meaning of section 351 of TIOPA 2010),

" Y's group " means a group of which Y is the ultimate parent (and for this purpose " group " and " ultimate parent " have the same meaning as they have for the purposes of Part 7 of that Act (see sections 338 and 339)), and

" acceptable accounting practice " means—

(a) international accounting standards,

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(b) UK generally accepted accounting practice, or

(c) accounting practice which is generally accepted in the country in which Y is resident.

(8) A currency is the designated currency of X for a period of account if the election in respect of that currency has effect throughout that period (see section 9B).

Textual Amendments

F20 Ss. 9A, 9B inserted (with effect in accordance with Sch. 7 para. 8 of the amending Act) by Finance Act 2011 (c. 11), **Sch. 7 para. 3**

9B Period for which an election under section 9A has effect

(1) An election under section 9A(2)(a) takes effect at the beginning of the day specified in the election as the day on which it takes effect (which must be later than the day on which the election is made).

(2) An election under section 9A(2)(b) is treated as taking effect at the time of X's incorporation.

(3) An election under section 9A(2)(a) may be revoked by notice of the revocation being given to an officer of Revenue and Customs before the election takes effect.

(4) Subject to that, an election has effect until immediately before—

(a) the day on which another election by X takes effect, or

(b) the day on which a revocation event occurs,

(whichever first occurs).

(5) A revocation event occurs in a period of account (other than a period to which subsection (6) applies) if, at any time during that period—

(a) it is not the case that a significant proportion of X's assets and liabilities are denominated in the currency to which the election relates, and

(b) it is not the case that the currency is the functional currency of another company which, with X, met the consolidation condition (within the meaning of section 9A(6)) at any time during the preceding period of account.

(6) Where the election is made under section 9A(2)(b), a revocation event occurs in the period of account in which X's first accounting period begins only if—

(a) Condition A and not Condition B is satisfied at the beginning of that accounting period, and

(b) the condition in subsection (5)(a) is met at any time during the period of account but after the first accounting period begins.

(7) Subsections (8) and (9) apply if a period of account of X ("the straddling period of account") begins before, and ends on or after, the day on which—

(a) an election under section 9A(2)(a) takes effect, or

(b) a revocation event occurs.

(8) It is to be assumed, for the purposes of this Chapter, that the straddling period of account consists of two separate periods of account—

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(a) the first beginning with the straddling period of account and ending immediately before that day, and

(b) the second beginning with that day and ending with the straddling period of account,

and X's profits and losses are to be computed accordingly for the purposes of corporation tax.

(9) For those purposes, it is to be assumed—

(a) that X prepares its accounts for each of the two periods in the same currency, and otherwise on the same basis, as it prepares its accounts for the straddling period of account, and

(b) that if the accounts for the straddling period of account, in accordance with generally accepted accounting practice, identify a currency as X's functional currency, the accounts for each of the two periods do likewise.

(10) In this section references to "X" are to be construed in accordance with section 9A.**]**

Textual Amendments

F20 Ss. 9A, 9B inserted (with effect in accordance with Sch. 7 para. 8 of the amending Act) by Finance Act 2011 (c. 11), **Sch. 7 para. 3**

[F21 9C Chargeable gains and losses of companies

(1) This section applies if—

(a) a company disposes of an asset which is a ship, an aircraft, shares or an interest in shares, and

(b) at any time beginning with the company's acquisition of the asset (or, if earlier, the time allowable expenditure was first incurred in respect of the asset) and ending with the disposal, the company's relevant currency is not sterling.

(2) A company's relevant currency at any time is its functional currency at that time, subject to subsection (3).

(3) If, at any time—

(a) a company is a UK resident investment company, and

(b) the company has a designated currency (see sections 9A and 9B) which is different from its functional currency,

the company's relevant currency at that time is that designated currency.

(4) If the relevant currency of the company at the time of the disposal is not sterling, the chargeable gain or loss accruing to the company on the disposal must be calculated as follows—

Step 1 Calculate the chargeable gain or loss in the relevant currency of the company at the time of the disposal.

Step 2 Translate the amount of the chargeable gain or loss into sterling by reference to the spot rate of exchange on the day of the disposal.

(5) In any case, subsections (6) to (10) apply for the purposes of calculating the chargeable gain or loss.

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(6) Where any allowable expenditure is incurred in a currency which is not the company's relevant currency at the time it is incurred, that expenditure is to be translated into that relevant currency by reference to the spot rate of exchange for the day on which it is incurred.

(7) Where, at any time after any allowable expenditure is incurred but before the asset is disposed of, there is a change in the company's relevant currency, that expenditure is to be translated (or, if it has previously been translated under this section, further translated) into the relevant currency of the company immediately following the change, by reference to the spot rate of exchange for the day of the change.

(8) Any amount of consideration for the disposal which is given in a currency other than the company's relevant currency is to be translated into that relevant currency by reference to the spot rate of exchange on the day of disposal.

(9) For the purposes of subsections (6) and (7)—

(a) any translation of expenditure under subsection (6) is to be done before any translation of the expenditure under subsection (7), and

(b) if subsection (7) applies as a result of more than one change in the company's relevant currency, it is to be applied in relation to each change in the order the changes were made (with the earliest first).

(10) Where, by virtue of any enactment, the company was at any time treated for the purposes of corporation tax on chargeable gains as acquiring the asset—

(a) for a consideration of such amount as would secure that neither a gain nor a loss would accrue to the person disposing of the asset, or

(b) for a consideration equal to the market value of the asset,

for the purposes of this section that allowable expenditure is treated as incurred by the company at that time.

(11) For the purposes of this section, a reference to a ship or aircraft includes a reference to the benefit of a contract—

(a) to which section 67 of CAA 2001 applies, and

(b) which relates to plant or machinery which is a ship or aircraft.

(12) In this section—

"allowable expenditure" means expenditure which, immediately before the disposal, was attributable to the asset under section 38(1)(a) to (c) of TCGA 1992;

"interest in shares" has the same meaning as in Schedule 7AC to TCGA 1992 (see paragraph 29 of that Schedule);

"shares" includes stock.**]**

Textual Amendments

F21 S. 9C inserted (1.9.2013) by Finance Act 2013 (c. 29), **s. 66(3)**(4); S.I. 2013/1815, art. 2

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Translating amounts into other currencies

10 The equivalent in another currency of a sterling amount

(1) Subsection (2) applies if, for the purposes of calculating the profits or losses of a company arising in an accounting period, section 7(3), 8(3) or 9(3) requires a sterling amount to be translated into its equivalent expressed in another currency.

(2) The translation must be made by reference to—
- (a) the average exchange rate for the accounting period, or
- (b) the rate mentioned in subsection (3).

(3) That rate is—
- (a) if the amount to be translated relates to a single transaction, an appropriate spot rate of exchange for the transaction, or
- (b) if the amount to be translated relates to more than one transaction, a rate of exchange derived on a just and reasonable basis from appropriate spot rates of exchange for those transactions.

11 Sterling equivalents: basic rule

(1) Subsection (2) applies if, for the purposes of calculating the profits or losses of a company arising in an accounting period, section 7(2), 8(2) or 9(2) requires a profit or loss to be translated into its sterling equivalent.

(2) The translation must be made by reference to—
- (a) the average exchange rate for the accounting period, or
- (b) the rate mentioned in subsection (3).

(3) That rate is—
- (a) if the amount to be translated relates to a single transaction, an appropriate spot rate of exchange for the transaction, or
- (b) if the amount to be translated relates to more than one transaction, a rate of exchange derived on a just and reasonable basis from appropriate spot rates of exchange for those transactions.

(4) Subsection (2) is subject to sections 12 and 13 (special rules where the translation is for the purpose of calculating carried-forward or carried-back amounts).

12 Sterling equivalents: carried-back amounts

(1) This section applies if, for the purpose of calculating a carried-back amount in respect of a company, a loss ("the loss") is required by section 7(2), 8(2) or 9(2) to be translated into its sterling equivalent.

(2) The translation must be made in accordance with whichever of the rules 1, 2 and 3 is applicable (see the table below).

Rule 1 applies if the later tax calculation currency is the same as the earlier tax calculation currency.	Rule 1 is that the loss must be translated into its sterling equivalent by reference to the same rate of exchange as that at which the profit against which the carried-back

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	amount is to be set off is required to be translated under section 11.
Rule 2 applies if— (a) the later tax calculation currency is not the same as the earlier tax calculation currency, and (b) the earlier tax calculation currency is sterling.	Rule 2 is that the loss must be translated into its sterling equivalent by reference to the spot rate of exchange for the last day of the relevant accounting period.
Rule 3 applies if— (a) the later tax calculation currency is not the same as the earlier tax calculation currency, and (b) the earlier tax calculation currency is a currency other than sterling.	Rule 3 is that the loss must be translated into its sterling equivalent by— (a) being translated into the earlier tax calculation currency by reference to the spot rate of exchange for the last day of the relevant accounting period, and (b) then being translated into sterling by reference to the same rate of exchange as that at which the profit against which the carried-back amount is to be set off is required to be translated under section 11.

(3) In the table in subsection (2)—

"the earlier tax calculation currency" means the tax calculation currency of the company in the accounting period to which the carried-back amount is to be carried back,

"the later tax calculation currency" means the tax calculation currency of the company in the accounting period in which the loss arises, and

"the relevant accounting period" means the latest accounting period of the company that both—

(a) ends before the accounting period in which the loss arises, and

(b) is a period in which the tax calculation currency of the company is the same as the earlier tax calculation currency.

13 Sterling equivalents: carried-forward amounts

(1) This section applies if, for the purpose of calculating a carried-forward amount in respect of a company, a loss ("the loss") is required by section 7(2), 8(2) or 9(2) to be translated into its sterling equivalent.

(2) The translation must be made in accordance with whichever of rules 1, 2 and 3 is applicable (see the table below).

Rule 1 applies if the earlier tax calculation currency is the same as the later tax calculation currency.	Rule 1 is that the loss must be translated into its sterling equivalent by reference to the same rate of exchange as that at which the profit against which the carried-forward amount is to be set off is required to be translated under section 11.

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Rule 2 applies if— (a) the earlier tax calculation currency is not the same as the later tax calculation currency, and (b) the later tax calculation currency is sterling.	Rule 2 is that the loss must be translated into its sterling equivalent by reference to the spot rate of exchange for the first day of the relevant accounting period.
Rule 3 applies if— (a) the earlier tax calculation currency is not the same as the later tax calculation currency, and (b) the later tax calculation currency is a currency other than sterling.	Rule 3 is that the loss must be translated into its sterling equivalent by— (a) being translated into the later tax calculation currency by reference to the spot rate of exchange for the first day of the relevant accounting period, and (b) then being translated into sterling by reference to the same rate of exchange as that at which the profit against which the carried-forward amount is to be set off is required to be translated under section 11.

(3) In the table in subsection (2)—

"the earlier tax calculation currency" means the tax calculation currency of the company in the accounting period in which the loss arises,

"the later tax calculation currency" means the tax calculation currency of the company in the accounting period to which the carried-forward amount is to be carried forward, and

"the relevant accounting period" means the earliest accounting period of the company that both—

(a) begins after the accounting period in which the loss arises, and

(b) is a period in which the tax calculation currency of the company is the same as the later tax calculation currency.

Adjustment of sterling losses

14 Carried-back amounts

(1) This section applies if conditions A, B and C are met.

(2) Condition A is that, in accordance with generally accepted accounting practice, a UK resident company—

(a) prepares its accounts for a period of account in sterling, or

(b) prepares its accounts for a period of account in a currency other than sterling and in those accounts identifies sterling as its functional currency.

(3) Condition B is that a loss of the company for that period ("the loss") which falls to be calculated in accordance with generally accepted accounting practice for corporation tax purposes is to be a carried-back amount.

(4) Condition C is that the tax calculation currency of the company in the accounting period to which the loss is to be carried back ("the earlier tax calculation currency") is a currency other than sterling.

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(5) The loss must be adjusted by—
  (a) first being translated into the earlier tax calculation currency by reference to the spot rate of exchange for the last day of the relevant accounting period, and
  (b) then being translated into sterling by reference to the same rate of exchange as that at which the profit against which the carried-back amount is to be set off is required to be translated under section 11.

(6) In this section "the relevant accounting period" means the latest accounting period of the company that both—
  (a) ends before the accounting period in which the loss arises, and
  (b) is a period in which the tax calculation currency of the company is the currency mentioned in subsection (4).

15 Carried-forward amounts

(1) This section applies if conditions A, B and C are met.

(2) Condition A is that, in accordance with generally accepted accounting practice, a UK resident company—
  (a) prepares its accounts for a period of account in sterling, or
  (b) prepares its accounts for a period of account in a currency other than sterling and in those accounts identifies sterling as its functional currency.

(3) Condition B is that a loss of the company for that period ("the loss") which falls to be calculated in accordance with generally accepted accounting practice for corporation tax purposes is to be a carried-forward amount.

(4) Condition C is that the tax calculation currency of the company in the accounting period to which the loss is to be carried forward ("the later tax calculation currency") is a currency other than sterling.

(5) The loss must be adjusted by—
  (a) first being translated into the later tax calculation currency by reference to the spot rate of exchange for the first day of the relevant accounting period, and
  (b) then being translated into sterling by reference to the same rate of exchange as that at which the profit against which the carried-forward amount is to be set off is required to be translated under section 11.

(6) In this section "the relevant accounting period" means the earliest accounting period of the company that both—
  (a) begins after the accounting period in which the loss arises, and
  (b) is a period in which the tax calculation currency of the company is the currency mentioned in subsection (4).

Interpretation

16 Sections 13(2) and 15(5): profit against which carried-forward amount to be set off

(1) This section is about the interpretation of the references in sections 13(2) and 15(5) to the profit against which a carried-forward amount is to be set off, in a case where the carried-forward amount—

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(a) is one that is treated as arising in an accounting period later than that in which it in fact arises, and
(b) is accordingly deductible in calculating a profit for that later period.

(2) In such a case, the references are to be read as references to the profit in calculating which the amount is deductible, disregarding the deduction.

17 Interpretation of Chapter

(1) References in this Chapter to the accounts of a UK resident company are to—
(a) the annual accounts of the company required by Part 15 of the Companies Act 2006, or
(b) if the company is not required to prepare such accounts, the accounts which it is required to keep under the law of the territory under whose laws the company is incorporated, or
(c) if the company is not required to keep accounts as mentioned in paragraph (a) or (b), those accounts of the company that most closely correspond to accounts which it would have been required to prepare if the provisions of Part 15 of the Companies Act 2006 applied to it.

(2) In this Chapter "carried-back amount" means—
(a) an amount carried back under section 37 (relief for trade losses against total profits),
(b) an amount carried back under section 389(2) of CTA 2009 (deficits of insurance companies), or
(c) an amount carried back by virtue of a claim under section 459(1)(b) of CTA 2009 (non-trading deficits from loan relationships).

(3) In this Chapter "carried-forward amount" means—
(a) an amount carried forward under section 45 (carry forward of trade loss against subsequent trade profits),
(b) an amount carried forward under section 62(5) (UK property business losses),
(c) an amount carried forward under section 63(3) (company with investment business ceasing to carry on a UK property business),
(d) an amount carried forward under 66(3) (overseas property business losses),
(e) an amount carried forward under section 91(6) (losses from miscellaneous transactions),
(f) an amount carried forward under **[**[F22]section 73 or 93 of FA 2012 for use at step 5 in section 76 of that Act (the I - E basis for insurance companies)**]**,
[F23](g) . . . . . .
(h) an amount carried forward under section 391(2) of CTA 2009 (deficits of insurance companies),
(i) an amount carried forward under section 457(3) of CTA 2009 (non-trading deficits from loan relationships),
(j) an amount carried forward under section 753(3) of CTA 2009 (non-trading loss on intangible fixed assets),
(k) an amount carried forward under section 925(3) of CTA 2009 (patent income: relief for expenses), or
(l) an amount carried forward under section 1223 of CTA 2009 (expenses of management and other amounts).

Status: *Point in time view as at 01/04/2014.*
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[[F24](3A) In this Chapter " investment company " means a company whose business consists wholly or mainly in the making of investments and the principal part of whose income is derived from those investments.**]**

(4) References in this Chapter to a company's functional currency are to the currency of the primary economic environment in which the company operates.

(5) References in this Chapter to the tax calculation currency of a company in an accounting period are to the currency in which profits or losses of the company arising in that period that fall to be calculated in accordance with generally accepted accounting practice for corporation tax purposes are required to be calculated by virtue of section 5(1), section 6(2), Step 1 of section 7(2), Step 1 of section 8(2) or Step 1 of section 9(2).

Textual Amendments

F22 Words in s. 17(3)(f) substituted (17.7.2012) by Finance Act 2012 (c. 14), **Sch. 16 para. 216(a)**

F23 S. 17(3)(g) omitted (17.7.2012) by virtue of Finance Act 2012 (c. 14), **Sch. 16 para. 216(b)**

F24 S. 17(3A) inserted (with effect in accordance with Sch. 7 para. 8 of the amending Act) by Finance Act 2011 (c. 11), **Sch. 7 para. 4**

PART 3

COMPANIES WITH SMALL PROFITS

The small profits rate

18 Profits charged at the small profits rate

Corporation tax is charged at the small profits rate on a company's taxable total profits of an accounting period if—

(a) the company is UK resident in the accounting period,

(b) it is not a close investment-holding company in the period, and

(c) its augmented profits of the accounting period do not exceed the lower limit.

Marginal relief

19 Marginal relief

(1) This section applies if—

(a) a company is UK resident in an accounting period,

(b) it is not a close investment-holding company in the period,

(c) its augmented profits of the accounting period—

(i) exceed the lower limit, but

(ii) do not exceed the upper limit, and

(d) its augmented profits of the period do not include any ring fence profits.

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(2) The corporation tax charged on the company's taxable total profits of the accounting period is reduced by an amount equal to—

$$F \times (U - A) \times \frac{N}{A}$$

where—
F is the standard fraction,
U is the upper limit,
A is the amount of the augmented profits, and
N is the amount of the taxable total profits.

(3) In this Part "the standard fraction" means the fraction set by Parliament as the standard fraction for the purposes of this Part.

20 Company with only ring fence profits

(1) This section applies if—
- (a) a company is UK resident in an accounting period,
- (b) it is not a close investment-holding company in the period,
- (c) its augmented profits of the accounting period—
  - (i) exceed the lower limit, but
  - (ii) do not exceed the upper limit, and
- (d) its augmented profits of the period consist exclusively of ring fence profits.

(2) The corporation tax charged on the company's taxable total profits of the accounting period is reduced by an amount equal to—

$$R \times (U - A) \times \frac{N}{A}$$

where—
R is the ring fence fraction,
U is the upper limit,
A is the amount of the augmented profits, and
N is the amount of the taxable total profits.

(3) In this Part "the ring fence fraction" means the fraction set by Parliament as the ring fence fraction for the purposes of this Part.

21 Company with ring fence profits and other profits

(1) This section applies if—
- (a) a company is UK resident in an accounting period,
- (b) it is not a close investment-holding company in the period,
- (c) its augmented profits of the accounting period—
  - (i) exceed the lower limit, but
  - (ii) do not exceed the upper limit, and
- (d) its augmented profits of that period consist of both ring fence profits and other profits.

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(2) The corporation tax charged on the company's taxable total profits of the accounting period is reduced by the total of—

(a) the sum equal to the ring fence fraction of the ring fence amount, and

(b) the sum equal to the standard fraction of the remaining amount.

(3) In this Part "ring fence profits" has the same meaning as in Part 8 (see section 276).

22 The ring fence amount

(1) In section 21 "the ring fence amount" means the amount given by the formula—

$$(UR - AR) \times \frac{NR}{AR}$$

(2) For the purposes of this section—

UR is the amount given by multiplying the upper limit by—

$$\frac{AR}{A}$$

AR is the total amount of any ring fence profits that form part of the augmented profits of the accounting period,

NR is the total amount of any ring fence profits that form part of the taxable total profits of the accounting period, and

A is the amount of the augmented profits of the accounting period.

23 The remaining amount

(1) In section 21 "the remaining amount" means the amount given by the formula—

$$(UZ - AZ) \times \frac{NZ}{AZ}$$

(2) For the purposes of this section—

UZ is the amount given by multiplying the upper limit by—

$$\frac{AZ}{A}$$

AZ is the total amount of any profits other than ring fence profits that form part of the augmented profits of the accounting period,

NZ is the total amount of any profits other than ring fence profits that form part of the taxable total profits of the accounting period, and

A is the amount of the augmented profits of the accounting period.

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The lower limit and the upper limit

24 The lower limit and the upper limit

(1) This section gives the meaning in this Part of "the lower limit" and "the upper limit" in relation to an accounting period of a company.

(2) If the company has no associated company in the accounting period—
- (a) the lower limit is £300,000, and
- (b) the upper limit is £1,500,000.

(3) If the company has one or more associated companies in the accounting period—
- (a) the lower limit is—

$$\frac{£300,000}{1+N}$$

and
- (b) the upper limit is—

$$\frac{£1,500,000}{1+N}$$

where N is the number of those associated companies.

(4) For an accounting period of less than 12 months the lower limit and the upper limit are proportionately reduced.

Modifications etc. (not altering text)

C3 Ss. 24-30 applied (with modifications) by S.I. 1998/3175, reg. 3(5) (as substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by The Corporation Tax (Instalment Payments) (Amendment) Regulations 2011 (S.I. 2011/1785), regs. 1(1), **4(8)**)

25 Associated companies

(1) For the purposes of section 24, a company is another company's associated company in an accounting period if it is an associated company (see subsection (4)) for any part of the accounting period.

(2) The rule in subsection (1) applies to each of two or more associated companies even if they are associated companies for different parts of the accounting period.

(3) But an associated company is ignored for the purposes of section 24 if—
- (a) it has not carried on a trade or business at any time in the accounting period, or
- (b) it was an associated company for part only of the accounting period and has not carried on a trade or business at any time in that part of the accounting period.

(4) For the purposes of this Part, a company is an associated company of another at any time when—
- (a) one of the two has control of the other, or

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(b) both are under the control of the same person or persons.

(5) In subsection (4) "control" has the same meaning as in Part 10 (see sections 450 and 451).

(6) In this section—
(a) subsection (3) is subject to section 26, and
(b) subsections (4) and (5) are subject to sections 27, 28, 29 and 30.

Modifications etc. (not altering text)

C3 Ss. 24-30 applied (with modifications) by S.I. 1998/3175, reg. 3(5) (as substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by The Corporation Tax (Instalment Payments) (Amendment) Regulations 2011 (S.I. 2011/1785), regs. 1(1), **4(8)**)

C4 Ss. 25-30 applied by Capital Allowances Act 2001 (c. 2), s. 99(5) (as substituted (with effect in accordance with s. 1184(1) of the amending Act) by 2010 c. 4, s. 1184(1), **Sch. 1 para. 332** (with Sch. 2))

26 Section 25(3): treatment of certain non-trading companies

(1) Subsection (2) applies if a company carries on a business of making investments in an accounting period and throughout the period the company—
(a) carries on no trade,
(b) has one or more 51% subsidiaries, and
(c) is a passive company.

(2) The company is treated for the purposes of section 25(3) as not carrying on a business at any time in the accounting period.

(3) A company is a passive company throughout an accounting period only if the following requirements are met—
(a) it has no assets in that period, other than shares in companies which are its 51% subsidiaries,
(b) no income arises to it in that period other than dividends,
(c) if income arises to it in that period in the form of dividends—
(i) the redistribution condition is met (see subsection (4)), and
(ii) the dividends are franked investment income received by it,
(d) no chargeable gains accrue to it in that period,
(e) no expenses of management of the business mentioned in subsection (1) are referable to that period, and
(f) no qualifying charitable donations are deductible from the company's total profits of that period.

(4) The redistribution condition is that—
(a) the company pays dividends to one or more of its shareholders in the accounting period, and
(b) the total amount paid in the form of those dividends is at least equal to the amount of the income arising to the company in the form of dividends in that period.

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(5) If income arises to a company in an accounting period in the form of a dividend and the requirement in subsection (3)(c) is met in respect of the income—

(a) neither the dividend nor any asset representing it is treated as an asset of the company in that accounting period for the purposes of subsection (3)(a), and

(b) no right of the company to receive the dividend is treated as an asset of the company for the purposes of subsection (3)(a) in that period or any earlier accounting period.

Modifications etc. (not altering text)

C3 Ss. 24-30 applied (with modifications) by S.I. 1998/3175, reg. 3(5) (as substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by The Corporation Tax (Instalment Payments) (Amendment) Regulations 2011 (S.I. 2011/1785), regs. 1(1), **4(8)**)

C4 Ss. 25-30 applied by Capital Allowances Act 2001 (c. 2), s. 99(5) (as substituted (with effect in accordance with s. 1184(1) of the amending Act) by 2010 c. 4, s. 1184(1), **Sch. 1 para. 332** (with Sch. 2))

[F25 27 Attribution to persons of rights and powers of their associates

(1) This section applies if—

(a) it is necessary to determine in accordance with section 25(4) and (5) whether a company is an associated company of another company, and

(b) the relationship between the two companies is not one of substantial commercial interdependence.

(2) In the application of section 451 (meaning of "control": rights to be attributed) for the purposes of the determination, any person to whom rights and duties fall to be attributed under subsections (4) and (5) of that section is to be treated, for the purposes of those subsections, as having no associates.

(3) The Treasury may by order prescribe factors that are to be taken into account in determining whether a relationship between two companies amounts to substantial commercial interdependence for the purposes of this section.**]**

Textual Amendments

F25 S. 27 substituted (with effect in accordance with s. 55(2)-(5) of the amending Act) by Finance Act 2011 (c. 11), **s. 55(1)**

Modifications etc. (not altering text)

C3 Ss. 24-30 applied (with modifications) by S.I. 1998/3175, reg. 3(5) (as substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by The Corporation Tax (Instalment Payments) (Amendment) Regulations 2011 (S.I. 2011/1785), regs. 1(1), **4(8)**)

28 Associated companies: fixed-rate preference shares

(1) In determining for the purposes of section 25(4) whether a company is under the control of another, fixed-rate preference shares held by a company are ignored if the company holding them—

(a) is not a close company,

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(b) takes no part in the management or conduct of the company which issued the shares, or in the management or conduct of its business, and

(c) subscribed for the shares in the ordinary course of a business which includes the provision of finance.

(2) In this section "fixed-rate preference shares" means shares which—

(a) were issued wholly for new consideration,

(b) do not carry any right either to conversion into shares or securities of any other description or to the acquisition of any additional shares or securities, and

(c) do not carry any right to dividends other than dividends which—

(i) are of a fixed amount or at a fixed rate per cent of the nominal value of the shares, and

(ii) together with any sum paid on redemption, represent no more than a reasonable commercial return on the consideration for which the shares were issued.

(3) In subsection (2)(a) "new consideration" has the meaning given by section 1115.

Modifications etc. (not altering text)

C3 Ss. 24-30 applied (with modifications) by S.I. 1998/3175, reg. 3(5) (as substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by The Corporation Tax (Instalment Payments) (Amendment) Regulations 2011 (S.I. 2011/1785), regs. 1(1), **4(8)**)

C4 Ss. 25-30 applied by Capital Allowances Act 2001 (c. 2), s. 99(5) (as substituted (with effect in accordance with s. 1184(1) of the amending Act) by 2010 c. 4, s. 1184(1), **Sch. 1 para. 332** (with Sch. 2))

29 Association through a loan creditor

(1) A company ("A") is not under the control of another company ("B") for the purposes of section 25(4) if—

(a) B is a loan creditor of A,

(b) there is no other connection between A and B, and

(c) either—

(i) B is not a close company, or

(ii) B's relationship to A as a loan creditor arose in the ordinary course of a business which B carries on.

(2) Subsection (3) applies if—

(a) two companies ("A" and "B") are controlled by the same person who is a loan creditor of each of them,

(b) there is no other connection between A and B, and

(c) either—

(i) the loan creditor is a company which is not a close company, or

(ii) the loan creditor's relationship to each of A and B as a loan creditor arose in the ordinary course of a business which the loan creditor carries on.

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(3) In determining for the purposes of this Part whether A and B are associated with each other, rights which the loan creditor has as a loan creditor of A, or as a loan creditor of B, are ignored.

(4) In subsection (2)(a) "control" has the same meaning as in section 25(4).

(5) In this section—

(a) "connection" includes a connection in the past as well as a connection in the present, and

(b) references to a connection between two companies include any dealings between them.

(6) In this section references to a loan creditor of a company are to be read in accordance with section 453.

Modifications etc. (not altering text)

C3 Ss. 24-30 applied (with modifications) by S.I. 1998/3175, reg. 3(5) (as substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by The Corporation Tax (Instalment Payments) (Amendment) Regulations 2011 (S.I. 2011/1785), regs. 1(1), **4(8)**)

C4 Ss. 25-30 applied by Capital Allowances Act 2001 (c. 2), s. 99(5) (as substituted (with effect in accordance with s. 1184(1) of the amending Act) by 2010 c. 4, s. 1184(1), **Sch. 1 para. 332** (with Sch. 2))

30 Association through a trustee

(1) Subsection (2) applies if—

(a) two companies ("A" and "B") are controlled by the same person by virtue of rights or powers (or both) held in trust by that person, and

(b) there is no other connection between A and B.

(2) In determining for the purposes of this Part whether A and B are associated with each other, the rights and powers mentioned in subsection (1)(a) are ignored.

(3) In subsection (1)—

(a) "control" has the same meaning as in section 25(4),

(b) "connection" includes a connection in the past as well as a connection in the present, and

(c) the reference to a connection between A and B includes any dealings between them.

Modifications etc. (not altering text)

C3 Ss. 24-30 applied (with modifications) by S.I. 1998/3175, reg. 3(5) (as substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by The Corporation Tax (Instalment Payments) (Amendment) Regulations 2011 (S.I. 2011/1785), regs. 1(1), **4(8)**)

C4 Ss. 25-30 applied by Capital Allowances Act 2001 (c. 2), s. 99(5) (as substituted (with effect in accordance with s. 1184(1) of the amending Act) by 2010 c. 4, s. 1184(1), **Sch. 1 para. 332** (with Sch. 2))

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Supplementary

31 Power to obtain information

[F26](1) . . . . . .

(2) Subsections (3) and (4) apply if a company ("the issuing company") appears to an officer of Revenue and Customs to be a close company.

(3) The officer may, for the purposes of this Part, by notice require the issuing company to provide the officer with—

(a) particulars of any bearer securities issued by the company,

(b) the names and addresses of the persons to whom the securities were issued, and

(c) details of the amounts issued to each person.

(4) The officer may, for the purposes of this Part, by notice require—

(a) any person to whom bearer securities were issued by the company, or

(b) any person to or through whom bearer securities issued by the company were subsequently sold or transferred,

to provide any further information that the officer reasonably requires with a view to enabling the officer to find out the names and addresses of the persons beneficially interested in the securities.

(5) In this section—

"loan creditor" has the meaning given by section 453, and

"securities" includes—

(a) shares, stocks, bonds, debentures and debenture stock, and

(b) any promissory note or other instrument evidencing indebtedness to a loan creditor of the company.

Textual Amendments

F26 S. 31(1) omitted (with effect in accordance with Sch. 23 para. 65 of the amending Act) by virtue of Finance Act 2011 (c. 11), **Sch. 23 paras. 64(2)(a)**, 65(1)(a) (with Sch. 23 paras. 50, 65(1)(b))

32 Meaning of "augmented profits"

(1) For the purposes of this Part, a company's augmented profits of an accounting period are—

(a) the company's **[**[F27]adjusted**]** taxable total profits of that period, plus

(b) any franked investment income received by the company that is not excluded by subsection (2).

[[F28](1A) A company's "adjusted taxable total profits" of a period are what would have been the company's taxable total profits of the period in the absence of sections 1(2A), 2B and 8(4A) of TCGA 1992 and section 2(2A) of CTA 2009 (certain gains on relevant high value disposals by companies etc chargeable to capital gains tax not corporation tax).**]**

(2) This subsection excludes any franked investment income which the company ("the receiving company") receives from a company which is—

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(a) a 51% subsidiary of—
  (i) the receiving company, or
  (ii) a company of which the receiving company is a 51% subsidiary, or
(b) a trading company or relevant holding company that is a quasi-subsidiary of the receiving company.

(3) For the purposes of subsection (2)(b) a company is a quasi-subsidiary of the receiving company if—
(a) it is owned by a consortium of which the receiving company is a member,
(b) it is not a 75% subsidiary of any company, and
(c) no arrangements of any kind (whether in writing or not) exist by virtue of which it could become a 75% subsidiary of any company.

Textual Amendments

F27 Word in s. 32(1)(a) inserted (with effect in accordance with Sch. 25 para. 20 of the amending Act) by Finance Act 2013 (c. 29), **Sch. 25 para. 19(2)**

F28 s. 32(1A) inserted (with effect in accordance with Sch. 25 para. 20 of the amending Act) by Finance Act 2013 (c. 29), **Sch. 25 para. 19(3)**

33 Interpretation of section 32(2) and (3)

(1) For the purposes of section 32(2)(a), a company ("A") is a 51% subsidiary of another company ("B") only at times when—
(a) B would be beneficially entitled to more than 50% of any profits available for distribution to equity holders of A, and
(b) B would be beneficially entitled to more than 50% of any assets of A available for distribution to its equity holders on a winding up.

(2) The requirement in subsection (1) is in addition to the requirements of section 1154(2) (meaning of "51% subsidiary").

(3) In determining for the purposes of section 32(2)(a) whether or not a company is a 51% subsidiary of another company ("C"), C is treated as not being the owner of share capital if—
(a) it owns the share capital indirectly,
(b) the share capital is owned directly by a company ("D"), and
(c) a profit on the sale of the shares would be a trading receipt for D.

(4) In section 32(2)(b) and this section—
(a) "trading company" means a company whose business consists wholly or mainly of carrying on a trade or trades, and
(b) "relevant holding company" means a company whose business consists wholly or mainly of holding shares in or securities of trading companies that are its 90% subsidiaries.

(5) For the purposes of section 32(3), a company is owned by a consortium if at least 75% of the company's ordinary share capital is beneficially owned by two or more companies each of which—
(a) beneficially owns at least 5% of that capital,

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(b) would be beneficially entitled to at least 5% of any profits available for distribution to equity holders of the company, and

(c) would be beneficially entitled to at least 5% of any assets of the company available for distribution to its equity holders on a winding up.

(6) The companies meeting those conditions are called the members of the consortium.

(7) Chapter 6 of Part 5 (equity holders and profits or assets available for distribution) applies for the purposes of subsections (1) and (5) as it applies for the purposes of section 151(4)(a) and (b).

34 Close investment-holding companies

(1) For the purposes of this Part, a close company ("the candidate company") is a close investment-holding company in an accounting period unless throughout the period it exists wholly or mainly for one or more of the permitted purposes set out in subsection (2).

There is an exception to this rule in subsection (5).

(2) The candidate company exists for a permitted purpose so far as it exists—

(a) for the purpose of carrying on a trade or trades on a commercial basis,

(b) for the purpose of making investments in land, or estates or interests in land, in cases where the land is, or is intended to be, let commercially (see subsection (3)),

(c) for the purpose of holding shares in and securities of, or making loans to, one or more companies each of which—

(i) is a qualifying company, or

(ii) falls within subsection (4),

(d) for the purpose of co-ordinating the administration of two or more qualifying companies,

(e) for the purpose of the making of investments as mentioned in paragraph (b)—

(i) by one or more qualifying companies, or

(ii) by a company which has control of the candidate company, or

(f) for the purpose of a trade or trades carried on on a commercial basis—

(i) by one or more qualifying companies, or

(ii) by a company which has control of the candidate company.

(3) For the purposes of subsection (2)(b), any letting of land is taken to be commercial unless the land is let to—

(a) a person connected with the candidate company ("a connected person"), or

(b) a person who is—

(i) the spouse or civil partner of a connected person,

(ii) a relative of a connected person, or the spouse or civil partner of a relative of a connected person,

(iii) the relative of the spouse or civil partner of a connected person, or

(iv) the spouse or civil partner of a relative of the spouse or civil partner of the connected person.

(4) A company falls within this subsection (see subsection (2)(c)(ii)) if—

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(a) it is under the control of the candidate company or of a company which has control of the candidate company, and

(b) it exists wholly or mainly for the purpose of holding shares in or securities of, or of making loans to, one or more qualifying companies.

(5) If a company is wound up and was not a close investment-holding company in the accounting period that ends (by virtue of section 12(2) of CTA 2009) immediately before the winding up starts, the company is not treated for the purposes of this Part as being a close investment-holding company in the subsequent accounting period.

(6) In this section "qualifying company" means a company which—

(a) is under the control of the candidate company or of a company which has control of the candidate company, and

(b) exists wholly or mainly for either or both of the purposes mentioned in subsection (2)(a) and (b).

(7) In this section—

"control" has the meaning given by section 450, and

"relative" means brother, sister, ancestor or lineal descendant.

PART 4

LOSS RELIEF

CHAPTER 1

INTRODUCTION

35 Overview of Part

(1) This Part provides corporation tax relief for—

(a) losses made in a trade (see Chapter 2 as well as the restrictions on relief in Chapter 3 relating to limited partnerships and limited liability partnerships),

(b) losses made in a UK property business or overseas property business (see Chapter 4),

(c) losses made on a disposal of certain shares (see Chapter 5), and

(d) losses made in certain miscellaneous transactions (see Chapter 6).

(2) This Part also provides for the reduction of available relief if there is a write-off of government investment in a company (see Chapter 7).

(3) For rules about the calculation of losses for the purposes of this Part, see—

(a) section 47 of CTA 2009 (losses of a trade calculated on same basis as profits), and

(b) section 210 of CTA 2009 (which applies section 47 of that Act, so that losses of a UK property business or overseas property business are calculated on the same basis as profits).

(4) See also Part 17 of CTA 2009 for rules about how to calculate the losses of a company that is a partner in a partnership.

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CHAPTER 2

TRADE LOSSES

Introduction

36 Introduction to Chapter

(1) This Chapter—
- (a) provides relief against a company's total profits of an accounting period for a loss made by the company in a trade in that or a subsequent accounting period (see sections 37 to 44), and
- (b) provides relief against a company's profits of a trade of an accounting period for a loss made by the company in the trade in a previous accounting period (see sections 45 to 47).

(2) This Chapter also provides for restrictions on relief for the following cases—
- (a) farming or market gardening (sections 48 to 51),
- (b) dealings in commodity futures (section 52),
- (c) leasing contracts and company reconstructions (section 53), and
- (d) receipts of interest, dividends and royalties by a non-UK resident company (section 54).

(3) In this Chapter references to a company carrying on a trade are references to the company carrying on the trade so as to be within the charge to corporation tax in relation to the trade.

(4) In this Chapter, except in so far as the context otherwise requires—
- (a) references to a trade include an office, and
- (b) references to carrying on a trade include holding an office.

Trade loss relief against total profits

37 Relief for trade losses against total profits

(1) This section applies if, in an accounting period, a company carrying on a trade makes a loss in the trade.

(2) The company may make a claim for relief for the loss under this section (but see subsection (5)).

(3) If the company makes a claim, the relief is given by deducting the loss from the company's total profits of—
- (a) the accounting period in which the loss is made ("the loss-making period"), and
- (b) if the claim so requires, previous accounting periods so far as they fall (wholly or partly) within the period of 12 months ending immediately before the loss-making period begins.

(4) The amount of a deduction to be made under subsection (3) for any accounting period is the amount of the loss so far as it cannot be deducted under that subsection for a subsequent accounting period.

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(5) The company may not make a claim if, in the loss-making period, the company carries on the trade wholly outside the United Kingdom.

(6) A deduction under subsection (3)(b) may be made for an accounting period only if the company—
  (a) carried on the trade in the period, and
  (b) did not do so wholly outside the United Kingdom.

(7) The company's claim must be made—
  (a) within the period of two years after the end of the loss-making period, or
  (b) within such further period as an officer of Revenue and Customs may allow.

(8) If, for an accounting period, deductions under subsection (3) are to be made for losses of different accounting periods, the deductions are to be made in the order in which the losses were made (starting with the earliest loss).

(9) Relief under this section is subject to restriction or modification in accordance with provisions of the Corporation Tax Acts.

Modifications etc. (not altering text)

C5 S. 37 applied (with effect in accordance with s. 148 of the amending Act) by Finance Act 2012 (c. 14), **s. 123** (with s. 147, Sch. 17(34))

C6 S. 37(3)(b) applied (with modifications) by 2009 c. 10, Sch. 6 para. 3(1) (as substituted (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 1 para. 714(2)** (with Sch. 2))

38 Limit on deduction if accounting period falls partly within 12 month period

(1) This section applies if an accounting period falls partly within the period of 12 months mentioned in section 37(3)(b).

(2) The amount of the deduction for the loss for the accounting period is not to exceed an amount equal to the overlapping proportion of the company's total profits of that period.

(3) The overlapping proportion is the same as the proportion that the part of the accounting period falling within the period of 12 months bears to the whole of the accounting period.

Modifications etc. (not altering text)

C7 S. 38(1) applied (with modifications) by 2009 c. 10, Sch. 6 para. 3(1) (as substituted (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 1 para. 714(2)** (with Sch. 2))

C8 S. 38(3) applied (with modifications) by 2009 c. 10, Sch. 6 para. 3(1) (as substituted (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 1 para. 714(2)** (with Sch. 2))

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39 Terminal losses: extension of periods for which relief may be given

(1) This section applies if—

(a) a company ceases to carry on a trade, and

(b) the company has made a terminal loss in the trade.

(2) Sections 37(3)(b) and 38(1) and (3) have effect in relation to the terminal loss as if the references to 12 months were references to 3 years.

(3) The following are terminal losses made in the trade—

(a) the whole of any loss made by the company in the trade in an accounting period that begins during the final 12 months, and

(b) the overlapping proportion of any loss made by the company in the trade in an accounting period that ends, but does not begin, during the final 12 months.

(4) The overlapping proportion is the same as the proportion that the part of the accounting period falling within the final 12 months bears to the whole of the accounting period.

(5) "The final 12 months" means the period of 12 months ending when the company ceases to carry on the trade.

(6) This section is subject to section 41.

40 Ring fence trades: extension of periods for which relief may be given

(1) This section applies if—

(a) in an accounting period a company makes a loss in a ring fence trade (as defined in section 162 of CAA 2001),

(b) the accounting period is an accounting period **[**[F29]for which any allowances under section 164 or **[**[F30]by virtue of section 416ZA**]** of CAA 2001 are made to the company in respect of decommissioning expenditure**]**, and

(c) not all the loss is a terminal loss (see section 39(3) above).

(2) Sections 37(3)(b) and 38(1) and (3) have effect in relation to the loss (so far as it is not a terminal loss) as if the references to 12 months were references to 3 years.

(3) But if the loss exceeds **[**[F31]the sum of the allowances**]** mentioned in subsection (1)(b), subsection (2) applies in relation to the loss only so far as it does not exceed **[**[F32]that amount**]**.

[[F33](3A) In this section "decommissioning expenditure" has the meaning given by section 330C.**]**

(4) This section is subject to section 41.

Textual Amendments

F29 Words in s. 40(1)(b) substituted (with effect in accordance with Sch. 21 para. 6 of the amending Act) by Finance Act 2012 (c. 14), **Sch. 21 para. 5(2)**

F30 Words in s. 40(1)(b) substituted (with effect in accordance with s. 92(10) of the amending Act) by Finance Act 2013 (c. 29), **s. 92(8)**

F31 Words in s. 40(3) substituted (with effect in accordance with Sch. 21 para. 6 of the amending Act) by Finance Act 2012 (c. 14), **Sch. 21 para. 5(3)(a)**

F32 Words in s. 40(3) substituted (with effect in accordance with Sch. 21 para. 6 of the amending Act) by Finance Act 2012 (c. 14), **Sch. 21 para. 5(3)(b)**

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F33 S. 40(3A) inserted (with effect in accordance with Sch. 21 para. 6 of the amending Act) by Finance Act 2012 (c. 14), **Sch. 21 para. 5(4)**

41 Sections 39 and 40: transfers of trade to obtain relief

Sections 39 and 40 do 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 either or both of those sections apply in relation to a loss by reason of the cessation.

42 Ring fence trades: further extension of period for relief

(1) This section applies if—

(a) a company makes a claim under section 37 for relief in respect of a loss made in a ring fence trade,

(b) the claim is made by virtue of section 39 or 40, and

(c) a part of the loss that is eligible for relief under section 37 cannot be so relieved because there are not enough profits from which the loss may be deducted under that section.

(2) Relief for the part of the loss that cannot be relieved under section 37 ("the unrelieved loss") is given to the company under this section.

(3) The relief is given by deducting the unrelieved loss from the profits of the ring fence trade of an accounting period that—

(a) falls wholly or partly before the three year relief period, and

(b) ends on or after 17 April 2002.

(4) The amount of a deduction to be made under subsection (3) for any accounting period is so much of the unrelieved loss as cannot be deducted under that subsection from profits of the ring fence trade of a subsequent accounting period (but this is subject to subsections (5) and (6)).

(5) In the case of an accounting period that falls partly before the 3 year relief period, the amount given by subsection (4) is to be reduced by the proportion which the part of the accounting period falling within the 3 year relief period bears to the whole of the accounting period.

(6) In the case of an accounting period that falls partly before 17 April 2002, the amount given by subsection (4) is to be reduced by the proportion which the part of the accounting period falling before that date bears to the whole of the accounting period.

(7) If, for an accounting period, deductions under subsection (3) are to be made for losses of different accounting periods, the deductions are to be made in the order in which the losses were made (starting with the earliest first).

(8) In this section—

"ring fence trade" has the same meaning as in section 162 of CAA 2001, and

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"3 year relief period" means the period of 3 years that applies to a claim under section 37 by virtue of section 39 or 40.

43 Claim period in case of ring fence or mineral extraction trades

(1) This section applies in relation to a claim under section 37 if—

(a) as a result of section 165 of CAA 2001 (general decommissioning expenditure after ceasing ring fence trade) a company's qualifying expenditure for the accounting period in which it ceases to carry on a ring fence trade (as defined in section 162 of that Act) is increased by any amount, or

(b) as a result of section 416 **[**[F34]or 416ZA**]** of CAA 2001 (expenditure on **[**[F35]site restoration **]**) any expenditure is treated as qualifying expenditure of a company incurred on the last day of trading.

(2) So far as the claim relates to the increase mentioned in subsection (1)(a), the period of two years specified in section 37(7)(a) for making the claim is instead to be read as a reference to the period given by adding two years to the post-cessation period (within the meaning of section 165 of CAA 2001).

(3) So far as the claim relates to the expenditure mentioned in subsection (1)(b), the period of two years specified in section 37(7)(a) for making the claim is instead to be read as a reference to a period of 5 years.

Textual Amendments

F34 Words in s. 43(1)(b) inserted (with effect in accordance with s. 92(10) of the amending Act) by Finance Act 2013 (c. 29), **s. 92(9)(a)**

F35 Words in s. 43(1)(b) substituted (with effect in accordance with s. 92(10) of the amending Act) by Finance Act 2013 (c. 29), **s. 92(9)(b)**

44 Trade must be commercial or carried on for statutory functions

(1) Relief under section 37 is not available for a loss made in a trade unless for the loss-making period (see section 37(3)(a)) the trade is carried on—

(a) on a commercial basis, and

(b) with a view to the making of a profit in the trade or so as to afford a reasonable expectation of making such a profit.

(2) References in subsection (1)(b) to a profit in the trade include references to a profit in any larger undertaking of which the trade forms part.

(3) If during the loss-making period there is a change in the way in which the trade is carried on, it is treated as having been carried on throughout that period in the way in which it is being carried on by the end of that period.

(4) The restriction on relief under this section does not apply if the trade is a trade carried on in the exercise of functions conferred by or under an Act (including an Act of the Scottish Parliament).

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Carry forward of trade loss relief

45 Carry forward of trade loss against subsequent trade profits

(1) This section applies if, in an accounting period, a company carrying on a trade makes a loss in the trade.

(2) Relief for the loss is given to the company under this section.

(3) The relief is given for that part of the loss for which no relief is given under section 37 or 42 ("the unrelieved loss").

(4) For this purpose—

(a) the unrelieved loss is carried forward to subsequent accounting periods (so long as the company continues to carry on the trade), and

(b) the profits of the trade of any such period are reduced by the unrelieved loss so far as that loss cannot be used under this paragraph to reduce the profits of an earlier period.

(5) In this section and section 46 references to profits of the trade are references to profits of the trade chargeable to corporation tax.

(6) Relief under this section is subject to restriction or modification in accordance with provisions of the Corporation Tax Acts.

Modifications etc. (not altering text)

C9 S. 45 applied (retrospective to 1.4.2014) by Finance Act 2014 (c. 26), Sch. 16 paras. 6, **9(1)**

46 Use of trade-related interest and dividends if insufficient trade profits

(1) This section applies for the purposes of section 45 if—

(a) the company carries on the trade in an accounting period ("the later period"), and

(b) relief cannot be fully given in the later period for the unrelieved loss (or for that loss so far as it cannot be relieved in earlier periods) because there are no profits, or insufficient profits, of the trade of the later period.

(2) Treat any interest or dividends within subsection (3) as profits of the trade of the later period.

(3) Interest or dividends are within this subsection if they—

(a) are from investments, and

(b) would be brought into account as trading receipts in calculating the profits of the trade of the later period but for the fact that they have been subjected to tax under other provisions of the Tax Acts.

47 Registered industrial and provident societies

(1) This section applies for the purposes of section 45 if the company carrying on the trade is a registered industrial and provident society.

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(2) The following amounts may be brought into account in calculating the profits of the trade—
  (a) amounts to which the charge to corporation tax on income applies under section 299 of CTA 2009 (charge to tax on non-trading profits from loan relationships), and
  (b) amounts arising from possessions out of the United Kingdom to which the charge to corporation tax on income applies under section 933 of CTA 2009 (dividends of non-UK resident company) or under section 974 of that Act (income arising from foreign holdings).

Restrictions on relief: farming or market gardening

48 Farming or market gardening

(1) This section applies if a loss is made in a trade of farming or market gardening in an accounting period ("the current period").

(2) Relief under section 37 is not available for the loss if a loss, calculated without regard to capital allowances, was made in the trade—
  (a) in the current period, and
  (b) in each accounting period falling wholly or partly within the period of 5 years ("the prior 5 years") ending immediately before the current period begins.

(3) But this section does not prevent relief for the loss from being available if—
  (a) the carrying on of the trade forms part of, and is ancillary to, a larger trading undertaking,
  (b) the farming or market gardening activities meet the reasonable expectation of profit test (see section 49), or
  (c) the trade was started, or treated as started, during the prior 5 years (see section 50).

(4) A loss in a trade is calculated without regard to capital allowances by ignoring—
  (a) the allowances treated as expenses of the trade under CAA 2001, and
  (b) the charges treated as receipts of the trade under CAA 2001.

49 Reasonable expectation of profit

(1) This section explains how the farming or market gardening activities ("the activities") meet the reasonable expectation of profit test for the purposes of section 48(3)(b).

(2) The test is decided by reference to the expectations of a competent farmer or market gardener (a "competent person") carrying on the activities.

(3) The test is met if—
  (a) a competent person carrying on the activities in the year ("the current year") after the prior 5 years would reasonably expect future profits (see subsection (4)), but
  (b) a competent person carrying on the activities at the start of the prior period of loss (see subsection (5)) could not reasonably have expected the activities to become profitable until after the end of the current year.

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(4) In determining whether a competent person carrying on the activities in the current year would reasonably expect future profits, regard must be had to—
  (a) the nature of the whole of the activities, and
  (b) the way in which the whole of the activities were carried on in the current year.

(5) "The prior period of loss" means—
  (a) the prior 5 years, or
  (b) if subsection (6) applies, the period made up of the successive accounting periods taken together as mentioned in that subsection.

(6) This subsection applies if—
  (a) losses in the trade, calculated without regard to capital allowances (see section 48(4)), were made in successive accounting periods before the current year, and
  (b) taken together those accounting periods amount to a period of more than 5 years ending at the end of the prior 5 years.

50 Cessation of trades

(1) For the purposes of section 48(3)(c) a trade is to be treated as ceased, and a new trade as started, in any of the following cases—

Case 1

A company starts or ceases to be within the charge to corporation tax in respect of a trade.

Case 2

There is a change in the persons carrying on a trade which involves all of the persons carrying it on before the change permanently ceasing to carry it on.

Case 3

There is a change in the persons carrying on a trade and—
  (a) immediately before the change, the trade is carried on by persons who include a company, and
  (b) after the change, no company that carried on the trade in partnership immediately before the change continues to carry it on in partnership.

Case 4

There is a change in the persons carrying on a trade and—
  (a) immediately before the change, no company carries on the trade in partnership, and
  (b) immediately after the change, the trade is carried on in partnership by persons who include a company.

(2) Subsection (1) is subject to subsections (3) and (4).

(3) A trade is not to be treated as ceased if the change in the persons carrying on the trade is a transfer to which Chapter 1 of Part 22 applies (transfers of trade without a change of ownership).

(4) In determining if there is a change in the persons carrying on a trade, subsection (1) is subject to the following rules—

Status: *Point in time view as at 01/04/2014.*
Changes to legislation: *Corporation Tax Act 2010 is up to date with all changes known to be in force on or before 12 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Rule 1

A husband and wife are treated as the same person.

Rule 2

Individuals who are civil partners of each other are treated as the same person.

Rule 3

A husband or wife is treated as the same person as—

(a) a company of which either of them has control, or

(b) a company of which both have control.

Rule 4

An individual's civil partner is treated as the same person as—

(a) a company of which either of the civil partners has control, or

(b) a company of which both have control.

(5) In subsection (4) "control" has the same meaning as in section 450.

51 Companies treated as same person as individual

(1) This section applies for the purposes of sections 48(2) and 49(6) if, as a result of section 50(4), a company is treated as the same person as an individual.

(2) A loss in an accounting period may be determined by reference to profits and losses made by the individual in the trade in tax years (within the meaning of the Income Tax Acts).

(3) For this purpose—

(a) profits and losses made by the individual in tax years may be allocated (in whole or in part) to accounting periods in a way that is just and reasonable, and

(b) if a tax year or part of a tax year is not covered by any accounting period—

(i) the period covered by the tax year or part may be treated as if it were an accounting period, and

(ii) in accordance with paragraph (a), profits and losses may be allocated to it.

(4) Section 70(2), (3)(a), (4)(a) and (5) of ITA 2007 applies for the purpose of determining the individual's profits and losses in the trade for tax years.

Restrictions on relief: commodity futures

52 Dealings in commodity futures

(1) This section applies if—

(a) a company makes a loss in a trade of dealing in commodity futures,

(b) the company carried on the trade as a partner in a partnership, and

(c) a scheme has been effected or arrangements within subsection (3) have been made (whether by the partnership agreement or otherwise).

(2) Relief under section 37 is not available for the loss.

Status: *Point in time view as at 01/04/2014.*
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(3) Arrangements are within this subsection if as a result of them the sole or main benefit that might be expected to arise to the company from the company's interest in the partnership is the obtaining of a reduction in tax liability by means of relief under section 37.

(4) If relief is given in a case to which this section applies, the relief is withdrawn by the making of an assessment to corporation tax under this section.

(5) "Commodity futures" means commodity futures that are for the time being dealt in on a recognised futures exchange (as defined in section 288(6) of TCGA 1992).

Other restrictions on relief

53 Leasing contracts and company reconstructions

(1) This section applies if—
- (a) under a contract a company ("the leasing company") incurs capital expenditure on the provision of plant or machinery,
- (b) the leasing company lets that plant or machinery to another person under another contract ("the leasing contract"),
- (c) a first-year allowance (within the meaning of Part 2 of CAA 2001) in relation to the capital expenditure is made to the leasing company for an accounting period ("the allowance period"),
- (d) arrangements within subsection (3) are in place in the allowance period, and
- (e) apart from this section, relief under section 37 or 45 would be available to the leasing company in relation to losses made on the leasing contract.

(2) In the allowance period and any subsequent accounting period, no relief is available to the leasing company as mentioned in subsection (1)(e) except against profits (if any) arising under the leasing contract.

(3) Arrangements are within this subsection if, as a result of them, a successor company will be able to carry on, at some time during or after the allowance period, any part of the leasing company's trade which includes the performance of all or any of the obligations which (apart from the arrangements) would be the leasing company's obligations under the leasing contract.

(4) A company ("company S") is a successor company if—
- (a) Chapter 1 of Part 22 applies in relation to the leasing company and company S as, respectively, the predecessor and the successor within the meaning of that Chapter, or
- (b) the leasing company and company S are connected with each other.

(5) "Arrangements" means arrangements of any kind (whether or not in writing).

(6) For the purposes of this section, calculate losses made on the leasing contract and profits arising under that contract as if—
- (a) the performance of that contract were a trade carried on by the leasing company separately from any other trade carried on by it, and
- (b) the leasing company started carrying on that separate trade at the commencement of the letting under that contract.

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(7) In determining if relief is available to the leasing company as mentioned in subsection (1)(e), any losses made on the leasing contract are treated as made in a trade carried on by the leasing company separately from any other trade carried on by it.

54 Non-UK resident company: receipts of interest, dividends or royalties

(1) This section applies if—
  (a) a non-UK resident company carries on a trade in the United Kingdom, and
  (b) tax-exempt receipts of interest, dividends or royalties arise to the company.

(2) The receipts are not to be excluded from the profits of the trade so as to give rise to a loss to be deducted under **[**[F36]section 37 or 45**]**.

(3) For the purposes of subsection (1) a receipt is "tax-exempt" if it has been treated as tax-exempt under arrangements having effect under section 2 of TIOPA 2010.

Textual Amendments

F36 Words in s. 54(2) substituted (17.7.2012) by Finance Act 2012 (c. 14), **Sch. 16 para. 217**

CHAPTER 3

LIMITED PARTNERS AND MEMBERS OF LIMITED LIABILITY PARTNERSHIPS

Introduction

55 Introduction to Chapter

(1) This Chapter restricts the amount of relief that may be given for any loss made by a company in a trade carried on by the company—
  (a) as a limited partner (see sections 56 to 58), or
  (b) as a member of a limited liability partnership (an "LLP") (see sections 59 to 61).

(2) In this Chapter persons carrying on a trade in partnership are referred to collectively as a "firm".

Limited partners

56 Restriction on reliefs for limited partners

(1) This section applies if—
  (a) at any time in an accounting period a company carries on a trade ("the limited partnership trade") as a limited partner in a firm, and
  (b) the company makes a loss in the limited partnership trade in that period ("the loss-making period").

(2) There is a restriction on the amount of relief that may be given for the loss—

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(a) under section 37 (relief for trade losses against total profits) other than against profits of the limited partnership trade, or
(b) under Part 5 (group relief).

(3) The restriction is that the sum of—
(a) the amount of the relief given, and
(b) the total amount of all other relief within subsection (4),
must not exceed the company's contribution to the firm as at the time mentioned in subsection (5).

(4) Relief is within this subsection if it is given under section 37 or Part 5 for a loss made in the limited partnership trade by the company in an accounting period at any time during which it carries on that trade as a limited partner.

(5) The time referred to in subsection (3) is—
(a) the end of the loss-making period, or
(b) if the company ceases to carry on the limited partnership trade during that period, the time when it does so.

(6) If the firm is carrying on, or has carried on, other trades apart from the limited partnership trade, for the purpose of determining the total amount of all other relief within subsection (4), apply that subsection in relation to each other trade as well as the limited partnership trade and then add the results together.

57 Meaning of "contribution to the firm"

(1) For the purposes of section 56 the company's contribution to the firm is the sum of amounts A and B.

(2) Amount A is the amount which the company has contributed to the firm as capital less so much of that amount (if any) as is within subsection (4).

(3) In particular, the company's share of any profits of the firm is to be included in the amount which the company has contributed to the firm as capital so far as that share has been added to the firm's capital.

(4) An amount of capital is within this subsection if it is an amount which the company—
(a) has previously drawn out or received back,
(b) is or may be entitled to draw out or receive back at any time when the company is carrying on a trade as a limited partner in the firm, or
(c) is or may be entitled to require another person to reimburse to it.

(5) In subsection (4) any reference to drawing out or receiving back an amount is to doing so directly or indirectly but does not include drawing out or receiving back an amount which, because of its being drawn out or received back, is chargeable to tax as profits of a trade.

(6) Amount B is the amount of the company's total share of profits within subsection (7) except so far as—
(a) that share has been added to the firm's capital, or
(b) the company has received that share in money or money's worth.

(7) Profits are within this subsection if they are from the limited partnership trade.

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(8) In determining the amount of the company's total share of profits within subsection (7) ignore the company's share of any losses from the limited partnership trade which would (apart from this subsection) reduce that amount.

(9) In subsections (3), (7) and (8) any reference to profits or losses are to profits or losses calculated in accordance with generally accepted accounting practice (before any adjustment required or authorised by law in calculating profits or losses for tax purposes).

(10) If the firm is carrying on, or has carried on, other trades apart from the limited partnership trade, subsections (7) and (8) have effect as if references to the limited partnership trade were references to the limited partnership trade or any of the other trades.

58 Meaning of "limited partner"

(1) In sections 56 and 57 "limited partner" means a company which carries on a trade—
- (a) as a limited partner in a limited partnership registered under the Limited Partnerships Act 1907,
- (b) as a partner in a firm which in substance acts as a limited partner in relation to the trade (see subsection (2)), or
- (c) while the condition mentioned in subsection (3) is met in relation to the company.

(2) A company in substance acts as a limited partner in relation to a trade if the company—
- (a) is not entitled to take part in the management of the trade, and
- (b) is entitled to have any liabilities (or those beyond a certain limit) for debts or obligations incurred for the purposes of the trade met or reimbursed by some other person.

(3) The condition referred to in subsection (1)(c) is that—
- (a) the company carries on the trade jointly with other persons,
- (b) under the law of a territory outside the United Kingdom, the company is not entitled to take part in the management of the trade, and
- (c) under that law, the company is not liable beyond a certain limit for debts or obligations incurred for the purposes of the trade.

(4) In the case of a company which is a limited partner as a result of subsection (1)(c), references in sections 56 and 57 to the firm are to be read as references to the relationship between the company and the other persons mentioned in subsection (3)(a).

Members of LLPs

59 Restriction on relief for members of LLPs

(1) This section applies if—
- (a) a company carries on a trade ("the LLP trade") as a member of an LLP at any time in an accounting period, and
- (b) the company makes a loss in the LLP trade in that period ("the loss-making period").

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(2) There is a restriction on the amount of relief that may be given for the loss—
  (a) under section 37 (relief for trade losses against total profits) other than against profits of the LLP trade, or
  (b) under Part 5 (group relief).

(3) The restriction is that the sum of—
  (a) the amount of the relief given, and
  (b) the total amount of all other relief within subsection (4),

  must not exceed the company's contribution to the LLP as at the time mentioned in subsection (5).

(4) Relief is within this subsection if it is given under section 37 or Part 5 for a loss made in the LLP trade by the company in an accounting period at any time during which it carries on that trade as a member of an LLP.

(5) The time mentioned in subsection (3) is—
  (a) the end of the loss-making period, or
  (b) if the company ceases to carry on the LLP trade during that period, at the time when it does so.

(6) If the LLP is carrying on, or has carried on, other trades apart from the LLP trade, for the purpose of determining the total amount of all other relief within subsection (4), apply that subsection in relation to each other trade as well as the LLP trade and then add the results together.

60 Meaning of "contribution to the LLP"

(1) For the purposes of section 59 the company's contribution to the LLP at any time ("the relevant time") is the sum of amounts A and B.

(2) Amount A is the amount which the company has contributed to the LLP as capital less so much of that amount (if any) as is within subsection (5).

(3) In particular, the company's share of any profits of the LLP is to be included in the amount which the company has contributed to the LLP as capital so far as that share has been added to the LLP's capital.

(4) In subsection (3) the reference to profits is to profits calculated in accordance with generally accepted accounting practice (before any adjustment required or authorised by law in calculating profits for tax purposes).

(5) An amount of capital is within this subsection if it is an amount which the company—
  (a) has previously drawn out or received back,
  (b) draws out or receives back during the period of 5 years beginning with the relevant time,
  (c) is or may be entitled to draw out or receive back at any time when it is a member of the LLP, or
  (d) is or may be entitled to require another person to reimburse to it.

(6) In subsection (5) any reference to drawing out or receiving back an amount is to doing so directly or indirectly but does not include drawing out or receiving back an amount which, because of its being drawn out or received back, is chargeable to tax as profits of a trade.

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(7) Amount B is the amount of the company's liability on a winding up of the LLP so far as that amount is not included in amount A.

(8) For the purposes of subsection (7) the amount of the company's liability on a winding up of the LLP is the amount which—

(a) the company is liable to contribute to the assets of the LLP in the event of the LLP being wound up, and

(b) the company remains liable to contribute for the period of at least 5 years beginning with the relevant time (or until the LLP is wound up, if that happens before the end of that period).

61 Unrelieved losses brought forward

(1) This section applies if—

(a) a company ("the member company") carries on a trade as a member of an LLP at a time during an accounting period ("the current period"), and

(b) as a result of section 59, relief under section 37 or Part 5 (group relief) has not been given for an amount of loss made in the trade by the member company as a member of the LLP in a previous accounting period.

(2) For the purpose of determining the relief under section 37 or Part 5 to be given to any company, the amount of loss is treated as having been made by the member company in the current period so far as it is not excluded by subsection (3) or (4).

(3) An amount of loss is excluded so far as—

(a) under this section the amount has been treated as made by the member company in a previous accounting period, and

(b) as a result of that, relief under section 37 or Part 5 has been given for the amount or would have been given had a claim been made.

(4) An amount of loss is also excluded so far as relief under the Corporation Tax Acts has been given for the amount other than as a result of this section.

CHAPTER 4

PROPERTY LOSSES

Modifications etc. (not altering text)

C10 Pt. 4 Ch. 4 excluded (with effect in accordance with s. 148 of the amending Act) by Finance Act 2012 (c. 14), **s. 87(2)**(3) (with s. 147, Sch. 17)

UK property businesses

62 Relief for losses made in UK property business

(1) This section applies if, in an accounting period, a company carrying on a UK property business makes a loss in the business.

(2) Relief for the loss is given to the company under this section.

Status: *Point in time view as at 01/04/2014.*
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(3) The relief is given by deducting the loss from the company's total profits of the accounting period.

(4) Subsection (5) applies if—
- (a) not all the loss can be deducted as mentioned in subsection (3), and
- (b) the company continues to carry on the UK property business in the next accounting period.

(5) So far as the loss cannot be deducted, it—
- (a) is carried forward to the next accounting period, and
- (b) is treated for the purposes of this section as a loss made by the company in the UK property business in that period.

(6) Relief under this section is subject to restriction or modification in accordance with provisions of the Corporation Tax Acts.

63 Company with investment business ceasing to carry on UK property business

(1) This section applies if, in an accounting period, a company with investment business (as defined in section 1218 of CTA 2009)—
- (a) ceases to carry on a UK property business or to be within the charge to corporation tax in respect of such a business, but
- (b) continues to be a company with investment business.

(2) Subsection (3) applies if, as a result of the company ceasing to carry on the UK property business or to be within the charge to corporation tax in respect of it, an amount of loss made in carrying on that business cannot be carried forward to the next accounting period for the purposes of section 62.

(3) The amount of loss—
- (a) is, nevertheless, carried forward to the next accounting period, and
- (b) is treated for the purposes of Chapter 2 of Part 16 of CTA 2009 as an expense of management deductible for that period or a succeeding period in accordance with that Chapter.

64 UK property business to be commercial or carried on for statutory functions

(1) Sections 62 and 63 apply to a UK property business only so far as it is carried on—
- (a) on a commercial basis, or
- (b) in the exercise of functions conferred by or under an Act (including an Act of the Scottish Parliament).

(2) A business (or part) is not carried on on a commercial basis unless it is carried on with a view to making a profit or so as to afford a reasonable expectation of making a profit.

(3) If during an accounting period there is a change in the way in which a business (or part) is carried on, it is treated as having been carried on throughout that period in the way in which it is being carried on by the end of that period.

65 UK furnished holiday lettings business treated as trade

(1) This section applies if a company carries on a UK furnished holiday lettings business.

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(2) "UK furnished holiday lettings business" means a UK property business so far as it consists of the commercial letting of furnished holiday accommodation (within the meaning of Chapter 6 of Part 4 of CTA 2009).

(3) For the purposes of this Part **[**[F37] (but as modified below)**]** the company is treated as carrying on a single trade—

(a) which consists of every commercial letting of furnished holiday accommodation comprised in the company's UK furnished holiday lettings business, and

(b) in relation to which the profits are chargeable to corporation tax under Chapter 2 of Part 3 of CTA 2009.

(4) [F38]... sections 62 to 64 apply in relation to the company's UK property business as if the lettings mentioned in subsection (3)(a) were not included in it.

[[F39](4A) Chapter 2 applies as if sections 37 to 44 and 48 to 54 were omitted.**]**

(5) If there is a letting of accommodation only part of which is furnished holiday accommodation, just and reasonable apportionments are to be made for the purpose of determining what is comprised in the trade treated as carried on.

Textual Amendments

F37 Words in s. 65(3) inserted (with effect in accordance with Sch. 14 para. 9 of the amending Act) by Finance Act 2011 (c. 11), **Sch. 14 para. 8(2)(a)**

F38 Word in s. 65(4) omitted (with effect in accordance with Sch. 14 para. 9 of the amending Act) by virtue of Finance Act 2011 (c. 11), **Sch. 14 para. 8(2)(b)**

F39 S. 65(4A) inserted (with effect in accordance with Sch. 14 para. 9 of the amending Act) by Finance Act 2011 (c. 11), **Sch. 14 para. 8(2)(c)**

Overseas property businesses

66 Relief for losses made in overseas property business

(1) This section applies if, in an accounting period, a company carrying on an overseas property business makes a loss in the business.

(2) Relief for the loss is given to the company under this section.

(3) For this purpose—

(a) the loss is carried forward to subsequent accounting periods, and

(b) the profits of the business of any such period are reduced by the loss so far as it cannot be used under this paragraph to reduce the profits of the business of an earlier period.

(4) Relief under this section is subject to restriction or modification in accordance with provisions of the Corporation Tax Acts.

67 Overseas property business to be commercial or carried on for statutory functions

(1) Section 66 applies to an overseas property business only so far as it is carried on—

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(a) on a commercial basis, or

(b) in the exercise of functions conferred by or under an Act (including an Act of the Scottish Parliament) or by or under the law of a territory outside the United Kingdom.

(2) A business (or part) is not carried on on a commercial basis unless it is carried on with a view to making a profit or so as to afford a reasonable expectation of making a profit.

(3) If during an accounting period there is a change in the way in which a business (or part) is carried on, it is treated as having been carried on throughout that period in the way in which it is being carried on by the end of that period.

[[F40]67A EEA furnished holiday lettings business treated as trade

(1) This section applies if a company carries on an EEA furnished holiday lettings business.

(2) " EEA furnished holiday lettings business " means an overseas property business so far as it consists of the commercial letting of furnished holiday accommodation (within the meaning of Chapter 6 of Part 4 of CTA 2009) in one or more EEA states.

(3) For the purposes of this Part (but as modified below) the company is treated as carrying on a single trade—

(a) which consists of every commercial letting of furnished holiday accommodation comprised in the company's EEA furnished holiday lettings business, and

(b) in relation to which the profits of which are chargeable to corporation tax under Chapter 2 of Part 3 of CTA 2009.

(4) Sections 66 and 67 apply in relation to the company's overseas property business as if the lettings mentioned in subsection (3)(a) were not included in it.

(5) Chapter 2 applies as if sections 37 to 44 and 48 to 54 were omitted.

(6) If there is a letting of accommodation only part of which is furnished holiday accommodation, just and reasonable apportionments are to be made for the purpose of determining what is comprised in the trade treated as carried on.**]**

Textual Amendments

F40 S. 67A inserted (with effect in accordance with Sch. 14 para. 9 of the amending Act) by Finance Act 2011 (c. 11), **Sch. 14 para. 8(3)**

Modifications etc. (not altering text)

C11 S. 67A applied by 2001 c. 2, s. 250A(2) (as inserted (with effect in accordance with Sch. 14 para. 13 of the amending Act) by Finance Act 2011 (c. 11), **Sch. 14 para. 12(14)**)

[[F41]Insurance companies

Textual Amendments

F41 67B and cross-heading inserted (17.7.2012) by Finance Act 2012 (c. 14), **Sch. 16 para. 218**

Status: *Point in time view as at 01/04/2014.*
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67B Exclusion in the case of property businesses of insurance companies

(1) This Chapter does not apply for the purpose of applying the I - E rules in relation to a loss made by an insurance company in any of its separate UK property businesses or overseas property businesses within section 86(4) of FA 2012.

(2) But in the case of a loss which is referable, in accordance with Chapter 4 of Part 2 of that Act, to the company's basic life assurance and general annuity business, see section 87(3) and (4) of that Act.**]**

CHAPTER 5

LOSSES ON DISPOSAL OF SHARES

Share loss relief against income

68 Share loss relief

(1) A company which has subscribed for shares in a qualifying trading company is eligible for relief under this Chapter ("share loss relief") if—
  (a) it incurs an allowable loss (for the purposes of corporation tax on chargeable gains) on the disposal of the shares in any accounting period, and
  (b) it meets the eligibility conditions (see section 69).

(2) Subsection (1) applies only if the disposal of the shares is—
  (a) by way of a bargain made at arm's length,
  (b) by way of a distribution in the course of dissolving or winding up the qualifying trading company,
  (c) a disposal within section 24(1) of TCGA 1992 (entire loss, destruction, dissipation or extinction of asset), or
  (d) a deemed disposal under section 24(2) of that Act (claim that value of the asset has become negligible).

(3) Subsection (1) does not apply to any allowable loss incurred on the disposal if—
  (a) the shares are the subject of an exchange or arrangement of the kind mentioned in section 135 or 136 of TCGA 1992 (company reconstructions etc), and
  (b) because of section 137 of that Act, the exchange or arrangement involves a disposal of the shares.

(4) For the meaning of "qualifying trading company", see section 78.

69 Eligibility conditions

(1) These are the eligibility conditions mentioned in section 68(1)(b) that a company which has subscribed for shares in a qualifying trading company must meet to be eligible for share loss relief on the disposal of the shares.

(2) Condition A is that the subscribing company ("the investor") is an investment company on the date of the disposal of the shares ("the disposal date").

(3) Condition B is that the investor has been an investment company—
  (a) for a continuous period of 6 years ending on the disposal date, or

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(b) for a shorter continuous period ending on the disposal date and has not before the beginning of that period been a trading company or an excluded company (see section 90(1)).

(4) Condition C is that the investor was not associated with, or a member of the same group as, the qualifying trading company at any time during the period—
(a) beginning with the date when the investor subscribed for the shares, and
(b) ending with the disposal date.

(5) For the purposes of condition C, two companies are associated with each other if—
(a) one controls the other, or
(b) both are under the control of the same person or persons.

(6) Sections 450 and 451 (which contain provision as to when a person is to be taken to have control of a company) apply for the purposes of subsection (5).

70 Entitlement to claim

(1) This section applies where a company is eligible for share loss relief.

(2) The company may make a claim for the loss to be deducted in calculating for corporation tax purposes the company's income—
(a) for the accounting period in which the loss is incurred, and
(b) if the claim so requires, for previous accounting periods so far as they fall (wholly or partly) within the period of 12 months ending immediately before the beginning of the accounting period in which the loss is incurred.

(3) The company may make a claim under subsection (2)(b) for any accounting period only if the company was an investment company throughout that period.

(4) A claim for share loss relief must be made before the end of the period of two years after the end of the accounting period in which the loss is incurred.

71 How relief works

(1) This subsection explains how deductions in respect of share loss relief claimed by a company under section 70 are to be made.

Step 1

Deduct the loss in calculating the company's income for the accounting period in which the loss is incurred.

Step 2

If not all of the loss can be deducted at Step 1, deduct the remaining loss in calculating the company's income for any accounting period falling (wholly or partly) within the 12 month period that ends immediately before the beginning of the accounting period in which the loss is incurred.

(2) The amount of a deduction to be made at Step 2 for any accounting period is the amount of the loss so far as it cannot be deducted under subsection (1) for a subsequent accounting period.

(3) Subsection (1) is subject to sections 72, 74(5) and 75 (which set limits on the amount of share loss relief that may be obtained in particular cases).

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(4) A deduction at Step 2 from the income of an accounting period may be made only after all other deductions have been made from the income for that period in respect of share loss relief given for an earlier loss.

(5) Deductions made on the basis of relief claimed under Part 7 of Schedule 15 to FA 2000 (relief for losses on disposal of shares to which investment relief is attributable) must, in accordance with paragraph 70 of that Schedule, be made before making deductions for share loss relief.

(6) A claim for share loss relief does not affect any claim for a deduction under TCGA 1992 for so much of the allowable loss as is not deducted under subsection (1).

72 Limit on deduction if accounting period falls partly within 12 month period

(1) This section applies if an accounting period falls partly within the period of 12 months ending immediately before the beginning of the accounting period in which the loss is incurred.

(2) The amount of the deduction under Step 2 in section 71(1) for the accounting period is not to exceed an amount equal to the overlapping proportion of the company's income of that period.

(3) The overlapping proportion is the same as the proportion that the part of the accounting period falling within the 12 month period mentioned in subsection (1) bears to the whole of the accounting period.

Shares: subscription and disposal

73 Subscription for shares

(1) This section has effect for the purposes of this Chapter.

(2) A company subscribes for shares in another company if they are issued to the company by the other company in consideration of money or money's worth.

(3) If—

(a) a company has subscribed for, or is treated under this subsection as having subscribed for, any shares, and

(b) any corresponding bonus shares are subsequently issued to the company,

the company is treated as having subscribed for the bonus shares.

(4) If—

(a) a company subscribed for any shares (“the original shares”) on a particular date, and

(b) any corresponding bonus shares are treated as having been subscribed for by the company under subsection (3),

the company is treated as having subscribed for the bonus shares on that date.

74 Disposals of new shares

(1) This section applies if—

(a) a company disposes of shares (“the new shares”), and

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(b) the new shares are, by virtue of section 127 of TCGA 1992 (reorganisation etc treated as not involving disposal), identified with other shares ("the old shares") previously held by the company.

(2) The company is not eligible for share loss relief on the disposal of the new shares unless condition A or B is met.

This is subject to section 87(3).

(3) Condition A is that the company would have been eligible for share loss relief on a disposal of the old shares—

(a) if the company had incurred an allowable loss in disposing of them by way of a bargain made at arm's length on the occasion of the disposal that would have occurred but for section 127 of TCGA 1992, and

(b) where applicable, if this Chapter had then been in force.

(4) Condition B is that the company gave for the new shares consideration in money or money's worth other than consideration of the kind mentioned in paragraph (a) or (b) of section 128(2) of TCGA 1992 ("new consideration").

(5) If the company relies on condition B, the amount of share loss relief on the disposal of the new shares must not exceed the amount or value of the new consideration taken into account as a deduction in calculating the amount of the loss incurred on the disposal.

75 Limits on relief

(1) Subsection (2) applies if—

(a) a company disposes of any shares for which it has subscribed in a qualifying trading company ("qualifying shares"),

(b) those shares either—

(i) form part of a section 104 holding or a 1982 holding at the time of the disposal, or

(ii) formed part of such a holding at an earlier time, and

(c) the company makes a claim under section 70 in respect of a loss incurred on the disposal.

(2) The amount of share loss relief on the disposal is not to exceed the sums that would be allowed as deductions in calculating the amount of the loss if the qualifying shares had not formed part of the holding.

(3) Subsection (4) applies if—

(a) a company disposes of any qualifying shares,

(b) the qualifying shares, and other shares that are not capable of being qualifying shares, are for the purposes of TCGA 1992 to be treated as acquired by a single transaction by virtue of section 105(1)(a) of that Act (disposal of shares acquired on same day etc), and

(c) the company makes a claim under section 70 in respect of a loss incurred on the disposal.

(4) The amount of share loss relief on the disposal is not to exceed the sums that would be allowed as deductions in calculating the amount of the loss if—

(a) the qualifying shares were to be treated as acquired by a single transaction, and

(b) the other shares were not to be so treated.

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(5) Subsection (6) applies if—

(a) a company ("the investor") disposes of any qualifying shares,

(b) the qualifying shares (taken as a single asset), and other shares in the same company that are not capable of being qualifying shares (taken as a single asset), are for the purposes of TCGA 1992 to be treated as the same asset by virtue of section 127 of that Act (reorganisation etc treated as not involving disposal), and

(c) the investor makes a claim under section 70 in respect of a loss incurred on the disposal.

References in this subsection and subsection (6) to other shares in the same company include debentures of the same company.

(6) The amount of share loss relief on the disposal is not to exceed the sums that would be allowed as deductions in calculating the amount of the loss if the qualifying shares and the other shares in the same company were not to be treated as the same asset.

(7) In this section—

"section 104 holding" has the meaning given by section 104(3) of TCGA 1992, and

"1982 holding" has the meaning given by section 109(1) of that Act.

(8) For the purposes of this section and section 76, shares are not capable of being qualifying shares at any time if—

(a) the company concerned acquired the shares otherwise than by subscription,

(b) condition C in section 78(4) was not met in relation to the issue of the shares, or

(c) condition D in section 78(5) would not be met if the shares were disposed of at that time.

(9) For the purposes of subsection (5), shares are not capable of being qualifying shares at any time if they are shares of a different class from the shares mentioned in paragraph (a) of that subsection.

76 Disposal of shares forming part of mixed holding

(1) This section applies if a company disposes of shares forming part of a mixed holding of shares, that is, a holding of shares in a company which includes—

(a) shares that are not capable of being qualifying shares, and

(b) other shares.

(2) Any question—

(a) whether a disposal by the company of shares forming part of the mixed holding is of qualifying shares, or

(b) as to which of any qualifying shares acquired by the company at different times such a disposal relates to,

is to be determined as provided by the following provisions of this section.

(3) Any such question as is mentioned in subsection (2) is to be determined—

(a) except in a case falling within paragraph (b)—

(i) in accordance with subsection (4), and

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(ii) in the case of shares which under that subsection are identified with the whole or any part of a section 104 holding or a 1982 holding, in accordance with subsection (5),

(b) in the case of a mixed holding which includes any shares—

(i) to which investment relief is attributable under Schedule 15 to FA 2000 (corporate venturing scheme), and

(ii) which have been held continuously (within the meaning of paragraph 97 of that Schedule) from the time they were issued until the disposal,

in accordance with subsection (6).

(4) For the purposes of subsection (3)(a)(i), the question is to be determined by identifying the shares disposed of in accordance with sections 105 and 107 of TCGA 1992.

(5) For the purposes of subsection (3)(a)(ii), the question is to be determined by treating the disposal and any previous disposal by the company out of the section 104 or 1982 holding as relating to shares acquired later rather than earlier.

(6) For the purposes of subsection (3)(b), the question is to be determined—

(a) as provided by paragraph 93 of Schedule 15 to FA 2000 (identification of shares on a disposal of part of a holding where investment relief is attributable to any shares in the holding held continuously by the disposing company), but

(b) as if the references in that paragraph to a disposal had the same meaning as in the preceding provisions of this section.

(7) Any such question as is mentioned in subsection (2) which cannot be determined as provided by subsections (3) to (6) is to be determined on a just and reasonable basis.

(8) In this section "holding" means any number of shares of the same class held by one company in the same capacity, growing or diminishing as shares of that class are acquired or disposed of.

For this purpose shares are not to be treated as being of the same class unless they are so treated by the practice of a recognised stock exchange or would be so treated if dealt in on such an exchange.

(9) In this section "section 104 holding", "1982 holding" and "qualifying shares" have the same meaning as in section 75.

77 Section 76: supplementary

(1) In a case to which section 127 of TCGA 1992 (reorganisation etc treated as not involving disposal) applies (including a case where that section applies by virtue of an enactment relating to chargeable gains), shares included in the new holding are treated for the purposes of section 76 as acquired when the original shares were acquired.

(2) Any shares held or disposed of by a nominee or bare trustee for a company are treated for the purposes of section 76 as held or disposed of by that company.

(3) In this section "new holding" and "original shares" have the same meaning as in section 127 of TCGA 1992 (or, as the case may be, that section as applied by the enactment concerned).

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Qualifying trading companies: the requirements

78 Qualifying trading companies

(1) For the purposes of this Chapter a qualifying trading company is a company which meets each of conditions A to D.

(2) Condition A is that the company either—

(a) meets each of the following requirements on the date of the disposal—

(i) the trading requirement (see section 79),

(ii) the control and independence requirement (see section 81),

(iii) the qualifying subsidiaries requirement (see section 82), and

(iv) the property managing subsidiaries requirement (see section 83), or

(b) has ceased to meet any of those requirements at a time which is not more than 3 years before that date and has not since that time been an excluded company, an investment company or a trading company.

(3) Condition B is that the company either—

(a) has met each of the requirements mentioned in condition A for a continuous period of 6 years ending on that date or at that time, or

(b) has met each of those requirements for a shorter continuous period ending on that date or at that time and has not before the beginning of that period been an excluded company, an investment company or a trading company.

(4) Condition C is that the company—

(a) met the gross assets requirement (see section 84) both immediately before and immediately after the issue of the shares in respect of which the share loss relief is claimed, and

(b) met the unquoted status requirement (see section 85) at the relevant time within the meaning of that section.

(5) Condition D is that the company has carried on its business wholly or mainly in the United Kingdom throughout the period—

(a) beginning with the incorporation of the company or, if later, 12 months before the shares in question were issued, and

(b) ending with the date of the disposal.

79 The trading requirement

(1) The trading requirement is that—

(a) the company, ignoring any incidental purposes, exists wholly for the purpose of carrying on one or more qualifying trades, or

(b) the company is a parent company and the business of the group does not consist wholly or as to a substantial part in the carrying on of non-qualifying activities.

(2) If the company intends that one or more other companies should become its qualifying subsidiaries with a view to their carrying on one or more qualifying trades—

(a) the company is treated as a parent company for the purposes of subsection (1)(b), and

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(b) the reference in subsection (1)(b) to the group includes the company and any existing or future company that will be its qualifying subsidiary after the intention in question is carried into effect.

This subsection does not apply at any time after the abandonment of that intention.

(3) For the purpose of subsection (1)(b) the business of the group means what would be the business of the group if the activities of the group companies taken together were regarded as one business.

(4) For the purpose of determining the business of a group, activities are ignored so far as they are activities carried on by a mainly trading subsidiary otherwise than for its main purpose.

(5) For the purposes of determining the business of a group, activities of a group company are ignored so far as they consist in—

(a) the holding of shares in or securities of a qualifying subsidiary of the parent company,

(b) the making of loans to another group company,

(c) the holding and managing of property used by a group company for the purpose of one or more qualifying trades carried on by a group company, or

(d) the holding and managing of property used by a group company for the purpose of research and development from which it is intended—

(i) that a qualifying trade to be carried on by a group company will be derived, or

(ii) that a qualifying trade carried on or to be carried on by a group company will benefit.

(6) Any reference in subsection (5)(d)(i) or (ii) to a group company includes a reference to any existing or future company which will be a group company at any future time.

(7) In this section—

"excluded activities" has the meaning given by section 192 of ITA 2007 read with sections 193 to 199 of that Act,

"group" means a parent company and its qualifying subsidiaries,

"group company", in relation to a group, means the parent company or any of its qualifying subsidiaries,

"incidental purposes" means purposes having no significant effect (other than in relation to incidental matters) on the extent of the activities of the company in question,

"mainly trading subsidiary" means a subsidiary which, apart from incidental purposes, exists wholly for the purpose of carrying on one or more qualifying trades, and any reference to the main purpose of such a subsidiary is to be read accordingly,

"non-qualifying activities" means—

(a) excluded activities, and

(b) activities (other than research and development) carried on otherwise than in the course of a trade,

"parent company" means a company that has one or more qualifying subsidiaries,

"qualifying subsidiary" is to be read in accordance with section 191 of ITA 2007,

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"qualifying trade" has the meaning given by section 189 of that Act, and

"research and development" has the meaning given by section 1138 of this Act.

(8) In sections 189(1)(b) and 194(4)(c) of ITA 2007 (as applied by subsection (7) for the purposes of the definitions of "excluded activities" and "qualifying trade") "period B" means the continuous period that is relevant for the purposes of section 78(3).

(9) In section 195 of ITA 2007 (as applied by subsection (7) for the purpose of the definition of "excluded activities"), references to the issuing company are to be read as references to the company mentioned in subsection (1).

80 Ceasing to meet trading requirement because of administration etc

(1) A company is not regarded as ceasing to meet the trading requirement merely because of anything done in consequence of the company or any of its subsidiaries being in administration or receivership.

This has effect subject to subsections (2) and (3).

(2) Subsection (1) applies only if—

(a) the entry into administration or receivership, and

(b) everything done as a result of the company concerned being in administration or receivership,

is for genuine commercial reasons, and is not part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax.

(3) A company ceases to meet the trading requirement if before the time that is relevant for the purposes of section 78(2)—

(a) a resolution is passed, or an order is made, for the winding up of the company or any of its subsidiaries (or, in the case of a winding up otherwise than under the Insolvency Act 1986 or the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)), any other act is done for the like purpose), or

(b) the company or any of its subsidiaries is dissolved without winding up.

This is subject to subsection (4).

(4) Subsection (3) does not apply if —

(a) the winding up is for genuine commercial reasons, and is not part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax, and

(b) the company continues, during the winding up, to be a trading company.

(5) References in this section to a company being "in administration" or "in receivership" are to be read in accordance with section 252 of ITA 2007.

81 The control and independence requirement

(1) The control element of the requirement is that—

(a) the company must not control (whether on its own or together with any person connected with it) any company which is not a qualifying subsidiary of the company, and

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(b) no arrangements must be in existence by virtue of which the company could fail to meet paragraph (a) (whether at a time during the continuous period that is relevant for the purposes of section 78(3) or otherwise).

(2) The independence element of the requirement is that—

(a) the company must not—

(i) be a 51% subsidiary of another company, or

(ii) be under the control of another company (or of another company and any other person connected with that other company), without being a 51% subsidiary of that other company, and

(b) no arrangements must be in existence by virtue of which the company could fail to meet paragraph (a) (whether at a time during the continuous period that is relevant for the purposes of section 78(3) or otherwise).

(3) This section is subject to section 87(3).

(4) In this section—

"arrangements" includes any scheme, agreement or understanding (whether or not legally enforceable),

"control", in subsection (1)(a), is to be read in accordance with sections 450 and 451 (but see section 1124 for the meaning of "control" in subsection (2)(a)(ii)), and

"qualifying subsidiary" is to be read in accordance with section 191 of ITA 2007.

82 The qualifying subsidiaries requirement

(1) The qualifying subsidiaries requirement is that any subsidiary that the company has must be a qualifying subsidiary of the company.

(2) In this section "qualifying subsidiary" is to be read in accordance with section 191 of ITA 2007.

83 The property managing subsidiaries requirement

(1) The property managing subsidiaries requirement is that any property managing subsidiary that the company has must be a qualifying 90% subsidiary of the company.

(2) In this section—

"property managing subsidiary" has the meaning given by section 188(2) of ITA 2007, and

"qualifying 90% subsidiary" has the meaning given by section 190 of that Act.

84 The gross assets requirement

(1) The gross assets requirement in the case of a single company is that the value of the company's gross assets—

(a) must not exceed £7 million immediately before the shares in respect of which the share loss relief is claimed are issued, and

(b) must not exceed £8 million immediately afterwards.

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(2) The gross assets requirement in the case of a parent company is that the value of the group assets—
  (a) must not exceed £7 million immediately before the shares in respect of which the share loss relief is claimed are issued, and
  (b) must not exceed £8 million immediately afterwards.

(3) The value of the group assets means the sum of the values of the gross assets of each of the members of the group, ignoring any that consist in rights against, or shares in or securities of, another member of the group.

(4) In this section—

"group" means a parent company and its qualifying subsidiaries,

"parent company" means a company that has one or more qualifying subsidiaries,

"qualifying subsidiary" is to be read in accordance with section 191 of ITA 2007, and

"single company" means a company that does not have one or more qualifying subsidiaries.

85 The unquoted status requirement

(1) The unquoted status requirement is that, at the time ("the relevant time") at which the shares in respect of which the share loss relief is claimed are issued—
  (a) the company must be an unquoted company,
  (b) there must be no arrangements in existence for the company to cease to be an unquoted company, and
  (c) there must be no arrangements in existence for the company to become a subsidiary of another company ("the new company") by virtue of an exchange of shares, or shares and securities, if—
    (i) section 87 applies in relation to the exchange, and
    (ii) arrangements have been made with a view to the new company ceasing to be an unquoted company.

(2) The arrangements referred to in subsection (1)(b) and (c)(ii) do not include arrangements in consequence of which any shares, stocks, debentures or other securities of the company or the new company are at any subsequent time—
  (a) listed on a stock exchange that is a recognised stock exchange by virtue of an order made under section 1005(1)(b) of ITA 2007, or
  (b) listed on an exchange, or dealt in by any means, designated by an order made for the purposes of section 184(3)(b) or (c) of that Act,

if the order was made after the relevant time.

(3) In this section—

"arrangements" includes any scheme, agreement or understanding (whether or not legally enforceable),

"debenture" has the meaning given by section 738 of the Companies Act 2006, and

"unquoted company" has the meaning given by section 184(2) of ITA 2007.

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86 Power to amend requirements by Treasury order

The Treasury may by order make such amendments of sections 79 to 85 as they consider appropriate.

Qualifying trading companies: supplementary

87 Relief after an exchange of shares for shares in another company

(1) This section and section 88 apply in relation to shares if—

(a) a company ("the new company") in which the only issued shares are subscriber shares acquires all the shares ("old shares") in another company ("the old company"),

(b) the consideration for the old shares consists wholly of the issue of shares ("new shares") in the new company,

(c) the consideration for the new shares of each description consists wholly of old shares of the corresponding description,

(d) new shares of each description are issued to the holders of old shares of the corresponding description in respect of and in proportion to their holdings, and

(e) by virtue of section 127 of TCGA 1992 as applied by section 135(3) of that Act (company reconstructions etc), the exchange of shares is not to be treated as involving a disposal of the old shares or an acquisition of the new shares.

In this subsection references to shares, except the first and that in the expression "subscriber shares", include securities.

(2) For the purposes of this Chapter the exchange of shares is not regarded as involving any disposal of the old shares or any acquisition of the new shares.

(3) Nothing in—

(a) section 74(2) (disposal of new shares), and

(b) section 81 (the control and independence requirement),

applies in relation to such an exchange of shares, or shares and securities, as is mentioned in subsection (1) or, in the case of section 81, arrangements with a view to such an exchange.

(4) For the purposes of this section old shares and new shares are of a corresponding description if, on the assumption that they were shares in the same company, they would be of the same class and carry the same rights.

(5) References in section 88 to "old shares", "new shares", "the old company" and "the new company" are to be read in accordance with this section.

88 Substitution of new shares for old shares

(1) Subsection (2) applies if, in the case of any new shares held by a company or by a nominee for a company, the old shares for which they were exchanged were shares which had been subscribed for by the company ("the investor").

(2) This Chapter has effect in relation to any subsequent disposal or other event as if—

(a) the new shares had been subscribed for by the investor at the time when, and for the amount for which, the old shares were subscribed for by the investor,

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(b) the new shares had been issued by the new company at the time when the old shares were issued to the investor by the old company, and

(c) any requirements of this Chapter which were met at any time before the exchange by the old company had been met at that time by the new company.

(3) Nothing in subsection (2) applies in relation to section 195(7) of ITA 2007 as applied by section 79(7) above for the purpose of the definition of "excluded activities".

89 Deemed time of issue for certain shares

(1) This section applies for the purposes of the following provisions—

section 78(5)(a),
section 84(1)(a) and (2)(a),
section 85(1), and
section 88(2)(b).

(2) If—

(a) any shares ("the original shares") have been issued to a company, or are treated under this subsection as having been issued to the company at a particular time, and

(b) any corresponding bonus shares are subsequently issued to the company,

the bonus shares are treated as having been issued at the time the original shares were issued to the company or are treated as having been so issued.

Interpretation

90 Interpretation of Chapter

(1) In this Chapter (subject to subsections (2) to (7))—

"bonus shares" means shares which are issued otherwise than for payment (whether in cash or otherwise),

"corresponding bonus shares", in relation to any shares, means bonus shares which—

(a) are issued in respect of those shares, and

(b) are in the same company, are of the same class, and carry the same rights, as those shares,

"excluded company" means a company which—

(a) has a trade which consists wholly or mainly of dealing in land, in commodities or futures or in shares, securities or other financial instruments,

(b) has a trade which is not carried on on a commercial basis and in such a way that profits in the trade can reasonably be expected to be realised,

(c) is a holding company of a group other than a trading group, or

(d) is a building society or a registered industrial and provident society,

"group" (except in sections 79 and 84) means a company which has one or more 51% subsidiaries together with that or those subsidiaries,

"holding company" means a company whose business consists wholly or mainly in the holding of shares or securities of companies which are its 51% subsidiaries,

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"investment company" means a company—

(a) whose business consists wholly or mainly in the making of investments, and

(b) which derives the principal part of its income from the making of investments,

but does not include the holding company of a trading group,

"registered industrial and provident society" means a society registered or treated as registered under the Industrial and Provident Societies Act 1965 or the Industrial and Provident Societies Act (Northern Ireland) 1969 (c. 24 (N.I.)),

"shares"—

(a) includes stock, but

(b) does not include shares or stock not forming part of a company's ordinary share capital,

"share loss relief" has the meaning given by section 68(1),

"trading company" means a company other than an excluded company which is—

(a) a company whose business consists wholly or mainly in the carrying on of a trade or trades, or

(b) the holding company of a trading group, and

"trading group" means a group the business of whose members, when taken together, consists wholly or mainly in the carrying on of a trade or trades.

(2) For the purposes of the definition of "corresponding bonus shares" in subsection (1), shares are not treated as being of the same class unless they would be so treated if they were—

(a) included in the official UK list, and

(b) admitted to trading on the London Stock Exchange.

(3) Except as provided by subsection (4), paragraph (b) of the definition of shares in subsection (1) does not apply in the definition of "excluded company" in subsection (1) or in sections 75(3) to (6), (8) and (9) and 87(1) to (4).

(4) Paragraph (b) of that definition applies in relation to the first reference to "shares" in section 87(1).

(5) The definition of "shares" in subsection (1) does not apply in sections 79(5)(a), 84(3) and 85(1)(c) and (2).

(6) For the purposes of the definition of "trading group" in subsection (1), any trade carried on by a subsidiary which is an excluded company is treated as not constituting a trade.

(7) For the purposes of this Chapter a disposal of shares which results in an allowable loss for the purposes of corporation tax on chargeable gains is treated as made at the time when the disposal is made or treated as made for the purposes of TCGA 1992.

Status: *Point in time view as at 01/04/2014.*
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CHAPTER 6

LOSSES FROM MISCELLANEOUS TRANSACTIONS

91 Relief for losses from miscellaneous transactions

(1) This section applies if, in an accounting period ("the loss-making period"), a company makes a loss in a transaction within subsection (2).

(2) A transaction is within this subsection if income arising from it would be miscellaneous income of the company.

(3) Relief for the loss is given to the company under this section.

(4) For this purpose the company's miscellaneous income of the loss-making period is reduced by the loss.

(5) Subsection (6) applies to the loss so far as it cannot be used under subsection (4) to reduce the company's income.

(6) The loss—
- (a) is carried forward to subsequent accounting periods, and
- (b) the company's miscellaneous income of any such period is reduced by the loss so far as it cannot be used under this paragraph to reduce the income of an earlier period.

(7) A company's miscellaneous income is so much of the company's income which—
- (a) arises from transactions, and
- (b) is chargeable to corporation tax under or by virtue of any provision to which section 1173 applies, other than regulation 18(4) of the Offshore Funds (Tax) Regulations 2009 (S.I. 2009/3001) (offshore income gains).

CHAPTER 7

WRITE-OFF OF GOVERNMENT INVESTMENT

92 Loss relief to be reduced if government investment is written off

(1) This section applies if an amount of government investment in a company ("the written-off amount") is written off.

(2) The written-off amount is set off against the company's carry-forward losses as at the end of the accounting period ending last before the day of the write-off.

(3) If the written-off amount exceeds those losses, the excess is set off against the company's carry-forward losses as at the end of the next accounting period and so on until the whole of the written-off amount has been set off.

(4) In this Chapter "company" has the meaning given by section 1121 but does not include an unincorporated association.

(5) This section needs to be read with—

section 93 (which applies if the company is in a group of companies),

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section 94 (which explains what is meant by government investment being written off and how the written-off amount is calculated), and

section 95 (which explains what is meant by carry-forward losses).

93 Groups of companies

(1) This section applies if—

(a) at the end of an accounting period a company in which an amount of government investment is written off is in a group of companies, and

(b) under section 92(2) or (3) an amount could be set off against the company's carry-forward losses as at the end of that period (or could be so set off if there were enough of those losses).

(2) The amount may be set off (wholly or partly) against the carry-forward losses of one or more companies within subsection (3), as may be just and reasonable.

(3) A company (other than the company referred to in subsection (1)(a)) is within this subsection if at the end of the accounting period it is in the group of companies.

(4) A "group of companies" consists of a company that has one or more 51% subsidiaries, together with that or those subsidiaries.

94 Cases in which government investment is written off

(1) Government investment in a company is written off if any of the following occurs in relation to the company. This is subject to subsection (2).

Case 1

The company's liability to repay any money lent to it out of public funds by a Minister is extinguished. In this case the written-off amount is the amount of the liability extinguished and the write-off occurs when the liability is extinguished.

Case 2

Any of the company's shares for which a Minister has subscribed out of public funds are cancelled. In this case the written-off amount is the amount subscribed for the shares and the write-off occurs when the shares are cancelled.

Case 3

The company's commencing capital debt (see subsection (3)) is reduced otherwise than by being paid off or its public dividend capital (see subsection (4)) is reduced otherwise than by being repaid (including, in either case, a reduction to nil). In this case the written-off amount is the amount of the reduction and the write-off occurs when the reduction occurs.

(2) The written-off amount is reduced so far as it is replaced by—

(a) money lent, or a payment made, out of public funds, or

(b) shares subscribed for by a Minister for money or money's worth.

(3) "Commencing capital debt" means a debt to a Minister assumed as such under an enactment.

(4) "Public dividend capital" means an amount paid by a Minister—

(a) under an enactment in which that amount is so described, or

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(b) under an enactment corresponding to an enactment in which a payment made on similar terms to another body is so described.

(5) In this section—

"enactment" includes an Act of the Scottish Parliament, and

"Minister" means a Minister of the Crown, the Scottish Ministers or a Northern Ireland department.

95 Meaning of "carry-forward losses"

(1) A company's carry-forward losses as at the end of an accounting period are as follows.

Type 1

Losses of the company to be carried forward under section 45, 62 or 66 to the next accounting period. These include losses to be treated as expenses of management of the company under section 63 for the next accounting period.

Type 2

Any excess of the company to be carried forward for deduction to the next accounting period under section 1223(3) of CTA 2009.

Type 3

Any excess of the company to be carried forward for deduction to the next accounting period under section 260(2) of CAA 2001.

Type 4

Any qualifying charitable donations made by the company so far as they exceed the company's profits of the accounting period and are available for surrender for the next accounting period under Part 5 (group relief).

Type 5

Allowable losses of the company available under section 8 of TCGA 1992 so far as not allowed for the accounting period or any previous accounting period.

(2) For the purposes of section 92(2) an amount is excluded from a company's carry-forward losses if, before the day of the write-off, a claim is made in relation to the amount under section 37 or Part 5 (group relief) of this Act or section 260(3) of CAA 2001.

(3) But, for the purposes of section 92(3), any such claim made on or after that day is to be disregarded in determining the company's carry-forward losses as at the end of any accounting period.

(4) The set off of an amount against a company's carry-forward losses as at the end of any accounting period is to be done—

first, against those within Types 1 to 4, and

second, against those within Type 5.

96 Interaction with other tax provisions

(1) A company, in calculating its profits of a trade for corporation tax purposes, is not prevented from deducting a sum by reason only that an amount of government investment in the company is written off.

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(2) Subsection (3) applies for the purposes of section 50 of TCGA 1992 and section 532 of CAA 2001 in their application in relation to a company.

(3) Expenditure is not met by a public body (as defined in section 532(2) of CAA 2001) by reason only that an amount of government investment in the company is written off.

(4) Section 464(1) of CTA 2009 does not prevent section 92 of this Act from applying if the writing-off of an amount of government investment in a company involves the extinguishment (in whole or in part) of a liability under a loan relationship.

PART 5

GROUP RELIEF

Modifications etc. (not altering text)

C12 Pt. 5 applied (with effect in accordance with s. 148 of the amending Act) by Finance Act 2012 (c. 14), **s. 125** (with s. 147, Sch. 17)

CHAPTER 1

INTRODUCTION

97 Introduction to Part

(1) This Part—

(a) allows a company to surrender losses and other amounts, and

(b) enables, in certain cases involving groups or consortiums of companies, other companies to claim corporation tax relief for the losses and other amounts that are surrendered.

(2) The corporation tax relief mentioned in subsection (1) is called “group relief”.

(3) Chapter 2 allows a company within the charge to corporation tax to surrender losses and other amounts it has for an accounting period.

(4) Chapter 3 allows a non-UK resident company that is resident or carrying on a trade in the European Economic Area to surrender losses and other amounts it has for a period.

(5) Chapter 4 sets out how a company may claim group relief in respect of losses and other amounts surrendered, how group relief is given and limitations on the amount of group relief to be given on a claim.

(6) Chapter 5 explains certain key concepts for the purposes of group relief, including (in particular) how to determine if a company is a member of a group of companies or is a member of, or is owned by, a consortium.

(7) Chapter 6 contains provision about persons holding equity in companies and about distributions of companies' profits and assets (which is relevant for the purposes of sections 143(3)(b) and (c) and 144(3)(b) and (c) (in Chapter 4) and section 151(4)(a) and (b) (in Chapter 5)).

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(8) Chapter 7 contains definitions that apply for the purposes of this Part and miscellaneous provisions.

(9) For provision about making claims for group relief, see Part 8 of Schedule 18 to FA 1998 (which includes provision in paragraph 76 of that Schedule for the making of assessments or other adjustments if group relief has been given which is, or has become, excessive).

CHAPTER 2

SURRENDER OF COMPANY'S LOSSES ETC FOR AN ACCOUNTING PERIOD

Introduction

98 Overview of Chapter

(1) This Chapter allows a company to surrender losses and other amounts it has for an accounting period.

(2) Sections 99 to 104 set out the basic provisions about the surrendering of losses and other amounts.

(3) Sections 105 to 110 place restrictions on the surrendering of losses and other amounts.

Basic provisions about surrendering losses and other amounts

99 Surrendering of losses and other amounts

(1) This section applies if a company has one or more of the following for an accounting period—
  (a) a trading loss (see section 100),
  (b) a capital allowance excess (see section 101),
  (c) a deficit within Chapter 16 of Part 5 of CTA 2009 (non-trading deficit on loan relationship),
  (d) amounts allowable as qualifying charitable donations (see Part 6),
  (e) a UK property business loss (see section 102),
  (f) management expenses (see section 103), and
  (g) a non-trading loss on intangible fixed assets (see section 104).

(2) The company may surrender the losses and other amounts under this Chapter so far as the losses and other amounts are eligible for corporation tax relief (apart from this Part).

(3) Subsection (2) applies in relation to losses and other amounts within subsection (1)(a) to (c) even if the company has other profits in the accounting period mentioned in subsection (1) from which the losses and other amounts could be deducted.

(4) But so far as losses and other amounts are within subsection (1)(d) to (g), subsection (2) is subject to the restriction in section 105.

(5) Subsection (2) is also subject to—

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(a) sections 106 to 110 (which place further restrictions on what the surrendering company may surrender),
(b) sections 432 and 433 (which restrict relief for expenses treated as incurred under Chapter 3 or 4 of Part 9), and
(c) sections 887 and 888 (which restrict relief in certain cases involving partnership losses in a business of leasing plant or machinery).

(6) Under paragraph 70(1) of Schedule 18 to FA 1998, the company surrenders losses or other amounts, so far as eligible for surrender under this Chapter, by consenting to one or more claims for group relief in relation to the amounts (see Requirement 1 in section 130).

(7) In this Part, in relation to losses or other amounts within subsection (1) that a company has for an accounting period—

"the surrenderable amounts" means the losses or other amounts so far as eligible for surrender under this Chapter,

"surrendering company" means the company that has the losses or other amounts, and

"the surrender period" means the accounting period for which the company has the losses or other amounts.

100 Meaning of "trading loss"

(1) In section 99(1)(a) "trading loss" means a loss made in a trade in the surrender period.

(2) But it does not include—
(a) a loss made in a trade carried on wholly outside the United Kingdom, or
(b) a loss that is not eligible for relief under section 37 as a result of section 44 or 48.

101 Meaning of "capital allowance excess"

(1) In section 99(1)(b) "capital allowance excess" means an excess of the kind mentioned in section 260(1) of CAA 2001 for the surrender period.

(2) In determining if there is such an excess for the surrender period and, if there is, its amount, apply section 260(1) of CAA 2001 but subject to subsections (3) and (4).

(3) Capital allowances brought forward from previous accounting periods are to be ignored.

(4) The reference in section 260(1) of CAA 2001 to a description of the company's income is to be read as a reference to that description of income before deductions for—
(a) losses of any accounting period other than the surrender period, or
(b) capital allowances.

102 Meaning of "UK property business loss"

(1) In section 99(1)(e) "UK property business loss" means a loss made in a UK property business in the surrender period.

(2) But it does not include a loss treated as made in the surrender period as a result of section 62(5).

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103 Meaning of "management expenses"

(1) In section 99(1)(f) "management expenses" means expenses that are deductible for the surrender period under section 1219 of CTA 2009.

(2) But it does not include—

(a) expenses that are deductible for the surrender period as a result of section 1223 of CTA 2009, or

(b) amounts treated as expenses deductible for the surrender period as a result of section 63 above.

104 Meaning of "non-trading loss on intangible fixed assets"

(1) In section 99(1)(g) "non-trading loss on intangible fixed assets" is to be read in accordance with Part 8 of CTA 2009.

(2) But so much of such a loss as is made up of an amount carried forward under section 753(3) of CTA 2009 is excluded from the scope of section 99(1)(g).

Restrictions on losses and other amounts that may be surrendered

105 Restriction on surrender of losses etc within section 99(1)(d) to (g)

(1) This section applies if the surrendering company has for the surrender period losses or other amounts within section 99(1)(d) to (g) ("relevant amounts") that are eligible for corporation tax relief (apart from this Part).

(2) The surrendering company may not surrender any relevant amount under this Chapter unless the total of the relevant amounts exceeds **[**[F42]the profit-related threshold**]** .

(3) If the total of the relevant amounts does exceed **[**[F43]the profit-related threshold**]** —

(a) the surrendering company may surrender relevant amounts, but

(b) the total amount that may be surrendered is limited to the amount of the excess.

[[F44](3A) The profit-related threshold" is the sum of—

(a) the surrendering company's gross profits of the surrender period, and

(b) where chargeable profits of a CFC for an accounting period ending in the surrender period are apportioned to the surrendering company in accordance with step 3 in subsection (1) of 371BC of TIOPA 2010 and the surrendering company is in relation to that accounting period of the CFC a chargeable company for the purposes of step 4 in that subsection, the total of the chargeable profits so apportioned.

(3B) Where—

(a) an accounting period of a CFC ending in the surrender period is one to which (because of paragraph 50 of Schedule 20 of FA 2012) the repeal of Chapter 4 of Part 17 of ICTA does not apply,

(b) chargeable profits of the CFC for that accounting period are apportioned to the surrendering company in accordance with sections 747(3) and 752 of ICTA, and

(c) the surrendering company is not prevented by section 747(5) of ICTA from being chargeable to tax in respect of the CFC for that accounting period,

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the profit-related threshold also includes the total of the chargeable profits so apportioned.**]**

(4) If the surrendering company surrenders relevant amounts, the amount surrendered is treated as consisting of—

(a) first, donations within section 99(1)(d),

(b) second, losses within section 99(1)(e),

(c) third, expenses within section 99(1)(f), and

(d) fourth, losses within section 99(1)(g).

(5) For the purposes of this section the surrendering company's gross profits of the surrender period are its profits for that period without any of the following—

(a) a deduction in respect of any of the kinds of thing mentioned in section 99(1),

(b) a deduction falling to be made in respect of losses, allowances or other amounts of any other period (whether or not in respect of a kind of thing so mentioned), and

(c) a deduction falling to be made by virtue of section 63 of this Act or section 1223(3) of CTA 2009 (other amounts carried forward).

[[F45](5A) For the purposes of this section—

"CFC" has the same meaning as in Part 9A of TIOPA 2010, except that in subsection (3B) it means a controlled foreign company as defined by section 747(2) of ICTA;

"chargeable profits", in relation to a CFC, is to be read in accordance with section 371BA(3) of TIOPA 2010, except that in subsection (3B) it is to be read in accordance with section 747(6) of ICTA.**]**

(6) This section is subject to section 305 (oil activities: availability of group relief against ring fence profits).

Textual Amendments

F42 Words in s. 105(2) substituted (with effect in accordance with s. 29(6)-(9) of the amending Act) by Finance Act 2013 (c. 29), **s. 29(2)**

F43 Words in s. 105(3) substituted (with effect in accordance with s. 29(6)-(9) of the amending Act) by Finance Act 2013 (c. 29), **s. 29(3)**

F44 S. 105(3A)(3B) inserted (with effect in accordance with s. 29(6)-(9) of the amending Act) by Finance Act 2013 (c. 29), **s. 29(4)**

F45 S. 105(5A) inserted (with effect in accordance with s. 29(6)-(9) of the amending Act) by Finance Act 2013 (c. 29), **s. 29(5)**

106 Restriction on losses etc surrenderable by UK resident

(1) This section applies if the surrendering company is UK resident.

(2) The surrendering company may not surrender a loss or other amount under this Chapter so far as the loss or other amount—

(a) is attributable to a permanent establishment through which the company carries on a trade outside the United Kingdom (see subsection (3)), and

(b) is, or represents, an amount within subsection (5).

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(3) A loss or other amount is attributable to a permanent establishment of the surrendering company if (ignoring this section) the amount could be included in the company's surrenderable amounts for the surrender period if those amounts were determined—
  (a) by reference to that establishment alone, and
  (b) by applying, in relation to that establishment, principles corresponding in all material respects to those mentioned in subsection (4).

(4) The principles are those that would be applied for corporation tax purposes in determining an equivalent loss or other amount in the case of a permanent establishment through which a non-UK resident company carries on a trade in the United Kingdom.

(5) An amount is within this subsection if, for the purposes of non-UK tax (see section 187) chargeable under the law of the territory in which the permanent establishment is situated, the amount is (in any period) deductible from or otherwise allowable against non-UK profits (see section 108) of a person other than the surrendering company.

(6) Subsection (7) applies for the purposes of subsection (5) if, in order to determine if an amount is deductible or otherwise allowable for the purposes of non-UK tax chargeable under the law of a territory, it is necessary under that law to know if the amount (or a corresponding amount) is deductible or otherwise allowable for tax purposes in the United Kingdom.

(7) The amount is to be treated as deductible or otherwise allowable for the purposes of the non-UK tax chargeable under the law of the territory concerned if (and only if) the surrendering company is treated as resident in that territory for the purposes of the non-UK tax.

107 Restriction on losses etc surrenderable by non-UK resident

(1) This section applies if the surrendering company is a non-UK resident company carrying on a trade in the United Kingdom through a permanent establishment.

[[F46](1A) If the surrendering company is established in the EEA (within the meaning of section 134A), it may surrender a loss or other amount under this Chapter only so far as conditions A and B are met.

Subsection (6A) imposes restrictions on a surrender under this subsection.**]**

(2) **[**[F47]In any other case, the**]** surrendering company may surrender a loss or other amount under this Chapter only so far as conditions A, B and C are met in relation to the loss or other amount.

(3) Condition A is that the loss or other amount is attributable to activities of the surrendering company in respect of which it is within the charge to corporation tax for the surrender period.

(4) Condition B is that the loss or other amount is not attributable to activities of the surrendering company that are double taxation exempt for the surrender period (see section 186).

(5) Condition C is that—
  (a) the loss or other amount does not correspond to, and is not represented in, an amount within subsection (6), and

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(b) no amount brought into account in calculating the loss or other amount corresponds to, or is represented in, an amount within subsection (6).

(6) An amount is within this subsection if, for the purposes of non-UK tax chargeable under the law of a territory, the amount is (in any period) deductible from or otherwise allowable against non-UK profits of any person.

[[F48](6A) A loss or other amount may not be surrendered by virtue of subsection (1A) if and to the extent that it, or any amount brought into account in calculating it, corresponds to, or is represented in, amounts within subsection (6B).

(6B) An amount is within this subsection if, for the purposes of non-UK tax chargeable under the law of a territory, the amount is (in any period) deducted from or otherwise allowed against non-UK profits of any person.**]**

(7) But an amount is not to be taken to be within subsection (6) **[**[F49]or (6B) **]** by reason only that it is—

(a) an amount of profits brought into account for the purpose of being excluded from non-UK profits of the person, or

(b) an amount brought into account in calculating an amount of profits brought into account as mentioned in paragraph (a).

(8) Subsection (9) applies for the purposes of subsection (6) if, in order to determine if an amount is deductible or otherwise allowable for the purposes of non-UK tax chargeable under the law of a territory, it is necessary under that law to know if the amount (or a corresponding amount) is deductible or otherwise allowable for tax purposes in the United Kingdom.

(9) The amount is to be treated as deductible or otherwise allowable for the purposes of the non-UK tax chargeable under the law of the territory concerned.

Textual Amendments

F46 S. 107(1A) inserted (with effect in accordance with s. 30(6)-(8) of the amending Act) by Finance Act 2013 (c. 29), **s. 30(2)**

F47 Words in s. 107(2) substituted (with effect in accordance with s. 30(6)-(8) of the amending Act) by Finance Act 2013 (c. 29), **s. 30(3)**

F48 S. 107(6A)(6B) inserted (with effect in accordance with s. 30(6)-(8) of the amending Act) by Finance Act 2013 (c. 29), **s. 30(4)**

F49 Words in s. 107(7) inserted (with effect in accordance with s. 30(6)-(8) of the amending Act) by Finance Act 2013 (c. 29), **s. 30(5)**

108 Meaning of "non-UK profits"

(1) In sections 106 and 107 "non-UK profits", in relation to a person, means—

(a) amounts within subsection (2), or

(b) amounts taken into account in calculating amounts within subsection (2).

(2) Amounts are within this subsection if they—

(a) are taken for the purposes of the non-UK tax in question to be the amount of the profits, income or gains on which (after allowing for deductions) the person is charged with that tax, and

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(b) are not amounts corresponding to, and are not represented in, the total profits of any person of any accounting period.

(3) For the purposes of subsection (2)(b) amounts that arise from activities of a non-UK resident company that are double taxation exempt for an accounting period (see section 186) are excluded from the company's total profits of that period.

109 Restriction on losses etc surrenderable by dual resident

(1) This section applies if in the surrender period the surrendering company is UK resident and is also within a charge to non-UK tax under the law of a territory because—
- (a) it derives its status as a company from that law,
- (b) its place of management is in that territory, or
- (c) it is for some other reason treated under that law as resident in that territory for the purposes of that tax.

(2) If condition A, B or C is met, the surrendering company may not surrender any losses or other amounts under this Chapter.

(3) Condition A is that the surrendering company is not a trading company throughout the surrender period.

(4) Condition B is that in the surrender period the surrendering company carries on a trade of such a description that the company's main function, or one of its main functions, consists of one or more of the following activities.

Activity 1

Acquiring and holding shares, securities or investments of any other kind (whether directly or indirectly).

Activity 2

Making, under loan relationships, payments in relation to which debits fall to be brought into account for the purposes of Part 5 of CTA 2009.

Activity 3

Making payments which are qualifying charitable donations.

Activity 4

Making payments similar to those within Activity 3 but which are deductible in calculating the profits of the surrendering company for corporation tax purposes.

Activity 5

Obtaining funds for the purposes of, or otherwise in connection with, any of Activities 1 to 4.

(5) Condition C is that in the surrender period the surrendering company carries on one or more of Activities 1 to 5—
- (a) to an extent that does not appear to be justified by any trade which it carries on, or
- (b) for a purpose that does not appear to be appropriate to any such trade.

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110 Restriction on surrender of losses etc from alternative finance arrangements

(1) This section applies if the surrendering company is prevented from obtaining a deduction in respect of an amount by section 520 of CTA 2009 (provision not at arm's length: non-deductibility of relevant return).

(2) The amount may not be surrendered under this Chapter.

CHAPTER 3

SURRENDERS MADE BY NON-UK RESIDENT COMPANY RESIDENT OR TRADING IN THE EEA

Introduction

111 Overview of Chapter

(1) This Chapter allows a non-UK resident company that is resident or carrying on a trade in the European Economic Area to surrender losses and other amounts it has for a period.

(2) Section 113 sets out the basic provisions about the surrendering of losses and other amounts.

(3) Sections 114 to 121 set out conditions that must be met if losses and other amounts are to be surrendered (see Step 2 in section 113(2)).

(4) Sections 122 to 128 set out other rules, assumptions and exclusions (see Steps 3 and 5 in section 113(2)).

112 EEA related definitions

In this Chapter—

"EEA accounting period" means a period for which an EEA related company has a loss or other amount,

"EEA amount" has the meaning given under Step 1 of section 113(2),

"EEA related company" means a non-UK resident company that—

(a) is resident in an EEA territory, or

(b) is not resident in any EEA territory but is carrying on a trade in an EEA territory through a permanent establishment, and

"EEA territory", in relation to any time, means a territory outside the United Kingdom that is within the European Economic Area at that time.

Basic provisions about surrendering losses and other amounts

113 Steps to determine extent to which loss etc can be surrendered

(1) This section applies if an EEA related company has a loss or other amount for an EEA accounting period.

(2) Take the following steps to determine the extent to which the EEA related company may surrender the loss or other amount under this Chapter.

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Step 1

Determine the extent to which (if at all) the loss or other amount is eligible for corporation tax relief (apart from this Chapter). The loss or other amount may be surrendered only so far as it is not so eligible. A loss or other amount, so far as surrenderable under this Step, is referred to in this Chapter as an "EEA amount".

Step 2

Determine the extent to which the EEA amount in question meets—

(a) the equivalence condition (see section 114),
(b) the EEA tax loss condition (see sections 115 and 116),
(c) the qualifying loss condition (see sections 117 to 120), and
(d) the precedence condition (see section 121).

References to "the qualifying part of the EEA amount" are references to the EEA amount so far as it meets all those conditions.

Step 3

Recalculate the EEA amount in accordance with section 128 using the assumptions set out in sections 123 to 126. The result is called "the recalculated EEA amount".

Step 4

Determine the amount that may be surrendered. That amount is—

(a) the qualifying part of the EEA amount, or
(b) if less, an amount equal to the relevant proportion of the recalculated EEA amount.

If the recalculated EEA amount is an amount of income or other profits, the amount that may be surrendered is nil."The relevant proportion" is the same as the proportion that the qualifying part of the EEA amount bears to the EEA amount.

Step 5

Determine the extent to which (if at all) the amount resulting from Step 4 is excluded by section 127. If any of that amount is excluded, reduce it accordingly.

(3) If in recalculating the EEA amount at Step 3 it is to be assumed under section 125 that there are two or more accounting periods in relation to the EEA accounting period, the total of the amounts apportioned to the assumed accounting periods available for surrender under subsection (2) is not to exceed the qualifying part of the EEA amount.

(4) Under paragraph 70(1) of Schedule 18 to FA 1998, an EEA related company surrenders an EEA amount, so far as eligible for surrender under this Chapter, by consenting to one or more claims for group relief in relation to the amount (see Requirement 1 in section 135).

(5) In this Part, in relation to losses or other amounts that an EEA related company has for an EEA accounting period—

"the surrenderable amounts" means the losses or other amounts so far as eligible for surrender under this Chapter,

"surrendering company" means the company that has the losses or other amounts, and

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"the surrender period" means the assumed accounting period under section 125 for which the company is taken to have the surrenderable amounts.

Conditions that must be met

114 The equivalence condition

An EEA amount meets the equivalence condition so far as it corresponds (in all material respects) to a loss or other amount within section 99(1)(a) to (g).

115 The EEA tax loss condition: companies resident in EEA territory

(1) In the case of a surrendering company that is resident in an EEA territory ("the resident EEA territory"), an EEA amount meets the EEA tax loss condition so far as—
  (a) subsection (2) applies to the amount, and
  (b) the amount is not excluded by subsection (3).

(2) This subsection applies to the EEA amount so far as it is calculated in accordance with the rules of the resident EEA territory that are applicable for determining, in the surrendering company's case, the amount of any loss or other amount eligible for relief from any non-UK tax (see section 187) chargeable under the law of the resident EEA territory.

(3) The EEA amount is excluded so far as, for corporation tax purposes, it is attributable to a permanent establishment through which the surrendering company carries on a trade in the United Kingdom.

116 The EEA tax loss condition: companies not resident in EEA territory

(1) In the case of a surrendering company that is not resident in any EEA territory but is carrying on a trade in an EEA territory ("the relevant EEA territory") through a permanent establishment, an EEA amount meets the EEA tax loss condition so far as—
  (a) subsection (2) applies to the amount, and
  (b) the amount is not excluded by subsection (3).

(2) This subsection applies to the EEA amount so far as it is calculated in accordance with the rules in the relevant EEA territory that are applicable for determining, in the surrendering company's case, the amount of any loss or other amount eligible for relief from any non-UK tax chargeable under the law of the relevant EEA territory.

(3) The EEA amount is excluded so far as it is attributable to activities of the surrendering company that are subject to relieving arrangements.

(4) "Relieving arrangements" means arrangements within subsection (5) that have the effect mentioned in subsection (6) (or would have that effect if a claim were made).

(5) Arrangements are within this subsection if they are made with a view to affording relief from double taxation in relation to—
  (a) any non-UK tax chargeable under the law of the relevant EEA territory and any non-UK tax chargeable under the law of any other territory, or
  (b) any non-UK tax chargeable under the law of the relevant EEA territory and United Kingdom income or corporation tax.

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(6) The effect referred to in subsection (4) is that the income or gains arising for the EEA accounting period from the activities are ignored in calculating the surrendering company's profits, income or gains chargeable to non-UK tax under the law of the relevant EEA territory for that period.

117 The qualifying loss condition: general

(1) An EEA amount meets the qualifying loss condition so far as sections 118, 119 and 120 apply to it.

(2) In this section and sections 118 to 120, "the relevant EEA territory" means—
- (a) the EEA territory in which the surrendering company is resident, or
- (b) (as the case may be) the EEA territory in which the surrendering company carries on a trade through a permanent establishment.

(3) In sections 118 and 119 "relevant non-UK tax" means any non-UK tax chargeable under the law of the relevant EEA territory or any other resident territory.

(4) A "resident territory" is—
- (a) if the surrendering company is resident in an EEA territory and is also resident in another territory outside the United Kingdom, that other territory, or
- (b) if the surrendering company is not resident in any EEA territory, the territory (or territories) in which it is resident.

118 The qualifying loss condition: relief for current and previous periods

(1) This section applies to an EEA amount so far as subsections (2) and (3) apply to it (but subject to subsection (4)).

(2) This subsection applies to the EEA amount so far as, for the purposes of any relevant non-UK tax, the EEA amount cannot be taken into account in calculating any profits, income or gains that—
- (a) arise in the EEA accounting period or any previous period to the surrendering company or any other person, and
- (b) are chargeable to that tax for the EEA accounting period or any previous period.

(3) This subsection applies to the EEA amount so far as, for the purposes of any relevant non-UK tax, the EEA amount cannot be relieved in the EEA accounting period or any previous period—
- (a) by the payment of a credit,
- (b) by the elimination or reduction of a tax liability, or
- (c) in any other way.

(4) This section applies to the EEA amount (or a part of it) only if every step is taken (whether by the surrendering company or any other person) to secure that the EEA amount (or part) is—
- (a) taken into account as mentioned in subsection (2), or
- (b) relieved as mentioned in subsection (3).

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119 The qualifying loss condition: relief for future periods

(1) This section applies to an EEA amount so far as subsections (2) and (3) apply to it.

(2) This subsection applies to the EEA amount so far as, for the purposes of any relevant non-UK tax, the EEA amount cannot be taken into account in calculating any profits, income or gains that—
  (a) might arise in any period after the EEA accounting period to the surrendering company or any other person, and
  (b) (if there were any) would be chargeable to that tax for any period after the EEA accounting period.

(3) This subsection applies to the EEA amount so far as, for the purposes of any relevant non-UK tax, the EEA amount cannot be relieved in any period after the EEA accounting period—
  (a) by the payment of a credit,
  (b) by the elimination or reduction of a tax liability, or
  (c) in any other way.

(4) The determination as to the extent to which the EEA amount—
  (a) cannot be taken into account as mentioned in subsection (2), or
  (b) cannot be relieved as mentioned in subsection (3),
  is to be made as at the time immediately after the end of the EEA accounting period.

120 The qualifying loss condition: non-UK tax relief in another territory

(1) This section applies to an EEA amount so far as it is not excluded by subsection (2) or (3).

(2) The EEA amount is excluded so far as, for the purposes of any non-UK tax chargeable under the law of any territory other than the relevant EEA territory, it has been taken into account in calculating any profits, income or gains that—
  (a) have arisen in any period to the surrendering company or any other person, and
  (b) were chargeable to that tax for the period (or would have been so chargeable had the EEA amount not been so taken into account).

(3) The EEA amount is excluded so far as, for the purposes of any non-UK tax chargeable under the law of any territory other than the relevant EEA territory, it has been relieved in any period—
  (a) by the payment of a credit,
  (b) by the elimination or reduction of a tax liability, or
  (c) in any other way.

121 The precedence condition

(1) An EEA amount meets the precedence condition so far as no relief can be given for it in any territory which—
  (a) is outside the United Kingdom,
  (b) is not the relevant EEA territory (as defined by section 117(2)), and
  (c) is within subsection (2).

(2) A territory is within this subsection if—

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(a) a company resident in the territory owns (directly or indirectly) ordinary share capital in the surrendering company,
(b) a UK resident company owns (directly or indirectly) ordinary share capital in the company resident in the territory,
(c) the surrendering company is a 75% subsidiary of the UK resident company, and
(d) the surrendering company is not such a subsidiary as a result of its being a 75% subsidiary of another UK resident company.

(3) In subsection (1) the reference to relief being given in any territory is a reference to relief being given—
(a) by taking the EEA amount (or a part of it) into account in calculating any profits, income or gains of any person chargeable to non-UK tax under the law of the territory,
(b) by the payment of a credit to any person under that law,
(c) by the elimination or reduction of a tax liability of any person under that law, or
(d) in any other way.

(4) Chapter 5 explains how to determine if a company is a 75% subsidiary of another company.

Other rules, assumptions and exclusions

122 Assumptions to be made in recalculating EEA amount

Sections 123 to 126 apply for the purpose of recalculating the EEA amount at Step 3 in section 113.

123 Assumptions as to UK residence

(1) Assume that the surrendering company is UK resident throughout the EEA accounting period.

(2) But this does not require it to be assumed—
(a) that there is any change in the place or places at which the surrendering company carries on its activities (although see section 124), or
(b) that the surrendering company ceases to be UK resident at the end of the EEA accounting period.

(3) Assume that the surrendering company becomes UK resident (and, therefore, within the charge to corporation tax) at the beginning of the EEA accounting period.

124 Assumptions as to places in which activities carried on

(1) If during the EEA accounting period the surrendering company carries on a trade wholly or partly in the relevant EEA territory, assume that the trade is carried on wholly or partly in the United Kingdom.

(2) If the surrendering company holds any estate, interest or rights in or over land in the relevant EEA territory, assume that the land is in the United Kingdom.

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(3) For the purposes of subsection (2) the reference to holding an estate, interest or rights in or over land in the relevant EEA territory is to be read so as to produce the result that most closely corresponds with that produced by applying those concepts of law in relation to a UK property business or land in the United Kingdom.

(4) In this section "the relevant EEA territory" means—
- (a) the EEA territory in which the surrendering company is resident, or
- (b) (as the case may be) the EEA territory in which the surrendering company carries on a trade through a permanent establishment.

125 Assumptions as to accounting periods

(1) Assume that an accounting period of the surrendering company begins at the beginning of the EEA accounting period.

(2) Assume that the accounting period ends—
- (a) when the EEA accounting period ends, or
- (b) if earlier, at the end of 12 months.

(3) If the accounting period ends before the end of the EEA accounting period, assume that a further accounting period then begins and so on until the EEA accounting period ends.

(4) Assume that any further accounting period ends—
- (a) at the end of 12 months, or
- (b) if earlier, when the EEA accounting period ends.

126 Assumptions in relation to capital allowances

(1) This section applies if, before the EEA accounting period, the surrendering company incurs capital expenditure on the provision of plant or machinery for the purposes of any activity.

(2) For the purposes of Part 2 of CAA 2001 assume that the plant or machinery—
- (a) was provided for purposes wholly other than those of the activity, and
- (b) was not brought into use for the purposes of the activity until the beginning of the EEA accounting period,

and section 13 of CAA 2001 is to apply accordingly.

(3) This section is to be read as if contained in Part 2 of CAA 2001.

127 Amounts excluded because of certain arrangements

(1) An amount (or part of an amount) resulting from Step 4 in section 113 is excluded if—
- (a) it is not attributable for corporation tax purposes to any permanent establishment through which the surrendering company carries on a trade in the United Kingdom, and
- (b) the following condition is met.

(2) The condition is that the amount (or part)—
- (a) would not have resulted from Step 4 but for any arrangements within subsection (3), or

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(b) would not have arisen to the surrendering company but for any such arrangements.

(3) Arrangements are within this subsection if their main purpose, or one of their main purposes, is to secure that the amount (or part) may be surrendered for the purposes of group relief.

(4) "Arrangements" includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable).

128 Rules for recalculating EEA amount

(1) For the purposes of Step 3 in section 113 the EEA amount is to be recalculated in accordance with any provision made by or under the Corporation Tax Acts—
(a) that applies for the purpose of calculating for corporation tax purposes losses or other amounts to which the EEA amount corresponds, or
(b) that otherwise affects in any way the amount of those losses or other amounts that is eligible for corporation tax relief.

(2) For the purposes of subsection (1) the Treasury may by regulations provide for the modification of any provision made by or under the Corporation Tax Acts—
(a) that applies as mentioned in subsection (1)(a), or
(b) that otherwise affects an amount as mentioned in subsection (1)(b).

(3) Regulations under subsection (2) may make provision in relation to—
(a) all classes of trade or business, or
(b) any particular class or classes of trade or business.

(4) Regulations under subsection (2) may—
(a) make different provision for different cases or different purposes,
(b) contain incidental, supplemental, consequential and transitional provision and savings, and
(c) make provision having retrospective effect.

CHAPTER 4

CLAIMS FOR GROUP RELIEF

Introduction

129 Overview of Chapter

(1) This Chapter sets out how a company may claim group relief, how group relief is given and limitations on the amount of group relief to be given on a claim.

(2) **[**[F50]Sections 130 to 134A**]** deal with claims in relation to surrenderable amounts under Chapter 2.

(3) Sections 135 and 136 deal with claims in relation to surrenderable amounts under Chapter 3.

(4) Section 137 deals with how group relief is given.

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(5) Sections 138 to 142 set out a limitation on the amount of group relief to be given on any claim.

(6) Sections 143 to 149 set out limitations on the amount of group relief to be given on claims based on consortium condition 1, consortium condition 2 or consortium condition 3 (see Requirement 3 in section 130).

Textual Amendments

F50 Words in s. 129(2) substituted (with effect in accordance with Sch. 6 para. 10 of the amending Act) by Finance (No. 3) Act 2010 (c. 33), **Sch. 6 para. 2**

Surrenderable amounts under Chapter 2

130 Group relief claims on amounts surrenderable under Chapter 2

(1) This section applies in relation to the surrendering company's surrenderable amounts for the surrender period under Chapter 2.

(2) A company ("the claimant company") may make a claim for group relief for an accounting period ("the claim period") in relation to those amounts (in whole or in part) if the following requirements are met.

Requirement 1

The surrendering company consents to the claim.

Requirement 2

There is a period ("the overlapping period") that is common to the claim period and the surrender period.

Requirement 3

At a time during the overlapping period—

(a) the group condition is met (see section 131),

(b) consortium condition 1 is met (see section 132),

(c) consortium condition 2 is met (see section **[**[F51]section 133(1) and (3) to (8)**]**), or

(d) consortium condition 3 is met (see **[**[F52]section 133(2) to (8)**]**).

(3) More than one company may make a claim for group relief in relation to any surrenderable amounts (but the giving of group relief in relation to any claim is subject to the provisions of this Chapter).

Textual Amendments

F51 Words in s. 130(2)(c) substituted (with effect in accordance with Sch. 6 para. 10 of the amending Act) by Finance (No. 3) Act 2010 (c. 33), **Sch. 6 para. 3(a)**

F52 Words in s. 130(2)(d) substituted (with effect in accordance with Sch. 6 para. 10 of the amending Act) by Finance (No. 3) Act 2010 (c. 33), **Sch. 6 para. 3(b)**

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131 The group condition

(1) The group condition is met if the surrendering company and the claimant company—
- (a) are members of the same group of companies (see section 152), and
- (b) are both UK related.

(2) For the meaning of "UK related" in subsection (1)(b) and in sections 132 and 133, see section 134.

132 Consortium condition 1

(1) Consortium condition 1 is met if subsection (2) or (3) applies.

(2) This subsection applies if—
- (a) the surrendering company is a trading company or a holding company,
- (b) the surrendering company is owned by a consortium,
- (c) the claimant company is a member of the consortium, and
- (d) both companies are UK related.

(3) This subsection applies if—
- (a) the claimant company is a trading company or a holding company,
- (b) the claimant company is owned by a consortium,
- (c) the surrendering company is a member of the consortium, and
- (d) both companies are UK related.

(4) But consortium condition 1 is not met if a profit on a sale within subsection (5) by the company that is the member of the consortium would be a trading receipt of the member.

(5) A sale is within this subsection if it is a sale of—
- (a) the share capital the member owns in the company owned by the consortium, or
- (b) if that company is owned by the consortium as a result of section 153(3) (consortiums involving holding companies), the share capital the member owns in the holding company in question.

133 Consortium conditions 2 and 3

(1) Consortium condition 2 is met if—
- (a) the surrendering company is a trading company or a holding company,
- (b) the surrendering company is owned by a consortium,
- (c) the claimant company is not a member of the consortium,
- (d) the claimant company is a member of the same group of companies as a third company ("the link company"),
- (e) the link company is a member of the consortium, [F53]...
- **[**[F54](f) the surrendering company and the claimant company are both UK related, and
- (g) the link company is UK related or established in the EEA. **]**

(2) Consortium condition 3 is met if—
- (a) the claimant company is a trading company or a holding company,
- (b) the claimant company is owned by a consortium,

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(c) the surrendering company is not a member of the consortium,

(d) the surrendering company is a member of the same group of companies as a third company ("the link company"),

(e) the link company is a member of the consortium, [F55]...

[[F56](f) the surrendering company and the claimant company are both UK related, and

(g) the link company is UK related or established in the EEA. **]**

(3) But neither consortium condition 2 nor consortium condition 3 is met if a profit on a sale within subsection (4) by the link company would be a trading receipt of that company.

(4) A sale is within this subsection if it is a sale of—

(a) the share capital the link company owns in the company ("the consortium company") owned by the consortium as mentioned in subsection (1)(b) or (2)(b), or

(b) if the consortium company is owned by the consortium as a result of section 153(3) (consortiums involving holding companies), the share capital the link company owns in the holding company in question.

[[F57](5) Subsection (6) applies where the link company—

(a) is established in the EEA, but

(b) is not UK related.

(6) Neither consortium condition 2 nor consortium condition 3 is met unless the link company is a member of the same group of companies as the other company mentioned in subsection (1)(d) or (2)(d) without the involvement of a relevant company.

(7) A "relevant company" is a company that is not established in the EEA.

(8) For the purposes of subsection (6) a company ("A") is a member of the same group of companies as another company ("B") without the involvement of a relevant company if—

(a) in a case where A is the 75% subsidiary of B, B owns at least 75% of A's ordinary share capital otherwise than through a relevant company,

(b) in a case where B is the 75% subsidiary of A, A owns at least 75% of B's ordinary share capital otherwise than through a relevant company, and

(c) in a case where neither company is the 75% subsidiary of the other but both are 75% subsidiaries of a third company, the third company—

(i) is not a relevant company, and

(ii) owns at least 75% of A's ordinary share capital, and at least 75% of B's ordinary share capital, otherwise than through a relevant company.**]**

Textual Amendments

F53 Word in s. 133(1)(e) omitted (with effect in accordance with Sch. 6 para. 10 of the amending Act) by virtue of Finance (No. 3) Act 2010 (c. 33), **Sch. 6 para. 4(2)(a)**

F54 S. 133(1)(f)(g) substituted for s. 133(1)(f) (with effect in accordance with Sch. 6 para. 10 of the amending Act) by Finance (No. 3) Act 2010 (c. 33), **Sch. 6 para. 4(2)(b)**

F55 Word in s. 133(2)(e) omitted (with effect in accordance with Sch. 6 para. 10 of the amending Act) by virtue of Finance (No. 3) Act 2010 (c. 33), **Sch. 6 para. 4(3)(a)**

F56 S. 133(2)(f)(g) substituted for s. 133(2)(f) (with effect in accordance with Sch. 6 para. 10 of the amending Act) by Finance (No. 3) Act 2010 (c. 33), **Sch. 6 para. 4(3)(b)**

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F57 S. 133(5)-(8) inserted (with effect in accordance with Sch. 6 para. 10 of the amending Act) by Finance (No. 3) Act 2010 (c. 33), **Sch. 6 para. 4(4)**

134 Meaning of "UK related" company

For the purposes of sections 131 to 133 a company is UK related if—

(a) it is a UK resident company, or

(b) it is a non-UK resident company carrying on a trade in the United Kingdom through a permanent establishment.

[F58 134A Companies "established in the EEA"

(1) For the purposes of section 133 a company is established in the EEA if—

(a) it is constituted under the law of the United Kingdom or an EEA territory, and

(b) it has its registered office, central administration or principal place of business within the European Economic Area.

(2) In this section "EEA territory", in relation to any time, means a territory outside the United Kingdom that is within the European Economic Area at that time.]

Textual Amendments

F58 S. 134A inserted (with effect in accordance with Sch. 6 para. 10 of the amending Act) by Finance (No. 3) Act 2010 (c. 33), **Sch. 6 para. 5**

Surrenderable amounts under Chapter 3

135 Group relief claims on amounts surrenderable under Chapter 3

(1) This section applies in relation to the surrendering company's surrenderable amounts for the surrender period under Chapter 3.

(2) A company ("the claimant company") may make a claim for group relief for an accounting period ("the claim period") in relation to those amounts (in whole or in part) if the following requirements are met.

Requirement 1

The surrendering company consents to the claim.

Requirement 2

There is a period ("the overlapping period") that is common to the claim period and the surrender period.

Requirement 3

The EEA group condition is met (see section 136) at a time during the overlapping period.

(3) More than one company may make a claim for group relief in relation to any surrenderable amounts (but the giving of group relief in relation to any claim is subject to the provisions of this Chapter).

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136 The EEA group condition

(1) The EEA group condition is met if subsection (2) or (3) applies.

(2) This subsection applies if—
- (a) the surrendering company is a 75% subsidiary of the claimant company, and
- (b) the claimant company is UK resident.

(3) This subsection applies if—
- (a) both the surrendering company and the claimant company are 75% subsidiaries of a third company, and
- (b) the third company is UK resident.

(4) Chapter 5 explains how to determine if a company is a 75% subsidiary of another company.

Giving of group relief

137 Deduction from total profits

(1) If the claimant company makes a claim as mentioned in section 130 or 135, the group relief is given by the making of a deduction from the claimant company's total profits of the claim period.

(2) The amount of the deduction is—
- (a) an amount equal to the surrendering company's surrenderable amounts for the surrender period, or
- (b) if the claim is in relation to only part of those amounts, an amount equal to that part.

(3) Subsection (2) is subject to—
- (a) subsections (4) to (7),
- (b) the limitation set out in sections 138 to 142 that applies in relation to all claims for group relief,
- (c) the limitations set out in sections 143 to 149 that apply in relation to claims based on consortium condition 1, consortium condition 2 or consortium condition 3,
- (d) Chapter 3 of Part 4 (relief in cases involving trading losses made in limited partnerships or limited liability partnerships), and
- (e) section 305(1) (group relief in cases involving oil activities etc).

(4) The deduction is to be made—
- (a) before deductions for relief within subsection (5), but
- (b) after all other deductions to be made at Step 2 in section 4(2) (apart from deductions for group relief on other claims).

(5) The deductions within this subsection are deductions for relief—
- (a) under section 37 in relation to a loss made in an accounting period after the claim period,
- (b) under section 260(3) of CAA 2001 in relation to capital allowances for an accounting period after the claim period, and

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(c) under section 389 or 459 of CTA 2009 in relation to a deficit for a deficit period after the claim period.

(6) For the purposes of subsection (4)(b) it is to be assumed that the claimant company has claimed all relief available to it for the claim period under section 37 of this Act or section 260(3) of CAA 2001.

(7) Corporation tax relief is not to be given more than once for the same amount, whether—
(a) by giving group relief and by giving some other relief (for any accounting period) to the surrendering company, or
(b) by giving group relief more than once.

General limitation on amount of group relief to be given

138 Limitation on amount of group relief applying to all claims

The amount of group relief to be given on a claim ("the current claim") is limited to—
(a) the unused part of the surrenderable amounts (see section 139), or
(b) if less, the unrelieved part of the claimant company's available total profits of the claim period (see section 140).

139 Unused part of the surrenderable amounts

(1) The unused part of the surrenderable amounts is the amount equal to—
(a) the surrenderable amount for the overlapping period (see subsection (2)), less
(b) the amount of prior surrenders for that period (see subsections (3) to (5)).

(2) To determine the surrenderable amount for the overlapping period—
(a) take the proportion of the surrender period included in the overlapping period, and
(b) apply that proportion to the surrenderable amounts for the surrender period.

The surrenderable amount for the overlapping period is the amount given as a result of paragraph (b).

(3) To determine the amount of prior surrenders for the overlapping period—
(a) identify any prior claims for the purposes of this section (see subsection (4)), and
(b) take the steps set out in subsection (5) in relation to each such claim.

The amount of prior surrenders for the overlapping period is the total of the previously used amounts given at Step 3 in subsection (5) for all the prior claims.

(4) A claim is a prior claim for the purposes of this section if—
(a) it is a claim by any company for group relief in respect of the whole or a part of the amounts that, in relation to the current claim, are the surrendering company's surrenderable amounts for the surrender period,
(b) it is made before the current claim, and
(c) it has not been withdrawn.

(5) These are the steps referred to in subsection (3)(b) to be taken in relation to each prior claim.

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Step 1

Identify the overlapping period for the prior claim.

Step 2

Identify any period that is common to the overlapping period for the current claim and the overlapping period for the prior claim. If there is a common period, go to Step 3. If there is no common period, there is no previously used amount in relation to the prior claim (and ignore Step 3).

Step 3

Determine the previously used amount of group relief in relation to the prior claim (see subsection (6)).

(6) To determine the previously used amount of group relief in relation to a prior claim—

(a) take the proportion of the overlapping period for the prior claim that is included in the common period identified at Step 2 in relation to that claim, and

(b) apply that proportion to the amount of group relief given on the prior claim.

The previously used amount of group relief in relation to the prior claim is the amount given as a result of paragraph (b).

(7) For the meaning of "the overlapping period" see section 142.

140 Unrelieved part of claimant company's available total profits

(1) The unrelieved part of the claimant company's available total profits of the claim period is the amount equal to—

(a) the company's available total profits for the overlapping period (see subsection (2)), less

(b) the amount of previously claimed group relief for that period (see subsection (3)).

(2) To determine the available total profits for the overlapping period—

(a) take the proportion of the claim period included in the overlapping period, and

(b) apply that proportion to the available total profits of the claim period.

The available total profits for the overlapping period is the amount given as a result of paragraph (b).

(3) To determine the amount of previously claimed group relief for the overlapping period—

(a) identify any prior claims for the purposes of this section (see subsection (4)), and

(b) take the steps set out in subsection (5) in relation to each such claim.

The amount of previously claimed group relief for the overlapping period is the total of the previously claimed amounts given at Step 3 in subsection (5) for all the prior claims.

(4) A claim is a prior claim for the purposes of this section if—

(a) it is a claim by the claimant company for group relief which would be given by way of a deduction from the company's total profits of the claim period,

(b) it is made before the current claim, and

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(c) it has not been withdrawn.

(5) These are the steps referred to in subsection (3)(b) to be taken in relation to each prior claim.

Step 1

Identify the overlapping period for the prior claim.

Step 2

Identify any period that is common to the overlapping period for the current claim and the overlapping period for the prior claim. If there is a common period, go to Step 3. If there is no common period, there is no previously claimed amount in relation to the prior claim (and ignore Step 3).

Step 3

Determine the previously claimed amount of group relief in relation to the prior claim (see subsection (6)).

(6) To determine the previously claimed amount of group relief in relation to a prior claim—

(a) take the proportion of the overlapping period for the prior claim that is included in the common period identified at Step 2 in relation to that claim, and

(b) apply that proportion to the amount of group relief given on the prior claim.

The previously claimed amount of group relief in relation to the prior claim is the amount given as a result of paragraph (b).

(7) In this section references to the claimant company's "available total profits" are references to its total profits after the deductions mentioned in section 137(4)(b).

(8) Further, if the claimant company is non-UK resident its available total profits do not include any part of its total profits that arise from activities that are double taxation exempt for the claim period (see section 186) (so far as those profits are not covered by the deductions mentioned in section 137(4)(b)).

(9) For the meaning of "the overlapping period" see section 142.

141 Sections 139 and 140: supplementary

(1) If two or more claims for group relief are made at the same time, for the purposes of sections 139 and 140 treat the claims as made—

(a) in such order as the company making them may elect or the companies making them may jointly elect, or

(b) if no such election is made, in such order as an officer of Revenue and Customs may direct.

(2) For the purposes of Step 3 in subsection (5) of each of sections 139 and 140 the amount of group relief given on a prior claim is determined on the basis that relief is given on the claim before it is given on any later claim.

(3) If the use of the proportion mentioned in section 139(2) or (6), or in section 140(2) or (6), would, in the circumstances of a particular case, produce a result that is unjust or unreasonable, the proportion is to be modified so far as necessary to produce a result that is just and reasonable.

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142 Meaning of "the overlapping period"

(1) In sections 139 and 140 "the overlapping period", in relation to a claim for group relief, means the period that is common to the claim period and the surrender period (see Requirement 2 in section 130(2) or, as the case may be, section 135(2)).

(2) But if during any part of the overlapping period the group relief condition is not met, that part is treated as not forming part of the overlapping period but instead as forming—

(a) a part of the surrender period that is not included in the overlapping period, and

(b) a part of the claim period that is not included in the overlapping period.

(3) The group relief condition is the condition on which the claim for group relief is based, that is—

the group condition,
consortium condition 1,
consortium condition 2,
consortium condition 3, or
the EEA group condition.

Limitations on group relief if claim based on consortium condition 1, 2 or 3

143 Condition 1: surrendering company owned by consortium

(1) This section applies if—

(a) the claimant company makes a claim for group relief based on consortium condition 1, and

(b) it is the surrendering company that is owned by the consortium.

(2) The group relief to be given on the claim is limited to the ownership proportion of the surrenderable amount for the overlapping period (see section 139(2) to determine the surrenderable amount for the overlapping period).

(3) The ownership proportion is the same as the lowest of the following proportions—

(a) the proportion of the ordinary share capital of the surrendering company that is beneficially owned by the claimant company,

(b) the proportion of any profits available for distribution to equity holders of the surrendering company to which the claimant company is beneficially entitled (see Chapter 6), [F59]...

(c) the proportion of any assets of the surrendering company available for distribution to such equity holders on a winding up to which the claimant company would be beneficially entitled (see Chapter 6) **[**[F60], and

(d) the proportion of the voting power in the surrendering company that is directly possessed by the claimant company.**]**

(4) For the purposes of subsection (3)—

(a) the proportions mentioned in **[**[F61]paragraphs (a) to (d)**]** of that subsection are those prevailing during the overlapping period, and

(b) if any of those proportions changes during that period, use the average of that proportion during that period.

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(5) If the surrendering company is owned by the consortium as a result of section 153(3) (consortiums involving holding companies), references in subsection (3) to the surrendering company are to be read as references to the holding company in question.

(6) In this section "the overlapping period" is to be read in accordance with section 142.

Textual Amendments

F59 Word in s. 143(3)(b) omitted (with effect in accordance with Sch. 6 para. 10 of the amending Act) by virtue of Finance (No. 3) Act 2010 (c. 33), **Sch. 6 para. 7(2)(a)**

F60 S. 143(3)(d) and word inserted (with effect in accordance with Sch. 6 para. 10 of the amending Act) by Finance (No. 3) Act 2010 (c. 33), **Sch. 6 para. 7(2)(b)**

F61 Words in s. 143(4)(a) substituted (with effect in accordance with Sch. 6 para. 10 of the amending Act) by Finance (No. 3) Act 2010 (c. 33), **Sch. 6 para. 7(3)**

144 Condition 1: claimant company owned by consortium

(1) This section applies if—

(a) the claimant company makes a claim for group relief based on consortium condition 1, and

(b) it is the claimant company that is owned by the consortium.

(2) The group relief to be given on the claim is limited to the ownership proportion of the claimant company's **[**[F62]available total profits**]** of the overlapping period (see section 140(2) to determine the **[**[F62]available total profits**]** of the overlapping period).

(3) The ownership proportion is the same as the lowest of the following proportions—

(a) the proportion of the ordinary share capital of the claimant company that is beneficially owned by the surrendering company,

(b) the proportion of any profits available for distribution to equity holders of the claimant company to which the surrendering company is beneficially entitled (see Chapter 6), [F63]...

(c) the proportion of any assets of the claimant company available for distribution to such equity holders on a winding up to which the surrendering company would be beneficially entitled (see Chapter 6) **[**[F64], and

(d) the proportion of the voting power in the claimant company that is directly possessed by the surrendering company.**]**

(4) For the purposes of subsection (3)—

(a) the proportions mentioned in **[**[F65]paragraphs (a) to (d)**]** of that subsection are those prevailing during the overlapping period, and

(b) if any of those proportions changes during that period, use the average of that proportion during that period.

(5) If the claimant company is owned by the consortium as a result of section 153(3) (consortiums involving holding companies), references in subsection (3) to the claimant company are to be read as references to the holding company in question.

(6) In this section "the overlapping period" is to be read in accordance with section 142.

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Textual Amendments

F62 Words in s. 144(2) substituted (with effect in accordance with art. 1(3) of the amending S.I.) by The Tax Law Rewrite Acts (Amendment) Order 2013 (S.I. 2013/463), arts. 1(2), **10**

F63 Word in s. 144(3)(b) omitted (with effect in accordance with Sch. 6 para. 10 of the amending Act) by virtue of Finance (No. 3) Act 2010 (c. 33), **Sch. 6 para. 8(2)(a)**

F64 S. 144(3)(d) and word inserted (with effect in accordance with Sch. 6 para. 10 of the amending Act) by Finance (No. 3) Act 2010 (c. 33), **Sch. 6 para. 8(2)(b)**

F65 Words in s. 144(4)(a) substituted (with effect in accordance with Sch. 6 para. 10 of the amending Act) by Finance (No. 3) Act 2010 (c. 33), **Sch. 6 para. 8(3)**

145 Conditions 2 and 3: limitations in sections 143 and 144

(1) This section applies if the claimant company makes a claim for group relief based on consortium condition 2 or consortium condition 3.

(2) If the claim is based on consortium condition 2, the limitation on group relief in section 143(2) applies in relation to the claim, but for this purpose references in section 143(3) to the claimant company are to be read as references to the link company.

(3) If the claim is based on consortium condition 3, the limitation on group relief in section 144(2) applies in relation to the claim, but for this purpose references in section 144(3) to the surrendering company are to be read as references to the link company.

146 Conditions 2 and 3: companies in link company's group

(1) If the claimant company makes a claim for group relief based on consortium condition 2, the amount of group relief to be given on the claim is limited by subsections (2) and (3).

(2) There is a limit on the amount of group relief that can be given, in total, on consortium claims made by the link company and group companies in relation to the surrendering company's surrenderable amounts for the surrender period.

(3) That limit is the maximum amount of group relief that could be given to the link company in relation to those amounts on consortium claims—

(a) assuming that no consortium claims in relation to those amounts were made by group companies based on consortium condition 2, [F66]...

[[F67](aa) assuming that the link company was UK related, and]

(b) ignoring any lack of profits of the link company from which deductions could be made as mentioned in section 137(1).

(4) If the claimant company makes a claim for group relief based on consortium condition 3, the amount of group relief to be given on the claim is limited by subsections (5) to (7).

(5) There is a limit on the amount of group relief that can be given, in total, to the claimant company for the claim period on consortium claims made in relation to losses and other amounts surrendered by the link company and group companies.

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(6) That limit is the same as the limit that, as a result of section 144(2), would apply for the purposes of a consortium claim made by the claimant company for the claim period in relation to losses or other amounts surrendered by the link company**[**[F68], assuming that the link company was UK related**]**.

(7) In determining the limit that would apply as a result of section 144(2) it is to be assumed that the accounting period of the link company is the same as the accounting period of the claimant company.

(8) In this section—

"consortium claim" means a claim for group relief based on consortium condition 1, consortium condition 2 or consortium condition 3, [F69]...

"group company", for the purpose of determining in accordance with this section a limitation on the amount of group relief to be given on a claim based on consortium condition 2 or consortium condition 3, means a company that is a member of the same group of companies as the link company (other than the link company itself)**[**[F70], and

"UK related", in relation to a company, has the meaning given by section 134.**]**

Textual Amendments

F66 Word in s. 146(3)(a) omitted (with effect in accordance with Sch. 6 para. 10 of the amending Act) by virtue of Finance (No. 3) Act 2010 (c. 33), **Sch. 6 para. 6(2)(a)**

F67 S. 146(3)(aa) inserted (with effect in accordance with Sch. 6 para. 10 of the amending Act) by Finance (No. 3) Act 2010 (c. 33), **Sch. 6 para. 6(2)(b)**

F68 Words in s. 146(6) inserted (with effect in accordance with Sch. 6 para. 10 of the amending Act) by Finance (No. 3) Act 2010 (c. 33), **Sch. 6 para. 6(3)**

F69 Word in s. 146(8) omitted (with effect in accordance with Sch. 6 para. 10 of the amending Act) by virtue of Finance (No. 3) Act 2010 (c. 33), **Sch. 6 para. 6(4)(a)**

F70 Words in s. 146(8) inserted (with effect in accordance with Sch. 6 para. 10 of the amending Act) by Finance (No. 3) Act 2010 (c. 33), **Sch. 6 para. 6(4)(b)**

[[F71]146A Conditions 1 and 2: surrendering company not controlled by claimant company etc

(1) This section applies if—

(a) the claimant company makes a claim for group relief based on consortium condition 1,

(b) it is the surrendering company that is owned by the consortium, and

(c) during any part of the overlapping period, arrangements within subsection (3) are in place which enable a person to prevent the claimant company, either alone or together with one or more other companies that are members of the consortium, from controlling the surrendering company.

(2) This section also applies if—

(a) the claimant company makes a claim for group relief based on consortium condition 2, and

(b) during any part of the overlapping period, arrangements within subsection (3) are in place which enable a person to prevent the link company, either alone

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or together with one or more other companies that are members of the consortium, from controlling the surrendering company.

(3) Arrangements are within this subsection if—

(a) the company, either alone or together with one or more other companies that are members of the consortium, would control the surrendering company, but for the existence of the arrangements, and

(b) the arrangements form part of a scheme the main purpose, or one of the main purposes, of which is to enable the claimant company to obtain a tax advantage under this Chapter.

(4) The group relief to be given on the claim is to be determined as if the surrenderable amount for the overlapping period were 50% of what it would be but for this section (see section 139(2) to determine the surrenderable amount for the overlapping period).

(5) In this section " the overlapping period " is to be read in accordance with section 142.

(6) Section 1139 ("tax advantage") applies for the purposes of this section.

Textual Amendments

F71 Ss. 146A, 146B inserted (with effect in accordance with Sch. 6 para. 10 of the amending Act) by Finance (No. 3) Act 2010 (c. 33), **Sch. 6 para. 9**

146B Conditions 1 and 3: claimant company not controlled by surrendering company etc

(1) This section applies if—

(a) the claimant company makes a claim for group relief based on consortium condition 1,

(b) it is the claimant company that is owned by the consortium, and

(c) during any part of the overlapping period, arrangements within subsection (3) are in place which enable a person to prevent the surrendering company, either alone or together with one or more other companies that are members of the consortium, from controlling the claimant company.

(2) This section also applies if—

(a) the claimant company makes a claim for group relief based on consortium condition 3, and

(b) during any part of the overlapping period, arrangements within subsection (3) are in place which enable a person to prevent the link company, either alone or together with one or more other companies that are members of the consortium, from controlling the claimant company.

(3) Arrangements are within this subsection if—

(a) the company, either alone or together with one or more other companies that are members of the consortium, would control the claimant company, but for the existence of the arrangements, and

(b) the arrangements form part of a scheme the main purpose, or one of the main purposes, of which is to enable the claimant company to obtain a tax advantage under this Chapter.

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(4) The group relief to be given on the claim is to be determined as if the claimant company's total profits for the overlapping period were 50% of what they would be but for this section (see section 140(2) to determine the total profits for the overlapping period).

(5) In this section " the overlapping period " is to be read in accordance with section 142.

(6) Section 1139 ("tax advantage") applies for the purposes of this section.**]**

Textual Amendments

F71 Ss. 146A, 146B inserted (with effect in accordance with Sch. 6 para. 10 of the amending Act) by Finance (No. 3) Act 2010 (c. 33), **Sch. 6 para. 9**

147 Conditions 1 and 2: surrenderable amounts including trading loss

(1) This section applies if—

(a) the claimant company makes a claim for group relief based on consortium condition 1,

(b) it is the surrendering company that is owned by the consortium,

(c) the surrendering company's surrenderable amounts for the surrender period include a loss within section 99(1)(a), and

(d) the surrendering company has profits (of any description) of that period from which the loss could be deducted under section 37.

(2) This section also applies if—

(a) the claimant company makes a claim for group relief based on consortium condition 2,

(b) the surrendering company's surrenderable amounts for the surrender period include a loss within section 99(1)(a), and

(c) the surrendering company has profits (of any description) of that period from which the loss could be deducted under section 37.

(3) The amount of group relief to be given on the claim is to be determined on the assumption that—

(a) the surrendering company makes a claim under section 37 in relation to the loss mentioned in subsection (1)(c) or (2)(b), and

(b) relief under that section is to be given in relation to the loss before the group relief is given.

(4) If section 148 also applies in relation to the claim for group relief, in giving effect to subsection (3) of this section the surrenderable amounts for the purposes of subsections (3) and (4) of that section are to be reduced by the amount of relief to be given on the surrendering company's claim as mentioned in subsection (3)(b) of this section.

148 Conditions 1 and 2: surrendering company in group of companies

(1) This section applies if—

(a) the claimant company makes a claim for group relief based on consortium condition 1,

(b) it is the surrendering company that is owned by the consortium, and

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(c) the surrendering company is also a member of a group of companies.

(2) This section also applies if—

(a) the claimant company makes a claim for group relief based on consortium condition 2, and

(b) the surrendering company is a member of a group of companies.

[F72(3) In the case of the claim ("the current claim") the surrendering company's surrenderable amounts for the surrender period are to be treated as reduced (but not below nil) by the group's potential relief.]

(5) The group's potential relief is the maximum amount of group relief that could be given if every claim that could be made based on the group condition in respect of the surrenderable amounts was in fact made (and for this purpose it is to be assumed that the maximum possible claim is made in each case).

(6) Before determining the maximum amount of potential group relief under subsection (5), take account of any claim made before the current claim that—

(a) is a claim for group relief based on the group condition, and

(b) is in relation to losses or other amounts surrendered by a member of the same group of companies as the surrendering company (other than the surrendering company itself).

Textual Amendments

F72 S. 148(3) substituted for s. 148(3)(4) (with effect in accordance with art. 1(3) of the amending S.I.) by The Tax Law Rewrite Acts (Amendment) Order 2013 (S.I. 2013/463), arts. 1(2), **11**

149 Conditions 1 and 3: claimant company in group of companies

(1) This section applies if—

(a) the claimant company makes a claim for group relief based on consortium condition 1,

(b) it is the claimant company that is owned by the consortium, and

(c) the claimant company is also a member of a group of companies.

(2) This section also applies if—

(a) the claimant company makes a claim for group relief based on consortium condition 3, and

(b) the claimant company is a member of a group of companies.

[F73(3) In the case of the claim ("the current claim") the claimant company's available total profits of the claim period are to be treated as reduced (but not below nil) by the group's potential relief.]

(5) The group's potential relief is the maximum amount of group relief that could be claimed by the claimant company for the claim period on claims based on the group condition.

(6) Before determining the maximum amount of potential group relief under subsection (5), take account of any claim made before the current claim that—

(a) is a claim for group relief based on the group condition made by another member of the same group of companies as the claimant company, and

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(b) is in relation to losses or other amounts surrendered by a company that is also a member of that group.

Textual Amendments

F73 S. 149(3) substituted for s. 149(3)(4) (with effect in accordance with art. 1(3) of the amending S.I.) by The Tax Law Rewrite Acts (Amendment) Order 2013 (S.I. 2013/463), arts. 1(2), **12**

CHAPTER 5

SUBSIDIARIES, GROUPS AND CONSORTIUMS

Introduction

150 Overview of Chapter

(1) This Chapter explains how to determine if a company—
- (a) is a 75% or 90% subsidiary of another company (see section 151),
- (b) is a member of a group of companies (see section 152),
- (c) is owned by a consortium (see section 153), or
- (d) is a member of a consortium (see section 153).

(2) Sections 154 to 156 qualify those explanations in cases involving transfers of companies.

Explanations of terms

151 Meaning of "75% subsidiary" and "90% subsidiary"

(1) In this Part "75% subsidiary" and "90% subsidiary" are to be read in accordance with Chapter 3 of Part 24, but subject to subsections (2) to (4).

(2) In applying the definition of "75% subsidiary" in section 1154(3), share capital of a registered industrial or provident society is to be treated as if it were ordinary share capital.

(3) If—
- (a) a company ("the shareholder") directly owns shares in another company, and
- (b) a profit on the sale of those shares would be a trading receipt of the shareholder,

the shareholder is treated as not being the owner of those shares for the purpose of determining if any company is a 75% subsidiary of any other company.

(4) If a company ("the subsidiary") would, apart from this subsection, be treated as a 75% or 90% subsidiary of another company ("the parent") at any time, the subsidiary is not to be so treated unless at that time the parent—
- (a) is beneficially entitled to at least 75% or 90% (as the case may be) of any profits available for distribution to equity holders of the subsidiary (see Chapter 6), and

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(b) would be beneficially entitled to at least 75% or 90% (as the case may be) of any assets of the subsidiary available for distribution to such equity holders on a winding up (see Chapter 6).

152 Groups of companies

For the purposes of this Part two companies are members of the same group of companies if—

(a) one is the 75% subsidiary of the other, or

(b) both are 75% subsidiaries of a third company.

153 Companies owned by consortiums and members of consortiums

(1) For the purposes of this Part a company is owned by a consortium if—

(a) the company is not a 75% subsidiary of any company, and

(b) at least 75% of the company's ordinary share capital is beneficially owned by other companies each of which beneficially owns at least 5% of that capital.

(2) The other companies each owning at least 5% of the share capital are the members of the consortium for the purposes of this Part.

(3) If—

(a) a trading company is a 90% subsidiary of a holding company and is not a 75% subsidiary of any company apart from the holding company, and

(b) as a result of subsection (1), the holding company is owned by a consortium,

then for the purposes of this Part the trading company is also owned by the consortium.

Arrangements for transfers of companies

154 Arrangements for transfer of member of group of companies etc

(1) This section applies if, apart from this section, one company ("the first company") and another company ("the second company") would be members of the same group of companies.

(2) For the purposes of this Part the companies are not members of the same group of companies if—

(a) one of the companies has surrenderable amounts for an accounting period ("the current period"), and

(b) arrangements within subsection (3) are in place.

(3) Arrangements are within this subsection if they have any of the following effects **[**[F74](but see sections **[**[F75]155A **]** and 155B)**]**.

Effect 1

At some time during or after the current period, the first company or any successor of it—

(a) could cease to be a member of the same group of companies as the second company, and

(b) could become a member of the same group of companies as a third company (see subsection (4)).

Status: *Point in time view as at 01/04/2014.*
Changes to legislation: *Corporation Tax Act 2010 is up to date with all changes known to be in force on or before 12 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Effect 2

At some time during or after the current period a person (other than the first or second company) has or could obtain, or persons together (other than those companies) have or could obtain, control of the first company but not of the second company.

Effect 3

At some time during or after the current period, a third company could start to carry on the whole or a part of a trade that at a time during the current period is carried on by the first company and could do so—

(a) as the successor of the first company, or

(b) as the successor of another company which is not a third company and which started to carry on the whole or a part of the trade during or after the current period.

(4) A "third company" means a company that is not, apart from any arrangements within subsection (3), a member of the same group of companies as the first company.

Textual Amendments

F74 Words in s. 154(3) inserted (with effect in accordance with art. 15 of the amending S.I.) by The Enactment of Extra-Statutory Concessions Order 2012 (S.I. 2012/266), arts. 1, **13(2)**

F75 Word in s. 154(3) substituted (with effect in accordance with s. 31(4) of the amending Act) by Finance Act 2013 (c. 29), **s. 31(2)**

155 Arrangements for transfer of company owned by consortium etc

(1) This section applies if, apart from this section, a trading company would be owned by a consortium.

(2) The trading company is not owned by the consortium if—

(a) for an accounting period ("the current period") the trading company or a member of the consortium has surrenderable amounts, and

(b) arrangements within subsection (3) are in place.

(3) Arrangements are within this subsection if they have any of the following effects **[**[F76](but see sections **[**[F77]155A**]** and 155B)**]**.

Effect 1

The trading company or a successor of it could, at some time during or after the current period, become a 75% subsidiary of a third company (see subsection (4)).

Effect 2

Any person who owns, or any persons who together own, less than 50% of the ordinary share capital of the trading company—

(a) has, or together have, control of the trading company, or

(b) could obtain such control at some time during or after the current period.

Effect 3

Any person ("P"), either alone or together with persons connected with P—

(a) holds or could obtain at least 75% of the qualifying votes, or

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(b) controls or could control the exercise of at least 75% of those votes.

For this purpose—

"connected" is to be read in accordance with section 1122 but as if subsection (4) of that section were omitted, and

"qualifying votes" means the votes which may be cast in a poll taken at a general meeting of the trading company held during or after the current period.

Effect 4

A third company could start to carry on the whole or a part of a trade that at a time during the current period is carried on by the trading company and could do so—

(a) as the successor of the trading company, or

(b) as the successor of another company which is not a third company and which started to carry on the whole or a part of the trade during or after the current period.

(4) A "third company" means a company that is not, apart from any arrangements within subsection (3), a member of the same group of companies as the trading company.

(5) If the trading company would, apart from this section, be owned by a consortium as a result of section 153(3) (consortiums involving holding companies)—

(a) references in this section (apart from references under Effect 4) to the trading company are to be read as including references to the holding company concerned, and

(b) Effect 3 does not apply if P is that holding company.

Textual Amendments

F76 Words in s. 155(3) inserted (with effect in accordance with art. 15 of the amending S.I.) by The Enactment of Extra-Statutory Concessions Order 2012 (S.I. 2012/266), arts. 1, **13(3)**

F77 Word in s. 155(3) substituted (with effect in accordance with s. 31(4) of the amending Act) by Finance Act 2013 (c. 29), **s. 31(2)**

[F78 155A Certain arrangements not within sections 154 and 155

(1) Arrangements entered into by a joint venture company which, apart from this section, would be arrangements within section 154(3) or 155(3) are not to be treated as such arrangements if and so long as—

(a) the arrangements fall within subsection (2), and

(b) none of the contingencies mentioned in subsection (3) to which the arrangements relate has occurred.

(2) Arrangements fall within this subsection if they are—

(a) an agreement which provides for the transfer of shares or securities in the joint venture company to one or more members of that company on, or as a result of, one or more contingencies mentioned in subsection (3) occurring, or

(b) a provision in a constitutional document of the joint venture company which provides for the suspension of a member's voting rights on, or as a result of, one or more of those contingencies occurring.

(3) The contingencies referred to in subsections (1)(b) and (2) are—

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(a) the voluntary departure of a member,

(b) the commencement of the liquidation, administration, administrative receivership or receivership of, or the entering into of a voluntary arrangement by, a member under the Insolvency Act 1986 or the Insolvency (Northern Ireland) Order 1989 or the commencement, or entering into, of equivalent proceedings or arrangements under the law of any country or territory outside the United Kingdom,

(c) a serious deterioration in the financial condition of a member,

(d) a change of control of a member,

(e) a default by a member in performing its obligations under any agreement between the members or with the joint venture company (which, for this purpose, includes any constitutional document of the joint venture company),

(f) an external change in the commercial circumstances in which the joint venture company operates such that its viability is threatened,

(g) an unresolved disagreement between members, and

(h) any contingency of a similar kind to that mentioned in any of paragraphs (a) to (g) which is provided for, but not intended to happen, when the arrangements in question are entered into.

(4) This section does not apply if a member could alone or together with connected persons dictate the terms or timing of—

(a) the transfer of shares or securities, or

(b) the suspension of a member's voting rights,

in advance of one or more of the contingencies occurring.

(5) For the purposes of subsection (4) members are not connected with each other by reason only of their membership of the joint venture company.

(6) In this section—

"connected" has the same meaning as in section 1122;

"constitutional document" means a memorandum of association, articles of association or any other similar document regulating the affairs of the joint venture company;

"joint venture company" means a company which—

(a) has two or more member companies, and

(b) carries on a commercial activity governed by an agreement regulating the affairs of its members;

"member" means a holder of shares or securities in the joint venture company.

Textual Amendments

F78 Ss. 155A, 155B inserted (with effect in accordance with art. 15 of the amending S.I.) by The Enactment of Extra-Statutory Concessions Order 2012 (S.I. 2012/266), arts. 1, **13(1)**

155B Certain mortgage arrangements not within sections 154 and 155

(1) Arrangements entered into by a company which, apart from this section, would be arrangements within section 154(3) or 155(3) are not to be treated as such arrangements if and so long as—

Status: *Point in time view as at 01/04/2014.*
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(a) the arrangements are a mortgage, secured by way of shares or securities in the company, which on default or the happening of any other event allows the mortgagee to exercise its rights against the mortgagor, and

(b) the mortgagee has not exercised its rights against the mortgagor.

(2) This section does not apply if the mortgagee—

(a) possesses greater rights in respect of the shares or securities which are the subject of the mortgage than it requires to protect its interest as mortgagee, or

(b) could alone or together with connected persons dictate the terms or timing of the default or the happening of any other event which allows it to exercise its rights against the mortgagor.

(3) For the purposes of subsection (2)(b) the mortgagee is not, by reason only of the mortgage, connected with a company whose shares or securities are the subject of the mortgage.

(4) In this section—

"connected" has the same meaning as in section 1122;

"mortgage" means—

(a) in England and Wales, and Northern Ireland, any legal or equitable charge, and

(b) in Scotland, any right in security,

(and section 1166(1) (definition of "mortgage": Scotland) does not apply).**]**

Textual Amendments

F78 Ss. 155A, 155B inserted (with effect in accordance with art. 15 of the amending S.I.) by The Enactment of Extra-Statutory Concessions Order 2012 (S.I. 2012/266), arts. 1, **13(1)**

156 Sections 154 and 155: supplementary

(1) This section applies for the purposes of sections 154 **[**[F79]to 155B**]**.

(2) "Arrangements"—

(a) means arrangements of any kind (whether or not in writing), but

(b) does not include **[**[F80]— **]**

(i) a power of a Minister of the Crown, the Scottish Ministers or a Northern Ireland department to give directions to a statutory body as to the disposal of assets belonging to the body or to a subsidiary of the body.**[**[F81], or

(ii) a condition or requirement imposed by, or agreed with, a Minister of the Crown, the Scottish Ministers, a Northern Ireland department or a statutory body.**]**

[[F82](2A) In subsection (2) "statutory body" means a body (other than a company as defined by section 1(1) of the Companies Act 2006) established by or under a statutory provision for the purpose of carrying out functions conferred on it by or under a statutory provision, except that the Treasury may, by order, specify that a body is or is not to be a statutory body for this purpose.**]**

(3) A company is the successor of another company if it carries on a trade which, in whole or in part, the other company used to carry on and the circumstances are such that—

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(a) Chapter 1 of Part 22 (transfers of trade without a change of ownership) applies in relation to the companies as, respectively, the successor and the predecessor within the meaning of that Chapter, or

(b) the two companies are connected with each other in accordance with section 1122.

Textual Amendments

F79 Words in s. 156(1) substituted (with effect in accordance with art. 15 of the amending S.I.) by The Enactment of Extra-Statutory Concessions Order 2012 (S.I. 2012/266), arts. 1, **13(4)**

F80 Words in s. 156(2)(b) renumbered as s. 156(2)(b)(i) (with effect in accordance with s. 31(4) of the amending Act) by Finance Act 2013 (c. 29), **s. 31(1)(a)**

F81 S. 156(2)(b)(ii) and word inserted (with effect in accordance with s. 31(4) of the amending Act) by Finance Act 2013 (c. 29), **s. 31(1)(b)**

F82 S. 156(2A) inserted (with effect in accordance with s. 31(4) of the amending Act) by Finance Act 2013 (c. 29), **s. 31(1)(c)**

CHAPTER 6

EQUITY HOLDERS AND PROFITS OR ASSETS AVAILABLE FOR DISTRIBUTION

Modifications etc. (not altering text)

C13 Pt. 5 Ch. 6 applied (with effect in accordance with s. 381(1) of the amending Act) by Taxation (International and Other Provisions) Act 2010 (c. 8), **ss. 241(6)**, 381(1) (with Sch. 9 paras. 1-9, 22)

C14 Pt. 5 Ch. 6 applied (with effect in accordance with s. 381(1) of the amending Act) by Taxation (International and Other Provisions) Act 2010 (c. 8), **ss. 345(7)**, 381(1) (with Sch. 9 paras. 1-9, 22, 31)

C15 Pt. 5 Ch. 6 applied (with modifications) by Taxation of Chargeable Gains Act 1992 (c. 12), s. 252(10) (as substituted (with effect in accordance with s. 1184(1) of the amending Act) by 2010 c. 4, s. 1184(1), **Sch. 1 para. 252** (with Sch. 2))

C16 Pt. 5 Ch. 6 applied (with modifications) by Taxation of Chargeable Gains Act 1992 (c. 12), s. 170(8) (as substituted (with effect in accordance with s. 1184(1) of the amending Act) by 2010 c. 4, s. 1184(1), **Sch. 1 para. 242(4)** (with Sch. 2))

C17 Pt. 5 Ch. 6 applied (with modifications) by Finance Act 2009 (c. 4), s. 772(1)(2) (as substituted (with effect in accordance with s. 1184(1) of the amending Act) by 2010 c. 4, s. 1184(1), **Sch. 1 para. 646** (with Sch. 2))

C18 Pt. 5 Ch. 6 applied (with modifications) by Taxation of Chargeable Gains Act 1992 (c. 12), Sch. 7AC para. 8(2) (as substituted (with effect in accordance with s. 1184(1) of the amending Act) by 2010 c. 4, s. 1184(1), **Sch. 1 para. 269(3)** (with Sch. 2))

C19 Pt. 5 Ch. 6 applied by Capital Allowances Act 2001 (c. 2), ss. 212G(5), 212H(2) (as inserted (with effect in accordance with Sch. 4 para. 5, 6 of the amending Act) by 2010 c. 13, **Sch. 4 para. 2**)

C20 Pt. 5 Ch. 6 applied (with modifications) by 2007 c. 3, s. 257BF(3)(4) (as inserted (17.7.2012) by Finance Act 2012 (c. 14), **Sch. 6 para. 1**)

Status: *Point in time view as at 01/04/2014.*
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Introduction

157 Introduction to Chapter

(1) This Chapter applies for the purposes of sections 143(3)(b) and (c), 144(3)(b) and (c) and 151(4)(a) and (b).

(2) For the purposes of this Chapter—
- (a) "new consideration" has the meaning given by section 1115, and
- (b) all loans are regarded as being securities.

Equity holders

158 Meaning of "equity holder"

(1) An equity holder of a company ("the relevant company") is any person who—
- (a) holds ordinary shares in the company (see section 160), or
- (b) is a loan creditor of the company in relation to a loan other than a normal commercial loan (see section 162).

(2) For the purposes of subsection (1)(b) a person is a loan creditor of a company if the person is a creditor in respect of any redeemable loan capital issued by the company or in respect of a debt incurred by the company—
- (a) for any money borrowed or capital assets acquired by the company,
- (b) for any right to receive income created in favour of the company, or
- (c) for consideration the value of which to the company was, at the time when the debt was incurred, substantially less than the amount of the debt (including any premium on the debt).

(3) Subsection (1) is subject to section 159.

Modifications etc. (not altering text)

C21 S. 158(1)(b) modified (with effect in accordance with reg. 1(2)(3) of the amending S.I.) by The Taxation of Regulatory Capital Securities Regulations 2013 (S.I. 2013/3209), regs. 1(1), **4** (with reg. 8)

159 Use of relevant company's assets

(1) Subsection (2) applies if—
- (a) a person ("P") has, directly or indirectly, provided new consideration for any shares or securities in the relevant company,
- (b) assets of the relevant company are used by P for the purposes of a trade carried on by P or are used by a person connected with P for the purposes of a trade carried on by that connected person, and
- (c) in respect of those assets an allowance within subsection (3) has been made to the relevant company.

(2) P (and no other person) is to be treated as being an equity holder in relation to the shares or securities mentioned in subsection (1)(a).

(3) The allowances within this subsection are—

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(a) an annual investment allowance, within the meaning of Chapter 5 of Part 2 of CAA 2001, in relation to expenditure incurred by the relevant company on the provision of plant or machinery,

(b) a first-year allowance, within the meaning of that Chapter, in relation to expenditure so incurred,

(c) a writing-down allowance, within the meaning of that Chapter, in relation to expenditure so incurred, and

(d) an allowance under Chapter 3 of Part 6 of CAA 2001 in relation to expenditure incurred by the relevant company on research and development (within the meaning of that Part).

(4) If—

(a) P is a bank,

(b) the only new consideration provided by P is provided in the normal course of banking business by way of a normal commercial loan (see section 162), and

(c) the cost to the relevant company of the assets mentioned in subsection (1)(b) is less than the amount of the new consideration,

the reference in subsection (2) to the shares or securities is to be read as a reference to only so much of that normal commercial loan as is equal to that cost of those assets.

Modifications etc. (not altering text)

C22 S. 159(4)(b) modified (with effect in accordance with reg. 1(2)(3) of the amending S.I.) by The Taxation of Regulatory Capital Securities Regulations 2013 (S.I. 2013/3209), regs. 1(1), **4** (with reg. 8)

160 Meaning of "ordinary shares"

(1) For the purposes of section 158(1)(a) "ordinary shares" means shares other than restricted preference shares.

(2) For the purposes of subsection (1) restricted preference shares are shares that meet each of conditions A to E.

(3) Condition A is that the shares are issued for consideration which is or includes new consideration.

(4) Condition B is that the shares do not carry any right to conversion into shares or securities other than a right to conversion into—

(a) shares to which section 164(1) applies,

(b) securities to which section 164(2) applies, or

(c) shares or securities in the relevant company's quoted parent company (see section 164(3) to (7)).

(5) Condition C is that the shares do not carry any right to the acquisition of shares or securities.

(6) Condition D is that the shares—

(a) do not carry a right to dividends, or

(b) carry a restricted right to dividends (see section 161).

(7) Condition E is that the shares, on repayment, do not carry rights to an amount exceeding the new consideration mentioned in subsection (3) except so far as those

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rights are reasonably comparable with those generally carried by fixed dividend shares listed on a recognised stock exchange.

Modifications etc. (not altering text)

C23 S. 160 modified by 1988 c. 1, Sch. 25 para. 2(7A) (as inserted (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 1 para. 147(2)(b)** (with Sch. 2))

C24 S. 160 excluded (1.3.2013) by The Building Societies (Core Capital Deferred Shares) Regulations 2013 (S.I. 2013/460), regs. 1(1), **3(2)(c)** (with reg. 1(2))

161 Meaning of "restricted right to dividends"

(1) For the purposes of condition D in section 160, a right to dividends carried by shares in a company is a "restricted right to dividends" if—

(a) the dividends represent no more than a reasonable commercial return on the new consideration received by the company in respect of the shares, and

(b) subsection (2), (3) or (4) applies.

(2) This subsection applies if—

(a) the dividends are of a fixed amount or are at a fixed percentage rate of the nominal value of the shares, and

(b) the company is not entitled, by virtue of any term subject to which the shares are issued or held, to reduce the amount of, or not to pay, any of the dividends.

(3) This subsection applies if—

(a) the dividends are of a fluctuating percentage rate of the nominal value of the shares, and

(b) the company is not entitled, by virtue of any term subject to which the shares are issued or held, to reduce the amount of, or not to pay, any of the dividends.

(4) This subsection applies if paragraph (a) of subsection (2) or (3) is met but paragraph (b) of that subsection is not met and—

(a) the company is only entitled to reduce the amount of, or not to pay, any of the dividends in special circumstances, or

(b) having regard to all the circumstances, it is reasonable to assume that the company is only likely to reduce the amount of, or not to pay, any of the dividends in special circumstances.

(5) For the purposes of subsection (3)(a) dividends are of a "fluctuating percentage rate" of the nominal value of shares if the rate fluctuates in accordance with—

(a) a standard published rate of interest,

(b) the retail prices index, or

(c) any other general index of prices similar to the retail prices index that is published by the government, or by an agent of the government, of the country or territory in whose currency the shares are denominated.

(6) For the purposes of subsection (4) a company reduces the amount of, or does not pay, dividends "in special circumstances" if—

(a) at the time the dividend is or would be payable, the company is in severe financial difficulties, or

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(b) the company does so for the purpose of following a recommendation of a relevant regulatory body.

(7) The Treasury may by order specify circumstances in which a company is to be treated as in severe financial difficulties for the purposes of subsection (6)(a).

(8) In subsection (6)(b) "relevant regulatory body" means—

[[F83](a) in relation to a dividend paid by a company that is a PRA-authorised person for the purposes of the FISMA, the Prudential Regulation Authority,

(aa) in relation to a dividend paid by a company that is authorised for the purposes of the FISMA but does not fall within paragraph (a), the Financial Conduct Authority, and**]**

(b) in relation to a dividend paid by any other company, a body discharging functions in relation to the company under the law of a country or territory outside the United Kingdom that correspond to functions discharged by the Financial Services Authority in relation to a company authorised as mentioned in paragraph (a).

Textual Amendments

F83 S. 161(8)(a)(aa) substituted for s. 161(8)(a) (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 18 para. 129(2)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

162 Meaning of "normal commercial loan"

(1) For the purposes of sections 158(1)(b) and 159(4)(b) "normal commercial loan" means a loan—

(a) which is of or includes new consideration, and

(b) in relation to which each of conditions A to D is met.

[F84](1A) . . . . . .

(2) Condition A is that the loan does not carry any right to conversion into shares or securities other than a right to conversion into—

(a) shares to which section 164(1) applies,

(b) securities to which section 164(2) applies, or

(c) shares or securities in **[**[F85]a quoted unconnected company (see section 164(2A)) or in**]** the relevant company's quoted parent company (see section 164(3) to (7)).

(3) Condition B is that the loan does not carry any right to the acquisition of shares or securities.

(4) Condition C is that the loan does not entitle the loan creditor to any amount by way of interest which—

(a) depends to any extent on the results of the relevant company's business or on the results of any part of that business,

(b) depends to any extent on the value of any of the relevant company's assets, or

(c) exceeds a reasonable commercial return on the new consideration lent.

This subsection needs to be read with section 163.

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(5) Condition D is that the loan is a loan in relation to which the loan creditor is entitled, on repayment, to an amount which—
  (a) does not exceed the new consideration lent, or
  (b) is reasonably comparable with the amount generally repayable (in relation to an equal amount of new consideration) under the terms of issue of securities listed on a recognised stock exchange.

Textual Amendments

F84 S. 162(1A) repealed (with effect in accordance with reg. 1(2)(3) of the amending S.I.) by The Taxation of Regulatory Capital Securities Regulations 2013 (S.I. 2013/3209), regs. 1(1), **12(a)(i)**

F85 Words in s. 162(2)(c) inserted (with effect in accordance with s. 32(7) of the amending Act) by Finance Act 2012 (c. 14), **s. 32(2)**

163 Normal commercial loans: company's results or value of assets

(1) Interest is not within section 162(4)(a) by reason only that the terms of the loan provide for the rate of interest—
  (a) to be reduced if the results of the relevant company's business or any part of the business improve, or
  (b) to be increased if such results worsen.

(2) Interest is not within section 162(4)(b) by reason only that the terms of the loan provide for the rate of interest—
  (a) to be reduced if the value of any of the relevant company's assets increases, or
  (b) to be increased if the value of any such assets decreases.

(3) Subsection (4) applies if—
  (a) a loan is made to the relevant company for the purpose of facilitating the acquisition of land,
  (b) the loan is made on the basis mentioned in subsection (5), and
  (c) none of the land that the loan is used to acquire is acquired with a view to resale at a profit.

(4) Interest on the loan is not within section 162(4)(b) by reason only that the terms of the loan are such that the only way the loan creditor can enforce payment of an amount due is by exercising rights granted by way of security over the land that the loan is used to acquire.

(5) The basis referred to in subsection (3)(b) is that—
  (a) the whole of the loan is to be applied in the acquisition of land by the relevant company or in meeting incidental costs incurred wholly and exclusively for the purpose of obtaining the loan or providing security for the loan,
  (b) the payment of any amount due in connection with the loan to the person making it is to be secured on the land that the loan is used to acquire, and
  (c) no other security is to be required for the payment of any such amount.

(6) "Incidental costs" means expenditure on fees, commissions, advertising, printing or other incidental matters.

Status: *Point in time view as at 01/04/2014.*
Changes to legislation: *Corporation Tax Act 2010 is up to date with all changes known to be in force on or before 12 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

164 Sections 160 and 162: supplementary

(1) This subsection applies to any shares—

(a) in relation to which conditions A, C, D and E in section 160 are met, and

(b) which do not carry any rights to conversion into shares or securities other than rights to conversion into shares or securities in the relevant company's quoted parent company (see subsections (3) to (6)).

(2) This subsection applies to any securities—

(a) which represent a loan of or including new consideration,

(b) in relation to which conditions B, C and D in section 162 are met, and

(c) which do not carry any rights to conversion into shares or securities other than rights to conversion into shares or securities in **[**[F86]a quoted unconnected company (see subsection (2A)) or in**]** the relevant company's quoted parent company.

[[F87](2A) For the purposes of this section and section 162 a company is a quoted unconnected company if (and only if)—

(a) its ordinary shares are listed on a recognised stock exchange, and

(b) it is not connected with the relevant company.**]**

(3) For the purposes of this section and sections 160 and 162 a company ("the candidate company") is the relevant company's quoted parent company if (and only if)—

(a) the relevant company is a 75% subsidiary of the candidate company,

(b) the candidate company is not a 75% subsidiary of any company, and

(c) the candidate company's ordinary shares are listed on a recognised stock exchange.

(4) **[**[F88]In the case of a company whose**]** ordinary share capital is divided into two or more classes, **[**[F89]subsections (2A)(a) and (3)(c) are**]** met only if its ordinary shares of each class are listed on a recognised stock exchange.

(5) In **[**[F90]this section**]** "ordinary shares" means shares forming part of ordinary share capital.

(6) Subsection (7) applies if, in determining under subsection (3)(a) whether the relevant company is a 75% subsidiary of the candidate company, it is necessary to know, for the purposes of subsection (1)(b) or (2)(c) or section 160(4)(c) or 162(2)(c), whether the candidate company is the relevant company's quoted parent company.

(7) It is to be assumed for those purposes that the candidate company is the relevant company's quoted parent company.

Textual Amendments

F86 Words in s. 164(2)(c) inserted (with effect in accordance with s. 32(7) of the amending Act) by Finance Act 2012 (c. 14), **s. 32(3)**

F87 S. 164(2A) inserted (with effect in accordance with s. 32(7) of the amending Act) by Finance Act 2012 (c. 14), **s. 32(4)**

F88 Words in s. 164(4) substituted (with effect in accordance with s. 32(7) of the amending Act) by Finance Act 2012 (c. 14), **s. 32(5)(a)**

F89 Words in s. 164(4) substituted (with effect in accordance with s. 32(7) of the amending Act) by Finance Act 2012 (c. 14), **s. 32(5)(b)**

Status: *Point in time view as at 01/04/2014.*
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F90 Words in s. 164(5) substituted (with effect in accordance with s. 32(7) of the amending Act) by Finance Act 2012 (c. 14), **s. 32(6)**

[F91]164A Loan forming part of tier two capital

. . . . . .

Textual Amendments

F91 S. 164A repealed (with effect in accordance with reg. 1(2)(3) of the amending S.I.) by The Taxation of Regulatory Capital Securities Regulations 2013 (S.I. 2013/3209), regs. 1(1), **12(a)(ii)**

Company's entitlement to profits or assets available for distribution: basic provisions

165 Proportion of profits available for distribution to which company is entitled

(1) This section applies for the purpose of determining the proportion to which a company ("company A") is, at any time, beneficially entitled of any profits available for distribution to the equity holders of another company ("company B").

(2) The proportion is the proportion to which company A would, at that time, be beneficially entitled on a distribution in money to the equity holders of company B ("the profit distribution") of—

(a) an amount of profits equal to company B's total profits of the relevant accounting period (see section 168), or

(b) if there are no such total profits, profits of £100.

(3) It does not matter for the purposes of subsection (2) if any of company B's total profits are not actually distributed.

(4) If company B is non-UK resident, company B's total profits are to be calculated as if it were UK resident.

(5) For the purposes of the profit distribution, it is to be assumed that no payment is made by way of repayment of share capital or of the principal secured by any loan unless that payment is a distribution.

(6) Subject to subsection (5), if an equity holder is entitled as such to a payment which (apart from this subsection) would not be a distribution, the equity holder is nevertheless to be treated as entitled to the payment on the profit distribution.

166 Proportion of assets available for distribution to which company is entitled

(1) This section applies for the purpose of determining the proportion to which a company ("company A") would, at any time, be beneficially entitled of any assets available for distribution to the equity holders of another company ("company B") on a winding up.

(2) The proportion is the proportion to which company A would, at that time, be beneficially entitled if company B were to be wound up and on that winding up ("the notional winding up") the value of assets available for distribution to company B's equity holders were equal to—

(a) the assets amount minus the liabilities amount, or

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(b) if the assets amount does not exceed the liabilities amount or if company B's balance sheet is prepared to a date other than the end of the relevant accounting period (see section 168), £100.

(3) The "assets amount" is the amount of company B's assets as shown in its balance sheet as at the end of the relevant accounting period.

(4) The "liabilities amount" is the amount of company B's liabilities as shown in that balance sheet but excluding liabilities to equity holders as such.

(5) If, on the notional winding up, an equity holder would be entitled as such to an amount of assets which (apart from this subsection) would not be a distribution of assets, the equity holder is nevertheless treated as entitled to the amount on the distribution of assets on the notional winding up.

(6) Subsection (7) applies if—

(a) an equity holder ("E") of company B provided new consideration for any shares or securities in company B in relation to which E is an equity holder,

(b) company B makes a loan to E or any person connected with E or acquires shares or securities in E or any person so connected, and

(c) in making that loan or acquiring those shares or securities, company B applies, directly or indirectly, an amount ("the returned amount") corresponding to the whole or any part of the new consideration.

(7) The following amounts are to be reduced by the returned amount—

(a) the assets amount, and

(b) the amount of assets to which E is beneficially entitled on the notional winding up.

167 Profits or assets available for distribution and entitlement: supplementary

(1) References to profits or assets available for distribution to equity holders of a company do not include references to any profits or assets available for distribution to any equity holder otherwise than as an equity holder.

(2) References to a company being beneficially entitled to profits or assets are references to the company being so entitled—

(a) directly,

(b) through another company or other companies, or

(c) partly directly and partly through another company or other companies.

(3) If a person is an equity holder in relation to shares or securities as a result of section 159, that person (and no other) is to be treated as being beneficially entitled to any distribution of profits or assets attributable to those shares or securities.

168 Meaning of "the relevant accounting period"

(1) For the purpose of determining the proportion of profits or assets to which company A would be beneficially entitled as mentioned in section 165(2) or 166(2) at any time, "the relevant accounting period" is the accounting period of company B in which that time falls.

(2) If company B is non-UK resident and is not within the charge to corporation tax, the relevant accounting period is to be determined using the assumption in subsection (3).

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(3) The assumption is that company B became UK resident (and, therefore, within the charge to corporation tax) at the time it became a 75% subsidiary (as mentioned in section 136) ignoring section 151(4).

Company's entitlement to profits or assets available for distribution: supplementary

169 Application and interpretation of sections 170 to 182

(1) Sections 170 to 182 apply for the purpose of determining the proportion of profits or assets to which company A would be beneficially entitled as mentioned in section 165(2) or 166(2) at any time.

(2) In those sections—

"arrangements" means arrangements of any kind (whether or not in writing),

"company A's proportion" means the proportion of profits or assets to which company A would be beneficially entitled as mentioned in section 165(2) or 166(2) at the relevant time,

"distribution rights" means rights in relation to dividends or interest or assets on a winding up,

"the participating equity holders", in relation to the determining of company A's proportion, means the equity holders of company B—

(a) to whom the profit distribution would be made, or

(b) who would be entitled to participate in the notional winding up, and

"the relevant time" means the time mentioned in subsection (1) when the beneficial entitlement of company A is to be determined.

170 Shares or securities with limited rights

(1) This section applies if, at the relevant time, one or more of the participating equity holders holds, as such, shares or securities with distribution rights that are limited (wholly or partly) by reference to a specified amount or amounts.

(2) Determine what company A's proportion would be if all those distribution rights were waived so far as they are so limited.

The result is referred to as "the alternative proportion".

(3) If the alternative proportion is less than what company A's proportion would be ignoring this section, then company A's proportion is taken to be the alternative proportion.

(4) Subsection (3) is subject to sections 175, 176, 178 and 180.

(5) For the purposes of subsection (1) a limitation on a right may operate—

(a) by specifying the capital or amount of profits by reference to which a distribution is calculated, or

(b) in any other way.

(6) But in a case to which section 180 applies (see section 179), limitations that are covered by Case 1 in section 179 are ignored for the purposes of subsection (1).

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171 Shares or securities with temporary rights

(1) Section 172 applies if, at the relevant time, one or more of the participating equity holders holds, as such, shares or securities—
  (a) which have rights within subsection (2), or
  (b) in relation to which arrangements within subsection (3) are in place.

(2) The rights within this subsection are distribution rights of such a kind that if—
  (a) the profit distribution were to be made, or
  (b) the notional winding up were to occur,

  at a time after the relevant accounting period, the equity holder's entitlement at that time would be different from the equity holder's entitlement at the relevant time.

(3) The arrangements within this subsection are arrangements of such a kind that if—
  (a) effect were to be given to the arrangements, and
  (b) the profit distribution were to be made, or the notional winding up were to occur, at a time after the relevant accounting period,

  then, as a result of effect being given to the arrangements, the equity holder's entitlement at that time would be different from the equity holder's entitlement at the relevant time.

(4) The references in subsections (2) and (3) to the equity holder's entitlement at a time are references to the proportion to which the equity holder would be beneficially entitled (as the case may be)—
  (a) of profits on the profit distribution if it were made at that time, or
  (b) of assets on the notional winding up if it occurred at that time.

172 Company A's proportion if shares etc have temporary rights

(1) If this section applies, determine what company A's proportion would be if the rights of all participating equity holders at the relevant time were the same as what they would be at the relevant future time.

  The result is referred to as "the alternative proportion".

(2) For the purposes of subsection (1)—
  (a) "the relevant future time" means the time after the relevant accounting period mentioned in subsection (2) or (3) of section 171 (as the case may be), and
  (b) assume that effect is given to all arrangements (if any) within subsection (3) of that section.

(3) If the alternative proportion is less than what company A's proportion would be ignoring this section, then company A's proportion is taken to be the alternative proportion.

(4) Subsection (3) is subject to sections 175, 177, 178 and 180.

173 Cases in which option arrangements are in place

(1) Section 174 applies if option arrangements are in place at the relevant time.

(2) "Option arrangements" means arrangements in relation to which conditions A and B are met **[**[F92](but see sections 174A and 174B)**]**.

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(3) Condition A is that the effect of the arrangements is that there could be a change in—

(a) the proportion of profits to which any of the participating equity holders would be beneficially entitled on the profit distribution if it were made at a time after the relevant time, or

(b) the proportion of assets to which any of the participating equity holders would be beneficially entitled on the notional winding up if it occurred at a time after the relevant time.

(4) Condition B is that, under the arrangements, the change could result from the exercise of—

(a) a right to acquire ordinary shares in company B (see section 160) or securities in company B, or

(b) a right to require a person to acquire such shares or securities.

(5) For the purposes of subsection (4)—

(a) it does not matter whether or not the shares or securities were issued before the arrangements were put in place,

(b) "right" does not include a right within subsection (6), and

(c) "securities" does not include normal commercial loans (as defined by section 162).

(6) A right is within this subsection if it—

(a) is a right of an individual to acquire shares,

(b) was obtained because of the individual's office or employment as a director or employee of company B, and

(c) was obtained in accordance with a share option scheme at a time when the scheme was an approved share option scheme.

(7) In subsection (6)(c)—

"share option scheme" means—

(a) an SAYE option scheme within the meaning of the SAYE code (see section 516(4) of ITEPA 2003), or

(b) a CSOP scheme within the meaning of the CSOP code (see section 521(4) of ITEPA 2003), and

"approved" means—

(a) in relation to an SAYE option scheme, approved under Schedule 3 to ITEPA 2003, and

(b) in relation to a CSOP scheme, approved under Schedule 4 to ITEPA 2003.

Textual Amendments

F92 Words in s. 173(2) inserted (with effect in accordance with art. 15 of the amending S.I.) by The Enactment of Extra-Statutory Concessions Order 2012 (S.I. 2012/266), arts. 1, **14(2)**

174 Company A's proportion if option arrangements in place

(1) If this section applies, take the following steps.

Step 1

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Identify all option rights under the option arrangements (or sets of arrangements if more than one) which exist at the relevant time but which have not become effective at or before that time."Option rights" means rights of the kind mentioned in section 173(4)(a) or (b), and such a right becomes "effective" when the shares or securities to which it relates are acquired as a result of its exercise.

Step 2

Identify each possible state of affairs that could subsist at the relevant time if the option rights identified at Step 1, or any of them or any combination of them, became effective at that time. For this purpose it does not matter if an option right cannot actually become effective at or before the relevant time.

Step 3

Take each state of affairs identified at Step 2 and—

(a) identify what the rights and duties of the participating equity holders would be at the relevant time if the state of affairs were to subsist at that time, and

(b) determine what company A's proportion would be if those rights and duties were the rights and duties of the participating equity holders at the relevant time.

Step 4

Identify the lowest proportion determined under paragraph (b) of Step 3. That proportion is referred to as "the alternative proportion".

(2) If the alternative proportion is less than what company A's proportion would be ignoring this section, then company A's proportion is taken to be the alternative proportion.

(3) Subsection (2) is subject to sections 176 to 178 and 180.

[F93 174A Certain option arrangements not within section 173

(1) Arrangements entered into by a joint venture company which, apart from this section, would be option arrangements within section 173 are not to be treated as such arrangements if and so long as—

(a) the arrangements are within subsection (2), and

(b) none of the contingencies mentioned in subsection (3) to which the arrangements relate has occurred.

(2) Arrangements are within this subsection if they are—

(a) an agreement which provides for the transfer of shares or securities in the joint venture company to one or more members of that company on, or as a result of, one or more contingencies mentioned in subsection (3) occurring, or

(b) a provision in a constitutional document of the joint venture company which provides for the suspension of a member's voting rights on, or as a result of, one or more of those contingencies occurring.

(3) The contingencies referred to in subsections (1)(b) and (2) are—

(a) the voluntary departure of a member,

(b) the commencement of the liquidation, administration, administrative receivership or receivership of, or the entering into of a voluntary arrangement

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by, a member under the Insolvency Act 1986 or the Insolvency (Northern Ireland) Order 1989 or the commencement, or entering into, of equivalent proceedings or arrangements under the law of any country or territory outside the United Kingdom,

(c) a serious deterioration in the financial condition of a member,

(d) a change of control of a member,

(e) a default by a member in performing its obligations under any agreement between the members or with the joint venture company (which, for this purpose, includes any constitutional document of the joint venture company),

(f) an external change in the commercial circumstances in which the joint venture company operates such that its viability is threatened,

(g) an unresolved disagreement between members, and

(h) any contingency of a similar kind to that mentioned in any of paragraphs (a) to (g) which is provided for, but not intended to happen, when the option arrangements in question are entered into.

(4) This section does not apply if a member could alone or together with connected persons dictate the terms or timing of—

(a) the transfer of shares or securities, or

(b) the suspension of a member's voting rights,

in advance of one or more of the contingencies occurring.

(5) For the purposes of subsection (4) members are not connected with each other by reason only of their membership of the joint venture company.

(6) In this section—

"connected" has the same meaning as in section 1122;

"constitutional document" means a memorandum of association, articles of association or any other similar document regulating the affairs of the joint venture company;

"joint venture company" means a company which—

(a) has two or more member companies, and

(b) carries on a commercial activity governed by an agreement regulating the affairs of its members;

"member" means a holder of shares or securities in the joint venture company.

Textual Amendments

F93 Ss. 174A, 174B inserted (with effect in accordance with art. 15 of the amending S.I.) by The Enactment of Extra-Statutory Concessions Order 2012 (S.I. 2012/266), arts. 1, **14(1)**

174B Certain mortgage arrangements not within section 173

(1) Arrangements entered into by a company which, apart from this section, would be option arrangements within section 173 are not to be treated as such arrangements if and so long as—

(a) the arrangements are a mortgage, secured by way of shares or securities in the company, which on default or the happening of any other event allows the mortgagee to exercise its rights against the mortgagor, and

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(b) the mortgagee has not exercised its rights against the mortgagor.

(2) This section does not apply if the mortgagee—

(a) possesses greater rights in respect of the shares or securities which are the subject of the mortgage than it requires to protect its interest as mortgagee, or

(b) could alone or together with connected persons dictate the terms or timing of the default or the happening of any other event which allows it to exercise its rights against the mortgagor.

(3) For the purposes of subsection (2)(b) the mortgagee is not by reason only of the mortgage connected with a company whose shares or securities are the subject of the mortgage.

(4) In this section—

"connected" has the same meaning as in section 1122;

"mortgage" means—

(a) in England and Wales, and Northern Ireland, any legal or equitable charge, and

(b) in Scotland, any right in security,

(and section 1166(1) (definition of "mortgage": Scotland) does not apply).**]**

Textual Amendments

F93 Ss. 174A, 174B inserted (with effect in accordance with art. 15 of the amending S.I.) by The Enactment of Extra-Statutory Concessions Order 2012 (S.I. 2012/266), arts. 1, **14(1)**

175 Cases in which both sections 170 and 172 apply

(1) This section applies in a case in which sections 170 and 172 apply but section 174 does not.

(2) Determine what company A's proportion would be—

(a) on the basis mentioned in section 170(2),

(b) on the basis mentioned in section 172(1),

(c) on those bases taken together, and

(d) ignoring sections 170 and 172.

(3) Company A's proportion is taken to be the lowest proportion determined under subsection (2).

176 Cases in which both sections 170 and 174 apply

(1) This section applies in a case in which sections 170 and 174 apply but section 172 does not.

(2) Determine what company A's proportion would be—

(a) on the basis mentioned in section 170(2),

(b) on the basis mentioned at Step 4 in section 174,

(c) on those bases taken together, and

(d) ignoring sections 170 and 174.

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(3) Company A's proportion is taken to be the lowest proportion determined under subsection (2).

177 Cases in which both sections 172 and 174 apply

(1) This section applies in a case in which sections 172 and 174 apply but section 170 does not.

(2) Determine what company A's proportion would be—
- (a) on the basis mentioned in section 172(1),
- (b) on the basis mentioned at Step 4 in section 174,
- (c) on those bases taken together, and
- (d) ignoring sections 172 and 174.

(3) Company A's proportion is taken to be the lowest proportion determined under subsection (2).

178 Cases in which sections 170, 172 and 174 all apply

(1) This section applies in a case in which sections 170, 172 and 174 all apply.

(2) Determine what company A's proportion would be—
- (a) on the basis mentioned in section 170(2),
- (b) on the basis mentioned in section 172(1),
- (c) on the basis mentioned at Step 4 in section 174,
- (d) on the bases mentioned in sections 170(2) and 172(1) taken together,
- (e) on the bases mentioned in section 170(2) and at Step 4 in section 174 taken together,
- (f) on the bases mentioned in section 172(1) and at Step 4 in section 174 taken together,
- (g) on the bases mentioned in section 170(2), section 172(1) and at Step 4 in section 174 taken together, and
- (h) ignoring sections 170, 172 and 174.

(3) Company A's proportion is taken to be the lowest proportion determined under subsection (2).

179 Cases in which surrendering or claimant company is non-UK resident

(1) If the surrendering company or the claimant company is non-UK resident at the relevant time, section 180 applies as mentioned in subsections (2) and (3) in the cases set out in subsection (4).

(2) Section 180 applies in the application of this Chapter for the purposes of sections 143(3)(b) and (c) and 144(3)(b) and (c) if the non-UK resident company is owned by the consortium at the relevant time.

(3) Section 180 applies in the application of this Chapter for the purposes of section 151(4)(a) and (b) in determining if the non-UK resident company is a 75% or 90% subsidiary of another company at the relevant time.

Status: *Point in time view as at 01/04/2014.*
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But section 180 is not to be applied in determining if the EEA group condition is met (see section 136) at the relevant time.

(4) The cases in which section 180 applies are as follows.

Case 1

One or more of the participating equity holders holds, as such, shares or securities with distribution rights that have effect (wholly or partly) by reference to whether or not, or to what extent, the profits or assets distributed are referable to company B's UK trade (see section 182).

Case 2

Section 174 applies and any of the proportions to be determined under paragraph (b) of Step 3 in that section would differ according to whether or not, or to what extent, the profits or assets distributed are referable to company B's UK trade.

180 Company A's proportion if non-UK resident involved

(1) If this section applies—

(a) go to subsection (2) if the case is one in which none of sections 170, 172 and 174 applies, and

(b) go to subsection (3) if the case is one in which any of sections 170, 172, and 174 applies.

(2) If the case is as mentioned in subsection (1)(a)—

(a) determine what company A's proportion would be using the assumptions set out in section 181, and

(b) if the proportion so determined ("the alternative proportion") is less than what company A's proportion would be ignoring this section, then company A's proportion is taken to be the alternative proportion.

(3) If the case is as mentioned in subsection (1)(b), take the following steps.

Step 1

Determine, in each way required by the applicable sections, what company A's proportion would be ignoring this section. A proportion determined at this step is referred to as a "normal proportion".

Step 2

Determine, in each way required by the applicable sections, what company A's proportion would be using the assumptions set out in section 181. A proportion determined at this step is referred to as a "section 181 proportion".

Step 3

If a section 181 proportion determined in a required way is less than the normal proportion determined in that way, for the purposes of the applicable sections use the section 181 proportion instead of the normal proportion.

(4) In subsection (3) "the applicable sections" means any of sections 170, 172 and 174 that applies in the case mentioned in subsection (1)(b), together with whichever (if any) of sections 175 to 178 that applies in that case.

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181 Assumptions to be applied if non-UK resident company involved

(1) The assumptions referred to in section 180 are as follows.

Assumption 1

The profit distribution or the distribution on the notional winding up is confined to a distribution of the profits or assets referable to company B's UK trade (see section 182).

Assumption 2

Section 165(2) (in the case of a profit distribution) is applied on the basis that the amount of company B's total profits referred to in that subsection does not exceed the amount of those profits referable to its UK trade.

Assumption 3

Section 166(3) and (4) (in the case of a distribution on a notional winding up) is applied on the basis that the amount of company B's assets and liabilities referred to in those subsections does not exceed the amount of those assets and liabilities referable to its UK trade.

Assumption 4

None of the ordinary equity holders has a beneficial entitlement to the profits or assets referable to company B's UK trade that is greater than the proportion of the distribution in question to which the equity holder would be beneficially entitled—

(a) if Assumptions 1 to 3 were ignored, and
(b) if it would otherwise be less, the distribution were £100.

(2) In subsection (1) "ordinary equity holder" means an equity holder whose beneficial entitlement on the profit distribution or the distribution on the notional winding up does not differ according to whether or not, or the extent to which, the profits or assets distributed are referable to company B's UK trade.

182 Assets etc referable to UK trade

Profits, assets or liabilities of company B are referable to company B's UK trade so far as they—

(a) are attributable to, or used for the purposes of, activities the income or chargeable gains from which are or (if there were any) would be brought into account in calculating company B's total profits of any accounting period, and
(b) are not attributable to, or used for the purposes of, activities which are double taxation exempt for any accounting period (see section 186).

CHAPTER 7

MISCELLANEOUS PROVISIONS AND INTERPRETATION OF PART

Miscellaneous

183 Payments for group relief

(1) This section applies if—

Status: *Point in time view as at 01/04/2014.*
Changes to legislation: *Corporation Tax Act 2010 is up to date with all changes known to be in force on or before 12 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(a) the surrendering company and the claimant company have an agreement between them in relation to losses and other amounts of the surrendering company ("the agreed loss amounts"),
(b) group relief is given to the claimant company in relation to the agreed loss amounts, and
(c) as a result of the agreement the claimant company makes a payment to the surrendering company that does not exceed the total amount of the agreed loss amounts.

(2) The payment—
(a) is not to be taken into account in determining the profits or losses of either company for corporation tax purposes, and
(b) for corporation tax purposes is not to be regarded as a distribution.

184 References to "allowance" in CAA 2001

References in CAA 2001 (apart from Parts 6 and 10) to an allowance include references to an allowance which would be made—
(a) but for the giving of group relief, or
(b) but for that and for a lack of profits or other income.

Interpretation

185 "Trading company" and "holding company"

(1) In this Part "trading company" means a company the business of which consists wholly or mainly in the carrying on of a trade or trades.

(2) In this Part "holding company" means a company the business of which consists wholly or mainly in the holding of shares or securities of companies that—
(a) are its 90% subsidiaries (see section 151), and
(b) are trading companies.

186 When activities of a company are double taxation exempt

(1) For the purposes of this Part activities of a company are double taxation exempt for an accounting period if, because of double taxation arrangements, the income and chargeable gains (if any) arising for that period from the activities are to be ignored in determining the company's chargeable profits for that period.

(2) In determining if any activities are double taxation exempt, assume that any claim that must be made before effect is given to any provision of double taxation arrangements is made.

(3) "Double taxation arrangements" means arrangements which have effect under section 2(1) of TIOPA 2010 (double taxation relief by agreement with territories outside the United Kingdom).

Status: *Point in time view as at 01/04/2014.*
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187 "Non-UK tax"

(1) In this Part "non-UK tax" means a tax chargeable under the law of a territory outside the United Kingdom which—

(a) is charged on income and corresponds to United Kingdom income tax, or

(b) is charged on income or chargeable gains or both and corresponds to United Kingdom corporation tax.

(2) A tax is not outside the scope of subsection (1) by reason only that it—

(a) is chargeable under the law of a province, state or other part of a country, or

(b) is levied by or on behalf of a municipality or other local body.

188 Other definitions

(1) In this Part—

"the claimant company **[**[F94](except in section 156(2A)**]**" has the meaning given by section 130(2) or 135(2) (as the case may be),

"the claim period" has the meaning given by section 130(2) or 135(2) (as the case may be),

"company" means any body corporate,

"group relief" has the meaning given by section 97(2),

"profits" means income and chargeable gains, except in so far as the context otherwise requires,

"the surrenderable amounts" has the meaning given by section 99(7) or 113(5) (as the case may be),

"surrendering company" has the meaning given by section 99(7) or 113(5) (as the case may be), and

"the surrender period" has the meaning given by section 99(7) or 113(5) (as the case may be).

(2) In this Part, except in so far as the context otherwise requires—

(a) references to a trade include an office, and

(b) references to carrying on a trade include holding an office.

Textual Amendments

F94 Words in s. 188(1) inserted (with effect in accordance with s. 31(4) of the amending Act) by Finance Act 2013 (c. 29), **s. 31(3)**

Status: *Point in time view as at 01/04/2014.*
Changes to legislation: *Corporation Tax Act 2010 is up to date with all changes known to be in force on or before 12 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

PART 6

CHARITABLE DONATIONS RELIEF

CHAPTER 1

NATURE OF RELIEF

189 Relief for qualifying charitable donations

(1) Qualifying charitable donations made by a company are allowed as deductions from the company's total profits in calculating the corporation tax chargeable for an accounting period.

(2) They are deducted from the company's total profits for the period after any other relief from corporation tax other than group relief.

(3) The amount of the deduction is limited to the amount that reduces the company's taxable total profits for the period to nil.

(4) Except as otherwise provided, a deduction is allowed only in respect of qualifying charitable donations made by the company in the accounting period concerned.

(5) The above provisions are subject to **[**[F95]section 939F and to any other**]** express exceptions in the Corporation Tax Acts.

Textual Amendments

F95 Words in s. 189(5) substituted (with effect in accordance with Sch. 3 para. 27 of the amending Act) by Finance Act 2011 (c. 11), **Sch. 3 para. 21**

190 Qualifying charitable donations: meaning

(1) The following are qualifying charitable donations for corporation tax purposes—

(a) payments which are qualifying payments for the purposes of Chapter 2 (certain payments to charity), and

(b) amounts treated as qualifying charitable donations under Chapter 3 (certain disposals of investments to charity).

(2) However, no payment that is otherwise deductible from total profits, or in calculating any component of total profits, is a qualifying charitable donation.

Status: *Point in time view as at 01/04/2014.*
Changes to legislation: *Corporation Tax Act 2010 is up to date with all changes known to be in force on or before 12 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

CHAPTER 2

CERTAIN PAYMENTS TO CHARITY

Qualifying payments

191 Qualifying payments

(1) A payment made to a charity by a company is a qualifying payment for the purposes of this Chapter if each of conditions A to F is met.

(2) Condition A is that the payment is a payment of a sum of money.

(3) Condition B is that the payment is not subject to a condition as to repayment (but see section 192).

(4) Condition C is that the company making the payment is not itself a charity.

(5) Condition D is that the payment is not disqualified under section 193 (associated acquisition etc by the charity).

(6) Condition E is that the payment is not disqualified under section 194 (certain distributions).

(7) Condition F is that the payment is not disqualified under section 195 (associated benefits).

192 Condition as to repayment

(1) If—

(a) a company makes a payment to a charity ("the charitable payment"),

(b) the charity makes a payment to the company ("the repayment"), and

(c) each of conditions A to D is met,

the charitable payment is not subject to a condition as to repayment.

(2) Condition A is that the company is wholly owned by the charity, or by a number of charities that include the charity.

(3) Condition B is that the charitable payment is of an amount which the company estimates to be the amount necessary to reduce to nil the company's taxable total profits for the accounting period in which the payment is made ("the relevant period").

(4) Condition C is that the only purpose for which the charity makes the repayment is to adjust the amount of the charitable payment so that it is of the amount actually necessary to reduce to nil the company's taxable total profits for the relevant period.

(5) Condition D is that the repayment is made no later than 12 months after the end of the relevant period.

(6) If subsection (1) applies—

(a) the repayment is not non-charitable expenditure for the purposes of section 493 or 515 of this Act or section 543(1)(f) of ITA 2007, and

(b) paragraphs 56 and 62 (but not 64) of Schedule 18 to FA 1998 (supplementary claims or elections) apply to the repayment.

Status: *Point in time view as at 01/04/2014.*
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193 Associated acquisition etc

(1) A payment is disqualified under this section if—

(a) it is conditional on an acquisition of property by the charity from the company or a person associated with the company,

(b) it is associated with such an acquisition, or

(c) it is part of an arrangement involving such an acquisition.

(2) An acquisition by way of gift is to be ignored for the purposes of this section.

194 Distributions

(1) A payment is disqualified under this section if it is to be regarded as a distribution by reason of any provision of the Taxes Acts (within the meaning of TMA 1970) except section 1020 (transfers of assets or liabilities treated as distributions).

F96(2) . . . . . .

(3) A payment (other than a dividend) made by a company which is wholly owned by a charity is not to be regarded as a distribution for the purposes of subsection (1).

Textual Amendments

F96 S. 194(2) omitted (with effect in accordance with s. 33(6) of the amending Act) by virtue of Finance Act 2012 (c. 14), **s. 33(5)(a)**

195 Associated benefits

(1) A payment is disqualified under this section if—

(a) benefits are associated with the payment, and

(b) the restrictions on benefits associated with a payment are breached.

(2) Sections 196 to 198 apply for these purposes.

196 Associated benefits: meaning

For the purposes of this Chapter a benefit is associated with a payment if—

(a) it is received by the company which made the payment or by a person associated with the company, and

(b) it is received in consequence of making the payment.

197 Restrictions on associated benefits

(1) For the purposes of this Chapter the restrictions on benefits associated with a payment are breached if condition A or B is met.

(2) Condition A is that the total value of the benefits associated with the payment exceeds the variable limit, which is—

(a) 25% of the amount of the payment, if the amount of the payment is £100 or less,

(b) £25, if the amount of the payment is more than £100 but not more than £1,000,

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(c) 5% of the amount of the payment, if the amount of the payment is more than £1,000.

(3) Condition B is that the sum of the following total values is more than **[**[F97]£2,500**]**—

(a) the total value of the benefits associated with the payment, and

(b) the total value of the benefits (if any) associated with each relevant prior payment.

(4) A relevant prior payment is a payment—

(a) which has already been made by the company to the charity in the accounting period, and

(b) which is a qualifying payment.

(5) This section needs to be read with section 198.

Textual Amendments

F97 Sum in s. 197(3) substituted (with effect in accordance with s. 41(5) of the amending Act) by Finance Act 2011 (c. 11), **s. 41(2)**

198 Payments and benefits linked to periods of less than 12 months

(1) This section modifies the application of section 197(2) in relation to a payment if condition A, B, C or D is met.

(2) Condition A is that a benefit associated with the payment relates to a period of less than 12 months.

(3) Condition B is that a benefit associated with the payment consists of a right to receive benefits at intervals over a period of less than 12 months.

(4) Condition C is that a benefit associated with the payment is one of a series of benefits which are—

(a) received at intervals, and

(b) associated with a series of payments made at intervals of less than 12 months.

(5) Condition D is that—

(a) a benefit associated with the payment is not one of a series of benefits received at intervals, and

(b) the payment is one of a series of payments made at intervals of less than 12 months.

(6) If condition A, B or C is met, then for the purposes of section 197(2)—

(a) the value of the benefit is taken to be the annual equivalent of its actual value, and

(b) the amount of the payment is taken to be the annual equivalent of its actual amount.

(7) If condition D is met, the amount of the payment is taken for the purposes of section 197(2) to be the annual equivalent of its actual amount.

(8) The annual equivalent of the value of a benefit, or of the amount of a payment, is found as follows.

Status: *Point in time view as at 01/04/2014.*
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Step 1

Multiply the value or amount by 365.

Step 2

If condition A or B is met in relation to the benefit (and neither condition C nor condition D is met in relation to it) divide the result by the number of days in the period of less than 12 months referred to in subsection (2) or (as the case may be) subsection (3).

If condition C or D is met in relation to the benefit, divide the result by the average number of days in the intervals of less than 12 months referred to in subsection (4)(b) or (as the case may be) subsection (5)(b).

Payment attributed to earlier period

199 Payment attributed to earlier accounting period

(1) This section applies if—

(a) a company makes a qualifying payment,

(b) the company is wholly owned by a charity, and

(c) the company makes a claim for the payment (or part of it) to be treated as a qualifying charitable donation made in an accounting period falling wholly or partly within the period of 9 months ending with the date of the making of the payment.

(2) The payment (or part) is to be treated for corporation tax purposes as a qualifying charitable donation made in that accounting period and not in any later period.

(3) A claim must be made within the period of two years immediately following the accounting period in which the payment is made or such longer period as an officer of Revenue and Customs may allow.

Interpretation

200 Company wholly owned by a charity

(1) For the purposes of this Chapter a company is wholly owned by a charity if condition A or B is met.

(2) Condition A is that—

(a) the company has an ordinary share capital, and

(b) every part of that share capital is owned by a charity (whether or not the same charity).

(3) Condition B is that—

(a) the company is limited by guarantee, and

(b) every beneficiary of the company is or must be a charity or a company wholly owned by a charity.

(4) Ordinary share capital of a company is treated as owned by a charity if a charity—

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(a) directly or indirectly owns that share capital within the meaning of Chapter 3 of Part 24, or

(b) would be taken so to own it if references in that Chapter to a body corporate included references to a charity which is not a body corporate.

(5) A beneficiary of a company is a person who—

(a) is beneficially entitled to participate in the company's divisible profits, or

(b) will be beneficially entitled to share in any of the company's net assets available for distribution on its winding up.

Modifications etc. (not altering text)

C25 S. 200 applied (with modifications) by 2007 c. 3, s. 809ZJ(9) (as inserted (with effect in accordance with Sch. 3 paras. 27, 28 of the amending Act) by Finance Act 2011 (c. 11), **Sch. 3 para. 1**)

201 Associated persons

For the purposes of this Chapter a person is associated with a company if the person is connected with—

(a) the company, or

(b) a person connected with the company.

202 "Charity"

In this Chapter "charity" **[**[F98]includes**]**—

[F99](a) . . . . . .

(b) a scientific research association (as defined in section 469),

(c) the Trustees of the National Heritage Memorial Fund, **[**[F100]or**]**

(d) the Historic Buildings and Monuments Commission for England, [F101]...

[F101](e) . . . . . .

Textual Amendments

F98 Word in s. 202 substituted (with effect in accordance with art. 21 of the commencing S.I.) by Finance Act 2010 (c. 13), **Sch. 6 paras. 27(2)(a)**, 34(2); S.I. 2012/736, art. 21

F99 S. 202(a) omitted (with effect in accordance with art. 21 of the commencing S.I.) by virtue of Finance Act 2010 (c. 13), **Sch. 6 paras. 27(2)(b)**, 34(2); S.I. 2012/736, art. 21

F100 Word in s. 202(2)(c) inserted (1.4.2012) by The Public Bodies (Abolition of the National Endowment for Science, Technology and the Arts) Order 2012 (S.I. 2012/964), arts. 1(2), 3(1), **Sch.**

F101 S. 202(2)(e) and word omitted (1.4.2012) by virtue of The Public Bodies (Abolition of the National Endowment for Science, Technology and the Arts) Order 2012 (S.I. 2012/964), arts. 1(2), 3(1), **Sch.**

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CHAPTER 3

CERTAIN DISPOSALS TO CHARITY

Amounts treated as qualifying charitable donations

203 Certain disposals of investments

(1) This section applies if—

(a) a company disposes of the whole of the beneficial interest in a qualifying investment to a charity,

(b) the disposal is otherwise than by way of a bargain made at arm's length,

(c) the company is not itself a charity, and

(d) the company makes a claim.

(2) The relievable amount is treated for corporation tax purposes as a qualifying charitable donation made by the company in the accounting period in which the disposal is made.

(3) No relief in respect of the disposal is to be given under section 105 of CTA 2009 (gifts of trading stock to charities etc).

(4) For the calculation of the relievable amount, see section 206.

(5) If the qualifying investment is a qualifying interest in land, this section is subject to—

section 213 (certificates),

section 214 (qualifying interests in land held jointly),

section 215 (calculation of relievable amount etc where joint disposal), and

section 216 (disqualifying events).

204 Meaning of qualifying investment

(1) In this Chapter "qualifying investment" means any of the following—

(a) shares or securities which are listed on a recognised stock exchange or dealt in on a designated market in the United Kingdom,

(b) units in an authorised unit trust,

(c) shares in an open-ended investment company,

(d) an interest in an offshore fund, and

(e) a qualifying interest in land.

(2) In this section—

"offshore fund" has the meaning given by section 355 of TIOPA 2010, and

"open-ended investment company" is to be read in accordance with sections 613 and 615.

(3) In paragraph (a) of subsection (1) "designated" means designated by an order made by the Commissioners for Her Majesty's Revenue and Customs for the purposes of that paragraph.

(4) An order under subsection (3)—

(a) may designate a market by name or by reference to a class or description of market,

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(b) may vary or revoke a previous order under that subsection.

205 Meaning of qualifying interest in land

(1) In this Chapter "qualifying interest in land" means—

(a) a freehold interest in land in the United Kingdom, or

(b) a leasehold interest in land in the United Kingdom which is a term of years absolute.

This is subject to subsections (2) to (5).

(2) Subsection (3) applies if a company with a beneficial interest in a freehold or leasehold interest mentioned in subsection (1)(a) or (b) makes a disposal to a charity of—

(a) the whole of the beneficial interest, and

(b) an easement, servitude, right or privilege so far as benefiting the land in question.

(3) The disposal mentioned in subsection (2)(b) is regarded for the purposes of this Chapter as a disposal by the company of the whole of its beneficial interest in a qualifying interest in land separate from the disposal mentioned in subsection (2)(a).

(4) If a company which has a freehold or leasehold interest in land in the United Kingdom grants a lease for a term of years absolute to a charity of the whole or part of the land, the grant of the lease is regarded for the purposes of this Chapter as a disposal by the company of the whole of the beneficial interest in the leasehold interest so granted.

(5) Neither an agreement to acquire a freehold interest nor an agreement for a lease is a qualifying interest in land.

(6) In the application of this section to Scotland—

(a) references to a freehold interest in land are to the interest of the owner,

(b) references to a leasehold interest in land which is a term of years absolute are to a tenant's right over or interest in a property subject to a lease,

(c) references to an agreement for a lease do not include missives of let that constitute an actual lease, and

(d) the reference in subsection (4) to granting a lease for a term of years absolute is to granting a lease.

206 The relievable amount

(1) If the disposal is a gift, the relievable amount is given by the formula—

$$V + IC - B$$

where—

V is the value of the net benefit to the charity at, or immediately after, the time when the disposal is made (whichever is less),

IC is the amount of the incidental costs of making the disposal to the company making it, and

B is the total value of any benefits received in consequence of making the disposal by the company making the disposal or a person connected with the company.

(2) If the disposal is at an undervalue, the relievable amount is given by the formula—

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$$E + C - B$$

where—
E is the amount (if any) by which V (as defined in subsection (1)) exceeds the amount or value of the consideration for the disposal,
C is given by subsection (4), and
B is as defined in subsection (1).

(3) But if the amount given by the formula in subsection (1) or (2) is a negative amount, the relievable amount is nil.

(4) C is found as follows.

Step 1

Calculate the consideration for which the disposal is treated as made for the purposes of TCGA 1992 as a result of section 257(2)(a) of that Act (in case of disposal to charity etc, consideration to be such that no gain or loss accrues).

Step 2

Find the excess (if any) of the amount calculated at step 1 over the amount or value of the consideration for the disposal.

If there is such an excess, C is the amount of that excess or, if less, the amount of the incidental costs of making the disposal to the company making it.

If there is no such excess, C is nil.

(5) This section needs to be read with—
(a) section 207 (incidental costs of making disposal),
(b) section 208 (consideration), and
(c) sections 209 to 212 (value of net benefit to charity).

207 Incidental costs of making disposal

References in section 206 to the incidental costs of making the disposal to the company making it are to—
(a) fees, commission or remuneration paid for the professional services of a surveyor, valuer, auctioneer, accountant, agent or legal adviser which are wholly and exclusively incurred by the company for the purposes of the disposal,
(b) costs of transfer or conveyance wholly and exclusively incurred by the company for the purposes of the disposal,
(c) costs of advertising to find a buyer, and
(d) costs reasonably incurred in making any valuation or apportionment required for the purposes of this Chapter.

208 Consideration

If the disposal is at an undervalue, section 48 of TCGA 1992 (consideration due after time of disposal) applies in relation to the calculation of the relievable amount as it applies in relation to the calculation of a gain.

Status: *Point in time view as at 01/04/2014.*
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Value of net benefit to charity

209 Value of net benefit to charity

(1) For the purposes of this Chapter the value of the net benefit to a charity is—

(a) the **[**[F102]relevant**]** value of the qualifying investment, or

(b) if the charity is, or becomes, subject to a disposal-related obligation, the **[**[F102]relevant**]** value of the qualifying investment reduced by the total amount of the disposal-related liabilities of the charity.

[[F103](1A) In subsection (1) " relevant value " means—

(a) where subsection (1B) applies, the lower of the market value and the acquisition value, and

(b) otherwise, the market value.

(1B) This subsection applies where—

(a) the qualifying investment, or anything from which it derives or which it represents (whether in whole or in part and whether directly or indirectly), was acquired by the company making the disposal within the period of 4 years ending with the day on which the disposal is made,

(b) the acquisition was made as part of a scheme, and

(c) the main purpose, or one of the main purposes, of the company in entering into the scheme was to obtain relief, or an increased amount of relief, as a result of this Chapter.

(1C) In subsection (1B) " scheme " includes any scheme, arrangement or understanding of any kind, whether or not legally enforceable, involving a single transaction or two or more transactions. **]**

(2) This section is supplemented by—

(a) section 210 (market value of qualifying investments),

[[F104](aa) section 210A (acquisition value of qualifying investments),**]**

(b) section 211 (meaning of disposal-related obligation), and

(c) section 212 (meaning and amount of disposal-related liability).

Textual Amendments

F102 Word in s. 209(1) substituted (with effect in accordance with Sch. 7 paras. 9, 10 of the amending Act) by Finance Act 2010 (c. 13), **Sch. 7 para. 6(2)**

F103 S. 209(1A)-(1C) inserted (with effect in accordance with Sch. 7 paras. 9, 10 of the amending Act) by Finance Act 2010 (c. 13), **Sch. 7 para. 6(3)**

F104 S. 209(2)(aa) inserted (with effect in accordance with Sch. 7 paras. 9, 10 of the amending Act) by Finance Act 2010 (c. 13), **Sch. 7 para. 6(4)**

210 Market value of qualifying investments

(1) For the purposes of this Chapter the market value of a qualifying investment is determined in accordance with sections 272 to 274 of TCGA 1992 (subject to Part I of Schedule 11 to that Act).

Status: *Point in time view as at 01/04/2014.*
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(2) But, in the case of an interest in an offshore fund for which separate buying and selling prices are published regularly by the managers of the fund, the market value for the purposes of this Chapter is an amount equal to the buying price (that is the lower price) published on—
  (a) the day of the disposal, or
  (b) if none were published on that day, the latest day on which the prices were published before that day.

(3) In this section "offshore fund" has the meaning given by section 355 of TIOPA 2010.

[F105 210A Acquisition value of qualifying investments

(1) For the purposes of this Chapter the acquisition value of a qualifying investment disposed of by a company is—
  (a) where the qualifying investment was acquired by the company within the period of 4 years ending with the day on which the disposal is made, the cost to the company of acquiring it, or
  (b) where something from which the qualifying investment derives or which it represents was so acquired, such proportion of the cost to the company of acquiring that thing as is just and reasonable to attribute to the qualifying investment.

(2) A reference in subsection (1) to the cost to the company of an acquisition is to—
  (a) the consideration given by the company for the acquisition, less
  (b) any amount that is received in connection with the acquisition, by the company or a person connected with it, as part of the scheme in question.**]**

Textual Amendments

F105 S. 210A inserted (with effect in accordance with Sch. 7 paras. 9, 10 of the amending Act) by Finance Act 2010 (c. 13), **Sch. 7 para. 7**

211 Meaning of "disposal-related obligation"

(1) For the purposes of this Chapter an obligation is a "disposal-related obligation", in relation to a qualifying investment, if condition A or B is met in relation to it.

(2) The obligation may be to any person (whether or not the company making the disposal or a person connected with it).

(3) Condition A is that it is reasonable to suppose that the disposal of the qualifying investment to the charity would not have been made in the absence of the obligation.

(4) Condition B is that the obligation (whether in whole or in part) relates to, is framed by reference to, or is conditional on the charity receiving, the qualifying investment or a disposal-related investment.

(5) In applying condition A all the circumstances must be taken into account (including in particular the difference in the value of the net benefit to the charity calculated under section 209(1)(a) and that value calculated under section 209(1)(b) on the assumption that the obligation under consideration is a disposal-related obligation).

Status: *Point in time view as at 01/04/2014.*
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(6) In subsection (4) "disposal-related investment" means any of the following—
- (a) an asset of the same class or description as the qualifying investment (irrespective of size, quantity or amount),
- (b) an asset derived from, or representing, the qualifying investment, whether in whole or in part and whether directly or indirectly, and
- (c) an asset from which the qualifying investment is derived, or which the qualifying investment represents, whether in whole or in part and whether directly or indirectly.

(7) In this section "obligation" includes a reference to each of the following—
- (a) a scheme, arrangement or understanding of any kind, whether or not legally enforceable, and
- (b) a series of obligations (whether or not between the same parties).

212 Meaning and amount of "disposal-related liability"

(1) For the purposes of this Chapter a liability is a "disposal-related liability" in the case of a qualifying investment if it is a liability of the charity under a disposal-related obligation in relation to the qualifying investment.

(2) If the disposal-related obligation is contingent, the amount to be brought into account for the purposes of section 209 at any time in respect of the disposal-related liability, so far as contingent, is—
- (a) if the contingency occurs, the amount or value of the liability actually incurred in consequence of the occurrence of the contingency, or
- (b) if the contingency does not occur, nil.

Special provisions about qualifying interests in land

213 Certificate required from charity

(1) This section applies if the qualifying investment is a qualifying interest in land.

(2) A company may not make a claim under section 203 unless the company has received a certificate given by or on behalf of the charity.

(3) The certificate must—
- (a) describe the qualifying interest in land,
- (b) specify the date of the disposal, and
- (c) state that the charity has acquired the qualifying interest in land.

214 Qualifying interests in land held jointly

(1) This section applies if the qualifying investment is a qualifying interest in land.

(2) It applies if two or more persons ("the owners")—
- (a) are jointly beneficially entitled to the qualifying interest in land, or
- (b) are, taken together, beneficially entitled in common to the qualifying interest in land.

(3) Relief as a result of this Chapter is available if—

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(a) at least one of the owners is a qualifying company, and
(b) all the owners dispose of the whole of their beneficial interests in the qualifying interest in land to the charity.

(4) Relief as a result of this Chapter is available to each of the owners which is a qualifying company (and section 215 applies).

(5) A company is a qualifying company if it is not itself a charity.

(6) Subsection (7) applies if one or more of the owners is not a company.

(7) For the purpose of determining whether the owners' beneficial interests are disposed of as mentioned in subsection (3)(b), section 205(2) to (4) applies as if references to a company included references to a person who is not a company.

215 Calculation of relievable amount etc where joint disposal of interest in land

(1) If relief as a result of this Chapter is available because of section 214, this section applies for the purpose of finding—
(a) the relievable amount, and
(b) the amount of relief to be given to a qualifying company.

(2) If one or more of the owners is an individual, subsections (3) and (4) apply.

(3) The relievable amount is taken to be the relievable amount calculated for the purposes of Chapter 3 of Part 8 of ITA 2007.

(4) The amount of relief to be given to a qualifying company as a result of this Chapter is calculated on the basis that the reference in section 203(2) to the relievable amount is read as a reference to such share of the relievable amount found under subsection (3) above as is allocated to the company by the agreement mentioned in section 442(5) of ITA 2007.

(5) If none of the owners is an individual, subsections (6) to (9) apply.

(6) Calculate the relievable amount under this Chapter as if—
(a) the owners were a single qualifying company, and
(b) the disposals of the owners' beneficial interests were a single disposal by that single company of the whole of the beneficial interest in the qualifying interest in land.

(7) In particular, calculate the consideration mentioned at Step 1 in section 206(4) by—
(a) calculating, for each owner, the consideration for which the disposal of the owner's beneficial interest is treated as made for the purposes of TCGA 1992 as a result of section 257(2)(a) of that Act, and
(b) adding together all the consideration calculated under paragraph (a).

(8) If one or more of the owners is not a qualifying company, in calculating the relievable amount make just and reasonable adjustments to reduce the relievable amount to reflect the fact that relief as a result of this Chapter is not available to that owner or to those owners.

(9) The amount of relief to be given to a qualifying company as a result of this Chapter is calculated on the basis that the reference in section 203(2) to the relievable amount is read as a reference to such share of the relievable amount found under subsections

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(6) to (8) above as is allocated to the company by an agreement made between those owners which are qualifying companies.

216 Disqualifying events

(1) This section applies if the qualifying investment is a qualifying interest in land.

(2) If a disqualifying event occurs at any time in the provisional period, the following are treated as never having been entitled to relief as a result of this Chapter in respect of the disposal of the qualifying interest in land—

(a) in a case where sections 214 and 215 do not apply, the company which made the disposal, and

(b) in a case where those sections apply, each qualifying company which is an owner.

(3) All such assessments and adjustments of assessments are to be made as are necessary to give effect to subsection (2).

(4) A disqualifying event occurs if a person mentioned in subsection (5) becomes (otherwise than for full consideration in money or money's worth)—

(a) entitled to an interest or right in relation to all or part of the land to which the disposal relates, or

(b) party to an arrangement under which he enjoys some right in relation to all or part of that land.

(5) The persons are—

(a) in a case where sections 214 and 215 do not apply, the company which made the disposal or a person connected with that company, and

(b) in a case where those sections apply, a person who is an owner or a person connected with such a person.

(6) A disqualifying event does not occur if a person becomes entitled to an interest or right as mentioned in subsection (4)(a) as a result of a disposition of property on death (whether the disposition is effected by will, under the law relating to intestacy or otherwise).

(7) "The provisional period" is the period beginning with the date of the disposal of the qualifying interest in land and ending with the sixth anniversary of the end of the accounting period in which the disposal was made.

Interpretation

217 "Charity"

In this Chapter "charity" **[**[F106]includes**]**—

[F107](a) . . . . . .

(b) the Trustees of the National Heritage Memorial Fund, **[**[F108]or**]**

(c) the Historic Buildings and Monuments Commission for England, [F109]...

[F109](d) . . . . . .

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Textual Amendments

F106 Word in s. 217 substituted (with effect in accordance with art. 21 of the commencing S.I.) by Finance Act 2010 (c. 13), **Sch. 6 paras. 27(3)(a)**, 34(2); S.I. 2012/736, art. 21

F107 S. 217(a) omitted (with effect in accordance with art. 21 of the commencing S.I.) by virtue of Finance Act 2010 (c. 13), **Sch. 6 paras. 27(3)(b)**, 34(2); S.I. 2012/736, art. 21

F108 Word in s. 217 inserted (1.4.2012) by The Public Bodies (Abolition of the National Endowment for Science, Technology and the Arts) Order 2012 (S.I. 2012/964), arts. 1(2), 3(1), **Sch.**

F109 S. 217(d) and word omitted (1.4.2012) by virtue of The Public Bodies (Abolition of the National Endowment for Science, Technology and the Arts) Order 2012 (S.I. 2012/964), arts. 1(2), 3(1), **Sch.**

PART 7

COMMUNITY INVESTMENT TAX RELIEF

CHAPTER 1

INTRODUCTION

CITR

218 Meaning of "CITR"

This Part provides for community investment tax relief ("CITR"), that is, entitlement to tax reductions in respect of amounts invested by companies in community development finance institutions.

219 Eligibility for CITR

(1) A company ("the investor") which makes an investment ("the investment") in a body is eligible for CITR in respect of the investment if—

(a) at the time the investment is made the body is accredited as a community development finance institution under Chapter 2 of Part 7 of ITA 2007,

(b) the investment is a qualifying investment (see Chapter 2 of this Part), and

(c) the general conditions of Chapter 3 of this Part are met.

(2) In this Part references to "the CDFI" are to the body in which the investment is made.

220 Form and amount of CITR

(1) If the investor is eligible for CITR in respect of the investment, the investor may make a claim in respect of the investment for any one or more of the relevant accounting periods.

(2) If the investor makes a claim for a relevant accounting period, the investor is entitled to a reduction in the amount of its liability for corporation tax for that period.

[[F110](3) The amount of that reduction for the relevant accounting period is 5% of the invested amount in respect of the investment for the period.**]**

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(4) For **[**[F111]the purposes of this section and section 220A **]** the "relevant" accounting periods are—

(a) the accounting period in which the investment date falls, and

(b) each of the accounting periods in which the subsequent 4 anniversaries of that date fall.

(5) The investor is entitled to make a claim for CITR for a relevant accounting period if—

(a) the investor considers that the conditions for the CITR are for the time being met, and

(b) the investor has received a tax relief certificate (see section 229) relating to the investment from the CDFI,

but a claim may not be made before the end of the accounting period to which the claim relates.

(6) Subsection (5) is subject to the following provisions—

(a) section 236 (loans: no claim after disposal or excessive repayments or receipts of value),

(b) section 237 (securities or shares: no claim after disposal or excessive receipts of value),

(c) section 238 (no claim after loss of accreditation by the CDFI), and

(d) section 239 (accreditation of investor).

Textual Amendments

F110 S. 220(3) substituted (with effect in accordance with Sch. 27 para. 12 of the amending Act) by Finance Act 2013 (c. 29), **Sch. 27 para. 8(2)**

F111 Words in s. 220(4) substituted (with effect in accordance with Sch. 27 para. 12 of the amending Act) by Finance Act 2013 (c. 29), **Sch. 27 para. 8(3)**

[[F112]220A Carry forward of CITR

(1) This section applies if—

(a) the investor is entitled to a reduction in its liability for corporation tax for a relevant accounting period under section 220 in respect of the investment, but

(b) the amount of the reduction is not fully deducted at Step 2 for that relevant accounting period.

(2) The amount ("the excess amount") not deducted is treated as follows.

(3) For each subsequent relevant accounting period for which the investor—

(a) is entitled to a reduction in its liability for corporation tax under section 220 in respect of the investment, and

(b) makes a claim under this subsection,

the investor is also entitled to a reduction in its liability for corporation tax under this subsection.

(4) The amount of the reduction under subsection (3) for any relevant accounting period is the excess amount so far as it has not been deducted at Step 2 for any earlier relevant accounting period by virtue of that subsection.

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(5) In this section "Step 2" means the second step in paragraph 8(1) of Schedule 18 to FA 1998 (calculation of tax payable).**]**

Textual Amendments

F112 S. 220A inserted (with effect in accordance with Sch. 27 para. 12 of the amending Act) by Finance Act 2013 (c. 29), **Sch. 27 para. 9**

[F113 220B Limit on State aid

(1) The reductions that may be made in the amount of the investor's liability for corporation tax under section 220 or 220A for an accounting period ("the current accounting period") are limited as follows.

(2) The sum of the following amounts must not exceed [euro]200,000—

(a) so far as it represents aid granted to the investor, the total amount of reductions made in the amount of the investor's liability for corporation tax under section 220 or 220A—

(i) for the current accounting period, or

(ii) any earlier accounting period which ends during the relevant 3-year period, and

(b) the total of any de minimis aid granted to the investor during the relevant 3-year period which does not fall within paragraph (a).

(3) In subsection (2) "the relevant 3-year period" means the period of 3 years ending at the end of the current accounting period.

(4) Subsection (2) is to be read as if it were contained in Article 2 of Commission Regulation (EC) No. 1998/2006 (de minimis aid).**]**

Textual Amendments

F113 S. 220B inserted (with effect in accordance with Sch. 27 para. 13(2)(3) of the amending Act) by Finance Act 2013 (c. 29), **Sch. 27 para. 13(1)**

Miscellaneous

221 Meaning of "making an investment"

(1) For the purposes of this Part, a company makes an investment in a body at any time when—

(a) the company makes a loan (whether secured or unsecured) to the body, or

(b) an issue of securities of or shares in the body, for which the company has subscribed, is made to the company.

(2) The following provisions of this section apply for the purposes of subsection (1)(a).

(3) A company does not make a loan to a body if—

(a) the body uses overdraft facilities provided by the company, or

(b) the company subscribes for or otherwise acquires securities of the body.

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(4) If the loan agreement authorises the body to draw down amounts of the loan over a period of time, the loan is treated as made at the time when the first amount is drawn down.

222 Determination of "the invested amount"

(1) This section applies for the purpose of determining "the invested amount" in respect of any loan, securities or shares included in the investment.

This is subject to sections 246(2) and 252 (which adjust "the invested amount" in certain cases where value is received).

(2) In the case of a loan, the invested amount is—
- (a) for the accounting period in which the investment date falls, the average capital balance for the first year of the 5 year period,
- (b) for the accounting period in which the first anniversary of the investment date falls, the average capital balance for the second year of the 5 year period, and
- (c) for any subsequent accounting period—
  - (i) the average capital balance for the period of 12 months beginning with the anniversary of the investment date falling in the accounting period concerned, or
  - (ii) if less, the average capital balance for the period of 6 months beginning 18 months after the investment date.

(3) In the case of securities or shares, the invested amount for an accounting period is the amount subscribed by the investor for the securities or shares.

(4) For the purposes of this section, the average capital balance of the loan for a period is the mean of the daily balances of capital outstanding during the period.

223 Meaning of "the 5 year period" and "the investment date"

In this Part—

"the 5 year period" means the period of 5 years beginning with the investment date, and

"the investment date" means the day the investment is made.

224 Overview of other Chapters of Part

In this Part—
- (a) Chapter 4 provides for limitations on claims and the attribution of CITR to investments,
- (b) Chapter 5 provides for CITR to be withdrawn or reduced in the circumstances mentioned in that Chapter, and
- (c) Chapter 6 contains supplementary and general provision.

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CHAPTER 2

QUALIFYING INVESTMENTS

225 Qualifying investments: introduction

For the purposes of this Part the investment is a "qualifying investment" in the CDFI if—

(a) the investment consists of—

(i) a loan in relation to which the conditions of section 226 are met,

(ii) securities in relation to which the conditions of section 227 are met, or

(iii) shares in relation to which the conditions of section 228 are met,

(b) the investor receives from the CDFI a valid tax relief certificate in relation to the investment (see section 229), and

(c) the requirements of section 230 (no pre-arranged protection against risks) are met.

226 Conditions to be met in relation to loans

(1) Condition A of this section is that either—

(a) the CDFI receives from the investor, on the investment date, the full amount of the loan, or

(b) if the loan agreement authorises the CDFI to draw down amounts of the loan over a period of time, the end of that period is not later than 18 months after the investment date.

(2) Condition B is that the loan must not carry any present or future right to be converted into or exchanged for a loan which is, or securities, shares or other rights which are, redeemable within the 5 year period.

(3) Condition C is that the loan must not have been made on terms that allow any person to require—

(a) the repayment during the first two years of the 5 year period of any of the loan capital advanced in those two years,

(b) the repayment during the third year of that period of more than 25% of the loan capital outstanding at the end of those two years,

(c) the repayment before the end of the fourth year of that period of more than 50% of that loan capital, or

(d) the repayment before the end of that period of more than 75% of that loan capital.

(4) Subsection (3) does not apply if the CDFI is required to make the repayment as a result of its failure to meet any obligation of the loan agreement which—

(a) is imposed merely because of the commercial risks to which the investor is exposed as lender under that agreement, and

(b) is no more likely to be breached than any obligation that might reasonably have been agreed in respect of the loan in the absence of this Part.

(5) The Treasury may by order substitute any other percentage for any percentage for the time being specified in subsection (3).

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(6) Any such substitution is to have effect in relation to loans made by a company on or after the date specified in the order.

227 Conditions to be met in relation to securities

(1) Condition A of this section is that the securities must be—
  (a) subscribed for wholly in cash, and
  (b) fully paid for on the investment date.

(2) Condition B is that the securities must not carry—
  (a) any present or future right to be redeemed within the 5 year period, or
  (b) any present or future right to be converted into or exchanged for a loan which is, or securities, shares or other rights which are, redeemable within that period.

(3) For the purposes of subsection (1)(b), securities are not fully paid for if there is any undertaking to pay cash to the CDFI at a future date in connection with the acquisition of the securities.

228 Conditions to be met in relation to shares

(1) Condition A of this section is that the shares must be—
  (a) subscribed for wholly in cash, and
  (b) fully paid up on the investment date.

(2) Condition B is that the shares must not carry—
  (a) any present or future right to be redeemed during the 5 year period, or
  (b) any present or future right to be converted into or exchanged for a loan which is, or securities, shares or other rights which are, redeemable within that period.

(3) For the purposes of subsection (1)(b) shares are not fully paid up if there is any undertaking to pay cash to the CDFI at a future date in connection with the acquisition of the shares.

229 Tax relief certificates

(1) A "tax relief certificate" means a certificate issued by the CDFI in respect of the investment which is in the form specified by the Commissioners for Her Majesty's Revenue and Customs.

(2) The CDFI must not issue tax relief certificates under this section in respect of investments made in the CDFI in an accreditation period if the total value of—
  (a) those investments, and
  (b) any investments to which subsection (3) applies,

  will exceed the limit for that period.

(3) This subsection applies to investments—
  (a) which have been made in the CDFI in the accreditation period, and

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(b) in respect of which the CDFI has issued tax relief certificates under section 348 of ITA 2007 (which makes in relation to income tax provision corresponding to that made by this section).

(4) The limit for an accreditation period is—

(a) £10 million if the CDFI is accredited for the period as a retail community development finance institution (see section 340(8) of ITA 2007), and

(b) £20 million in any other case.

(5) For the purposes of subsection (2) the value of an investment made in the CDFI is—

(a) if the investment consists of a loan—

(i) the amount of the loan, or

(ii) if the loan agreement authorises the CDFI to draw down amounts of the loan over a period of time, the amount committed under the loan agreement, and

(b) if the investment consists of securities or shares, the amount subscribed for them.

(6) The Treasury may by order substitute any other amount for any amount for the time being specified in subsection (4).

(7) Any such substitution is to have effect in relation to such accreditation periods as may be specified in the order; and those periods may, if the substitution increases an amount for the time being specified in subsection (4), include periods beginning before the order comes into force.

(8) Any tax relief certificate issued in contravention of subsection (2) is invalid.

(9) A body is liable to a penalty of not more than £3,000 if it issues a tax relief certificate which is made fraudulently or negligently.

(10) An accreditation period is a period for which accreditation of the CDFI has effect under Chapter 2 of Part 7 of ITA 2007.

230 No pre-arranged protection against risks

(1) Any arrangements—

(a) under which the investment is made, or

(b) made, before the investor makes the investment, in relation to or in connection with the making of the investment,

must not include excluded arrangements.

(2) For the purposes of subsection (1) "excluded arrangements"—

(a) means arrangements the main purpose or one of the main purposes of which is (by means of any insurance, indemnity or guarantee or otherwise) to provide partial or complete protection for the investor against what would otherwise be the risks attached to making the investment, but

(b) does not include any arrangements which are confined to the provision for the investor of any protection against those risks which might reasonably be expected to be provided for commercial reasons if the investment were made in the course of a business of banking.

(3) For the purposes of this section "arrangements" includes any scheme, agreement or understanding (whether or not legally enforceable).

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CHAPTER 3

GENERAL CONDITIONS

231 No control of CDFI by investor

(1) The investor must not control the CDFI at any time during the 5 year period.

(2) In this section references to the investor include any person connected with the investor.

(3) If the CDFI is a body corporate, the question whether the investor controls the CDFI is, for the purposes of this section, determined in accordance with section 1124.

This is subject to subsection (6).

(4) In any other case the investor is treated, for those purposes, as having control of the CDFI if the investor has power to secure, as a result of—

(a) the possession of voting power in the CDFI, or

(b) any powers conferred by the constitution of, or any other document regulating, the CDFI,

that the affairs of the body are conducted in accordance with the investor's wishes.

This is subject to subsections (5) and (6).

(5) If—

(a) the CDFI is a partnership, and

(b) the investor is a member of that partnership,

for the purposes of determining in accordance with this section whether the investor controls the CDFI, the other members of that partnership are not, as a result of their membership of the CDFI, treated as partners of the investor.

(6) In determining whether the investor controls the CDFI there are attributed to the investor (so far as it would not otherwise be the case)—

(a) any rights or powers that the investor is entitled to acquire at a future date or will, at a future date, become entitled to acquire, and

(b) any rights or powers which another person holds on behalf of the investor or may be required to exercise, by direction, on the investor's behalf.

232 Investor must have beneficial ownership

(1) The investor must be the sole beneficial owner of the investment when it is made.

(2) If the investment consists of a loan, the person beneficially entitled to repayment of the loan is treated as the beneficial owner of the loan for the purposes of this Part.

233 Investor must not be accredited

The investor must not be accredited as a community development finance institution under Chapter 2 of Part 7 of ITA 2007 on the investment date.

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234 No acquisition of share in partnership

(1) If the CDFI is a partnership, the investment must not consist of or include any amount of capital contributed by the investor on becoming a member of the partnership.

(2) For this purpose the amount of capital contributed by the investor on becoming a member of the partnership includes any amount which—
  (a) purports to be provided by the investor by way of loan capital, and
  (b) is accounted for as partners' capital in the accounts of the partnership.

235 No tax avoidance purpose

The investment must not be made as part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax.

CHAPTER 4

LIMITATIONS ON CLAIMS AND ATTRIBUTION

Limitations on claims

236 Loans: no claim after disposal or excessive repayments or receipts of value

(1) If the investment consists of a loan, no claim may be made for an accounting period if—
  (a) the investor disposes of the whole or any part of the loan before the qualifying date relating to that period,
  (b) at any time after the investment is made but before that qualifying date, the amount of the capital outstanding on the loan is reduced to nil, or
  (c) before that qualifying date, paragraphs (a) and (b) of section 245(1) (repayments of loan in 5 year period exceeding permitted limits) apply in relation to the investment (whether by virtue of section 246 (receipts of value treated as repayments) or otherwise).

(2) For the purposes of subsection (1)(a) any repayment of the loan is to be ignored.

(3) For the purposes of this section the qualifying date relating to an accounting period is the next anniversary of the investment date to occur after the end of that period.

237 Securities or shares: no claim after disposal or excessive receipts of value

(1) If the investment consists of securities or shares, a claim made for an accounting period must relate only to those securities or shares held by the investor, as sole beneficial owner, continuously throughout the period—
  (a) beginning when the investment is made, and
  (b) ending immediately before the qualifying date relating to the accounting period.

(2) No claim may be made for an accounting period if before the qualifying date relating to that period paragraphs (a) to (d) of section 247(1) (receipts of value in the 6 year period exceeding permitted limits) apply in relation to the investment or any part of it.

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(3) For the purposes of this section the qualifying date relating to an accounting period is the next anniversary of the investment date to occur after the end of that period.

238 No claim after loss of accreditation by the CDFI

(1) If the CDFI ceases to be accredited under Chapter 2 of Part 7 of ITA 2007 with effect from a time within the 5 year period, no claim in respect of the investment may be made—
  (a) for the relevant accounting period, or
  (b) for any later accounting period.

(2) To find the relevant accounting period proceed under the rest of this section, in which references to the time of accreditation ceasing are to the time with effect from which the CDFI ceases to be accredited.

(3) If the time of accreditation ceasing falls within the first year of the 5 year period, the relevant accounting period is the accounting period in which the investment date fell.

(4) In any other case the relevant accounting period is—
  (a) the accounting period in which the last anniversary of the investment date before the time of accreditation ceasing fell, or
  (b) if the time of accreditation ceasing itself falls on an anniversary of the investment date, the accounting period in which that anniversary falls.

239 Accreditation of investor

(1) This section applies where the investor becomes accredited under Chapter 2 of Part 7 of ITA 2007 with effect from a time within the 5 year period.

(2) No claim in respect of the investment may be made—
  (a) for the relevant accounting period, or
  (b) for any later accounting period.

(3) To find the relevant accounting period proceed under the rest of this section, in which references to the time of accreditation are to the time with effect from which the investor becomes accredited.

(4) If the time of accreditation falls within the first year of the 5 year period, the relevant accounting period is the accounting period in which the investment date fell.

(5) In any other case the relevant accounting period is—
  (a) the accounting period in which the last anniversary of the investment date before the time of accreditation fell, or
  (b) if the time of accreditation itself falls on an anniversary of the investment date, the accounting period in which that anniversary falls.

Attribution

240 Attribution: general

(1) In this Part references to the CITR attributable to any loan, securities or shares in respect of an accounting period are read as references to the reduction which—

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(a) is made in the investor's liability to corporation tax for that period, and

(b) is attributed to that loan, or those securities or shares, in accordance with this section and section 241.

This is subject to the provisions of Chapter 5 for the withdrawal or reduction of CITR.

(2) Subsections (3) and (4) apply if the investor's liability to corporation tax is reduced for an accounting period under this Part.

(3) If the reduction is obtained because of one loan, or securities or shares included in one issue, the amount of the tax reduction is attributed to that loan or those securities or shares.

(4) If the reduction is obtained because of a loan or loans, securities or shares included in two or more investments, the reduction—

(a) is apportioned between the loan or loans, securities or shares in each of those investments in the same proportions as the invested amounts in respect of the loan or loans, securities or shares for the period, and

(b) is attributed to that loan or those loans, securities or shares accordingly.

[[F114](4A) In the case of CITR under section 220A, in subsection (4)(a) the reference to the period is to be read as a reference to the period mentioned in section 220A(1)(a).**]**

(5) If under this section an amount of any reduction of corporation tax is attributed to any securities in the same issue, a proportionate part of that amount is attributed to each security.

(6) If under this section an amount of any reduction of corporation tax is attributed to any shares in the same issue, a proportionate part of that amount is attributed to each of those shares.

(7) If CITR attributable to a loan or any securities or shares falls to be withdrawn under Chapter 5, the CITR attributable to that loan or each of those securities or shares is reduced to nil.

(8) If CITR attributable to any securities or shares falls to be reduced under that Chapter by any amount, the CITR attributable to each of those securities or shares is reduced by a proportionate part of that amount.

Textual Amendments

F114 S. 240(4A) inserted (with effect in accordance with Sch. 27 para. 12 of the amending Act) by Finance Act 2013 (c. 29), **Sch. 27 para. 10**

241 Attribution: bonus shares

(1) This section applies if—

(a) corresponding bonus shares are issued to the investor in respect of any shares ("the original shares") included in the investment, and

(b) the original shares have been continuously held by the investor, as sole beneficial owner, from the time they were issued until the issue of the bonus shares.

(2) A proportionate part of any amount attributed to the original shares, in respect of an accounting period, immediately before the bonus shares are issued is attributed to each

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of the shares in the holding consisting of the original shares and the bonus shares, in respect of that period.

(3) After the issue of the bonus shares this Part applies as if—
- (a) the original issue had included the bonus shares, and
- (b) the bonus shares had been held by the investor, as sole beneficial owner, continuously from the time the original shares were issued until the bonus shares were issued.

(4) In this section—

"corresponding bonus shares" means bonus shares that are in the same company, are of the same class, and carry the same rights as the original shares,

"original issue" means the issue of shares forming the investment.

CHAPTER 5

WITHDRAWAL OR REDUCTION OF CITR

Introduction

242 Introduction to Chapter

(1) This Chapter provides for CITR to be withdrawn or reduced under—
- (a) section 243 (disposal of loan during 5 year period),
- (b) section 244 (disposal of securities or shares during 5 year period),
- (c) section 245 (repayment of loan capital during 5 year period),
- (d) section 246 (value received by investor during 6 year period: loans),
- (e) section 247 (value received by investor during 6 year period: securities or shares),
- (f) section 254 (CITR subsequently found not to have been due).

(2) This Chapter also provides for the manner in which CITR is to be withdrawn or reduced (see section 255).

(3) In this Chapter "the 6 year period" in relation to the investment is the period of 6 years beginning 12 months before the investment date.

Disposals

243 Disposal of loan during 5 year period

(1) If the investment consists of a loan and within the 5 year period—
- (a) the investor disposes of the whole of the investment, otherwise than by way of a permitted disposal, or
- (b) the investor disposes of a part of the investment,

any CITR attributable to the investment in respect of any accounting period must be withdrawn.

(2) For the purposes of this section—
- (a) a disposal is "permitted" if—

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(i) it is by way of a distribution in the course of dissolving or winding up the CDFI,

(ii) it is a disposal within section 24(1) of TCGA 1992 (entire loss, destruction, dissipation or extinction of asset),

(iii) it is a deemed disposal under section 24(2) of that Act (claim that value of asset has become negligible), or

(iv) it is made after the CDFI has ceased to be accredited under Chapter 2 of Part 7 of ITA 2007, and

(b) a full or partial repayment of the loan is not treated as giving rise to a disposal.

244 Disposal of securities or shares during 5 year period

(1) This section applies if the investment consists of securities or shares and—

(a) the investor disposes of the whole or any part of the investment ("the former investment") within the 5 year period,

(b) the CDFI has not ceased to be accredited under Chapter 2 of Part 7 of ITA 2007 before the disposal, and

(c) the disposal does not arise as a result of an event within section 249(1)(a) (repayment, redemption or repurchase of securities or shares included in the investment).

(2) If the disposal is not a qualifying disposal, any CITR attributable to the former investment in respect of any accounting period must be withdrawn.

[F115(3) Subsections (3A) to (3H) apply if—

(a) the disposal is a qualifying disposal, and

(b) the investor has made a claim under section 220 in respect of the former investment for an accounting period ("period X").

(3A) Subsection (3B) applies if the total of the following CITR does not exceed A—

(a) any CITR attributable to the former investment in respect of period X given under section 220, and

(b) any CITR attributable to the former investment in respect of later accounting periods given under section 220A where period X is the accounting period mentioned in section 220A(1)(a).

(3B) All CITR falling within subsection (3A)(a) or (b) must be withdrawn.

(3C) If the total of the CITR falling within subsection (3A)(a) or (b) exceeds A, that total must be reduced by A.

(3D) For the purposes of subsection (3C) CITR given in a later accounting period must be reduced before CITR given in an earlier accounting period.

(3E) For the purposes of subsections (3A) and (3C) "A" is an amount equal to 5% of the amount or value of the consideration (if any) which the investor receives for the former investment.

(3F) If—

(a) the total of the CITR falling within subsection (3A)(a) or (b)("B") is less than

(b) the amount ("C") which is equal to 5% of the invested amount in respect of the former investment for period X,

"A" is to be reduced by multiplying it by the fraction—

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B C

(3G) If the amount of CITR attributable to the former investment in respect of an accounting period has been reduced before the CITR is obtained, the amount referred to in subsection (3F) as B is to be treated for the purposes of that subsection as the amount it would have been without the reduction.

(3H) Subsection (3G) does not apply to a reduction by virtue of section 241 (attribution: bonus shares).**]**

(4) For the purposes of this section "qualifying disposal" means a disposal that is—

(a) by way of a bargain made at arm's length, or

(b) a permitted disposal (within the meaning of section 243).

(5) F116 ...

F116 . . . . . .

F116 . . . . . .

$$\frac{B}{C}$$

F116(6) . . . . . .

F116(7) . . . . . .

Textual Amendments

F115 S. 244(3)-(3H) substituted for s. 244(3) (with effect in accordance with Sch. 27 para. 12 of the amending Act) by Finance Act 2013 (c. 29), **Sch. 27 para. 11(2)**

F116 S. 244(5)-(7) omitted (with effect in accordance with Sch. 27 para. 12 of the amending Act) by virtue of Finance Act 2013 (c. 29), **Sch. 27 para. 11(3)**

Repayment of loans

245 Repayment of loan capital during 5 year period

(1) If the investment consists of a loan and—

(a) the average capital balance of the loan for the third, fourth or final year of the 5 year period is less than the permitted balance for the year in question, and

(b) the difference between those balances is not an amount of insignificant value,

any CITR attributable to the investment in respect of any accounting period must be withdrawn.

(2) For the purposes of this section—

"the average capital balance" of the loan for a period is the mean of the daily balances of capital outstanding during that period, ignoring any non-standard repayments of the loan made in that period or at any earlier time, and

"the permitted balance" of the loan is—

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(a) for the third year of the 5 year period, 75% of the average capital balance for the period of 6 months beginning 18 months after the investment date,
(b) for the fourth year of that period, 50% of that balance, and
(c) for the final year of that period, 25% of that balance.

(3) For the purposes of subsection (2) a repayment of the loan is a non-standard repayment if subsection (4) or (5) applies.

(4) This subsection applies if the repayment is made at the choice or discretion of the CDFI, and not as a direct or indirect consequence of any obligation provided for under the terms of the loan agreement.

(5) This subsection applies if the repayment is made as a result of the failure of the CDFI to meet any obligation of the loan agreement which—
(a) is imposed merely because of the commercial risks to which the investor is exposed as lender under that agreement, and
(b) is no more likely to be breached than any obligation that might reasonably have been agreed in respect of the loan in the absence of this Part.

(6) For the purposes of this section "an amount of insignificant value" means an amount which—
(a) is not more than £1,000, or
(b) if it is more than £1,000, is insignificant in relation to the average capital balance of the loan for the year of the 5 year period in question.

Receipts of value

246 Value received by investor during 6 year period: loans

(1) This section applies if the investment consists of a loan and the investor receives any value (other than an amount of insignificant value) from the CDFI during the 6 year period (see section 249 for provision about when value is received).

(2) The investor is treated for the purposes of—
(a) section 222 (determination of "invested amount"), and
(b) section 245 (repayments of loan capital),
as having received a repayment of the loan of an amount equal to the amount of the value received.

(3) For those purposes the repayment is treated as made—
(a) if the value is received in the first or second year of the 6 year period, at the beginning of that second year, and
(b) if the value is received in a later year of that period, at the beginning of the year in question.

(4) For the purposes of section 245 the repayment is treated as a repayment other than a non-standard repayment (within the meaning of that section).

(5) For the purposes of this section "an amount of insignificant value" means an amount of value which—
(a) is not more than £1,000, or

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(b) if it is more than £1,000, is insignificant in relation to the average capital balance of the loan for the year of the 6 year period in which the value is received.

(6) For the purposes of subsection (5)(b)—

(a) "the average capital balance" of the loan for a year is the mean of the daily balances of capital outstanding during the year (ignoring the receipt of value in question), and

(b) any value received in the first year of the 6 year period is treated as received at the beginning of the second year of that period.

(7) This section is subject to section 251 (value received if there is more than one investment).

(8) Value received is ignored, for the purposes of this section, so far as the CITR attributable to any loan, securities or shares in respect of any one or more accounting periods has already been reduced or withdrawn on its account.

247 Value received by investor during 6 year period: securities or shares

(1) This section applies if the investment consists of securities or shares and—

(a) the investor receives any value (other than an amount of insignificant value) from the CDFI during the 6 year period (see section 249 for provision about when value is received),

(b) the investment or a part of it is held by the investor at the time the value is received and has been held by the investor, as sole beneficial owner, continuously since the investment was made ("the continuing investment"),

(c) the receipt is wholly or partly in excess of the permitted level of receipts in respect of the continuing investment, and

(d) the amount of that excess is not an amount of insignificant value.

(2) Any CITR attributable to the continuing investment in respect of any accounting period must be withdrawn.

(3) For the purposes of subsection (1) the permitted level of receipts is exceeded if—

(a) any amount of value is received by the investor (ignoring any amounts of insignificant value) in the first 3 years of the 6 year period, or

(b) the total amount of value received by the investor (ignoring any amounts of insignificant value)—

(i) before the beginning of the fifth year of that period, exceeds 25% of the invested capital,

(ii) before the beginning of the final year of that period, exceeds 50% of the invested capital, or

(iii) before the end of that period, exceeds 75% of the invested capital.

(4) In this section—

"the invested capital", in relation to the continuing investment, means the amount subscribed for the securities or shares concerned, and

"an amount of insignificant value" means an amount of value which—

(a) is not more than £1,000, or

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(b) if it is more than £1,000, is insignificant in relation to the amount subscribed by the investor for the securities or shares included in the continuing investment.

(5) This section is subject to section 251 (value received if there is more than one investment).

(6) Value received is ignored, for the purposes of this section, so far as CITR attributable to any loan, securities or shares in respect of any one or more accounting periods has already been reduced or withdrawn on its account.

248 Receipts of insignificant value to be added together

(1) This section applies if—

(a) value is received ("the relevant receipt") by the investor from the CDFI at any time during the 6 year period relating to the investment (see section 249 for provision about when value is received),

(b) the investor has received from the CDFI one or more receipts of insignificant value at a time or times—

(i) during that period, but

(ii) not later than the time of the relevant receipt, and

(c) the total amount of the value of the receipts within paragraphs (a) and (b) is not an amount of insignificant value.

(2) The investor is treated for the purposes of this Part as if the relevant receipt had been a receipt of an amount of value equal to that total amount.

(3) A receipt does not fall within subsection (1)(b) if the whole or any part of it has previously formed part of a total amount falling within subsection (1)(c).

(4) For the purposes of this section "an amount of insignificant value" means an amount of value which—

(a) is not more than £1,000, or

(b) if it is more than £1,000, is insignificant in relation to the relevant amount.

(5) If the investment consists of a loan, the relevant amount for the purposes of subsection (4) is—

(a) if the relevant receipt is received in the first or second year of the 6 year period, the average capital balance of the loan for the second year of that period, and

(b) if the relevant receipt is received in a later year, the average capital balance of the loan for the year in question.

(6) For the purposes of subsection (5)—

(a) the average capital balance of the loan for a year is the mean of the daily balances of capital outstanding during the year, and

(b) the relevant receipt and any receipts within subsection (1)(b) are ignored when calculating the average capital balance for the year in question.

(7) If the investment consists of securities or shares, the relevant amount for the purposes of subsection (4) is—

(a) if the relevant receipt is received in the first year of the 6 year period, the amount subscribed for the securities or shares, and

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(b) in any other case, the amount subscribed for such of the securities or shares as—

(i) are held by the investor at the time the relevant receipt is received, and

(ii) have been held by the investor, as sole beneficial owner, continuously since the investment was made.

(8) This section is subject to section 251 (value received if there is more than one investment).

249 When value is received

(1) For the purposes of this Chapter the investor receives value from the CDFI at any time when the CDFI—

(a) repays, redeems or repurchases any securities or shares included in the investment,

(b) releases or waives any liability of the investor to the CDFI or discharges, or undertakes to discharge, any liability of the investor to a third person,

(c) makes a loan or advance to the investor which has not been repaid in full before the investment is made,

(d) provides a benefit or facility for—

(i) the investor or any associate of the investor, or

(ii) a director or employee of the investor or any associate of a director or employee of the investor,

(e) disposes of an asset to the investor for no consideration or for a consideration of an amount or value which is less than the market value of the asset,

(f) acquires an asset from the investor for a consideration of an amount or value which is more than the market value of the asset, or

(g) makes a payment to the investor other than a qualifying payment.

(2) But if the investor is a bank, the investor does not receive value from the CDFI when the CDFI makes a deposit with the investor in the course of the CDFI's ordinary banking arrangements with the investor.

(3) For the purposes of subsection (1)(b) the CDFI is treated as having released or waived a liability if the liability is not discharged within 12 months of the time when it ought to have been discharged.

(4) For the purposes of subsection (1)(c) the following are treated as loans made by the CDFI to the investor—

(a) the amount of any debt due from the investor to the CDFI (other than an ordinary trade debt), and

(b) the amount of any debt due from the investor to a third person which has been assigned to the CDFI.

(5) For the purposes of this section—

(a) references to a debt or liability do not, in relation to a person, include references to any debt or liability which would be discharged by the making by that person of a qualifying payment,

(b) references to a benefit or facility do not include references to any benefit or facility provided in circumstances such that, if a payment had been made of an amount equal to its value, that payment would have been a qualifying payment, and

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(c) any reference to a payment or disposal to a person includes a reference to a payment or disposal made to that person indirectly or to that person's order or for that person's benefit.

(6) In subsection (5) references to "a person" include references to any other person who, at any time in the 6 year period, is connected with that person, whether or not the other person is so connected at the material time.

(7) In this section—

"bank" has the meaning given by section 1120,

"qualifying payment" means—

(a) any payment by any person for any goods, services or facilities provided by the investor (in the course of the investor's trade or otherwise) which is reasonable in relation to the market value of those goods, services or facilities,

(b) the payment by any person of any interest which represents no more than a reasonable commercial return on money lent to that person,

(c) the payment by any company of any dividend or other distribution which does not exceed a normal return on any investment in shares in or securities of that company,

(d) any payment for the acquisition of an asset which does not exceed its market value,

(e) the payment by any person, as rent for any property occupied by the person, of an amount which is not more than a reasonable and commercial rent for the property, and

(f) a payment in discharge of an ordinary trade debt, and

"ordinary trade debt" means any debt for goods or services supplied in the ordinary course of a trade or business if any credit given—

(a) is for not more than 6 months, and

(b) is not longer than that normally given to customers of the person carrying on the trade or business.

250 The amount of value received

(1) In a case falling within a provision listed in column 1 of the following table, the amount of value received for the purposes of this Chapter is given by the corresponding entry in column 2 of the table.

Provision	*The amount of value received*
Section 249(1)(a)	The amount received by the investor
Section 249(1)(b)	The amount of the liability
Section 249(1)(c)	The amount of the loan or advance, less the amount of any repayment made before the investment is made
Section 249(1)(d)(i)	The cost to the CDFI of providing the benefit or facility, less any consideration given for it by the investor or any associate of the investor
Section 249(1)(d)(ii)	The cost to the CDFI of providing the benefit or facility, less any consideration given for it by the

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	investor or any associate of the investor or by a person within subsection (2)
Section 249(1)(e) or (f)	The difference between the market value of the asset and the consideration (if any) received for it
Section 249(1)(g)	The amount of the payment

(2) The persons within this subsection are—
- (a) in a case where the benefit or facility was provided to a director or employee, the director or employee or any associate of the director or employee, and
- (b) in a case where the benefit or facility was provided to an associate of a director or employee, the associate or the director or employee.

251 Value received if there is more than one investment

(1) This section applies if—
- (a) the investor makes two or more investments in the CDFI,
- (b) the investor is eligible for and claims CITR in respect of those investments, and
- (c) the investor receives value (other than value within section 249(1)(a)) which is received within the 6 year periods relating to two or more of those investments.

(2) Sections 246, 247, 248 and 252 have effect in relation to each investment referred to in subsection (1)(c) as if the amount of the value received were reduced by multiplying it by the fraction—

$$\frac{A}{B}$$

where—
A is the appropriate amount in respect of the investment in question, and
B is the sum of that amount and the appropriate amount or amounts in respect of the other investment or investments.

(3) If the investment consists of a loan, the appropriate amount for the purposes of subsection (2) is—
- (a) if the value is received in the first or second year of the 6 year period, the average capital balance of the loan for the second year of that period, and
- (b) if the value is received in a later year, the average capital balance of the loan for the year in question.

(4) For the purposes of subsection (3)—
- (a) the average capital balance of the loan for a year is the mean of the daily balances of capital outstanding during the year, and
- (b) the receipt of value is ignored when calculating the average capital balance for the year in question.

(5) If the investment consists of securities or shares, the appropriate amount for the purposes of subsection (2) is—
- (a) if the value is received in the first year of the 6 year period, the amount subscribed for the securities or shares, and

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(b) in any other case, the amount subscribed for such of the securities or shares as—

(i) are held by the investor at the time the value is received, and

(ii) have been held by the investor, as sole beneficial owner, continuously since the investment was made.

252 Effect of receipt of value on future claims

(1) This section applies if the investment consists of securities or shares and—

(a) the investor receives any value (other than an amount of insignificant value) from the CDFI during the 6 year period, and

(b) the investment or a part of it is held by the investor at the time the value is received and has been held by the investor, as sole beneficial owner, continuously since the investment was made ("the continuing investment"),

but no CITR attributable to the continuing investment is withdrawn under section 247 as a result of the receipt.

(2) For the purposes of calculating any CITR in respect of any securities or shares included in the continuing investment for any relevant accounting period, the amount subscribed for the securities or shares included in the continuing investment is treated as reduced by the amount of the value received.

(3) For this purpose the "relevant" accounting periods are—

(a) any accounting period ending on or after the anniversary of the investment date immediately before the receipt of value, or

(b) if the value was received on an anniversary of the investment date, any accounting period ending on or after that anniversary.

(4) For the purposes of this section "an amount of insignificant value" means an amount of value which—

(a) is not more than £1,000, or

(b) if it is more than £1,000, is insignificant in relation to the amount subscribed by the investor for the securities or shares included in the continuing investment.

(5) This section is subject to section 251 (value received if there is more than one investment).

253 Receipts of value by or from connected persons

In sections 246 to 252, if the context permits, references to the investor or the CDFI include references to any person who at any time in the 6 year period relating to the investment is connected with the investor or, as the case may be, the CDFI, whether or not the person is connected at the material time.

CITR not due

254 CITR subsequently found not to have been due

If any CITR has been obtained which is subsequently found not to have been due, the CITR must be withdrawn.

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Manner of withdrawal or reduction

255 Manner of withdrawal or reduction of CITR

(1) This section applies if any CITR has been obtained which falls to be withdrawn or reduced under this Chapter.

(2) The CITR must be withdrawn or reduced by making an assessment to corporation tax for the accounting period for which the CITR was obtained.

(3) An assessment under subsection (2) may be made at any time not more than 6 years after the end of the accounting period for which the CITR was obtained.

(4) Subsection (3) is not to be taken to limit the application of paragraph 46(2A) of Schedule 18 to the Finance Act 1998 (loss of tax brought about deliberately).

CHAPTER 6

SUPPLEMENTARY AND GENERAL

Alternative finance arrangements

256 Meaning of "loan" and "interest"

(1) In this Part—
- (a) references to a "loan" include references to alternative finance arrangements, and
- (b) references to "interest" include references to alternative finance return.

(2) In subsection (1)—

"alternative finance arrangements" means arrangements to which any of the following applies—
- (a) section 503 of CTA 2009 (purchase and resale arrangements),
- (b) section 505 of that Act (deposit arrangements),
- (c) section 506 of that Act (profit share agency arrangements), and

"alternative finance return" has the meaning given by section 511 and 513(1) and (2) of that Act.

(3) Subsection (1) needs to be read with—
- (a) section 257, in the case of arrangements to which section 503 of CTA 2009 applies,
- (b) section 258, in the case of arrangements to which section 505 of that Act applies, and
- (c) section 259, in the case of arrangements to which section 506 of that Act applies.

257 Purchase and resale arrangements

(1) This section applies if, under arrangements to which section 503 of CTA 2009 applies, a person ("the first purchaser") purchases an asset that is sold to another person ("the second purchaser").

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(2) This Part has effect in relation to the arrangements in accordance with subsections (3) to (9).

(3) The first purchaser is treated as making a loan to the second purchaser.

(4) The amount of the loan is treated as being equal to the first purchase price.

(5) If the arrangements provide that the first purchaser will transfer ownership of the asset to the second purchaser in instalments—
   (a) references to the loan being drawn down over a period of time include references to the asset being transferred to the second purchaser in instalments,
   (b) references to the date on which the first amount of the loan is drawn down include references to the date on which the first instalment is transferred to the second purchaser, and
   (c) references to the amount drawn down at a given date include references to the value of the instalments transferred at that date.

(6) In calculating the amount of capital outstanding on the loan, each payment of the second purchase price (or part of the second purchase price), as reduced by any amount of alternative finance return (within the meaning of Chapter 6 of Part 6 of CTA 2009) included within each payment, is treated as repayment of the loan capital.

(7) References to the beneficial owner of the loan include references to the person beneficially entitled to payment of the second purchase price.

(8) References to the disposal of the whole or any part of the loan include references to the disposal of the right to receive payment of the whole or any part of the outstanding second purchase price.

(9) If arrangements to which section 503 of CTA 2009 applies are, by virtue of this section, qualifying investments under Chapter 2 of this Part, paragraph (f) of section 249(1) above is to be ignored in relation to the arrangements concerned.

(10) In this section "the first purchase price" and "the second purchase price" have the same meaning as in section 503 of CTA 2009.

258 Deposit arrangements

(1) This section applies if, under arrangements to which section 505 of CTA 2009 applies, a person ("the depositor") deposits money with a financial institution.

(2) This Part has effect in relation to the arrangements in accordance with subsections (3) to (9).

(3) The depositor is treated as making a loan to the financial institution.

(4) The amount of the loan is treated as being equal to the money deposited under the arrangements.

(5) If the arrangements provide that the depositor will deposit a sum of money with the financial institution in instalments—
   (a) references to the loan being drawn down over a period of time include references to the depositor depositing a sum of money with the financial institution in instalments,

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(b) references to the date on which the first amount of the loan is drawn down include references to the date on which the first instalment is deposited with the financial institution, and

(c) references to the amount drawn down at a given date include references to the value of the instalments deposited with the financial institution at that date.

(6) The capital outstanding on the loan is treated as being equal to the balance of the repayable deposit.

(7) References to any repayment of the loan include references to any repayment of the deposit.

(8) References to the beneficial owner of the loan include references to the person beneficially entitled to repayment of the deposit.

(9) References to the disposal of the whole or any part of the loan include references to the disposal of the right to receive repayment of the whole or any part of the deposit.

(10) In this section "financial institution" has the same meaning as in Chapter 6 of Part 6 of CTA 2009 (see section 502 of that Act).

259 Profit share agency arrangements

(1) This section applies if, under arrangements to which section 506 of CTA 2009 applies, a person ("the principal") appoints a financial institution as agent.

(2) This Part has effect in relation to the arrangements in accordance with subsections (3) to (9).

(3) The principal is treated as making a loan to the agent.

(4) The amount of the loan is treated as being equal to the money provided by the principal to the agent under the arrangements.

(5) If the arrangements provide that the principal will provide a sum of money to the agent in instalments—

(a) references to the loan being drawn down over a period of time include references to the principal providing a sum of money to the agent in instalments,

(b) references to the date on which the first amount of the loan is drawn down include references to the date on which the first instalment is provided to the agent, and

(c) references to the amount drawn down at a given date include references to the value of the instalments provided to the agent at that date.

(6) The capital outstanding on the loan is treated as being equal to the balance of the repayable money provided to the agent.

(7) References to any repayment of the loan include references to any repayment of the money provided to the agent.

(8) References to the beneficial owner of the loan include references to the person beneficially entitled to repayment of the money provided to the agent.

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(9) References to the disposal of the whole or any part of the loan include references to the disposal of the right to receive repayment of the whole or any part of the money provided to the agent.

(10) In subsection (1) "financial institution" has the same meaning as in Chapter 6 of Part 6 of CTA 2009 (see section 502 of that Act).

Miscellaneous

260 Information to be provided by the investor

(1) If—

(a) the investor has obtained CITR in respect of the investment, and

(b) an event occurs because of which CITR attributable to the investment in respect of any accounting period falls to be withdrawn or reduced by virtue of section 243, 244, 245 or 247,

the investor must give an officer of Revenue and Customs a notice containing particulars of the event.

(2) Subject to subsection (3), a notice under subsection (1) must be given not later than the end of the period of 12 months beginning with the end of the accounting period in which the event occurred.

(3) If—

(a) the investor is required to give a notice as a result of the receipt of value by a person connected with the investor (see section 253), and

(b) the end of the period of 60 days beginning when the investor comes to know of that event is later than the final notice date under subsection (2),

the notice must be given before the end of that 60 day period.

261 Disclosure

(1) No obligation as to secrecy or other restriction on the disclosure of information imposed by statute or otherwise prevents the disclosure of information—

(a) by the Secretary of State to an officer of Revenue and Customs for the purpose of assisting Her Majesty's Revenue and Customs to discharge their functions under the Corporation Tax Acts so far as relating to matters arising under this Part, or

(b) by an officer of Revenue and Customs to the Secretary of State for the purpose of assisting the Secretary of State to discharge the Secretary of State's functions in connection with this Part.

(2) Information obtained by such disclosure is not to be further disclosed except for the purposes of legal proceedings arising out of the functions referred to.

262 Nominees

(1) For the purposes of this Part—

(a) loans made by or to, or disposed of by, a nominee for a person are treated as made by or to, or disposed of by, that person, and

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(b) securities or shares subscribed for by, issued to, acquired or held by or disposed of by a nominee for a person are treated as subscribed for by, issued to, acquired or held by or disposed of by that person.

(2) For the purposes of subsection (1) references to things done by or to a nominee for a person include things done by or to a bare trustee for a person.

263 Application for postponement of tax pending appeal

No application may be made under section 55(3) or (4) of TMA 1970 (application for postponement of payment of tax pending appeal) on the ground that a company is eligible for CITR unless a claim for the CITR has been duly made by the company under this Part.

264 Identification of securities or shares on a disposal

(1) This section applies for the purpose of identifying the securities or shares disposed of in any case where—

(a) the investor disposes of part of a holding of securities or shares ("the holding"), and

(b) the holding includes securities or shares to which CITR is attributable in respect of one or more accounting periods that have been held continuously by the investor from the time they were issued until the disposal.

(2) Any disposal by the investor of securities or shares included in the holding which have been acquired by the investor on different days is treated as relating to those acquired on an earlier day rather than to those acquired on a later day.

(3) If there is a disposal by the investor of securities or shares included in the holding which have been acquired by the investor on the same day, any of those securities or shares—

(a) to which CITR is attributable, and

(b) which have been held by the investor continuously from the time they were issued until the time of disposal,

are treated as disposed of after any other securities or shares included in the holding which were acquired by the investor on that day.

(4) For the purposes of this section a holding of securities is any number of securities of a company which—

(a) carry the same rights,

(b) were issued under the same terms, and

(c) are held by the investor in the same capacity.

It does not matter for this purpose that the number of the securities grows or diminishes as securities carrying those rights and issued under those terms are acquired or disposed of.

(5) For the purposes of this section a holding of shares is any number of shares in a company which—

(a) are of the same class, and

(b) are held by the investor in the same capacity.

It does not matter for this purpose that the number of the shares grows or diminishes as shares of that class are acquired or disposed of.

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(6) In a case to which section 127 of TCGA 1992 (equation of original shares and new holding) applies, shares comprised in the new holding are to be treated for the purposes of subsections (2) and (3) as acquired when the original shares were acquired.

(7) In subsection (6)—

(a) the reference to section 127 of TCGA 1992 includes a reference to that section as it is applied by virtue of any enactment relating to chargeable gains, and

(b) "original shares" and "new holding" have the same meaning as in section 127 of TCGA 1992 or (as the case may be) that section as applied by virtue of the enactment in question.

Definitions

265 Meaning of "issue of securities or shares"

(1) In this Part—

(a) references (however expressed) to an issue of securities of any body are to such securities of that body as carry the same rights and are issued under the same terms and on the same day, and

(b) references (however expressed) to an issue of shares in any body are to such shares in that body as are of the same class and issued on the same day.

(2) In this Part references (however expressed) to an issue of securities of or shares in a body to a company are to such of the securities or shares in an issue of securities of or shares in that body as are issued to that company in one capacity.

266 Meaning of "disposal"

(1) Subject to subsection (2), in this Part "disposal" is read in accordance with TCGA 1992, and related expressions are read accordingly.

(2) An investor is treated as disposing of any securities or shares which but for section 151BC(1) of TCGA 1992 the investor—

(a) would be treated as exchanging for other securities or shares by virtue of section 136 of that Act, or

(b) would be so treated but for section 137(1) of that Act (which restricts section 136 to genuine reconstructions).

267 Construction of references to being "held continuously"

(1) This section applies if for the purposes of this Part it becomes necessary to determine whether the investor has held the investment (or any part of it) continuously throughout any period.

(2) The investor is not treated as having held the investment (or any part of it) continuously throughout a period if the investor—

(a) is treated, under any provision of TCGA 1992, as having disposed of and immediately re-acquired the investment (or part) at any time during the period, or

(b) is treated as having disposed of the investment (or part) at any such time, by virtue of section 266(2) above.

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268 Meaning of "associate"

(1) In this Part "associate", in relation to a person, means—

(a) any relative or partner of that person,

(b) the trustee or trustees of any settlement in relation to which that person, or any relative of that person (living or dead), is or was a settlor, and

(c) if that person has an interest in any shares or obligations of a company which are subject to any trust or are part of the estate of a deceased person—

(i) the trustee or trustees of the settlement concerned or, as the case may be, the personal representatives of the deceased, and

(ii) if that person is a company, any other company which has an interest in those shares or obligations.

(2) In subsection (1)(a) and (b) "relative" means spouse or civil partner, ancestor or lineal descendant.

(3) In subsection (1)(b) "settlor" and "settlement" have the same meaning as in Chapter 5 of Part 5 of ITTOIA 2005 (see section 620 of that Act).

269 Minor definitions etc

(1) In this Part—

"body" includes an unincorporated association, and

"bonus shares" means shares which are issued otherwise than for payment (whether in cash or otherwise).

(2) For the purposes of this Part shares in a company are not treated as being of the same class unless they would be so treated if they were—

(a) included in the official UK list, and

(b) admitted to trading on the London Stock Exchange.

(3) For the purposes of this Part the market value at any time of any asset is the price which it might reasonably be expected to fetch on a sale at that time in the open market free from any interest or right which exists by way of security in or over it.

(4) In this Part—

(a) references to CITR obtained by the investor in respect of any investment (or part of an investment) include references to CITR obtained by the investor in respect of that investment (or part) at any time after the investor has disposed of it, and

(b) references to the withdrawal or reduction of CITR obtained by the investor in respect of the investment (or any part of it) include references to the withdrawal or reduction of CITR obtained in respect of that investment (or part) at any such time.

(5) In the case of any condition that cannot be met until a future date—

(a) references in this Part to a condition being met for the time being are to nothing having occurred to prevent its being met, and

(b) references to its continuing to be met are to nothing occurring to prevent its being met.

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PART 8

OIL ACTIVITIES

CHAPTER 1

INTRODUCTION

270 Overview of Part

(1) This Part is about the corporation tax treatment of oil activities.

(2) Chapter 2 contains basic definitions used in this Part.

(3) Chapter 3 treats oil-related activities as a separate trade.

(4) Chapter 4 makes provision about the calculation of profits from oil activities.

(5) Chapter 5 makes provision about ring fence expenditure supplement.

(6) Chapter 6 makes provision about the supplementary charge in respect of ring fence trades.

(7) Chapter 7 makes provision about the reduction of the supplementary charge for **[**[F117]eligible oil fields**]**.

(8) For the meaning of—

(a) "oil-related activities", see section 274,

(b) "ring fence trade", see section 277, and

[[F118](c) "eligible oil field", see section 357.**]**

Textual Amendments

F117 Words in s. 270(7) substituted (1.4.2013) by Finance Act 2012 (c. 14), **Sch. 22 paras. 18(2)(a)**, 21(2); S.I. 2013/744, art. 2

F118 S. 270(8)(c) substituted (1.4.2013) by Finance Act 2012 (c. 14), **Sch. 22 paras. 18(2)(b)**, 21(2); S.I. 2013/744, art. 2

CHAPTER 2

BASIC DEFINITIONS

271 "Associated companies"

(1) For the purposes of this Part two companies are associated with one another if—

(a) one is a 51% subsidiary of the other,

(b) each is a 51% subsidiary of a third company,

(c) one is owned by a consortium of which the other is a member,

(d) one has control of the other, or

(e) both are under the control of the same person.

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(2) For the purposes of this section—
  (a) a company is owned by a consortium if at least 75% of the company's ordinary share capital is beneficially owned by other companies each of which beneficially owns at least 5% of that capital, and
  (b) the other companies each owning at least 5% of that capital are the members of the consortium.

(3) In this section "control" has the same meaning as in Part 10 (close companies) (see sections 450 and 451).

272 "Oil extraction activities"

(1) In this Part "oil extraction activities" means activities within any of subsections (2) to (5) (but see also section 291(6)).

(2) Activities of a company in searching for oil in the United Kingdom or a designated area or causing such searching to be carried out for it.

(3) Activities of a company in extracting, or causing to be extracted for it, oil at any place in the United Kingdom or a designated area under rights which—
  (a) authorise the extraction, and
  (b) are held by it or by a company associated with it.

(4) Activities of a company in transporting, or causing to be transported for it, oil extracted at any such place not on dry land under rights which—
  (a) authorise the extraction, and
  (b) are held as mentioned in subsection (3)(b),

  if the transportation meets condition A or B (see subsections (6) and (7)).

(5) Activities of a company in effecting, or causing to be effected for it, the initial treatment or initial storage of oil won from any oil field under rights which—
  (a) authorise its extraction, and
  (b) are held as mentioned in subsection (3)(b).

(6) Condition A is that the transportation is to the place where the oil is first landed in the United Kingdom.

(7) Condition B is that the transportation—
  (a) is to the place in the United Kingdom, or
  (b) in the case of oil first landed in another country, is to the place in that or any other country (other than the United Kingdom),

  at which the seller in a sale at arm's length could reasonably be expected to deliver it (or, if there is more than one such place, the one nearest to the place of extraction).

(8) The definition of "initial storage" in section 12(1) of OTA 1975 applies for the purposes of this section.

(9) But in its application for those purposes in relation to the company mentioned in subsection (5) and to oil won from any one oil field, that definition is to have effect as if the reference to the maximum daily production rate of oil for the field mentioned in that definition were to a share of that maximum daily production rate proportionate to that company's share of the oil won from that field.

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(10) In this section "initial treatment" has the same meaning as in Part 1 of OTA 1975 (see section 12(1) of that Act).

273 "Oil rights"

In this Part "oil rights" means—

(a) rights to oil to be extracted at any place in the United Kingdom or a designated area, or

(b) rights to interests in or to the benefit of such oil.

274 "Oil-related activities"

In this Part "oil-related activities" means—

(a) oil extraction activities, and

(b) any activities consisting of the acquisition, enjoyment or exploitation of oil rights.

275 "Ring fence income"

In this Part "ring fence income" means income arising from oil extraction activities or oil rights.

276 "Ring fence profits"

In this Part "ring fence profits", in relation to an accounting period, means—

(a) if in accordance with section 197(3) of TCGA 1992 a company has an aggregate gain for that period, that gain and that company's ring fence income (if any) for that period, or

(b) otherwise, that company's ring fence income for that period.

277 "Ring fence trade"

In this Part "ring fence trade" means activities which—

(a) are within the definition of "oil-related activities" in section 274, and

(b) constitute a separate trade (whether because of section 279 or otherwise).

278 Other definitions

In this Part—

"chargeable period" has the same meaning as in Part 1 of OTA 1975 (see section 1(3) of that Act),

"designated area" means an area designated by Order in Council under section 1(7) of the Continental Shelf Act 1964,

"oil" means any substance won or capable of being won under the authority of a licence granted under Part 1 of the Petroleum Act 1998 or the Petroleum (Production) Act (Northern Ireland) 1964 (c. 28 (N.I.)), other than methane gas won in the course of operations for making and keeping mines safe,

"oil field" has the same meaning as in Part 1 of OTA 1975 (see section 12(1) of that Act),

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"OTA 1975" means the Oil Taxation Act 1975, and

"participator" has the same meaning as in Part 1 of OTA 1975 (see section 12(1) of that Act).

CHAPTER 3

DEEMED SEPARATE TRADE

279 Oil-related activities treated as separate trade

If a company carries on any oil-related activities as part of a trade, those activities are treated for the purposes of the charge to corporation tax on income as a separate trade, distinct from all other activities carried on by the company as part of the trade.

CHAPTER 4

CALCULATION OF PROFITS

Oil valuation

280 Disposal to be valued by reference to section 2(5A) of OTA 1975

(1) This section applies if each of conditions A to G is met.

(2) Condition A is that oil is won from an oil field in the United Kingdom.

(3) Condition B is that there is a disposal of the oil by a company.

(4) Condition C is that the disposal is a disposal of the oil by the company crude in a sale at arm's length (as defined in paragraph 1 of Schedule 3 to OTA 1975).

(5) Condition D is that the circumstances are such that the price received or receivable—

(a) falls to be taken into account under section 2(5)(a) of that Act in calculating for petroleum revenue tax purposes the assessable profit or allowable loss accruing to the company in a chargeable period from the oil field, or

(b) would fall to be so taken into account, had the oil field been a taxable field (as defined in section 185 of FA 1993).

(6) Condition E is that the terms of the contract are such as are described in the opening words of section 2(5A) of OTA 1975 (transportation etc).

(7) Condition F is that, but for subsection (9), the company is not entitled to a transportation allowance in respect of the oil in calculating ring fence profits.

(8) Condition G is that the company does not claim a transportation allowance in respect of the oil in calculating for corporation tax purposes any profits that are not ring fence profits.

(9) Section 2(5A) of OTA 1975 is to apply in determining the amount which the company is to bring into account for the purposes of the charge to corporation tax on income in respect of the disposal as it applies (or would apply) for petroleum revenue tax purposes.

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(10) In this section "transportation allowance", in relation to any oil, means—
- (a) a deduction in respect of the expense of transporting the oil as mentioned in the opening words of section 2(5A) of OTA 1975,
- (b) a deduction in respect of any costs of or incidental to the transportation of the oil as so mentioned, or
- (c) any such reduction in the price to be regarded as received or receivable for the oil as would result from the application of section 2(5A) of OTA 1975, if that provision applied for corporation tax purposes.

281 Valuation where market value taken into account under section 2 of OTA 1975

(1) This section applies if a person disposes of oil in circumstances such that the market value of the oil—
- (a) falls to be taken into account under section 2 of OTA 1975, otherwise than by virtue of paragraph 6 of Schedule 3 to that Act, in calculating for petroleum revenue tax purposes the assessable profit or allowable loss accruing to that person in a chargeable period from an oil field, or
- (b) would so fall but for section 10 of that Act.

(2) For the purposes of the charge to corporation tax on income, the disposal of the oil, and its acquisition by the person to whom it was disposed of, are to be treated as having been for a consideration equal to the market value of the oil—
- (a) as so taken into account under section 2 of that Act, or
- (b) as would have been so taken into account under that section but for section 10 of that Act.

282 Valuation where disposal not sale at arm's length

(1) This section applies if conditions A, B and C are met.

(2) Condition A is that a person disposes of oil acquired by the person—
- (a) in the course of oil extraction activities carried on by the person, or
- (b) as a result of oil rights held by the person.

(3) Condition B is that the disposal is not a sale at arm's length (as defined in paragraph 1 of Schedule 3 to OTA 1975).

(4) Condition C is that section 281 does not apply in relation to the disposal.

(5) For the purposes of the charge to corporation tax on income, the disposal of the oil, and its acquisition by the person to whom it was disposed of, are to be treated as having been for a consideration equal to the market value of the oil.

(6) Paragraphs 2 and 3A of Schedule 3 to OTA 1975 (definition of market value of oil including light gases) apply for the purposes of this section as they apply for the purposes of Part 1 of that Act, but with the following modifications.

(7) Those modifications are that—
- (a) any reference in paragraph 2 to the notional delivery day for the actual oil is to be read as a reference to the day on which the oil is disposed of as mentioned in this section, and
- (b) paragraph 2(4) is to be treated as omitted.

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283 Valuation where excess of nominated proceeds

(1) This section applies if an excess of nominated proceeds for a chargeable period—

(a) is taken into account in calculating a company's profits under section 2(5)(e) of OTA 1975, or

(b) would have been so taken into account if the company were chargeable to tax under OTA 1975 in respect of an oil field.

(2) For the purposes of the charge to corporation tax on income, the amount of the excess is to be added to the consideration which the company is treated as having received in respect of oil disposed of by it in the period.

(3) For corporation tax purposes, that amount is to be available to the company as a deduction in calculating the profits of any trade which (whether because of section 279 or otherwise) does not consist of activities falling within the definition of "oil-related activities" in section 274.

284 Valuation where relevant appropriation but no disposal

(1) This section applies if conditions A and B are met.

(2) Condition A is that a company makes a relevant appropriation of oil without disposing of it.

(3) Condition B is that the company does so in circumstances such that the market value of the oil—

(a) falls to be taken into account under section 2 of OTA 1975 in calculating for petroleum revenue tax purposes the assessable profit or allowable loss accruing to it in a chargeable period from an oil field, or

(b) would so fall but for section 10 of that Act.

(4) For the purposes of the charge to corporation tax on income, the company is to be treated as having, at the time of the appropriation—

(a) sold the oil in the course of the separate trade consisting of activities falling within the definition of "oil-related activities" in section 274, and

(b) purchased it in the course of the separate trade consisting of activities not so falling.

(5) For those purposes, that sale and purchase is to be treated as having been at a price equal to the market value of the oil—

(a) as so taken into account under section 2 of OTA 1975, or

(b) as would have been so taken into account under that section but for section 10 of that Act.

(6) In this section "relevant appropriation" has the meaning given by section 12(1) of OTA 1975.

285 Valuation where appropriation to refining etc

(1) This section applies if conditions A, B and C are met.

(2) Condition A is that a company appropriates oil acquired by it—

(a) in the course of oil extraction activities carried on by it, or

(b) as a result of oil rights held by it.

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(3) Condition B is that the oil is appropriated to refining or to any use except the production purposes of an oil field (as defined in section 12(1) of OTA 1975).

(4) Condition C is that section 284 does not apply in relation to the appropriation.

(5) For the purposes of the charge to corporation tax on income—
  (a) the company is to be treated as having, at the time of the appropriation, sold and purchased the oil as mentioned in section 284(4)(a) and (b), and
  (b) that sale and purchase is to be treated as having been at a price equal to the market value of the oil.

(6) Paragraphs 2 and 3A of Schedule 3 to OTA 1975 (definition of market value of oil including light gases) apply for the purposes of this section as they apply for the purposes of Part 1 of that Act, but with the following modifications.

(7) Those modifications are that—
  (a) any reference in paragraph 2 to the notional delivery day for the actual oil is to be read as a reference to the day on which the oil is appropriated as mentioned in this section,
  (b) any reference in paragraphs 2 and 2A to oil being relevantly appropriated is to be read as a reference to its being appropriated as mentioned in this section, and
  (c) paragraph 2(4) is to be treated as omitted.

[F119 Hire of relevant assets

Textual Amendments

F119 S. 285A and cross-heading inserted (retrospective to 1.4.2014) by Finance Act 2014 (c. 26), **Sch. 16 paras. 3**, 6

285A Restriction on hire etc of relevant assets to be brought into account

(1) This section applies if—
  (a) oil contractor activities are, or are to be, carried out, and
  (b) a company that carries on a ring fence trade makes, or is to make, one or more payments under a lease of a relevant asset, or part of a relevant asset, which is, or is to be, provided, operated or used in the relevant offshore service in question.

(2) The total amount that may be brought into account in respect of the payments for the purposes of calculating the company's ring fence profits in an accounting period is limited to the hire cap.

(3) The “hire cap” is an amount equal to the relevant percentage of TC for the accounting period, subject to subsection (4).

(4) If payments in relation to which subsection (2) or section 356N(2) (restriction on hire for oil contractors under Part 8ZA) applies are also made, or to be made, by one or more other companies in respect of the relevant asset or part, the “hire cap” is to be such proportion of the amount mentioned in subsection (3) as is just and reasonable,

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having regard (in particular) to the amounts of the payments made, or to be made, by each company.

(5) The "relevant percentage" and TC are to be determined in accordance with section 356N(5) to (16).

(6) To the extent that, by virtue of this section, payments within subsection (1)(b) cannot be brought into account for the purposes of calculating the company's ring fence profits in an accounting period, the payments may be—

(a) allowed as a deduction from the company's total profits for the accounting period, or

(b) treated as a surrenderable amount of the company for the accounting period for the purposes of Part 5 (group relief) (see section 99(7)) as if they were a trading loss,

but this is subject to subsection (7).

(7) No deduction may be made by virtue of subsection (6) from total profits so far as they are ring fence profits or contractor's ring fence profits.

(8) If the company or an associated person enters into arrangements the main purpose or one of the main purposes of which is to secure that subsection (2) does not apply in relation to one or more payments to any extent, that subsection applies in relation to the payments to the extent that it would not otherwise do so.

(9) In subsection (8) "arrangements" includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable).

(10) In this section—

"associated person" has the meaning given by section 356LB;

"contractor's ring fence profits" has the meaning given by section 356LD;

"oil contractor activities" and "relevant offshore service" have the meaning given by section 356L;

"relevant asset" has the meaning given by section 356LA;

"lease" has the meaning given by section 868.**]**

Loan relationships

286 Restriction on debits to be brought into account

(1) Debits may not be brought into account for the purposes of Part 5 of CTA 2009 (loan relationships) in respect of a company's loan relationships in any way that results in a reduction of what would otherwise be the company's ring fence profits, but this is subject to subsections (2) to (4).

(2) Subsection (1) does not apply so far as a loan relationship is in respect of money borrowed by the company which has been—

(a) used to meet expenditure incurred by the company in carrying on oil extraction activities or in acquiring oil rights otherwise than from a connected person, or

(b) appropriated to meeting expenditure to be so incurred by the company.

(3) Subsection (1) does not apply, in the case of debits falling to be brought into account as a result of section 329 of CTA 2009 in respect of a loan relationship that has not been

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entered into, so far as the relationship would have been one entered into for the purpose of borrowing money to be used or appropriated as mentioned in subsection (2).

(4) Subsection (1) does not apply, in the case of debits in respect of a loan relationship to which Chapter 2 of Part 6 of CTA 2009 (relevant non-lending relationships) applies, so far as—

(a) the payment of interest under the relationship is expenditure incurred as mentioned in subsection (2)(a), or

(b) the exchange loss arising from the relationship is in respect of a money debt on which the interest payable (if any) is, or would be, such expenditure.

(5) If a debit—

(a) falls to be brought into account for the purposes of Part 5 of CTA 2009 in respect of a loan relationship of a company, but

(b) as a result of this section cannot be brought into account in a way that results in any reduction of what would otherwise be the company's ring fence profits,

the debit is to be brought into account for those purposes as a non-trading debit despite anything in section 297 of that Act.

(6) References in this section to a loan relationship, in relation to the borrowing of money, do not include a relationship to which Chapter 2 of Part 6 of CTA 2009 (relevant non-lending relationships) applies.

287 Restriction on credits to be brought into account

(1) Credits in respect of exchange gains from a company's loan relationships may not be brought into account for the purposes of Part 5 of CTA 2009 (loan relationships) in any way that results in an increase of what would otherwise be the company's ring fence profits, but this is subject to subsections (2) to (4).

(2) Subsection (1) does not apply so far as a loan relationship is in respect of money borrowed by the company which has been—

(a) used to meet expenditure incurred by the company in carrying on oil extraction activities or in acquiring oil rights otherwise than from a connected person, or

(b) appropriated to meeting expenditure to be so incurred by the company.

(3) Subsection (1) does not apply, in the case of credits falling to be brought into account as a result of section 329 of CTA 2009 in respect of a loan relationship that has not been entered into, so far as the relationship would have been one entered into for the purpose of borrowing money to be used or appropriated as mentioned in subsection (2).

(4) Subsection (1) does not apply, in the case of credits in respect of a loan relationship to which Chapter 2 of Part 6 of CTA 2009 (relevant non-lending relationships) applies, so far as—

(a) the payment of interest under the relationship is expenditure incurred as mentioned in subsection (2)(a), or

(b) the exchange gain arising from the relationship is in respect of a money debt on which the interest payable (if any) is, or would be, such expenditure.

(5) If a credit—

(a) falls to be brought into account for the purposes of Part 5 of CTA 2009 in respect of any loan relationship of a company, but

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(b) as a result of this section cannot be brought into account in a way that results in any increase of what would otherwise be the company's ring fence profits,

the credit is to be brought into account for those purposes as a non-trading credit despite anything in section 297 of that Act.

(6) Section 286(6) applies for the purposes of this section.

[F120 287A Restriction where debits or credits relate to decommissioning security settlement

(1) No debits or credits are to be brought into account for the purposes of Part 5 of CTA 2009 (loan relationships) in respect of a company's loan relationship so far as the loan relationship is in respect of property comprised in a decommissioning security settlement.

(2) For the purposes of this section a settlement is a "decommissioning security settlement" if the sole or main purpose of the settlement is to provide security for the performance of obligations under an abandonment programme.

(3) In subsection (2)—

"abandonment programme" means an abandonment programme approved under Part 4 of the Petroleum Act 1998 (including such a programme as revised), and

"security" has the same meaning as in section 38A of that Act.]

Textual Amendments

F120 S. 287A inserted (with effect in accordance with s. 87(3) of the amending Act) by Finance Act 2013 (c. 29), **s. 87(1)**

Sale and lease-back

288 Sale and lease-back

(1) This section applies if conditions A, B and C are met.

(2) Condition A is that a company ("the seller") carrying on a trade has disposed of—

(a) an asset which was used for the purposes of that trade, or

(b) an interest in such an asset.

(3) Condition B is that the asset is used, under a lease, by the seller or a company associated with the seller ("the lessee") for the purposes of a ring fence trade carried on by the lessee.

(4) Condition C is that the lessee uses the asset before the end of the period of two years beginning with the disposal.

(5) Subsection (6) applies to so much (if any) of the expenditure incurred by the lessee under the lease as—

(a) falls, in accordance with generally accepted accounting practice, to be treated in the accounts of the lessee as a finance charge, or

(b) falls, if the lease is a long funding operating lease, to be deductible in calculating the profits of the lessee for corporation tax purposes (after first

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making against any such expenditure any reductions falling to be made as a result of section 379 (lessee under long funding operating lease)).

But subsection (6) is subject to subsection (7).

(6) The expenditure is not allowable in calculating for the purposes of Part 3 of CTA 2009 the profits of the ring fence trade.

(7) Expenditure is not to be disallowed because of subsection (6) so far as the disposal mentioned in subsection (2) is made for a consideration which—
  (a) is used to meet expenditure incurred by the seller in carrying on oil extraction activities or in acquiring oil rights otherwise than from a company associated with the seller, or
  (b) is appropriated to meeting expenditure to be so incurred by the seller.

(8) If any expenditure—
  (a) would, but for subsection (6), be allowable in calculating for the purposes of Part 3 of CTA 2009 the profits of the ring fence trade for an accounting period, but
  (b) because of that subsection is not so allowable,

the expenditure is to be brought into account for the purposes of Part 5 of CTA 2009 (loan relationships) as if it were a non-trading debit in respect of a loan relationship of the lessee for that period.

(9) In this section—

"long funding operating lease" means a long funding operating lease for the purposes of Part 2 of CAA 2001 (see section 70YI(1) of that Act), and

"lease", in relation to an asset, has the same meaning as in Chapter 3 of Part 19 (see section 868).

Regional development grants

289 Reduction of expenditure by reference to regional development grant

(1) This section applies if conditions A and B are met.

(2) Condition A is that a person has incurred expenditure (by way of purchase, rent or otherwise) on the acquisition of an asset in a transaction to which paragraph 2 of Schedule 4 to OTA 1975 applies (transactions between connected persons or otherwise than at arm's length).

(3) Condition B is that the expenditure incurred by the other person mentioned in that paragraph in acquiring, bringing into existence or enhancing the value of the asset as mentioned in that paragraph—
  (a) has been or is to be met by a regional development grant, and
  (b) falls (in whole or in part) to be taken into account under Part 2 or 6 of CAA 2001 (capital allowances relating to plant and machinery or research and development).

(4) Subsection (5) applies for the purposes of the charge to corporation tax on the income arising from the activities of the person mentioned in subsection (2) which are treated by section 279 as a separate trade for those purposes.

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(5) The expenditure mentioned in subsection (2) is to be reduced by the amount of the regional development grant mentioned in subsection (3).

(6) In this section "regional development grant" means a grant falling within section 534(1) of CAA 2001 (Northern Ireland regional development grant).

290 Adjustment as a result of regional development grant

(1) This section applies if conditions A, B and C are met.

(2) Condition A is that expenditure incurred by a company in relation to an asset in an accounting period ("the initial period") has been or is to be met by a regional development grant.

(3) Condition B is that, despite the provisions of section 534(2) and (3) of CAA 2001 (Northern Ireland regional development grants) and section 289 of this Act, in determining that company's liability to corporation tax for the initial period, the whole or some part of that expenditure falls to be taken into account under Part 2 or 6 of CAA 2001.

(4) Condition C is that—

(a) expenditure on the asset becomes allowable under section 3 or 4 of OTA 1975 in an accounting period (an "adjustment period") subsequent to the initial period, or

(b) the proportion of any such expenditure which is allowable in an adjustment period is different as compared with the initial period.

(5) There is to be redetermined for the purposes of subsections (7) and (8) the amount of the expenditure mentioned in subsection (2) which would have been taken into account as mentioned in subsection (3) if the circumstances mentioned in subsection (4) had existed in the initial period.

(6) According to whether the amount as so redetermined is greater or less than the amount actually taken into account as mentioned in subsection (3), the difference is referred to in subsections (7) and (8) as the increase or the reduction in the allowance.

(7) If there is an increase in the allowance, an amount of capital expenditure equal to the increase is to be treated, for the purposes of Part 2 or 6 of CAA 2001, as having been incurred by the company concerned in the adjustment period on an extension of, or addition to, the asset mentioned in subsection (2).

(8) If there is a reduction in the allowance, the company concerned is to be treated, for the purpose of determining its liability to corporation tax, as having received in the adjustment period, as income of the trade in connection with which the expenditure mentioned in subsection (2) was incurred, a sum equal to the amount of the reduction in the allowance.

(9) In this section "regional development grant" has the meaning given by section 289(6).

Tariff receipts etc

291 Tariff receipts etc

(1) Subsection (5) applies to a sum which meets conditions A, B and C.

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(2) Condition A is that the sum constitutes a tariff receipt or tax-exempt tariffing receipt of a person who is a participator in an oil field.

(3) Condition B is that the sum constitutes consideration in the nature of income rather than capital.

(4) Condition C is that the sum would not, but for subsection (5), be treated as mentioned in that subsection.

(5) The sum is to be treated as a receipt of the separate trade mentioned in section 279.

(6) So far as they would not otherwise be so treated, the activities—
   (a) of a participator in an oil field, or
   (b) of a person connected with the participator,

   in making available an asset in a way which gives rise to tariff receipts or tax-exempt tariffing receipts of the participator are to be treated for the purposes of this Part as oil extraction activities.

(7) In determining for the purposes of subsection (2) whether a sum constitutes a tariff receipt or tax-exempt tariffing receipt of a person who is a participator, no account may be taken of any sum which—
   (a) is in fact received or receivable by a person connected with the participator, and
   (b) constitutes a tariff receipt or tax-exempt tariffing receipt of the participator.

   But in relation to the person by whom such a sum is actually received, subsection (2) has effect as if the person were a participator and as if condition A were met.

(8) References in this section to a person connected with a participator include a person with whom the person is associated, within the meaning of paragraph 11 of Schedule 2 to the Oil Taxation Act 1983, but section 1176(1) of this Act (meaning of "connected" persons) does not apply for the purposes of this section.

(9) In this section—

   "tax-exempt tariffing receipt" has the meaning given by section 6A(2) of the Oil Taxation Act 1983, and

   "tariff receipt" has the same meaning as in that Act.

Abandonment guarantees

292 [F121Expenditure on abandonment guarantees]

(1) Subsection (2) applies if, as a result of section 3(1)(hh) of OTA 1975 (obtaining abandonment guarantee), expenditure incurred by a participator in an oil field is allowable (in whole or in part) for petroleum revenue tax purposes under section 3 of that Act.

[F122(1A) Subsection (2) also applies if expenditure incurred by a participator in an oil field would be so allowable as a result of section 3(1)(hh) of that Act but for the fact that the oil field is a non-taxable oil field within the meaning of Part 3 of FA 1993 (see section 185 of that Act).]

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(2) So far as **[**[F123]the expenditure mentioned in subsection (1) or (1A) is or would be so allowable**]** , it is to be allowed as a deduction in calculating the participator's ring fence income.

[F124](3) . . . . . .

[F124](4) . . . . . .

[F125](5) . . . . . .

(6) In this Chapter—

"abandonment guarantee" has the same meaning as it has for the purposes of **[**[F126]section 3 of OTA 1975**]** (see section 104 of **[**[F127]FA 1991 **]**), and

"the guarantor" and "the relevant participator" have the same meaning as in section 104 of that Act.

Textual Amendments

F121 S. 292 heading substituted (with effect in accordance with Sch. 31 para. 23 of the amending Act) by Finance Act 2013 (c. 29), **Sch. 31 para. 18(4)**

F122 S. 292(1A) inserted (with effect in accordance with Sch. 31 para. 23 of the amending Act) by Finance Act 2013 (c. 29), **Sch. 31 para. 2(2)(a)**

F123 Words in s. 292(2) substituted (with effect in accordance with Sch. 31 para. 23 of the amending Act) by Finance Act 2013 (c. 29), **Sch. 31 para. 2(2)(b)**

F124 S. 292(3)(4) omitted (with effect in accordance with Sch. 31 para. 23 of the amending Act) by virtue of Finance Act 2013 (c. 29), **Sch. 31 para. 7(2)**

F125 S. 292(5) omitted (with effect in accordance with Sch. 31 para. 23 of the amending Act) by virtue of Finance Act 2013 (c. 29), **Sch. 31 para. 18(2)**

F126 Words in s. 292(6) substituted (with effect in accordance with Sch. 31 para. 23 of the amending Act) by Finance Act 2013 (c. 29), **Sch. 31 para. 18(3)(a)**

F127 Words in s. 292(6) substituted (with effect in accordance with Sch. 31 para. 23 of the amending Act) by Finance Act 2013 (c. 29), **Sch. 31 para. 18(3)(b)**

[F128]293 Relief for reimbursement expenditure under abandonment guarantees

. . . . . .

Textual Amendments

F128 S. 293 omitted (with effect in accordance with Sch. 31 para. 23 of the amending Act) by virtue of Finance Act 2013 (c. 29), **Sch. 31 para. 7(3)**

[F129]294 Payment under abandonment guarantee not immediately applied

. . . . . .

Textual Amendments

F129 Ss. 294, 295 omitted (with effect in accordance with Sch. 31 para. 23 of the amending Act) by virtue of Finance Act 2013 (c. 29), **Sch. 31 para. 19**

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[F129]295 Amounts excluded from section 293(1)

. . . . . .

Textual Amendments

F129 Ss. 294, 295 omitted (with effect in accordance with Sch. 31 para. 23 of the amending Act) by virtue of Finance Act 2013 (c. 29), **Sch. 31 para. 19**

Abandonment expenditure

296 [[F130]Introduction to section 297]

(1) **[**[F131]Section 297 applies **]** if—

(a) paragraph 2A of Schedule 5 to OTA 1975 applies, [F132]..., and

(b) the default payment falls (in whole or part) to be attributed to the contributing participator under paragraph 2A(2) of that Schedule **[**[F133], or would fall to be so attributed if a claim under paragraph 2A(2) of that Schedule were made**]** .

[[F134](1A) The condition in subsection (1)(b) is to be treated as met for the purposes of this section if it would be met but for the fact that the contributing participator is (or was) a participator in an oil field that is a non-taxable oil field within the meaning of Part 3 of FA 1993 (see section 185 of that Act).**]**

(2) In section 297 "the additional abandonment expenditure" means the amount which is **[**[F135]or would be **]** attributed to the contributing participator as mentioned in subsection (1)(b) (whether representing the whole or only part of the default payment).

(3) In this Chapter "default payment", "the defaulter" and "contributing participator" have the same meaning as in paragraph 2A of Schedule 5 to OTA 1975.

Textual Amendments

F130 S. 296 heading substituted (with effect in accordance with Sch. 31 para. 23 of the amending Act) by Finance Act 2013 (c. 29), **Sch. 31 para. 20(b)**

F131 Words in s. 296(1) substituted (with effect in accordance with Sch. 31 para. 23 of the amending Act) by Finance Act 2013 (c. 29), **Sch. 31 para. 20(a)**

F132 Words in s. 296(1)(a) omitted (with effect in accordance with Sch. 31 para. 23 of the amending Act) by virtue of Finance Act 2013 (c. 29), **Sch. 31 para. 2(3)(a)**

F133 Words in s. 296(1)(b) inserted (with effect in accordance with Sch. 31 para. 23 of the amending Act) by Finance Act 2013 (c. 29), **Sch. 31 para. 2(3)(b)**

F134 S. 296(1A) inserted (with effect in accordance with Sch. 31 para. 23 of the amending Act) by Finance Act 2013 (c. 29), **Sch. 31 para. 2(3)(c)**

F135 Words in s. 296(2) inserted (with effect in accordance with Sch. 31 para. 23 of the amending Act) by Finance Act 2013 (c. 29), **Sch. 31 para. 2(3)(d)**

297 Relief for expenditure incurred by a participator in meeting defaulter's abandonment expenditure

(1) Relief by way of capital allowance, or a deduction in calculating ring fence income, is to be available to the contributing participator in respect of the additional abandonment

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expenditure if any such relief or deduction would have been available to the defaulter if—

(a) the defaulter had incurred the additional abandonment expenditure, and

(b) at the time that that expenditure was incurred the defaulter continued to carry on a ring fence trade.

(2) The basis of qualification for or entitlement to any relief or deduction which is available to the contributing participator under this section is to be determined on the assumption that the conditions in subsection (1)(a) and (b) are met.

(3) But, subject to subsection (2), any such relief or deduction is to be available in the same way as if the additional abandonment expenditure had been incurred by the contributing participator for the purposes of the ring fence trade carried on by the contributing participator.

[F136]298 Reimbursement by defaulter in respect of certain abandonment expenditure

. . . . . .

Textual Amendments

F136 S. 298 omitted (with effect in accordance with Sch. 31 para. 23 of the amending Act) by virtue of Finance Act 2013 (c. 29), **Sch. 31 para. 10**

[F137Receipts arising from decommissioning

Textual Amendments

F137 S. 298A and cross-heading inserted (with effect in accordance with Sch. 31 para. 23 of the amending Act) by Finance Act 2013 (c. 29), **Sch. 31 para. 21**

298A Receipts arising from decommissioning

(1) This section applies if—

(a) a company that is or has been carrying on a ring fence trade ("the defaulter") has defaulted on a liability under—

(i) a relevant agreement, or

(ii) an abandonment programme,

to make a payment towards decommissioning expenditure,

(b) another company that is or has been carrying on a ring fence trade ("the contributing company") pays an amount ("the relevant contribution") in or towards meeting the whole or part of the default, and

(c) the amount of the relevant contribution is less than the sum of the amounts within subsection (2).

(2) The amounts within this subsection are—

(a) any payments made (directly or indirectly) to the contributing company by the guarantor under an abandonment guarantee as a result of the defaulter defaulting on the liability,

(b) any reimbursement payments, and

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(c) any relief from tax which the contributing company obtains in respect of the relevant contribution.

(3) The difference between—

(a) the sum of the amounts within subsection (2), and

(b) the relevant contribution,

("the relevant difference") is to be treated as a receipt (in the nature of income) of the contributing company's ring fence trade for the relevant accounting period (see subsection (4)).

(4) "The relevant accounting period" means the accounting period that includes the day on which the Secretary of State certifies that the relevant abandonment programme has been satisfactorily completed ("the certification date").

This is subject to subsections (5) and (6).

(5) If the contributing company has ceased to carry on the ring fence trade before the certification date, "the relevant accounting period" is the last accounting period of the trade.

(6) If the contributing company has ceased to be within the charge to corporation tax in respect of the ring fence trade before the certification date, "the relevant accounting period" is the accounting period during or at the end of which the contributing company ceased to be within the charge to corporation tax in respect of the trade.

(7) The relevant difference is to be determined—

(a) in a case where subsection (5) or (6) applies, at the end of the calendar year in which the certification date falls, and

(b) in any other case, at the end of the relevant accounting period.

(8) In a case where subsection (5) or (6) applies, any corporation tax chargeable for the relevant accounting period by virtue of this section is due and payable as if it were corporation tax for an accounting period beginning with the certification date.

(9) Any additional assessment to corporation tax required in order to take account of a receipt arising under this section may be made at any time not later than 4 years after the end of the calendar year in which the certification date falls.

(10) In this section—

"abandonment programme" means an abandonment programme approved under Part 4 of the Petroleum Act 1998 (including such a programme as revised),

"decommissioning expenditure" has the meaning given by section 330C,

"reimbursement payment" means any payment made to the contributing company by the defaulter in reimbursing the contributing company in respect of, or otherwise making good to the contributing company, the whole or any part of the relevant contribution,

"the relevant abandonment programme" means the abandonment programme in respect of which the decommissioning expenditure mentioned in subsection (1)(a) was incurred, and

"relevant agreement" has the meaning given by section 104(5)(a) of FA 1991.**]**

Status: *Point in time view as at 01/04/2014.*
Changes to legislation: *Corporation Tax Act 2010 is up to date with all changes known to be in force on or before 12 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Deduction of PRT in calculating income for corporation tax purposes

299 Deduction of PRT in calculating income for corporation tax purposes

(1) This section applies if a participator in an oil field has paid any petroleum revenue tax with which the participator was chargeable for a chargeable period.

(2) In calculating for corporation tax the amount of the participator's income arising from oil extraction activities or oil rights in the relevant accounting period, there is to be deducted an amount equal to that petroleum revenue tax.

(3) There are to be made all such adjustments of assessments to corporation tax as are required in order to give effect to subsection (2).

(4) In this section "the relevant accounting period", in relation to any petroleum revenue tax paid by a company, means—

(a) the accounting period of the company in or at the end of which the chargeable period for which that tax was charged ends, or

(b) if that chargeable period ends after the accounting period of the company in or at the end of which the company—

(i) ceases to carry on the trade giving rise to the income referred to above, or

(ii) ceases to be within the charge to corporation tax in respect of the trade,

that accounting period.

300 Effect of repayment of PRT: general rule

(1) This section applies if some or all of the petroleum revenue tax in respect of which a deduction has been made under section 299(2) is subsequently repaid.

(2) The deduction is to be reduced or extinguished accordingly.

(3) Any additional assessment to corporation tax required in order to give effect to subsection (2) may be made at any time not later than 4 years after the end of the calendar year in which the petroleum revenue tax was repaid.

(4) This section is subject to section 301.

301 Effect of repayment of PRT: special rule

(1) This section applies if, in a case where paragraph 17 of Schedule 2 to OTA 1975 applies, an amount of petroleum revenue tax in respect of which a deduction has been made under section 299(2) is repaid as a result of an assessment under that Schedule or an amendment of such an assessment.

(2) As regards so much of that repayment as constitutes the appropriate repayment—

(a) section 300 does not apply, and

(b) the following provisions apply in relation to the company which is entitled to the repayment.

(3) In calculating for corporation tax the amount of the company's income arising in the relevant accounting period from oil extraction activities or oil rights there is to be added an amount equal to the appropriate repayment (but this is subject to subsections (4) and (5)).

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(4) Subsection (5) applies if—

(a) two or more carried back losses give rise to the appropriate repayment,

(b) the operative chargeable period in relation to each of the carried back losses is not the same, and

(c) if this section were applied separately in relation to each of the carried back losses there would be more than one relevant accounting period.

(5) The appropriate repayment is to be treated as apportioned between each of the relevant accounting periods mentioned in subsection (4)(c) in such a way as to secure that the amount added as a result of subsection (3) in relation to each of those relevant accounting periods is what it would have been if—

(a) relief for each of the carried back losses for which there is a different operative chargeable period had been given by a separate assessment or amendment of an assessment under Schedule 2 to OTA 1975, and

(b) relief for a carried back loss accruing in an earlier chargeable period had been so given before relief for a carried back loss accruing in a later chargeable period.

(6) Any additional assessment to corporation tax required in order to give effect to the addition of an amount as a result of subsection (3) may be made at any time not later than 4 years after the end of the calendar year in which the repayment of petroleum revenue tax comprising the appropriate repayment is made.

(7) In this section—

"allowable loss" has the same meaning as in Part 1 of OTA 1975 (see section 2 of that Act),

"the appropriate repayment" has the meaning given by paragraph 17(2) of Schedule 2 to that Act,

"carried back loss", in relation to the appropriate repayment, means an allowable loss—

(a) which falls within paragraph 17(1)(a) of Schedule 2 to OTA 1975, and

(b) which (alone or together with one or more other carried back losses) gives rise to the appropriate repayment,

"the operative chargeable period", in relation to a carried back loss, means the chargeable period in which the loss accrued, and

"the relevant accounting period", in relation to the company which is entitled to the appropriate repayment, means—

(a) the accounting period in or at the end of which the operative chargeable period ends,

(b) if the company ceases to carry on its ring fence trade before the end of the operative chargeable period, the last accounting period of that trade, or

(c) if the company ceases to be within the charge to corporation tax in respect of that trade before the end of the operative chargeable period, the accounting period during or at the end of which the company ceased to be within the charge to corporation tax in respect of that trade.

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Interest on repayment of PRT or APRT

302 Interest on repayment of PRT or APRT

(1) Subsection (3) applies if any amount of petroleum revenue tax paid by a participator in an oil field is, under any provision of Part 1 of OTA 1975, repaid to the participator with interest.

(2) Subsection (3) also applies if interest is paid to a participator under paragraph 10(4) of Schedule 19 to FA 1982 (interest on advance petroleum revenue tax which becomes repayable).

(3) The interest paid is to be disregarded in calculating the participator's income for corporation tax purposes.

Relief

303 Management expenses

No deduction under section 1219 of CTA 2009 (expenses of management of a company's investment business) is to be allowed from a company's ring fence profits.

304 Losses

(1) Relief in respect of a loss incurred by a company may not be given under section 37 (relief for trade losses against total profits) against that company's ring fence profits except so far as the loss arises from oil extraction activities or from oil rights.

(2) Subsection (5) applies if conditions A and B are met.

(3) Condition A is that a company incurs a loss in an accounting period in activities ("separate activities") which, for that or any subsequent accounting period, are treated by section 279 as a separate trade for the purposes of the charge to corporation tax on income.

(4) Condition B is that any of the company's trading income in any subsequent accounting period is derived from activities ("related activities") which are not part of the separate activities but which would together with those activities constitute a single trade, were it not for section 279.

(5) The loss may be used under section 45 (carry forward of trade loss against subsequent trade profits) to reduce so much of the company's trading income in any subsequent accounting period as is derived from the related activities.

(6) Subsection (5) applies despite anything in section 279.

305 Group relief

(1) On a claim for group relief made by a claimant company in relation to a surrendering company, group relief may not be allowed against the claimant company's ring fence profits except so far as the claim relates to losses incurred by the surrendering company that arose from oil extraction activities or from oil rights.

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(2) In section 105 (restriction on surrender of losses etc within section 99(1)(d) to (g)) the references to the surrendering company's gross profits of the surrender period do not include the company's relevant ring fence profits for that period.

(3) The company's "relevant ring fence profits" for that period are—
  (a) if for that period there are no qualifying charitable donations made by the company that are allowable under Part 6 (charitable donations relief), the company's ring fence profits for that period, or
  (b) otherwise, so much of the company's ring fence profits for that period as exceeds the amount of the qualifying charitable donations made by the company that are allowable under section 189 for that period.

(4) In this section "claimant company" and "surrendering company" are to be read in accordance with Part 5 (group relief) (see section 188).

306 Capital allowances

(1) A capital allowance may not to any extent be given effect under section 259 or 260 of CAA 2001 (special leasing) by deduction from a company's ring fence profits.

(2) But subsection (1) does not apply to a capital allowance which falls to be made to a company for any accounting period in respect of an asset which—
  (a) is used in the relevant accounting period by a company associated with it, and
  (b) is so used in carrying on oil extraction activities.

(3) "The relevant accounting period" means that for which the allowance in question first falls to be made to the company (whether or not it can to any extent be given effect in that period under section 259 of CAA 2001).

CHAPTER 5

RING FENCE EXPENDITURE SUPPLEMENT

Introduction

307 Overview of Chapter

(1) This Chapter entitles a company carrying on a ring fence trade, on making a claim in respect of an accounting period, to a supplement in respect of—
  (a) qualifying pre-commencement expenditure incurred before the trade is set up and commenced,
  (b) losses incurred in the trade, and
  (c) some or all of the supplement allowed in respect of earlier periods.

(2) Sections 308 to 314 make provision about the application and interpretation of this Chapter.

(3) Sections 315 to 320 make provision about supplement in relation to expenditure incurred by the company—
  (a) with a view to carrying on a ring fence trade, but
  (b) in an accounting period before the company sets up and commences that trade.

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(4) Sections 321 to 329 make provision about supplement in relation to losses incurred in carrying on the ring fence trade.

(5) There is a limit (of 6) on the number of accounting periods in respect of which a company may claim supplement.

(6) In determining the amount of supplement allowable, reductions fall to be made in respect of—
  (a) disposal receipts in respect of any asset representing qualifying pre-commencement expenditure.
  (b) ring fence losses that could be deducted under section 37 (relief for trade losses against total profits) or section 42 (ring fence trades: further extension of period for relief) from ring fence profits of earlier periods,
  (c) ring fence losses incurred in earlier periods that fall to be used under section 45 (carry forward of trade loss against subsequent trade profits) to reduce profits of succeeding periods,
  (d) unrelieved group ring fence profits.

Application and interpretation

308 Qualifying companies

(1) This Chapter applies in relation to any company which—
  (a) carries on a ring fence trade, or
  (b) is engaged in any activities with a view to carrying on a ring fence trade.

(2) In this Chapter such a company is referred to as a "qualifying company".

309 Accounting periods

(1) In this Chapter, in the case of a qualifying company—

"the commencement period" means the accounting period in which the company sets up and commences its ring fence trade,

"post-commencement period" means an accounting period beginning on or after 1 January 2006—
  (a) which is the commencement period, or
  (b) which ends after the commencement period, and

"pre-commencement period" means an accounting period—
  (a) beginning on or after 1 January 2006, and
  (b) ending before the commencement period.

(2) For the purposes of this Chapter, a company not within the charge to corporation tax which incurs any expenditure is to be treated as having such accounting periods as it would have if—
  (a) it carried on a trade consisting of the activities in respect of which the expenditure is incurred, and
  (b) it had started to carry on that trade when it started to carry on the activities in the course of which the expenditure is incurred.

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(3) In the case of an accounting period (a "straddling period") of a qualifying company beginning before 1 January 2006 and ending on or after that date—

(a) so much of the straddling period as falls before 1 January 2006, and

(b) so much of the straddling period as falls on or after that date,

are treated as separate accounting periods for the purposes of this Chapter.

(4) But special provision is made elsewhere in this Chapter in relation to straddling periods (see sections 311, 324 and 327(4) to (7)).

310 The relevant percentage

(1) For the purposes of this Chapter, the relevant percentage for an accounting period is **[**[F138]10%**]**.

(2) The Treasury may by order vary the percentage for the time being specified in subsection (1) for such accounting periods as may be specified in the order.

Textual Amendments

F138 Figure in s. 310(1) substituted (with effect in accordance with art. 1(2) of the amending S.I.) by The Corporation Tax (Variation of the Relevant Percentage) Order 2011 (S.I. 2011/2885), arts. 1(2), **2**

311 Limit on number of accounting periods for which supplement may be claimed

(1) A company may claim supplement under this Chapter in respect of no more than 6 accounting periods.

(2) The accounting periods in respect of which claims are made need not be consecutive.

(3) A claim for supplement by the company under Schedule 19B to ICTA (exploration expenditure supplement) in respect of an accounting period is to count for the purposes of this section as a claim for supplement under this Chapter in respect of that accounting period.

(4) But, if the company makes a claim for supplement under this Chapter in respect of the deemed accounting period, any claim for supplement by the company under Schedule 19B to ICTA in respect of the Schedule 19B deemed accounting period is to be ignored for the purposes of this section.

(5) In subsection (4)—

"the deemed accounting period" means the deemed accounting period under section 309(3) beginning on 1 January 2006, and

"the Schedule 19B deemed accounting period" means the deemed accounting period under paragraph 3(3) of Schedule 19B to ICTA ending before 1 January 2006.

312 Qualifying pre-commencement expenditure

(1) For the purposes of this Chapter, expenditure is "qualifying pre-commencement expenditure" if it meets each of conditions A to D.

(2) Condition A is that the expenditure is incurred on or after 1 January 2006.

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(3) Condition B is that the expenditure is incurred in the course of oil extraction activities.

(4) Condition C is that the expenditure is incurred by a company with a view to carrying on a ring fence trade but before the company sets up and commences the ring fence trade.

(5) Condition D is that the expenditure—
- (a) is subsequently allowable as a deduction in calculating the profits of the ring fence trade for the commencement period (whether or not any part of it is so allowable for any post-commencement period), or
- (b) is relevant R&D expenditure incurred by an SME.

(6) For the purposes of this section, expenditure incurred by a company is "relevant R&D expenditure incurred by an SME" if—
- (a) the company makes an election under section 1045 of CTA 2009 (alternative treatment for pre-trading expenditure: deemed trading loss) in respect of that expenditure, but
- (b) the company does not make a claim for an R&D tax credit under section 1054 of that Act in respect of that expenditure.

(7) In the case of any qualifying pre-commencement expenditure which is relevant R&D expenditure incurred by an SME, the amount of that expenditure is treated for the purposes of this Chapter as being equal to 150% of its actual amount.

[F139](8) . . . . . .

[F139](9) . . . . . .

Textual Amendments

F139 S. 312(8)(9) omitted (with effect in accordance with Sch. 15 paras. 28, 29 of the amending Act) by virtue of Finance Act 2013 (c. 29), **Sch. 15 para. 24(2)**

313 Unrelieved group ring fence profits for accounting periods

(1) There is an amount of unrelieved group ring fence profits for an accounting period of a qualifying company ("company Q") if—
- (a) the company and any other company ("company X") are members of the same group, and
- (b) company X has an amount of taxable ring fence profits (see section 314) for a corresponding accounting period.

(2) An accounting period of company X corresponds to an accounting period of company Q if—
- (a) it coincides with, or falls wholly within, the accounting period of company Q, or
- (b) it falls partly within the accounting period of company Q.

(3) If an accounting period of company X—
- (a) coincides with an accounting period of company Q, or
- (b) falls wholly within an accounting period of company Q,

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there is, for the accounting period of company Q, an amount of unrelieved group ring fence profits equal to the whole of company X's taxable ring fence profits for its accounting period.

(4) If an accounting period of company X falls partly within an accounting period of company Q—
   (a) there is an amount of unrelieved group ring fence profits for the accounting period of company Q, and
   (b) that amount is an amount equal to the part of company X's taxable ring fence profits for its accounting period that is attributable, on an apportionment in accordance with section 1172, to the part of that period which falls within the accounting period of company Q.

(5) For the purposes of this section, two companies are members of the same group if they are members of the same group of companies within the meaning of Part 5 (group relief).

(6) This section applies for the purposes of this Chapter.

314 Taxable ring fence profits for an accounting period

For the purposes of this Chapter, a company has taxable ring fence profits for an accounting period if it has an amount of ring fence profits which is chargeable to corporation tax for that accounting period after any group relief claimed under Part 5 (group relief).

Pre-commencement supplement

315 Supplement in respect of a pre-commencement accounting period

(1) If—
   (a) a qualifying company incurs qualifying pre-commencement expenditure in respect of a ring fence trade, and
   (b) the expenditure is incurred before the commencement period,

   the company may claim supplement under this section ("pre-commencement supplement") in respect of one or more pre-commencement periods.

(2) Any pre-commencement supplement allowed on a claim in respect of a pre-commencement period is to be treated as expenditure—
   (a) which is incurred by the company in the commencement period, and
   (b) which is allowable as a deduction in calculating the profits of the ring fence trade for that period.

(3) The amount of the supplement for any pre-commencement period in respect of which a claim under this section is made is the relevant percentage for that period of the reference amount for that period.

(4) If the pre-commencement period is a period of less than 12 months, the amount of the supplement for the period (apart from this subsection) is to be reduced proportionally.

(5) Sections 316 to 319 have effect for the purpose of determining the reference amount for a pre-commencement period.

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316 The mixed pool of qualifying pre-commencement expenditure and supplement previously allowed

(1) For the purpose of determining the amount of any pre-commencement supplement, a qualifying company is to be taken to have had, at all times in the pre-commencement periods of the company, a continuing mixed pool of—

(a) the relevant amount (if any) which the company carries forward under Schedule 19B to ICTA,

(b) qualifying pre-commencement expenditure, and

(c) pre-commencement supplement.

(2) The pool is to be taken to have consisted of—

(a) the relevant amount (if any) which the company carries forward under Schedule 19B to ICTA,

(b) the company's qualifying pre-commencement expenditure, allocated to the pool for each pre-commencement period in accordance with subsection (3), and

(c) the company's pre-commencement supplement, allocated to the pool for each pre-commencement period in accordance with subsection (4).

(3) To allocate qualifying pre-commencement expenditure to the pool for any pre-commencement period, take the following steps—

Step 1

Count as eligible expenditure for that period so much of the qualifying pre-commencement expenditure mentioned in section 315(1) as was incurred in that period.

Step 2

Find the total of all the eligible expenditure for that period (amount E).

Step 3

If section 317 applies, reduce amount E in accordance with that section.

Step 4

If section 318 applies, reduce (or, as the case may be, further reduce) amount E in accordance with that section.

And so much of amount E as remains after making those reductions is to be taken to have been added to the pool in that period

(4) If any pre-commencement supplement is allowed on a claim in respect of a pre-commencement period, the amount of that supplement is to be taken to have been added to the pool in that period.

(5) In this section references to the relevant amount (if any) which the company carries forward under Schedule 19B to ICTA are to the amount (if any) in its mixed pool for the purposes of Part 3 of Schedule 19B to ICTA immediately before 1 January 2006.

317 Reduction in respect of disposal receipts under CAA 2001

(1) This section applies in the case of the qualifying company if—

(a) it incurs qualifying pre-commencement expenditure in respect of a ring fence trade in any pre-commencement period,

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(b) it would, on the relevant assumption, be entitled to an allowance under any provision of CAA 2001 in respect of that expenditure,

(c) an event occurs in relation to any asset representing the expenditure in any pre-commencement period, and

(d) the event would, on the relevant assumption, require a disposal value (the "deductible amount") to be brought into account under any provision of CAA 2001 for any pre-commencement period.

(2) The relevant assumption is that the company was carrying on the ring fence trade—

(a) when the expenditure was incurred, and

(b) when the event giving rise to the disposal value occurred.

(3) For the purpose of allocating qualifying pre-commencement expenditure to the pool for each pre-commencement period—

(a) find the total amount of the disposal values in the case of all such events (amount D), and

(b) taking later periods before earlier periods, reduce (but not below nil) amount E for any pre-commencement period by setting against it so much of amount D as does not fall to be set against amount E for a later pre-commencement period.

318 Reduction in respect of unrelieved group ring fence profits

(1) This section applies if there is an amount of unrelieved group ring fence profits for a pre-commencement period.

(2) For the purpose of allocating qualifying pre-commencement expenditure to the pool for that period—

(a) find so much (if any) of amount E for that period as remains after any reduction falling to be made under section 317, and

(b) reduce that amount (but not below nil) by setting against it a sum equal to the aggregate of the amounts of unrelieved group ring fence profits for the period.

319 The reference amount for a pre-commencement period

For the purposes of section 315, the reference amount for a pre-commencement period is the amount in the pool at the end of the period—

(a) after the addition to the pool of any qualifying pre-commencement expenditure allocated to the pool for that period in accordance with section 316(3), but

(b) before determining, and adding to the pool, the amount of any pre-commencement supplement claimed in respect of the period.

320 Claims for pre-commencement supplement

(1) Any claim for pre-commencement supplement in respect of a pre-commencement period must be made as a claim for the commencement period.

(2) Paragraph 74 of Schedule 18 to FA 1998 (company tax returns etc: time limit for claims for group relief) applies in relation to a claim for pre-commencement supplement as it applies in relation to a claim for group relief.

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Post-commencement supplement

321 Supplement in respect of a post-commencement period

(1) A qualifying company which incurs a ring fence loss (see section 323) in any post-commencement period may claim supplement under this section ("post-commencement supplement") in respect of—

(a) that period, or

(b) any subsequent accounting period in which it carries on its ring fence trade.

(2) Any post-commencement supplement allowed on a claim in respect of a post-commencement period is to be treated for the purposes of the Corporation Tax Acts (other than the post-commencement supplement provisions or Part 4 of Schedule 19B to ICTA) as if it were a loss—

(a) which is incurred in carrying on the ring fence trade in that period, and

(b) which falls in whole to be used under section 45 (carry forward of trade loss against subsequent trade profits) to reduce trading income from the ring fence trade in succeeding accounting periods.

(3) Paragraph 74 of Schedule 18 to FA 1998 (company tax returns etc: time limit for claims for group relief) applies in relation to a claim for post-commencement supplement as it applies in relation to a claim for group relief.

(4) In this Chapter "the post-commencement supplement provisions" means this section and sections 322 to 329.

322 Amount of post-commencement supplement for a post-commencement period

(1) The amount of the post-commencement supplement for any post-commencement period in respect of which a claim under section 321 is made is the relevant percentage for that period of the reference amount for that period.

(2) If the post-commencement period is a period of less than 12 months, the amount of the supplement for the period (apart from this subsection) is to be reduced proportionally.

(3) Sections 325 to 329 have effect for the purpose of determining the reference amount for a post-commencement period.

323 Ring fence losses

(1) If—

(a) in any post-commencement period ("the period of the loss") a qualifying company carrying on a ring fence trade incurs a loss in the trade, and

(b) some or all of the loss falls to be used under section 45 (carry forward of trade loss against subsequent trade profits) to reduce trading income from the trade in succeeding accounting periods,

so much of the loss as falls to be so used is a "ring fence loss" of the company.

(2) In determining for the purposes of the post-commencement supplement provisions how much of a loss incurred in a ring fence trade falls to be used as mentioned in subsection (1)(b), the following assumptions are to be made.

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(3) The first assumption is that every claim is made that could be made by the company under section 37 (relief for trade losses against total profits) to deduct losses incurred in the ring fence trade from ring fence profits of earlier post-commencement periods.

(4) The second assumption is that (where appropriate) section 42 (ring fence trades: further extension of period for relief) applies in relation to every such claim under section 37.

(5) This section is subject to section 324 (special rule for straddling periods).

(6) This section has effect for the purposes of the post-commencement supplement provisions.

324 Special rule for straddling periods

(1) This section applies if the period of the loss is the deemed accounting period under section 309(3) beginning on 1 January 2006 ("the deemed accounting period").

(2) The amount of ring fence loss in the deemed accounting period is determined as follows—

Step 1

Calculate so much of the ring fence loss in the straddling period as, for the purposes of Part 4 of Schedule 19B to ICTA, is attributable to qualifying E&A allowances for the straddling period. The amount given by this step is "the qualifying Schedule 19B amount".

Step 2

Calculate so much of the ring fence loss in the straddling period as is attributable to allowances for the straddling period under Part 6 of CAA 2001 in respect of relevant expenditure. For the purposes of this step "relevant expenditure" means expenditure incurred by the company on or after 1 January 2006 which, but for that fact, would be qualifying E&A expenditure for the purposes of Schedule 19B to ICTA. For the purposes of this step a ring fence loss is attributable to those allowances so far as the amount of the loss (less the qualifying Schedule 19B amount) does not exceed the amount of those allowances for that period. The amount given by this step is "the amount of the post-1 January 2006 E&A allowances".

Step 3

Deduct the qualifying Schedule 19B amount and the amount of the post-1 January 2006 E&A allowances from the amount of the ring fence loss in the straddling period.

Step 4

Apportion the remaining amount of that loss (if any) to the deemed accounting period in proportion to the number of days in the deemed accounting period that fall in the straddling period. The amount given by this step is "the amount of the apportioned loss"

Step 5

The amount of the ring fence loss in the deemed accounting period is the amount of the apportioned loss plus the amount of the post-1 January 2006 E&A allowances.

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Changes to legislation: *Corporation Tax Act 2010 is up to date with all changes known to be in force on or before 12 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(3) In this section "the straddling period", in relation to a qualifying company, means an accounting period of the company—
  (a) beginning before 1 January 2006, and
  (b) ending on or after that date,
disregarding section 309(3).

(4) In this section references to the ring fence loss in the straddling period are to that loss determined on the assumption that the straddling period is the period of the loss for the purposes of section 323.

(5) This section has effect for the purposes of the post-commencement supplement provisions.

325 The pool of ring fence losses and the pool of non-qualifying Schedule 19B losses

(1) For the purpose of determining the amount of any post-commencement supplement, a qualifying company is to be taken at all times in its post-commencement periods to have a continuing mixed pool (the "ring fence pool") of—
  (a) the carried forward qualifying Schedule 19B amount (if any),
  (b) the company's ring fence losses, and
  (c) post-commencement supplement.

(2) The ring fence pool continues even if the amount in it is nil.

(3) For the purpose of determining the amount of any post-commencement supplement, a qualifying company is also to be taken in its post-commencement periods to have a non-qualifying pool consisting of the carried forward non-qualifying Schedule 19B amount.

(4) But the non-qualifying pool ceases to exist when the amount in it is reduced to nil.

(5) In this section—

"the carried forward qualifying Schedule 19B amount", in relation to a qualifying company, means the amount in its qualifying pool for the purposes of Part 4 of Schedule 19B to ICTA immediately before 1 January 2006, and

"the carried forward non-qualifying Schedule 19B amount", in relation to a qualifying company, means the amount in its non-qualifying pool for the purposes of Part 4 of Schedule 19B to that Act immediately before 1 January 2006.

326 The ring fence pool

(1) The ring fence pool consists of—
  (a) the carried forward qualifying Schedule 19B amount (if any),
  (b) the company's ring fence losses, allocated to the pool in accordance with subsection (2)(a), and
  (c) the company's post-commencement supplement, allocated to the pool in accordance with subsection (2)(b).

(2) The allocation of ring fence losses and post-commencement supplement to the pool is made as follows—
  (a) the amount of a ring fence loss is added to the pool in the period of the loss, and

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(b) if any post-commencement supplement is allowed on a claim in respect of a post-commencement period, the amount of that supplement is added to the pool in that period.

(3) The amount in the ring fence pool is subject to reductions in accordance with the following provisions of this Chapter.

(4) If a reduction in the amount in the ring fence pool falls to be made in any accounting period, the reduction is to be made—

(a) after the addition to the pool of the amount of any ring fence losses allocated to the pool in that period in accordance with subsection (2)(a), but

(b) before determining, and adding to the pool, the amount of any supplement claimed in respect of the period,

and references to the amount in the pool are to be read accordingly.

(5) In this section "the carried forward qualifying Schedule 19B amount", in relation to a qualifying company, means the amount in its qualifying pool for the purposes of Part 4 of Schedule 19B to ICTA immediately before 1 January 2006.

327 Reductions in respect of utilised ring fence losses

(1) If one or more ring fence losses are used under section 45 (carry forward of trade loss against subsequent trade profits) to reduce any profits of a post-commencement period, reductions are to be made in that period in accordance with this section.

(2) If the company has a non-qualifying pool, the amount in the non-qualifying pool is to be reduced (but not below nil) by setting against it a sum equal to the total amount used as mentioned in subsection (1).

(3) If—

(a) any of that sum remains after being so set against the amount in the non-qualifying pool, or

(b) the company does not have a non-qualifying pool,

the amount in the ring fence pool is to be reduced (but not below nil) by setting against it so much of that sum as so remains or (as the case may be) a sum equal to the total amount used as mentioned in subsection (1).

(4) If the post-commencement period is the deemed accounting period under section 309(3) beginning on 1 January 2006 ("the deemed accounting period"), the amount of the profits of the deemed accounting period is determined as follows.

(5) The amount of the profits of the straddling period is apportioned to the deemed accounting period in proportion to the number of days in the deemed accounting period that fall in the straddling period.

(6) The apportioned amount is taken for the purposes of this section to be the amount of the profits of the deemed accounting period.

(7) In this section "the straddling period", in relation to a qualifying company, means an accounting period of the company—

(a) beginning before 1 January 2006, and

(b) ending on or after that date,

disregarding section 309(3).

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328 Reductions in respect of unrelieved group ring fence profits

(1) If there is an amount of unrelieved group ring fence profits for a post-commencement period, reductions are to be made in that period in accordance with this section.

(2) If, after making any reductions that fall to be made in accordance with section 327, the company does not have a non-qualifying pool, the remaining amount in the ring fence pool is to be reduced (but not below nil) by setting against it a sum equal to the aggregate of the amounts of unrelieved group ring fence profits for the period.

(3) If, after making any reductions that fall to be made in accordance with section 327, the company has an amount in a non-qualifying pool, the amount in that pool is to be reduced (but not below nil) by setting against it a sum equal to the aggregate of the amounts of unrelieved group ring fence profits for the period.

(4) If any of that sum remains after being so set against the amount in the non-qualifying pool, the remaining amount in the ring fence pool is to be reduced (but not below nil) by setting against it so much of that sum as so remains.

(5) For the purposes of this section references to the remaining amount in the ring fence pool are references to so much (if any) of the amount in the ring fence pool as remains after making any reductions that fall to be made in accordance with section 327.

329 The reference amount for a post-commencement period

For the purposes of section 322 the reference amount for a post-commencement period is so much of the amount in the ring fence pool as remains after making any reductions required by section 327 or 328.

CHAPTER 6

SUPPLEMENTARY CHARGE IN RESPECT OF RING FENCE TRADES

330 Supplementary charge in respect of ring fence trades

(1) If a company carries on a ring fence trade in an accounting period, a sum equal to **[**[F140]32%**]** of its adjusted ring fence profits for that period is to be charged on the company as if it were an amount of corporation tax chargeable on the company.

(2) A company's "adjusted ring fence profits" for an accounting period are the amount which, on the assumption mentioned in subsection (3), would be determined for that period as the **[**[F141]company's ring fence profits**]** chargeable to corporation tax.

[[F142]See also sections 330A and 330B (which provide for the amount of adjusted ring fence profits to be further adjusted where decommissioning expenditure has been taken into account).**]**

(3) The assumption is that financing costs are left out of account in calculating—

(a) the amount of the profits or loss of any ring fence trade of the company for an accounting period, and

(b) if for any such period the whole or part of any loss relief is surrendered to the company in accordance with section 305(1), the amount of that relief or part.

(4) See also section 331 (meaning of financing costs etc).

Status: *Point in time view as at 01/04/2014.*
Changes to legislation: *Corporation Tax Act 2010 is up to date with all changes known to be in force on or before 12 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(5) This Chapter is subject to Chapter 7 (which contains provision about the reduction of the supplementary charge for **[**[F143]eligible oil fields**]**).

Textual Amendments

F140 Figure in s. 330(1) substituted (with effect in accordance with s. 7(2)-(11) of the amending Act) by Finance Act 2011 (c. 11), **s. 7(1)**

F141 Words in s. 330(2) substituted (retrospective to 6.12.2011) by Finance Act 2012 (c. 14), **s. 182(1)**(2)

F142 Words in s. 330(2) inserted (with effect in accordance with Sch. 21 para. 6 of the amending Act) by Finance Act 2012 (c. 14), **Sch. 21 para. 2**

F143 Words in s. 330(5) substituted (1.4.2013) by Finance Act 2012 (c. 14), **Sch. 22 paras. 18(3)**, 21(2); S.I. 2013/744, art. 2

[[F144]330A Decommissioning expenditure taken into account in calculating ring fence profits

(1) This section applies where—

(a) any decommissioning expenditure is taken into account in calculating the amount mentioned in paragraph (a) of subsection (3) of section 330 or the amount mentioned in paragraph (b) of that subsection, and

(b) if that expenditure were not so taken into account, the amount of the adjusted ring fence profits of the company for the accounting period would be greater than nil.

(2) In calculating for the purposes of section 330(1) the amount of the adjusted ring fence profits of the company for the accounting period, there is to be added an amount equal to the appropriate fraction of the used-up amount of that expenditure.

(3) For the purposes of this section—

"the appropriate fraction" is

$$SC - 20\ \%\ SC$$

where SC is the percentage specified in section 330(1) for the accounting period, and

"the used-up amount", in relation to any expenditure, is the difference between—

(a) the adjusted ring fence profits of the company for the accounting period determined in the absence of this section (which may be nil), and

(b) what the adjusted ring fence profits of the company for that accounting period would be if that expenditure were not taken into account as mentioned in subsection (1).

(4) In determining for the purposes of this section whether, and to what extent, any losses which have been taken into account as mentioned in subsection (1) are attributable to decommissioning expenditure—

(a) assume that any amounts of any other expenditure which could be taken into account in calculating those losses are taken into account before any amounts of decommissioning expenditure, and

(b) where any losses have been surrendered in accordance with Part 5, the company must specify, in accordance with a basis determined jointly by the company, the surrendering company (if different) and any other claimant

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company, whether any of those losses is attributable to decommissioning expenditure.

(5) But if paragraph (a) of subsection (4) would work unfavourably in the company's case, the company may elect for that paragraph not to apply in relation to it and for any amounts of expenditure which could be taken into account in calculating those losses instead to be taken into account in the order specified in the election.

(6) In determining for the purposes of this section the used-up amount of decommissioning expenditure, assume that any other amounts that could be deducted in calculating the adjusted ring fence profits of the company for the accounting period have already been so deducted.

(7) But if subsection (6) would work unfavourably in the company's case, the company may elect for that subsection not to apply in relation to it and for any amounts that could be deducted in calculating those adjusted ring fence profits instead to be deducted in the order specified in the election.

(8) For the purposes of this section, any deduction made under section 330B is to be disregarded.

(9) This section does not apply in relation to any accounting period for which the percentage specified in section 330(1) is less than or equal to 20% (including any accounting period beginning before 24 March 2011 and ending on or after that date).

(10) In this section—

"claimant company" and "surrendering company" are to be read in accordance with Part 5 (see section 188), and

"decommissioning expenditure" has the meaning given by section 330C.**]**

Textual Amendments

F144 Ss. 330A-330C inserted (with effect in accordance with Sch. 21 para. 6 of the amending Act) by Finance Act 2012 (c. 14), **Sch. 21 para. 3**

[F144 330B Decommissioning expenditure taken into account for PRT purposes

(1) This section applies where—

(a) any decommissioning expenditure is taken into account in calculating the assessable profit accruing to a participator in any chargeable period from an oil field, F145...

(b) if that expenditure were not so taken into account, the amount of petroleum revenue tax with which the participator would be chargeable in respect of the field for the chargeable period would be greater than nil.

[F146, and

(c) an amount equal to the appropriate fraction of the used-up amount of that expenditure is added under section 330A(2) in calculating the participator's adjusted ring fence profits for an accounting period.**]**

[F147(2) In calculating for the purposes of section 330(1) the amount of the participator's adjusted ring fence profits for the accounting period, there is to be deducted the amount given by—

$$RP \times AF \times D$$

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where—

RP is the relevant percentage of the decommissioning expenditure,

AF is the appropriate fraction, and

D is the PRT difference.**]**

(3) For the purposes of this section—

[[F148]"the relevant percentage of the decommissioning expenditure" is the percentage of that expenditure that is the used-up amount referred to in subsection (1)(c),**]**

"the appropriate fraction" is

SC – 20 % SC

where SC is the percentage specified in section 330(1) for the [F149]... accounting period, and

"the PRT difference" is the difference between—

(a) the amount of petroleum revenue tax with which the participator is chargeable for the chargeable period (which may be nil), and

(b) the amount of petroleum revenue tax with which the participator would be chargeable for that chargeable period if the decommissioning expenditure were not taken into account as mentioned in **[**[F150]subsection (1)(a) **]** .

(4) In determining for the purposes of this section whether, and to what extent, any allowable losses which have been taken into account as mentioned in **[**[F151]subsection (1)(a)**]** are attributable to decommissioning expenditure, assume that any amounts of any other expenditure which could be taken into account in calculating those losses are taken into account before any amounts of decommissioning expenditure.

(5) But if subsection (4) would work unfavourably in the participator's case, the participator may elect for that subsection not to apply in relation to it and for any amounts of expenditure which could be taken into account in calculating those losses instead to be taken into account in the order specified in the election.

(6) This section does not apply in relation to any accounting period for which the percentage specified in section 330(1) is less than or equal to 20% (including any accounting period beginning before 24 March 2011 and ending on or after that date).

(7) In this section—

"assessable profit" and "allowable loss" have the same meaning as in Part 1 of OTA 1975 (see section 2 of that Act),

"decommissioning expenditure" has the meaning given by section 330C, and

[F152]…**]**

[[F153]"the used-up amount", in relation to any expenditure, has the same meaning as in section 330A (see subsection (3) of that section).**]**

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Textual Amendments

F144 Ss. 330A-330C inserted (with effect in accordance with Sch. 21 para. 6 of the amending Act) by Finance Act 2012 (c. 14), **Sch. 21 para. 3**

F145 Word in s. 330B(1)(a) omitted (with effect in accordance with s. 88(7) of the amending Act) by virtue of Finance Act 2013 (c. 29), **s. 88(2)**

F146 S. 330B(1)(c) and word inserted (with effect in accordance with s. 88(7) of the amending Act) by Finance Act 2013 (c. 29), **s. 88(2)**

F147 S. 330B(2) substituted (with effect in accordance with s. 88(7) of the amending Act) by Finance Act 2013 (c. 29), **s. 88(3)**

F148 Words in s. 330B(3) inserted (with effect in accordance with s. 88(7) of the amending Act) by Finance Act 2013 (c. 29), **s. 88(4)(a)**

F149 Word in s. 330B(3) omitted (with effect in accordance with s. 88(7) of the amending Act) by virtue of Finance Act 2013 (c. 29), **s. 88(4)(b)**

F150 Words in s. 330B(3) substituted (with effect in accordance with s. 88(7) of the amending Act) by Finance Act 2013 (c. 29), **s. 88(4)(c)**

F151 Words in s. 330B(4) substituted (with effect in accordance with s. 88(7) of the amending Act) by Finance Act 2013 (c. 29), **s. 88(5)**

F152 Words in s. 330B(7) omitted (with effect in accordance with s. 88(7) of the amending Act) by virtue of Finance Act 2013 (c. 29), **s. 88(6)(a)**

F153 Words in s. 330B(7) inserted (with effect in accordance with s. 88(7) of the amending Act) by Finance Act 2013 (c. 29), **s. 88(6)(b)**

[F144 330C Meaning of "decommissioning expenditure"

(1) In sections 330A and 330B "decommissioning expenditure" means expenditure incurred in connection with—

(a) demolishing any plant or machinery,

(b) preserving any plant or machinery pending its reuse or demolition,

(c) preparing any plant or machinery for reuse,

(d) arranging for the reuse of any plant or machinery, or

(e) the restoration of any land.

(2) It is immaterial for the purposes of subsection (1)(b) whether the plant or machinery is reused, is demolished or is partly reused and partly demolished.

(3) It is immaterial for the purposes of subsection (1)(c) and (d) whether the plant or machinery is in fact reused.

(4) In subsection (1)(e) "restoration" includes landscaping.

(5) The Treasury may by order amend this section.

(6) An order under subsection (5) may include transitional provision and savings.]

Textual Amendments

F144 Ss. 330A-330C inserted (with effect in accordance with Sch. 21 para. 6 of the amending Act) by Finance Act 2012 (c. 14), **Sch. 21 para. 3**

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331 Meaning of "financing costs" etc

(1) This section applies for the purposes of section 330.

(2) "Financing costs" means the costs of debt finance.

(3) In calculating the costs of debt finance for an accounting period the matters to be taken into account include—

(a) any costs giving rise to debits in respect of debtor relationships of the company under Part 5 of CTA 2009 (loan relationships), other than debits in respect of exchange losses from such relationships,

(b) any exchange gain or loss from a debtor relationship of the company in relation to debt finance,

(c) any credit or debit falling to be brought into account in accordance with Part 7 of CTA 2009 (derivative contracts) in relation to debt finance,

(d) the financing cost implicit in a payment under a finance lease,

(e) if the company is the lessee under a long funding operating lease, the amount deductible in respect of payments under the lease in calculating the profits of the lessee for corporation tax purposes (after first making against any such amount any reductions falling to be made as a result of section 379 (lessee under long funding operating lease)), and,

(f) any other costs arising from what would be considered in accordance with generally accepted accounting practice to be a financing transaction.

(4) If an amount representing the whole or part of a payment falling to be made by a company—

(a) falls (or would fall) to be treated as a finance charge under a finance lease for the purposes of accounts which relate to that company and one or more other companies and are prepared in accordance with generally accepted accounting practice, but

(b) is not so treated in the accounts of the company,

the amount is to be treated as a financing cost within subsection (3)(d).

(5) If—

(a) in calculating the adjusted ring fence profits of a company for an accounting period, an amount falls to be left out of account as a result of subsection (3)(d), but

(b) the whole or any part of that amount is repaid,

the repayment is also to be left out of account in calculating the adjusted ring fence profits of the company for any accounting period.

(6) In this section "finance lease" means any arrangements which—

(a) provide for an asset to be leased or otherwise made available by a person to another person ("the lessee"), and

(b) under generally accepted accounting practice—

(i) fall (or would fall) to be treated, in the accounts of the lessee or a person connected with the lessee, as a finance lease or a loan, or

(ii) are comprised in arrangements which fall (or would fall) to be so treated.

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(7) For the purposes of applying subsection (6)(b), the lessee and any person connected with the lessee are to be treated as being companies which are incorporated in a part of the United Kingdom.

(8) Section 1176(1) (meaning of "connected" persons) does not apply for the purposes of this section.

(9) In this section—

"accounts", in relation to a company, includes accounts which—

(a) relate to two or more companies of which that company is one, and

(b) are drawn up in accordance with generally accepted accounting practice,

"debtor relationship" has the meaning given by section 302(6) of CTA 2009,

"exchange gains" and "exchange losses" are to be read in accordance with section 475 of CTA 2009, and

"long funding operating lease" means a long funding operating lease for the purposes of Part 2 of CAA 2001 (see section 70YI(1) of that Act).

332 Assessment, recovery and postponement of supplementary charge

(1) The provisions of section 330(1) relating to the charging of a sum as if it were an amount of corporation tax are to be taken as applying all enactments applying generally to corporation tax.

(2) But this is subject to—

(a) the provisions of the Taxes Acts,

(b) any necessary modifications, and

(c) subsection (5).

(3) The enactments mentioned in subsection (1) include—

(a) those relating to returns of information and the supply of accounts, statements and reports,

(b) those relating to the assessing, collecting and receiving of corporation tax,

(c) those conferring or regulating a right of appeal, and

(d) those concerning administration, penalties, interest on unpaid tax and priority of tax in cases of insolvency under the law of any part of the United Kingdom.

(4) Accordingly TMA 1970 is to have effect as if any reference to corporation tax included a sum chargeable under section 330(1) as if it were an amount of corporation tax (but this does not limit subsections (1) to (3)).

(5) In the Corporation Tax (Treatment of Unrelieved Surplus Advance Corporation Tax) Regulations 1999 (S.I. 1999/358) or any further regulations made under section 32 of FA 1998 (unrelieved surplus advance corporation tax)—

(a) references to corporation tax do not include a sum chargeable on a company under section 330(1) as if it were corporation tax, and

(b) references to profits charged to corporation tax do not include adjusted ring fence profits, within the meaning of section 330.

(6) In this section "the Taxes Acts" has the same meaning as in TMA 1970 (see section 118(1) of that Act).

Status: *Point in time view as at 01/04/2014.*
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CHAPTER 7

[F154REDUCTION OF SUPPLEMENTARY CHARGE FOR ELIGIBLE OIL FIELDS]

Textual Amendments

F154 Pt. 8 Ch. 7 heading substituted (1.4.2013) by Finance Act 2012 (c. 14), **Sch. 22 paras. 17**, 21(2); S.I. 2013/744, art. 2

Reduction of adjusted ring fence profits

333 Reduction of adjusted ring fence profits

(1) A company's adjusted ring fence profits for an accounting period are to be reduced by the amount of the company's pool of field allowances for that accounting period (see sections 334 to 336).

(2) But, if the profits are less than the amount of the pool, the profits are to be reduced to nil.

Pool of field allowances

334 Company's pool of field allowances

A company's pool of field allowances for an accounting period ("the relevant accounting period") is—

$$P + R$$

where—
P is the amount of the company's pool of field allowances for the previous accounting period that has been carried into the relevant accounting period (see sections 335 and 336), and
R is the aggregate of the amounts of field allowances for [F155eligible oil fields] which the company holds (see sections 337 to 339) that are activated in respect of—

(a) the relevant accounting period (see sections 340 and 341), and

(b) reference periods that fall within the relevant accounting period (see sections 342 to 344).

Textual Amendments

F155 Words in s. 334 substituted (1.4.2013) by Finance Act 2012 (c. 14), **Sch. 22 paras. 2**, 21(2); S.I. 2013/744, art. 2

335 Carrying part of pool of field allowances into following period

(1) This section applies if —

(a) a company has a pool of field allowances for an accounting period ("accounting period 1"), and

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(b) the company's adjusted ring fence profits for accounting period 1 are reduced to nil in accordance with section 333(2).

(2) A part of the company's pool of field allowances for accounting period 1 is to be carried into the following accounting period ("accounting period 2").

(3) The part to be carried into accounting period 2 is—

$$F - P$$

where—
F is the amount of the company's pool of field allowances for accounting period 1, and
P is the amount of the adjusted ring fence profits for accounting period 1.

336 Carrying whole of pool of field allowances into following period

(1) This section applies if a company—
(a) has a pool of field allowances for an accounting period, but
(b) has no adjusted ring fence profits for the accounting period.

(2) The whole of the company's pool of field allowances for the accounting period is to be carried into the following accounting period.

Field allowance: when held and unactivated amount

337 [F156Licensee to hold field allowance]

(1) A company that is **[**F157a licensee in an additionally-developed oil field or a new oil field (an "eligible oil field") on the authorisation day**]** is to hold a field allowance for that field as from the beginning of the **[**F158accounting period in which the authorisation day falls**][**F159(and accordingly may hold more than one field allowance for the field at the same time) **]**.

(2) The amount of the field allowance which the licensee is to hold at that time is—

$$T \times S$$

where—
T is the amount of the total field allowance for the field (see **[**F160sections 356 and 356A**]**), and
S is the share of the equity in the field which the F161... licensee has at the beginning of the authorisation day.

Textual Amendments

F156 S. 337 heading substituted (1.4.2013) by Finance Act 2012 (c. 14), **Sch. 22 paras. 3(4)**, 21(2); S.I. 2013/744, art. 2

F157 Words in s. 337(1) substituted (1.4.2013) by Finance Act 2012 (c. 14), **Sch. 22 paras. 3(2)(a)**, 21(2); S.I. 2013/744, art. 2

F158 Words in s. 337(1) substituted (with effect in accordance with s. 63(4) of the amending Act) by Finance Act 2011 (c. 11), **s. 63(1)**

Status: *Point in time view as at 01/04/2014.*
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F159 Words in s. 337(1) inserted (1.4.2013) by Finance Act 2012 (c. 14), **Sch. 22 paras. 3(2)(b)**, 21(2); S.I. 2013/744, art. 2

F160 Words in s. 337(2) substituted (retrospective to 1.4.2013) by The Additionally-developed Oil Fields Order 2013 (S.I. 2013/2910), arts. 1(1), **4**

F161 Word in s. 337(2) omitted (1.4.2013) by virtue of Finance Act 2012 (c. 14), **Sch. 22 paras. 3(3)**, 21(2); S.I. 2013/744, art. 2

338 Holding a field allowance on acquisition of equity share

For provision about holding a field allowance by virtue of the acquisition of a share of the equity in **[**[F162]an eligible oil field**]**, see section 347(2).

Textual Amendments

F162 Words in s. 338 substituted (1.4.2013) by Finance Act 2012 (c. 14), **Sch. 22 paras. 4**, 21(2); S.I. 2013/744, art. 2

339 Unactivated amount of field allowance

(1) This section applies if a company holds a field allowance for **[**[F163]an eligible oil field**]** by virtue of section 337 or 347(2).

(2) The unactivated amount of that allowance at a particular time ("the relevant time") is—

$$(R + E) - (A + D)$$

where—
R is the amount of the field allowance which the company held before the relevant time by virtue of section 337 or 347(2),
E is the total amount of the field allowance received before the relevant time by virtue of section 347(1) (company already holding field allowance acquires equity share),
A is the total amount of the field allowance activated in respect of —
(a) accounting periods ending before the relevant time, or
(b) reference periods ending before the relevant time, and
D is the total amount of reductions in the field allowance made before the relevant time by virtue of section 346 (company disposes of equity share).

(3) A company ceases to hold a field allowance for **[**[F163]an eligible oil field**]** if the unactivated amount of that allowance falls to nil.

Textual Amendments

F163 Words in s. 339(1)(3) substituted (1.4.2013) by Finance Act 2012 (c. 14), **Sch. 22 paras. 5**, 21(2); S.I. 2013/744, art. 2

Status: *Point in time view as at 01/04/2014.*
Changes to legislation: *Corporation Tax Act 2010 is up to date with all changes known to be in force on or before 12 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

No change in equity share: activation of allowance

340 Introduction to section 341

(1) Section 341 applies to a company in respect of **[**[F164]an eligible oil field**]** and an accounting period if the following conditions are met.

(2) Condition A is that the company is a licensee in the field for the whole of the accounting period.

(3) Condition B is that the company's share of the equity in the field is the same during the whole of the accounting period.

(4) Condition C is that the company holds an unactivated amount of field allowance for the field at the beginning of the accounting period.

(5) Condition D is that the company has relevant income from **[**[F165]the field**]** in the accounting period.

[[F166](6) But in a case where the field is an additionally-developed oil field in relation to which a qualifying project has been authorised as mentioned in section 349A(1)(a), the company is to be treated as having relevant income from the field in the accounting period if, and only if—

(a) a substantial amount of work has been done in relation to the project, and

(b) the accounting period begins on or after the first day of the year of expected first production for the field.

(7) For the purposes of subsection (6)—

(a) "the year of expected first production" for the field is the year that was notified to the national authority, on or before the day on which the project was authorised, as the calendar year in which additional reserves of oil were expected to be first won from the field as a result of the project, and

(b) "qualifying project" means a project meeting the conditions in subsection (1)(aa) and (b) of section 349A.**]**

Textual Amendments

F164 Words in s. 340(1) substituted (1.4.2013) by Finance Act 2012 (c. 14), **Sch. 22 paras. 6(2)**, 21(2); S.I. 2013/744, art. 2

F165 Words in s. 340(5) substituted (1.4.2013) by Finance Act 2012 (c. 14), **Sch. 22 paras. 6(3)**, 21(2); S.I. 2013/744, art. 2

F166 S. 340(6)(7) inserted (retrospective to 1.4.2013) by The Additionally-developed Oil Fields Order 2013 (S.I. 2013/2910), arts. 1(1), **5**

341 Activation of field allowance

(1) An amount of the company's field allowance for **[**[F167] the eligible oil field**]** is to be activated in respect of the accounting period.

(2) The amount of the field allowance to be activated is the smallest of the following amounts—

(a) the relevant activation limit,

(b) the company's relevant income from the field in the accounting period, and

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(c) the unactivated amount of the field allowance which the company holds at the beginning of the accounting period.

(3) The relevant activation limit is—

$$\frac{T}{5} \times E \times \frac{N}{365}$$

where—
T is the amount of the total field allowance for the field (see **[**[F168]sections 356 and 356A**]**),
E is the company's share of the equity in the field during the accounting period, and
N is the number of days in the accounting period.

[[F169](4) Subsection (5) applies for the purpose of determining the amount of a company's field allowance for an eligible oil field ("the relevant field allowance") to be activated in a case where—

(a) the company holds one or more other field allowances for the field, and

(b) at the time when the company began to hold the relevant field allowance, the company already held one or more of those other field allowances (an "earlier field allowance").

(5) The amount of the company's relevant income from the field in the accounting period is to be reduced (but not to below nil) by the amount of any earlier field allowance activated in respect of the accounting period.

(6) In a case where the company began to hold two or more field allowances at the same time, the company may determine the order in which the company is to be regarded for the purposes of this section as having begun to hold them.**]**

Textual Amendments

F167 Words in s. 341(1) substituted (1.4.2013) by Finance Act 2012 (c. 14), **Sch. 22 paras. 7(2)**, 21(2); S.I. 2013/744, art. 2

F168 Words in s. 341(3) substituted (retrospective to 1.4.2013) by The Additionally-developed Oil Fields Order 2013 (S.I. 2013/2910), arts. 1(1), **6**

F169 S. 341(4)-(6) inserted (1.4.2013) by Finance Act 2012 (c. 14), **Sch. 22 paras. 7(3)**, 21(2); S.I. 2013/744, art. 2

Change in equity share: activation of allowance

342 Introduction to sections 343 and 344

(1) Sections 343 and 344 apply to a company in respect of **[**[F170]an eligible oil field**]** and an accounting period if the following conditions are met.

(2) Condition A is that the company is a licensee in the field for the whole, or for part, of the accounting period.

(3) Condition B is that the company's share of the equity in the field is different at different times during the accounting period.

Status: *Point in time view as at 01/04/2014.*
Changes to legislation: *Corporation Tax Act 2010 is up to date with all changes known to be in force on or before 12 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(4) Condition C is that the company holds an unactivated amount of field allowance for the field at any time during the accounting period.

(5) Condition D is that the company has relevant income from the field in the accounting period.

[[F171](5A) But in a case where the field is an additionally-developed oil field in relation to which a qualifying project has been authorised as mentioned in section 349A(1)(a), the company is to be treated as having relevant income from the field in the accounting period if, and only if—

(a) a substantial amount of work has been done in relation to the project, and

(b) the accounting period begins on or after the first day of the year of expected first production for the field.

(5B) For the purposes of subsection (5A)—

(a) "the year of expected first production" for the field is the year that was notified to the national authority, on or before the day on which the project was authorised, as the calendar year in which additional reserves of oil were expected to be first won from the field as a result of the project, and

(b) "qualifying project" means a project meeting the conditions in subsection (1)(aa) and (b) of section 349A.**]**

(6) In a case where a company has three or more different shares of the equity in **[**[F172]an eligible oil field**]** during a particular day, sections 343 and 344 (in particular provisions relating to the beginning or end of a day) have effect subject to the necessary modifications.

Textual Amendments

F170 Words in s. 342(1) substituted (1.4.2013) by Finance Act 2012 (c. 14), **Sch. 22 paras. 8**, 21(2); S.I. 2013/744, art. 2

F171 S. 342(5A)(5B) inserted (retrospective to 1.4.2013) by The Additionally-developed Oil Fields Order 2013 (S.I. 2013/2910), arts. 1(1), **7**

F172 Words in s. 342(6) substituted (1.4.2013) by Finance Act 2012 (c. 14), **Sch. 22 paras. 8**, 21(2); S.I. 2013/744, art. 2

343 Reference periods

(1) For the purposes of section 344, the accounting period, or (if the company is not a licensee for the whole of the accounting period) the part or parts of the accounting period for which the company is a licensee, is to be divided into reference periods.

(2) A reference period is a period of consecutive days that meets the following conditions.

(3) Condition A is that, at the beginning of each day in the period, the company is a licensee in **[**[F173]the eligible oil field **]**.

(4) Condition B is that, at the beginning of each day in the period, the company's share of the equity in the field is the same.

(5) Condition C is that, at the beginning of the first day of the period, the company holds an unactivated amount of field allowance for the field.

Status: *Point in time view as at 01/04/2014.*
Changes to legislation: *Corporation Tax Act 2010 is up to date with all changes known to be in force on or before 12 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(6) Condition D is that each day in the period falls within the accounting period.

Textual Amendments

F173 Words in s. 343(3) substituted (1.4.2013) by Finance Act 2012 (c. 14), **Sch. 22 paras. 9**, 21(2); S.I. 2013/744, art. 2

344 Activation of field allowance

(1) An amount of the company's field allowance for **[**[F174]the eligible oil field**]** is to be activated in respect of each reference period.

(2) The amount of the field allowance to be activated is the smallest of the following amounts—

(a) the relevant activation limit,

(b) the company's relevant income from the field in the reference period, and

(c) the unactivated amount of the field allowance which the company holds at the beginning of the reference period.

(3) The relevant activation limit is—

$$\frac{T}{5} \times E \times \frac{R}{365}$$

where—
T is the amount of the total field allowance for the field (see **[**[F175]sections 356 and 356A**]**),
E is the company's share of the equity in the field during the reference period, and
R is the number of days in the reference period.

(4) The company's relevant income from the field in the reference period is—

$$I \times \frac{R}{L}$$

where—
I is the company's relevant income from the field in the whole of the accounting period,
R is the number of days in the reference period, and
L is the number of days in the accounting period for which the company is a licensee in **[**[F176]the field**]**.

[[F177](5) Subsection (6) applies for the purpose of determining the amount of a company's field allowance for an eligible oil field ("the relevant field allowance") to be activated in a case where—

(a) the company holds one or more other field allowances for the field, and

(b) at the time when the company began to hold the relevant field allowance, the company already held one or more of those other field allowances (an "earlier field allowance").

Status: *Point in time view as at 01/04/2014.*
Changes to legislation: *Corporation Tax Act 2010 is up to date with all changes known to be in force on or before 12 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(6) The amount of the company's relevant income from the field in the reference period is to be reduced (but not to below nil) by the amount of any earlier field allowance activated in respect of the reference period.

(7) In a case where the company began to hold two or more field allowances at the same time, the company may determine the order in which the company is to be regarded for the purposes of this section as having begun to hold them.**]**

Textual Amendments

F174 Words in s. 344(1) substituted (1.4.2013) by Finance Act 2012 (c. 14), **Sch. 22 paras. 10(2)**, 21(2); S.I. 2013/744, art. 2

F175 Words in s. 344(3) substituted (retrospective to 1.4.2013) by The Additionally-developed Oil Fields Order 2013 (S.I. 2013/2910), arts. 1(1), **8**

F176 Words in s. 344(4) substituted (1.4.2013) by Finance Act 2012 (c. 14), **Sch. 22 paras. 10(3)**, 21(2); S.I. 2013/744, art. 2

F177 S. 344(5)-(7) inserted (1.4.2013) by Finance Act 2012 (c. 14), **Sch. 22 paras. 10(4)**, 21(2); S.I. 2013/744, art. 2

Change in equity share: transfer of field allowance

345 Introduction to sections 346 and 347

(1) Sections 346 and 347 apply if the following conditions are met.

(2) Condition A is that a company that is a licensee in **[**[F178]an eligible oil field**]** ("the transferor") disposes of the whole or a part of its share of the equity in **[**[F179]the field**]** (and in section 347 each of those to which a share of the equity is disposed of is referred to as "a transferee").

(3) Condition B is that, immediately before the disposal, the transferor holds an unactivated amount of field allowance for **[**[F180]the field**]**.

(4) Subsection (5) applies when—

(a) determining (for the purposes of this section) whether a transferor holds an unactivated amount of field allowance immediately before the disposal ("the relevant time"), and

(b) determining (for the purposes of section 346), the unactivated amount of field allowance which a transferor holds at the relevant time;

but it applies only if an amount of field allowance for **[**[F180]the field**]** ("the relevant amount") has, by virtue of section 344, been activated in respect of the reference period that ends because of the disposal.

(5) When making the determination, the relevant amount of the field allowance must be treated as having been activated at a time before the relevant time.

(6) In a case where a company has three or more different shares of the equity in **[**[F181]an eligible oil field**]** during a particular day, sections 346 and 347 (in particular provisions relating to the beginning or end of a day) have effect subject to the necessary modifications.

Status: *Point in time view as at 01/04/2014.*
Changes to legislation: *Corporation Tax Act 2010 is up to date with all changes known to be in force on or before 12 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Textual Amendments

F178 Words in s. 345(2) substituted (1.4.2013) by Finance Act 2012 (c. 14), **Sch. 22 paras. 11(2)(a)**, 21(2); S.I. 2013/744, art. 2

F179 Words in s. 345(2) substituted (1.4.2013) by Finance Act 2012 (c. 14), **Sch. 22 paras. 11(2)(b)**, 21(2); S.I. 2013/744, art. 2

F180 Words in s. 345(3)(4) substituted (1.4.2013) by Finance Act 2012 (c. 14), **Sch. 22 paras. 11(3)**, 21(2); S.I. 2013/744, art. 2

F181 Words in s. 345(6) substituted (1.4.2013) by Finance Act 2012 (c. 14), **Sch. 22 paras. 11(4)**, 21(2); S.I. 2013/744, art. 2

346 Reduction of field allowance if equity disposed of

(1) The unactivated amount of the field allowance for **[**[F182]the eligible oil field**]** which the transferor holds immediately before the disposal is to be reduced by the following amount—

$$F \times \frac{E1 - E2}{E1}$$

where—
F is the unactivated amount of the field allowance which the transferor holds immediately before the disposal,
E1 is the transferor's share of the equity in **[**[F183]the field**]** immediately before the disposal, and
E2 is the transferor's share of the equity in **[**[F183]the field**]** immediately after the disposal.

(2) This section has effect at the end of the day on which the disposal takes place.

Textual Amendments

F182 Words in s. 346(1) substituted (1.4.2013) by Finance Act 2012 (c. 14), **Sch. 22 paras. 12(2)**, 21(2); S.I. 2013/744, art. 2

F183 Words in s. 346(1) substituted (1.4.2013) by Finance Act 2012 (c. 14), **Sch. 22 paras. 12(3)**, 21(2); S.I. 2013/744, art. 2

347 Acquisition of field allowance if equity acquired

(1) If a transferee holds a field allowance for **[**[F184]the eligible oil field**]** immediately before the disposal, the unactivated amount of the field allowance is to be increased by the amount calculated in accordance with subsection (4).

(2) If a transferee does not hold a field allowance for **[**[F185]the eligible oil field**]** immediately before the disposal, the transferee is to hold a field allowance for **[**[F186]the field**]**.

(3) The amount of the field allowance which the transferee is to hold is calculated in accordance with subsection (4).

(4) The amount referred to in subsections (1) and (3) is—

Status: *Point in time view as at 01/04/2014.*
Changes to legislation: *Corporation Tax Act 2010 is up to date with all changes known to be in force on or before 12 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

$$R \times \frac{E3}{E1 - E2}$$

where—
R is the amount of the reduction determined in accordance with section 346,
E3 is the share of the equity in **[**[F187]the field**]** that the transferee has acquired from the transferor, and
E1 and E2 are the same as in section 346.

(5) This section has effect at the end of the day on which the disposal takes place.

Textual Amendments

F184 Words in s. 347(1) substituted (1.4.2013) by Finance Act 2012 (c. 14), **Sch. 22 paras. 13(2)**, 21(2); S.I. 2013/744, art. 2

F185 Words in s. 347(2) substituted (1.4.2013) by Finance Act 2012 (c. 14), **Sch. 22 paras. 13(3)(a)**, 21(2); S.I. 2013/744, art. 2

F186 Words in s. 347(2) substituted (1.4.2013) by Finance Act 2012 (c. 14), **Sch. 22 paras. 13(3)(b)**, 21(2); S.I. 2013/744, art. 2

F187 Words in s. 347(4) substituted (1.4.2013) by Finance Act 2012 (c. 14), **Sch. 22 paras. 13(4)**, 21(2); S.I. 2013/744, art. 2

Miscellaneous

348 Adjustments

(1) This section applies if there is any alteration in a company's adjusted ring fence profits for an accounting period after this Chapter has had effect in relation to the profits.

(2) Any necessary adjustments to the operation of this Chapter (whether in relation to the profits or otherwise) are to be made (including any necessary adjustments to the effect of section 333 on the profits or to the calculation of the company's pool of field allowances for a subsequent accounting period).

349 Orders

(1) The Commissioners for Her Majesty's Revenue and Customs may by order make provision about the oil fields that are **[**[F188]additionally-developed oil fields or**]** qualifying oil fields for the purposes of this Chapter.

(2) The Commissioners for Her Majesty's Revenue and Customs may by order make provision about the amount of the total field allowance for any description of **[**[F189]eligible oil field**]** (whether or not provision has been made under subsection (1) about that description of **[**[F189]eligible oil field**]**).

[[F190](2A) The Commissioners for Her Majesty's Revenue and Customs may by order make provision about the meaning of any term used in this Chapter.**]**

[[F191](3) The provision that may be made by an order under this section includes—
(a) provision amending this Chapter,
(b) provision that has effect in relation to times before the order is made and does not increase any person's liability to tax, and

Status: *Point in time view as at 01/04/2014.*
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(c) incidental, supplemental, consequential, transitional or saving provision, including provision amending, repealing or revoking any provision made by or under this Act.**]**

(4) No order may be made under this section unless a draft of the statutory instrument containing it has been laid before and approved by a resolution of the House of Commons.

Textual Amendments

F188 Words in s. 349(1) inserted (17.7.2012) by Finance Act 2012 (c. 14), **Sch. 22 paras. 14(2)**, 21(2)
F189 Words in s. 349(2) substituted (17.7.2012) by Finance Act 2012 (c. 14), **Sch. 22 paras. 14(3)**, 21(2)
F190 S. 349(2A) inserted (17.7.2012) by Finance Act 2012 (c. 14), **Sch. 22 paras. 14(4)**, 21(2)
F191 S. 349(3) substituted (17.7.2012) by Finance Act 2012 (c. 14), **Sch. 22 paras. 14(5)**, 21(2)

Interpretation

[F192 349A "Additionally-developed oil field"

(1) In this Chapter an oil field is an "additionally-developed oil field" if—

[F193 (a) since the time when consent for development of the oil field was first granted, the national authority has authorised a project in relation to the field,

(aa) the project is described in a further consent for development of the field, and**]**

(b) the project meets such conditions as may be specified in an order made by the Commissioners for Her Majesty's Revenue and Customs.

(2) In this section—

"consent for development", in relation to an oil field, does not include consent which is limited to the purpose of testing the characteristics of an oil-bearing area,

"development", in relation to an oil field, means winning oil from the field otherwise than in the course of searching for oil or drilling wells, and

"national authority" means—

(a) the Secretary of State, or

(b) a Northern Ireland department.

(3) An order under this section may include provision having effect in relation to times before it is made, provided that it does not increase any person's liability to tax.

(4) No order may be made under this section unless a draft of the statutory instrument containing it has been laid before and approved by a resolution of the House of Commons.**]**

Textual Amendments

F192 S. 349A inserted (17.7.2012) by Finance Act 2012 (c. 14), **Sch. 22 paras. 15**, 21(2)
F193 S. 349A(1)(a)(aa) substituted for s. 349A(1)(a) (retrospective to 1.4.2013) by The Additionally-developed Oil Fields Order 2013 (S.I. 2013/2910), arts. 1(1), **9**

Status: *Point in time view as at 01/04/2014.*
Changes to legislation: *Corporation Tax Act 2010 is up to date with all changes known to be in force on or before 12 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

[F194 350 "New oil field"

(1) In this Chapter " new oil field " means an oil field—

(a) which is a qualifying oil field, and

(b) whose development (in whole or in part) is authorised for the first time on or after 22 April 2009.

(2) If all assets of an oil field which are relevant assets have been decommissioned, there is to be ignored for the purposes of subsection (1)(b) any authorisation in respect of that oil field which occurs before that decommissioning.

(3) Sub-paragraphs (2) to (9) of paragraph 7 of Schedule 1 to OTA 1975 apply for the purpose of determining whether relevant assets of an oil field are decommissioned as they apply for the purpose of determining whether qualifying assets of a relevant area are decommissioned.

(4) For the purposes of this section, an asset is a relevant asset of an oil field if—

(a) it has at any time been a qualifying asset (within the meaning of the Oil Taxation Act 1983) in relation to any participator in the field, and

(b) it has at any time been used for the purpose of winning oil from the field.**]**

Textual Amendments

F194 S. 350 substituted (with effect in accordance with s. 63(4) of the amending Act) by Finance Act 2011 (c. 11), **s. 63(2)**

351 "Authorisation of development of an oil field"

(1) In this Chapter a reference to authorisation of development of an oil field is a reference to a national authority—

(a) granting a licensee consent for development for the field,

(b) serving on a licensee a programme of development for the field, or

(c) approving a programme of development for the field.

(2) In this section—

"consent for development", in relation to an oil field, does not include consent which is limited to the purpose of testing the characteristics of an oil-bearing area,

"development", in relation to an oil field, means winning oil from the field otherwise than in the course of searching for oil or drilling wells, and

"national authority" means—

(a) the Secretary of State, or

(b) a Northern Ireland department.

352 "Qualifying oil field"

In this Chapter "qualifying oil field" means an oil field that is, on the authorisation day—

(a) a small oil field,

(b) an ultra heavy oil field, F195...

(c) an ultra high pressure/high temperature oil field,

Status: *Point in time view as at 01/04/2014.*
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[[F196](d) a large deep water oil field,
(e) a large shallow water gas field, or
(f) a deep water gas field.**]**

Textual Amendments

F195 Word in s. 352(b) omitted (with effect in accordance with art. 8 of the amending S.I.) by virtue of The Qualifying Oil Fields Order 2012 (S.I. 2012/3153), arts. 1(1), **3**

F196 S. 352(d)-(f) inserted (with effect in accordance with art. 8 of the amending S.I.) by The Qualifying Oil Fields Order 2012 (S.I. 2012/3153), arts. 1(1), **3**

353 "Small oil field"

(1) In this Chapter "small oil field" means an oil field which has reserves of oil of **[**[F197]7,000,000 tonnes**]** or less.

(2) For the purposes of this section and section 356(2)—
(a) the amount of reserves of oil which an oil field has is to be determined on the authorisation day, and
(b) 1,100 cubic metres of gas at a temperature of 15 degrees celsius and pressure of one atmosphere is to be counted as equivalent to one tonne.

Textual Amendments

F197 Words in s. 353(1) substituted (with effect in accordance with art. 8 of the amending S.I.) by The Qualifying Oil Fields Order 2012 (S.I. 2012/3153), arts. 1(1), **4**

354 "Ultra heavy oil field"

(1) In this Chapter "ultra heavy oil field" means an oil field with oil at—
(a) an API gravity below 18 degrees, and
(b) a viscosity of more than 50 centipoise at reservoir temperature and pressure.

(2) For that purpose API gravity, in relation to oil, is the amount determined by the following calculation—

$$\frac{141.5}{G} - 131.5$$

where G is the specific gravity of the oil at 15.56 degrees celsius.

355 "Ultra high pressure/high temperature oil field"

In this Chapter "ultra high pressure/high temperature oil field" means an oil field with oil at—
(a) a pressure of more than **[**[F198]862**]** bar in the reservoir formation, and
(b) a temperature of more than **[**[F199]166**]** degrees celsius in the reservoir formation.

Status: *Point in time view as at 01/04/2014.*
Changes to legislation: *Corporation Tax Act 2010 is up to date with all changes known to be in force on or before 12 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Textual Amendments

F198 Figure in s. 355(a) substituted (with effect in accordance with art. 1(2) of the amending S.I.) by The Qualifying Oil Fields Order 2010 (S.I. 2010/1899), arts. 1(2), **3(a)**

F199 Figure in s. 355(b) substituted (with effect in accordance with art. 1(2) of the amending S.I.) by The Qualifying Oil Fields Order 2010 (S.I. 2010/1899), arts. 1(2), **3(b)**

[F200 355A "Large deep water oil field"

(1) In this Chapter "large deep water oil field" means an oil field that meets conditions A to C.

(2) Condition A is that the field was authorised for the first time on or after 21 March 2012.

(3) Condition B is that the field has reserves of oil of—
- (a) 25,000,000 tonnes or more, but
- (b) less than 55,000,000 tonnes.

(4) Condition C is that the depth of the sea above the field is greater than 1,000 metres.

(5) For the purposes of this section and section 356(4)—
- (a) the amount of reserves of oil which an oil field has is to be determined on the authorisation day,
- (b) 1,100 cubic metres of gas at a temperature of 15 degrees celsius and pressure of one atmosphere is to be counted as equivalent to one tonne, and
- (c) the depth of the sea above an oil field is to be measured at the lowest astronomical tide from the water surface to the lowest point of the natural sea bed at the location of the primary subsea manifold or the first development well, whichever is the deeper.

Textual Amendments

F200 Ss. 355A-355C inserted (with effect in accordance with art. 8 of the amending S.I.) by The Qualifying Oil Fields Order 2012 (S.I. 2012/3153), arts. 1(1), **5**

355B "Large shallow water gas field"

(1) In this Chapter "large shallow water gas field" means an oil field that meets conditions A to D.

(2) Condition A is that the field was authorised for the first time on or after 25 July 2012.

(3) Condition B is that more than 95% of the reserves of oil which the field has consist of gas.

(4) Condition C is that the depth of the sea above the field is less than 30 metres.

(5) Condition D is that the amount of reserves of gas which the field has, or, where there are one or more oil fields related to the field, the total amount of reserves of gas which the field and those related oil fields together have, is—
- (a) 10 billion cubic metres or more, but
- (b) less than 25 billion cubic metres.

Status: *Point in time view as at 01/04/2014.*
Changes to legislation: *Corporation Tax Act 2010 is up to date with all changes known to be in force on or before 12 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(6) For the purposes of subsection (5) and section 356(5), an oil field is "related" to another oil field if—
  (a) the field meets conditions A to C, and
  (b) the authorisation day for each oil field is the same.

(7) For the purposes of this section and section 356(5)—
  (a) the amount of reserves of oil which an oil field has is to be determined on the authorisation day,
  (b) 1,100 cubic metres of gas at a temperature of 15 degrees celsius and pressure of one atmosphere is to be counted as equivalent to one tonne, and
  (c) the depth of the sea above an oil field is to be measured at the lowest astronomical tide from the water surface to the highest point of the natural sea bed at the location of the primary subsea manifold or the first development well, whichever is the shallower.

Textual Amendments

F200 Ss. 355A-355C inserted (with effect in accordance with art. 8 of the amending S.I.) by The Qualifying Oil Fields Order 2012 (S.I. 2012/3153), arts. 1(1), **5**

355C "Deep water gas field"

(1) In this Chapter "deep water gas field" means an oil field that meets conditions A to C.

(2) Condition A is that more than 75% of the reserves of oil which the field has consist of gas.

(3) Condition B is that the depth of the sea above the field is more than 300 metres.

(4) Condition C is that the length of the planned route of the primary pipe-line, or pipe-lines, to be used for transporting gas from the field to the relevant infrastructure is more than 60 kilometres.

(5) For the purposes of subsection (4)—
  (a) the length of the planned route is to be determined on the authorisation day,
  (b) "pipe-line" has the same meaning as in the Pipe-lines Act 1962 (see section 65 of that Act),
  (c) "the relevant infrastructure", in relation to an oil field, means any pipe-line or gas processing facility which is used by, or is intended to be used by, another oil field whose development was authorised before the authorisation day for the oil field, and
  (d) "gas processing facility" has the meaning given by section 90(1) of the Energy Act 2011 .

(6) For the purposes of this section—
  (a) the amount of reserves of oil which an oil field has is to be determined on the authorisation day,
  (b) 1,100 cubic metres of gas at a temperature of 15 degrees celsius and pressure of one atmosphere is to be counted as equivalent to one tonne, and
  (c) the depth of the sea above an oil field is to be measured at the lowest astronomical tide from the water surface to the lowest point of the natural sea

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bed at the location of the primary subsea manifold or the first development well, whichever is the deeper.**]**

Textual Amendments

F200 Ss. 355A-355C inserted (with effect in accordance with art. 8 of the amending S.I.) by The Qualifying Oil Fields Order 2012 (S.I. 2012/3153), arts. 1(1), **5**

356 "Total field allowance for a new oil field"

(1) For the purposes of this Chapter, the total field allowance for a new oil field is—

(a) in the case of a small oil field, the amount determined in accordance with subsection (2),

(b) in the case of an ultra heavy oil field, £800,000,000, [F201]...

(c) in the cases of an ultra high pressure/high temperature oil field, **[**[F202]the amount determined in accordance with subsection (3)**]**.

[[F203](d) in the case of a large deep water oil field, the amount determined in accordance with subsection (4),

(e) in the case of a large shallow water gas field, the amount determined in accordance with subsection (5), and

(f) in the case of a deep water gas field, the amount determined in accordance with subsection (6).**]**

[[F204](2) The total field allowance for a small oil field is—

(a) if the field has reserves of oil of 6,250,000 tonnes or less, £150,000,000, and

(b) in any other case (where the oil field has reserves of more than 6,250,000 tonnes but not more than 7,000,000 tonnes) the following amount—

£150,000,000×7,000,000−X7,000,000−6,250,000

where X is the amount of the reserves of oil (in tonnes) which the field has.**]**

[[F205](3) The total field allowance for an ultra high pressure/high temperature oil field is—

(a) £800,000,000, if the temperature of oil in the reservoir formation is more than 176.67 degrees celsius, and

(b) if the temperature of oil in the reservoir formation is more than 166 degrees celsius but not more than 176.67 degrees celsius, the sum of £500,000,000 and an amount calculated as follows—

X1067×£300,000,000

where X is the number of complete hundredths of a degree celsius by which the temperature of oil in the reservoir formation exceeds 166 degrees celsius.**]**

[[F206](4) The total field allowance for a large deep water oil field is —

£3,000,000,000×55,000,000−X15,000,000

where X is—

(a) in a case where the amount of the reserves of oil which the field has is 40,000,000 tonnes or less, 40,000,000,

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(b) in any other case (where the oil field has reserves of more than 40,000,000 tonnes but not more than 55,000,000 tonnes) the amount of the reserves of oil (in tonnes) which the field has.

(5) The total field allowance for a large shallow water gas field is—

£500,000,000×RT×25−X5

where—

R is the amount of the reserves of gas (in billion cubic metres) which the field has,

T is—

the amount of the reserves of gas (in billion cubic metres) which the field has, or

in a case where there are one or more oil fields related to the field, the total amount of reserves of gas (in billion cubic metres) which the field and those related oil fields together have, and

X is—

in a case where T is 20 or less, 20, and

in any other case (where T is greater than 20 but less than 25), T.

(6) The total field allowance for a deep water gas field is—

Y×D−6060

where—

Y is—

a) £800,000,000, or

b) in a case where two or more deep water gas fields share the same authorisation day, £1,600,000,000 divided by the total number of those deep water gas fields, and

D is—

a) where the length of the planned pipe-line route is more than 60 but less than 120 kilometres, that length (in kilometres), or

b) in a case where the length of the planned pipe-line route is 120 kilometres or more, 120.

(7) In subsection (6) "the planned pipe-line route", in relation to a deep water gas field, means the planned route of the pipe-line (or pipe-lines) to be used for transporting gas from the field as mentioned in section 355C(4).

(8) If an oil field falls within more than one of the descriptions of oil field listed in section 352 ("qualifying oil field"), then for the purposes of this section the field is to be regarded as being of the description that produces the greatest total field allowance for that field.**]**

Textual Amendments

F201 Word in s. 356(1)(b) omitted (with effect in accordance with art. 8 of the amending S.I.) by virtue of The Qualifying Oil Fields Order 2012 (S.I. 2012/3153), arts. 1(1), **6(2)**

F202 Words in s. 356(1)(c) substituted (with effect in accordance with art. 1(2) of the amending S.I.) by The Qualifying Oil Fields Order 2010 (S.I. 2010/1899), arts. 1(2), **4(2)**

F203 S. 356(1)(d)-(f) inserted (with effect in accordance with art. 8 of the amending S.I.) by The Qualifying Oil Fields Order 2012 (S.I. 2012/3153), arts. 1(1), **6(2)**

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F204 S. 356(2) substituted (with effect in accordance with art. 8 of the amending S.I.) by The Qualifying Oil Fields Order 2012 (S.I. 2012/3153), arts. 1(1), **6(3)**

F205 S. 356(3) inserted (with effect in accordance with art. 1(2) of the amending S.I.) by The Qualifying Oil Fields Order 2010 (S.I. 2010/1899), arts. 1(2), **4(3)**

F206 S. 356(4)-(8) inserted (with effect in accordance with art. 8 of the amending S.I.) by The Qualifying Oil Fields Order 2012 (S.I. 2012/3153), arts. 1(1), **6(4)**

[F207 356A "Total field allowance for an additionally-developed oil field"

(1) For the purposes of this Chapter, the total field allowance for an additionally-developed oil field in relation to which a qualifying project has been authorised as mentioned in section 349A(1)(a) is—

(a) if the field is not a cross-boundary field, the amount determined in accordance with subsection (2), and

(b) if the field is a cross-boundary field, the amount determined in accordance with subsection (3).

This is subject to subsections (4) and (7).

(2) In a case where the field is not a cross-boundary field, the total field allowance for the field is—

$$AR \times 50 \times CPT - £6020$$

where—

AR is the amount of additional reserves of oil (in tonnes) which the field has as a result of the project, and

CPT is—

(a) where the cost per tonne of the project is £80 or more, £80, and

(b) in any other case (where the cost per tonne of the project is less than £80 but more than £60), the cost per tonne of the project (expressed in pounds).

(3) In a case where the field is a cross-boundary field, the total field allowance for the field is—

$$A \times UKR$$

where—

A is the amount that would be determined in accordance with subsection (2) as the total field allowance for the field if it were not a cross-boundary field, and

UKR is the fraction of the reserves of oil which the field has lying within the UK marine area.

(4) The total field allowance for an additionally-developed oil field may not exceed the relevant maximum (see subsection (5)).

(5) The relevant maximum is—

(a) in the case of a licensee in the field who is liable to PRT, £500,000,000, and

(b) in any other case, £250,000,000.

(6) For the purposes of subsection (5) a licensee in an oil field in relation to which a qualifying project has been authorised as mentioned in section 349A(1)(a) is "liable to PRT" if—

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(a) it is reasonably expected, as at the authorisation day, that the licensee will be chargeable with petroleum revenue tax for a chargeable period in respect of its share of the equity in the field, and

(b) the chargeable period is one in which oil is reasonably expected, as at the authorisation day, to be won from the field as a result of the project.

(7) In a case where—

(a) the field is not the only additionally-developed oil field that has additional reserves of oil as a result of the project, and

(b) the sum of the amounts determined in accordance with subsection (2) or (3) (as the case may be) in relation to each of those oil fields is greater than the relevant maximum (see subsection (5)),

the total field allowance for the field is the relevant percentage of the amount determined in accordance with subsection (2) or (3) (as the case may be) in relation to the field.

(8) The relevant percentage is—

$$RMT \times 100$$

where—

RM is the relevant maximum, and

T is the sum of the amounts determined in accordance with subsection (2) or (3) (as the case may be) in relation to each of the additionally-developed oil fields that has additional reserves of oil as a result of the project.

(9) For the purposes of this section—

(a) 1,100 cubic metres of gas at a temperature of 15 degrees celsius and pressure of one atmosphere is to be counted as equivalent to one tonne,

(b) "cost per tonne", in relation to a project, has the same meaning as in article 2 of the Additionally-developed Oil Fields Order 2013,

(c) "cross-boundary field" has the meaning given by section 10(9) of the Petroleum Act 1998,

(d) "qualifying project" means a project meeting the conditions in subsection (1)(aa) and (b) of section 349A, and

(e) "UK marine area" has the same meaning as in the Marine and Coastal Access Act 2009 (see section 42 of that Act).**]**

Textual Amendments

F207 S. 356A inserted (retrospective to 1.4.2013) by The Additionally-developed Oil Fields Order 2013 (S.I. 2013/2910), arts. 1(1), **10**

357 Other definitions

[[F208](1)**]** In this Chapter—

"adjusted ring fence profits", in relation to a company and an accounting period, means the adjusted ring fence profits that would (if this Chapter were ignored) be taken into account in calculating the supplementary charge on the company under section 330(1) for the accounting period,

[[F209]"authorisation day" means—

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(a) **[**[F210]in relation to an additionally-developed oil field and a project authorised in relation to the field as mentioned in section 349A(1)(a), the day when the project is so authorised,**]**

(b) in relation to a new oil field, the day when development of the field is authorised as mentioned in section 350(1)(b),**]**

[[F211]"eligible oil field" means an oil field which is an additionally-developed oil field or a new oil field,**]**

[F212]…

"licensee" has the same meaning as in Part 1 of OTA 1975, and

"relevant income", in relation to **[**[F213]an eligible oil field**]** and an accounting period of a company, means production income of the company from any oil extraction activities carried on in the field that is taken into account in calculating the company's adjusted ring fence profits for the accounting period.

[[F214](2) Any reference in this Chapter to a share of the equity in an oil field (other than the reference in section 356A(6)) is, in the case of an additionally-developed oil field and a project authorised in relation to the field as mentioned in section 349A(1)(a), to be read as a reference to a share of the additional reserves of oil which the field has as a result of the project.**]**

Textual Amendments

F208 S. 357(1): renumbered (retrospective to 1.4.2013) by The Additionally-developed Oil Fields Order 2013 (S.I. 2013/2910), arts. 1(1), **11(2)**

F209 Words in s. 357(1) substituted (1.4.2013) by Finance Act 2012 (c. 14), **Sch. 22 paras. 16(2)**, 21(2); S.I. 2013/744, art. 2

F210 Words in s. 357(1) substituted (retrospective to 1.4.2013) by The Additionally-developed Oil Fields Order 2013 (S.I. 2013/2910), arts. 1(1), **11(3)**

F211 Words in s. 357 inserted (17.7.2012) by Finance Act 2012 (c. 14), **Sch. 22 paras. 16(3)**, 21(2)

F212 Words in s. 357(1) omitted (1.4.2013) by virtue of Finance Act 2012 (c. 14), **Sch. 22 paras. 16(4)**, 21(2); S.I. 2013/744, art. 2

F213 Words in s. 357 substituted (1.4.2013) by Finance Act 2012 (c. 14), **Sch. 22 paras. 16(5)**, 21(2); S.I. 2013/744, art. 2

F214 S. 357(2) inserted (retrospective to 1.4.2013) by The Additionally-developed Oil Fields Order 2013 (S.I. 2013/2910), arts. 1(1), **11(4)**

[[F215]PART 8ZA

OIL CONTRACTORS

Textual Amendments

F215 Pt. 8ZA inserted (retrospective to 1.4.2014) by Finance Act 2014 (c. 26), **Sch. 16 paras. 4**, 6

Status: *Point in time view as at 01/04/2014.*
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CHAPTER 1

INTRODUCTION

356K Overview of Part

(1) This Part is about the corporation tax treatment of oil contractor activities.

(2) Chapter 2 contains basic definitions used in this Part.

(3) Chapter 3 treats oil contractor activities as a separate trade.

(4) Chapter 4 makes provision about the calculation of profits from oil contractor activities.

(5) For the meaning of oil contractor activities, see section 356L.

CHAPTER 2

BASIC DEFINITIONS

356L "Oil contractor activities" etc

(1) The definitions in this section have effect for the purposes of this Part.

(2) "Oil contractor activities" means activities carried on by a company ("the contractor"), which are not oil-related activities (within the meaning of section 274), but are—
   (a) exploration or exploitation activities in, or in connection with, which the contractor provides, operates or uses a relevant asset (see section 356LA) in a relevant offshore service, or
   (b) otherwise carried on in, or in connection with, the provision by the contractor of a relevant offshore service.

(3) The contractor provides a "relevant offshore service" if the contractor provides, operates or uses a relevant asset in, or in connection with, the carrying on of exploration or exploitation activities in a relevant offshore area by the contractor or any other associated person.

(4) "Exploration or exploitation activities" means activities carried on in connection with the exploration or exploitation of the seabed and subsoil and their natural resources.

(5) "Relevant offshore area" means—
   (a) the territorial sea of the United Kingdom;
   (b) the areas designated by Order in Council under section 1(7) of the Continental Shelf Act 1964.

356LA "Relevant asset"

(1) In this Part "relevant asset" means an asset within subsection (2) in respect of which conditions A and B are met.

(2) An asset is within this subsection if it is a structure that—

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(a) can be moved from place to place (whether or not under its own power) without major dismantling or modification, and

(b) can be used to—

(i) drill for the purposes of searching for, or extracting, oil, or

(ii) provide accommodation for individuals who work on or from another structure used in a relevant offshore area for, or in connection with, exploration or exploitation activities ("offshore workers").

(3) But an asset is not within subsection (2)(b)(ii) if it is reasonable to suppose that its use to provide accommodation for offshore workers is unlikely to be more than incidental to another use, or other uses, to which the asset is likely to be put.

(4) In subsection (2)—

"oil" means any substance capable of being won under the authority of a licence granted under Part 1 of the Petroleum Act 1998 or the Petroleum (Production) Act (Northern Ireland) 1964;

"structure" includes a ship or other vessel.

(5) Condition A is that the asset, or any part of the asset, is leased (whether by the contractor or not) from an associated person other than the contractor.

(6) Condition B is that the asset is of the requisite value.

(7) The asset is of the "requisite value" if its market value is £2,000,000 or more.

(8) The Treasury may by regulations modify the meaning of "requisite value".

(9) Regulations under subsection (8) may—

(a) amend this section,

(b) make different provision for different cases or different purposes, and

(c) make incidental, consequential, supplementary or transitional provision or savings.

356LB "Associated person"

(1) For the purposes of this Part each of the following is an "associated person"—

(a) the contractor,

(b) any person who is, or has been, connected with the contractor,

(c) any person who has acted, acts or is to act, together with the contractor to provide a service, and

(d) any person who is connected with a person falling within paragraph (b) or (c).

(2) A person does not act together with the contractor to provide a service by reason only of leasing an asset, to any person, which is provided, operated or used in the service.

356LC "Lease"

In this Part "lease" has the meaning given by section 868 and "leased" and "leasing" are to be construed accordingly.

Status: *Point in time view as at 01/04/2014.*
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356LD "Contractor's ring fence profits"

In this Part the "contractor's ring fence profits", in relation to an accounting period, means the contractor's income arising from oil contractor activities for that period.

CHAPTER 3

DEEMED SEPARATE TRADE

356M Oil contractor activities treated as separate trade

If the contractor carries on oil contractor activities as part of a trade, those activities are treated for the purposes of the charge to corporation tax on income as a separate trade, distinct from all other activities carried on by the contractor as part of the trade.

CHAPTER 4

CALCULATION OF PROFITS

Hire of relevant assets

356N Restriction on hire etc of relevant assets to be brought into account

(1) This section applies if the contractor makes, or is to make, one or more payments under a lease of—
  (a) a relevant asset, or
  (b) part of a relevant asset.

(2) The total amount that may be brought into account in respect of the payments for the purposes of calculating the contractor's ring fence profits in an accounting period is limited to the hire cap.

(3) The "hire cap" is an amount equal to the relevant percentage of TC for the accounting period, subject to subsection (4).

(4) If payments in relation to which subsection (2) or section 285A(2) (restriction on hire for company carrying on a ring fence trade under Part 8) applies are also made, or to be made, by one or more other companies in respect of the relevant asset or part, the "hire cap" is to be such proportion of the amount mentioned in subsection (3) as is just and reasonable, having regard (in particular) to the amounts of the payments made, or to be made, by the contractor and each other company.

(5) Subject to subsection (7), the "relevant percentage" is—

$$UROS \div TU \times 7.5\%$$

where—

UROS is the number of days in the accounting period that the relevant asset is provided, operated or used in a relevant offshore service, and

TU is the number of days in the accounting period that the relevant asset is provided, operated or used (whether or not in a relevant offshore service).

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(6) Accordingly, the relevant percentage is zero if the relevant asset is not provided, operated or used in the accounting period.

(7) If the accounting period is less than 12 months, the relevant percentage is to be proportionally reduced.

(8) TC is—

$$OC+CE$$

(9) Unless subsection (11) applies, OC is the sum of—

(a) any consideration given for the acquisition of the relevant asset or part when it was first acquired by an associated person, and

(b) any expenses incurred by an associated person in connection with that acquisition (other than the costs of financing the acquisition).

This is subject to subsections (12) and (13).

(10) Subsection (11) applies if the relevant asset or part—

(a) is leased by an associated person from a person who is not an associated person, and

(b) has never been owned by an associated person.

(11) OC is the sum of—

(a) the consideration that it is reasonable to suppose would have been given for the acquisition of the relevant asset or part, if it had been acquired by an associated person by way of a bargain at arm's length at the time it was first leased as mentioned in subsection (10)(a), and

(b) the expenses (other than the costs of financing the acquisition) that it is reasonable to suppose would have been incurred by an associated person in connection with such an acquisition.

This is subject to subsections (12) and (13).

(12) If the relevant asset or part was first acquired by an associated person, or (as the case may be) first leased as mentioned in subsection (10)(a), before the beginning of the accounting period, OC does not include any part of the consideration mentioned in subsection (9)(a) or (as the case may be) (11)(a) that it is reasonable to attribute to anything that no longer forms part of the relevant asset or part at the beginning of the accounting period.

(13) If the relevant asset or part was first acquired by an associated person, or (as the case may be) first leased as mentioned in subsection (10)(a), in the accounting period, OC for the accounting period is—

$$OC \times D - DBAD$$

where—

D is the total number of days in the accounting period,

DBA is the number of days in the accounting period before the day on which the relevant asset or part was first acquired or first leased, and

OC is the amount given by subsection (9) or (as the case may be) (11).

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(14) CE is capital expenditure on the relevant asset or part (other than capital expenditure in respect of its acquisition or the acquisition of a lease of it) incurred by an associated person—

(a) after it was first acquired by an associated person or (as the case may be) was first leased as mentioned in subsection (10)(a), and

(b) before the end of the accounting period.

This is subject to subsections (15) and (16).

(15) CE does not include any capital expenditure mentioned in subsection (14) that is—

(a) incurred before the beginning of the accounting period, and

(b) not reflected in the state or nature of the relevant asset or part at the beginning of the accounting period.

(16) If any capital expenditure mentioned in subsection (14) is incurred on a day in the accounting period, the amount of CE for the accounting period in respect of that capital expenditure is—

$$CEA \times D - DBID$$

where—

D is the total number of days in the accounting period,

DBI is the number of days in the accounting period before the day on which that capital expenditure is incurred, and

CEA is the amount of that capital expenditure.

356NA Restriction on hire: further provision

(1) The Treasury may by regulations modify the "relevant percentage" for the purposes of section 356N or 285A.

(2) Regulations under subsection (1) may—

(a) amend section 356N or section 285A,

(b) make different provision for different cases or different purposes, and

(c) make incidental, consequential, supplementary or transitional provision or savings.

(3) To the extent that, by virtue of section 356N, payments within subsection (1) of that section cannot be brought into account for the purposes of calculating the contractor's ring fence profits in an accounting period, the payments may be—

(a) allowed as a deduction from the contractor's total profits for the accounting period, or

(b) treated as a surrenderable amount of the contractor for the accounting period for the purposes of Part 5 (group relief) (see section 99(7)) as if they were a trading loss,

subject to subsection (4).

(4) No deduction may be made by virtue of subsection (3) from total profits so far as they are contractor's ring fence profits or ring fence profits for the purposes of Part 8.

Status: *Point in time view as at 01/04/2014.*
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(5) If an associated person enters into arrangements the main purpose or one of the main purposes of which is to secure that section 356N(2) does not apply in relation to one or more payments to any extent, that provision applies in relation to the payments to the extent it would not otherwise do so.

(6) In subsection (5) "arrangements" includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable).

Loan relationships

356NB Restriction on debits to be brought into account

(1) Debits may not be brought into account for the purposes of Part 5 of CTA 2009 (loan relationships) in respect of the contractor's loan relationships in any way that results in a reduction of what would otherwise be the contractor's ring fence profits, but this is subject to subsections (2) to (4).

(2) Subsection (1) does not apply so far as a loan relationship is in respect of money borrowed by the contractor which has been—
   (a) used to meet expenditure incurred by the contractor in carrying on oil contractor activities, or
   (b) appropriated to meeting expenditure to be so incurred by the contractor.

(3) Subsection (1) does not apply, in the case of debits falling to be brought into account as a result of section 329 of CTA 2009 (pre-loan relationship and abortive expenses) in respect of a loan relationship that has not been entered into, so far as the relationship would have been one entered into for the purpose of borrowing money to be used or appropriated as mentioned in subsection (2).

(4) Subsection (1) does not apply, in the case of debits in respect of a loan relationship to which Chapter 2 of Part 6 of CTA 2009 (relevant non-lending relationships) applies, so far as—
   (a) the payment of interest under the relationship is expenditure incurred as mentioned in subsection (2)(a), or
   (b) the exchange loss arising from the relationship is in respect of a money debt on which the interest payable (if any) is, or would be, such expenditure.

(5) If a debit—
   (a) falls to be brought into account for the purposes of Part 5 of CTA 2009 in respect of a loan relationship of the contractor, but
   (b) as a result of this section cannot be brought into account in a way that results in any reduction of what would otherwise be the contractor's ring fence profits,

   the debit is to be brought into account for those purposes as a non-trading debit despite anything in section 297 of that Act.

(6) References in this section to a loan relationship, in relation to the borrowing of money, do not include a relationship to which Chapter 2 of Part 6 of CTA 2009 (relevant non-lending relationships) applies.

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356NC Restriction on credits to be brought into account

(1) Credits in respect of exchange gains from the contractor's loan relationships may not be brought into account for the purposes of Part 5 of CTA 2009 (loan relationships) in any way that results in an increase of what would otherwise be the contractor's ring fence profits, but this is subject to subsections (2) to (4).

(2) Subsection (1) does not apply so far as a loan relationship is in respect of money borrowed by the contractor which has been—
   (a) used to meet expenditure incurred by the contractor in carrying on oil contractor activities, or
   (b) appropriated to meeting expenditure to be so incurred by the contractor.

(3) Subsection (1) does not apply, in the case of credits falling to be brought into account as a result of section 329 of CTA 2009 (pre-loan relationship and abortive expenses) in respect of a loan relationship that has not been entered into, so far as the relationship would have been one entered into for the purpose of borrowing money to be used or appropriated as mentioned in subsection (2).

(4) Subsection (1) does not apply, in the case of credits in respect of a loan relationship to which Chapter 2 of Part 6 of CTA 2009 (relevant non-lending relationships) applies, so far as—
   (a) the payment of interest under the relationship is expenditure incurred as mentioned in subsection (2)(a), or
   (b) the exchange gain arising from the relationship is in respect of a money debt on which the interest payable (if any) is, or would be, such expenditure.

(5) If a credit—
   (a) falls to be brought into account for the purposes of Part 5 of CTA 2009 in respect of a loan relationship of the contractor, but
   (b) as a result of this section cannot be brought into account in a way that results in any increase of what would otherwise be the contractor's ring fence profits,

   the credit is to be brought into account for those purposes as a non-trading credit despite anything in section 297 of that Act.

(6) Section 356NB(6) applies for the purposes of this section.

Relief

356ND Management expenses

No deduction under section 1219 of CTA 2009 (expenses of management of a company's investment business) is to be allowed from the contractor's ring fence profits.

356NE Losses

Relief in respect of a loss incurred by the contractor may not be given under section 37 (relief for trade losses against total profits) against the contractor's ring fence profits except so far as the loss arises from oil contractor activities.

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356NF Group relief

(1) On a claim for group relief made by a claimant company in relation to a surrendering company, group relief may not be allowed against the claimant company's contractor's ring fence profits except so far as the claim relates to losses incurred by the surrendering company that arose from oil contractor activities.

(2) In section 105 (restriction on surrender of losses etc within section 99(1)(d) to (g)) the references to the surrendering company's gross profits of the surrender period do not include the company's relevant contractor's ring fence profits for that period.

(3) The company's "relevant contractor's ring fence profits" for that period are—

(a) if for that period there are no qualifying charitable donations made by the company that are allowable under Part 6 (charitable donations relief), the company's contractor's ring fence profits for that period, or

(b) otherwise, so much of the contractor's ring fence profits of the company for that period as exceeds the amount of the qualifying charitable donations made by the company that are allowable under section 189 for that period.

(4) In this section "claimant company" and "surrendering company" are to be read in accordance with Part 5 (group relief) (see section 188).

356NG Capital allowances

A capital allowance may not to any extent be given effect under section 259 or 260 of CAA 2001 (special leasing) by deduction from the contractor's ring fence profits.**]**

[[F216]PART 8A

PROFITS ARISING FROM THE EXPLOITATION OF PATENTS ETC

Textual Amendments

F216 Pt. 8A inserted (with effect in accordance with Sch. 2 paras. 7, 8 of the amending Act) by Finance Act 2012 (c. 14), **Sch. 2 para. 1(1)**

CHAPTER 1

REDUCED CORPORATION TAX RATE FOR PROFITS FROM PATENTS ETC

357A Election for special treatment of profits from patents etc

(1) A company may elect that any relevant IP profits of a trade of the company for an accounting period for which it is a qualifying company are chargeable at a lower rate of corporation tax.

(2) An election under subsection (1) is to be given effect by allowing a deduction to be made in calculating for corporation tax purposes the profits of the trade for the period.

(3) The amount of the deduction is—

$$RP \times (MR - IPR\ MR)$$

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where—

RP is the relevant IP profits of the trade of the company,

MR is the main rate of corporation tax, and

IPR is the special IP rate of corporation tax.

(4) The special IP rate of corporation tax is 10%.

(5) Chapter 2 specifies when a company is a qualifying company.

(6) Chapter 3 makes provision for determining the relevant IP profits or relevant IP losses of a trade.

(7) Chapter 4 makes provision for an alternative way of determining the relevant IP profits or losses of a trade known as "streaming".

(8) Chapter 5 makes provision in relation to the relevant IP losses of a trade.

(9) Chapter 6 contains anti-avoidance provisions.

(10) Chapter 7 contains supplementary provision.

CHAPTER 2

QUALIFYING COMPANIES

357B Meaning of "qualifying company"

(1) A company is a qualifying company for an accounting period if—
- (a) condition A or B is met, and
- (b) in the case of a company that is a member of a group, condition C is met.

(2) Condition A is that, at any time during the accounting period, the company—
- (a) holds any qualifying IP rights, or
- (b) holds an exclusive licence in respect of any qualifying IP rights.

For the meaning of "exclusive licence", see section 357BA.

(3) Condition B is that—
- (a) the company has held a qualifying IP right or an exclusive licence in respect of such a right,
- (b) the company has received income in respect of an event which occurred in relation to the right or licence, or any part of which so occurred, at a time when—
  - (i) the company was a qualifying company, and
  - (ii) an election under section 357A had effect in relation to it, and
- (c) the income falls to be taxed in the accounting period.

(4) A right is a qualifying IP right for the purposes of this Part if—
- (a) it is a right to which this Part applies (see section 357BB), and
- (b) the company meets the development condition in relation to the right (see section 357BC).

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(5) Condition C is that the company meets the active ownership condition for the accounting period (see section 357BE).

357BA Meaning of "exclusive licence"

(1) In this Part "exclusive licence", in relation to a right ("the principal right"), means a licence which—
  (a) is granted by the person who holds either the principal right or an exclusive licence in respect of the principal right ("the proprietor"), and
  (b) confers on the person holding the licence ("the licence-holder"), or on the licence-holder and persons authorised by it, the rights in respect of the principal right that are listed in subsection (2).

(2) The rights are—
  (a) one or more rights conferred to the exclusion of all other persons (including the proprietor) in one or more countries or territories, and
  (b) the right—
    (i) to bring proceedings without the consent of the proprietor or any other person in respect of any infringement of the rights within paragraph (a), or
    (ii) to receive the whole or the greater part of any damages awarded in respect of any such infringement.

(3) Where the licence-holder has any right within subsection (2)(b) by virtue of any enactment or rule of law, the right is to be regarded for the purposes of this section as conferred by the licence.

(4) Where—
  (a) a company ("C") that is a member of a group holds either a right to which this Part applies or an exclusive licence in respect of such a right, and
  (b) C confers on another company that is a member of the group all of the rights held by C in respect of the invention,

  that other company is to be treated for the purposes of this Part as holding an exclusive licence in respect of that right.

(5) For the purposes of subsection (4) it does not matter if the rights conferred by C do not include the right to enforce, assign or grant a licence of any of those rights.

357BB Rights to which this Part applies

(1) This Part applies to the following rights—
  (a) a patent granted under the Patents Act 1977,
  (b) a patent granted under the European Patent Convention,
  (c) a right of a specified description which corresponds to a right within paragraph (a) or (b) and is granted under the law of a specified EEA state,
  (d) a supplementary protection certificate,
  (e) any plant breeders' rights granted in accordance with Part 1 of the Plant Varieties Act 1997,
  (f) any Community plant variety rights granted under Council Regulation (EC) No 2100/94.

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(2) Where—

(a) directions are in force under section 22 of the Patents Act 1977 (information prejudicial to national security or safety of public) with respect to an application for a patent under that Act, and

(b) the person making the application has been notified under section 18(4) of that Act that the application complies with the requirements of the Act and the rules,

the person is to be treated for the purposes of this Part as if the person had been granted the patent under that Act.

(3) Where—

(a) a person holds a marketing authorisation in respect of a product in accordance with any EU legislation, and

(b) the product benefits from marketing protection (see subsection (4)) or data protection (see subsection (5)),

the person is to be treated for the purposes of this Part as having been granted a right to which this Part applies in respect of the product.

(4) For the purposes of this section a product benefits from marketing protection if—

(a) the product benefits from marketing protection by virtue of Article 14.11 of Regulation (EC) No 726/2004 of the European Parliament and of the Council of 31 March 2004 laying down Community procedures for the authorisation and supervision of medicinal products for human use, or

(b) any of the following prohibitions is in force—

(i) the prohibition on placing on the market a generic of the product imposed by Article 10.1 of Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use,

(ii) the prohibition imposed by Article 8.1 of Regulation (EC) No 141/2000 of the European Parliament and of the Council of 16 December 1999 on orphan medicinal products, and

(iii) the prohibition on placing on the market a generic of the product imposed by Article 13.1 of Directive 2001/82/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to veterinary medicinal products.

(5) For the purposes of this section a product benefits from data protection if—

(a) the product benefits from the data exclusivity conferred by Article 10.5 of Directive 2001/83/EC of the European Parliament and of the Council,

(b) the prohibition on referring to the results of tests or trials in relation to the product imposed by Article 74a of that Directive is in force, or

(c) data relating to the product benefits from data protection under Article 59 of Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market.

(6) The reference to data in subsection (5)(c) does not include a study necessary for the renewal or review of a marketing authorisation granted in respect of the product in accordance with Regulation (EC) No 1107/2009.

(7) In this section—

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"European Patent Convention" means the Convention on the Grant of European Patents,

"rules" means rules made under section 123 of the Patents Act 1977,

"specified" means specified in an order made by the Treasury, and

"supplementary protection certificate" means a certificate issued under—

(a) Council Regulation (EC) No 469/2009 of the European Parliament and of the Council of 6 May 2009 concerning the supplementary protection certificate for medicinal products, or

(b) Regulation (EC) No 1610/96 of the European Parliament and of the Council of 23 July 1996 concerning the creation of a supplementary protection certificate for plant protection products.

(8) The Treasury may by order—

(a) amend this section so as to make provision about the circumstances in which a product benefits from marketing or data protection for the purposes of this section;

(b) make such provision amending any reference in this section to EU legislation as appears to them appropriate in consequence of any EU legislation amending or replacing that EU legislation.

(9) An order made under this section may make any incidental, supplemental, consequential, transitional or saving provision, including provision amending or modifying this Part.

357BC The development condition

(1) A company meets the development condition in relation to a right if condition A, B, C or D is met.

Section 357BD (meaning of "qualifying development") applies for the purposes of this section.

(2) Condition A is that—

(a) the company has at any time carried out qualifying development in relation to the right, and

(b) the company has not ceased to be, or become, a controlled member of a group since that time.

(3) Condition B is that—

(a) the company has at any time carried out qualifying development in relation to the right,

(b) the company has ceased to be, or become, a controlled member of a group since that time,

(c) the company has, for a period of 12 months beginning with the day on which it ceased to be, or became, a controlled member of the group, performed activities of the same description as those that constituted the qualifying development, and

(d) the company remains a member of that group or (as the case may be) does not become a controlled member of any other group.

(4) Condition C is that—

(a) the company is a member of a group,

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(b) another company that is or has been a member of the group has carried out qualifying development in relation to the right, and

(c) that other company was a member of the group at the time it carried out the qualifying development.

(5) Condition D is that—

(a) the company is a member of a group,

(b) another company that is or has been a member of the group has carried out qualifying development in relation to the right,

(c) that other company ("T") or, where another member of the group begins to carry on the trade which T carried on immediately before becoming a member of the group, either or both of those companies have, while carrying on that trade as a member of the group, performed activities of the same description as those that constituted the qualifying development, and

(d) those activities of those companies, taken together, have been performed for a period of 12 months beginning with the day on which T became a member of the group.

(6) For the purposes of conditions A and B, a company becomes a controlled member of a group at any time if—

(a) another company ("P") either becomes the holder of a major interest in the company, or begins to control the company, at that time, and

(b) immediately before that time the company was not associated with P or with any company associated with P immediately before that time.

(7) For the purposes of conditions A and B, a company ceases to be a controlled member of a group at any time if—

(a) every other company which immediately before that time held a major interest in, or controlled, the company ceases to do so, and

(b) as a result the company ceases to be associated with any of those companies.

(8) Where—

(a) a company ceases to be a controlled member of a group at any time, and

(b) at that time the company holds a major interest in, or controls, any other company,

that other company is to be treated for the purposes of conditions A and B as also having ceased to be a controlled member of the group at that time.

(9) In subsections (6) and (7) "associated" is to be read in accordance with section 357GD(3).

(10) The following provisions apply for the purposes of subsections (6) to (8)—

section 472 of CTA 2009 (meaning of "control"), and

sections 473 and 474 of CTA 2009 (meaning of "major interest").

(11) A company that meets the development condition in relation to a right by virtue of the performance of the activities mentioned in subsection (3) or (5) for the period of 12 months so mentioned is to be regarded as meeting that condition in relation to the right during that period (as well as at any other time when the company meets the condition).

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357BD Meaning of "qualifying development"

(1) A company carries out "qualifying development" in relation to a right if—
  (a) it creates, or significantly contributes to the creation of, the invention, or
  (b) it performs a significant amount of activity for the purposes of developing the invention or any item or process incorporating the invention.

(2) The reference in subsection (1)(b) to developing the invention includes developing ways in which the invention may be used or applied.

(3) For the purposes of section 357BC it does not matter whether the qualifying development was carried out before or after—
  (a) the company, or
  (b) where the company is a member of a group, any member of the group,

  became the holder of the right or (as the case may be) an exclusive licence in respect of the right.

357BE The active ownership condition

(1) A company meets the active ownership condition for an accounting period if all or almost all of the qualifying IP rights held by the company in that accounting period are rights in respect of which condition A or B is met.

(2) Condition A is that during the accounting period the company performs a significant amount of management activity in relation to the rights.

(3) In subsection (2) "management activity", in relation to any qualifying IP rights, means formulating plans and making decisions in relation to the development or exploitation of the rights.

(4) Condition B is that the company meets the development condition in relation to the rights by virtue of section 357BC(2) or (3).

(5) Any reference in this section to a qualifying IP right held by the company includes a reference to a qualifying IP right in respect of which the company holds an exclusive licence.

CHAPTER 3

RELEVANT IP PROFITS

Steps for calculating relevant IP profits of a trade

357C Relevant IP profits

(1) To determine the relevant IP profits of a trade of a company for an accounting period—

  Step 1 Calculate the total gross income of the trade for the accounting period (see section 357CA).

  Step 2 Calculate the percentage ("X%") given by the following formula—

  RIPI TI × 100

  where—

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"RIPI" is so much of the total gross income of the trade for the accounting period as is relevant IP income (see sections 357CC and 357CD), and

"TI" is the total gross income of the trade for the accounting period.

Step 3 Calculate X% of the profits of the trade for the accounting period. If there are no such profits, calculate X% of the losses of the trade (expressed as a negative figure) for the accounting period. In calculating the profits of the trade for the purposes of this step, make any adjustments required by section 357CG (and references in this step to the profits or losses of the trade are to be read subject to any such adjustments).

Step 4 Deduct from the amount given by Step 3 the routine return figure (see section 357CI). The amount given by this step is the "qualifying residual profit".

If the amount of the qualifying residual profit is not greater than nil, go to Step 7.

Step 5 If the company has elected for small claims treatment, calculate the small claims amount in relation to the trade (see section 357CM). If the company has not, go to Step 6.

Step 6 Deduct from the qualifying residual profit the marketing assets return figure (see section 357CN).

Step 7 If the company has made an election under section 357CQ (which provides in certain circumstances for profits arising before the grant of a right to be treated as relevant IP profits), add to the amount given by Step 5 or 6 (or, if the amount of the qualifying residual profit was not greater than nil, Step 4) any amount determined in accordance with subsection (3) of that section.

(2) If the amount given by subsection (1) is greater than nil, that amount is the relevant IP profits of the trade for the accounting period.

(3) If the amount given by subsection (1) is less than nil, that amount is the relevant IP losses of the trade for the accounting period (see Chapter 5).

Total gross income of trade

357CA Total gross income of a trade

(1) For the purposes of this Part the "total gross income" of a trade of a company for an accounting period is the aggregate of the amounts falling within the Heads set out in—
  (a) subsection (3) (revenue),
  (b) subsection (5) (compensation),
  (c) subsection (6) (adjustments),
  (d) subsection (7) (proceeds from intangible fixed assets),
  (e) subsection (8) (profits from patent rights).

(2) But the total gross income of the trade does not include any finance income (see section 357CB).

(3) Head 1 is any amounts which—
  (a) in accordance with generally accepted accounting practice ("GAAP") are recognised as revenue in the company's profit and loss account or income statement for the accounting period, and

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(b) are brought into account as credits in calculating the profits of the trade for the accounting period.

(4) Where the company does not draw up accounts for an accounting period in accordance with GAAP, the reference in subsection (3)(a) to any amounts which in accordance with GAAP are recognised as revenue in the company's profit and loss account or income statement for the accounting period is to be read as a reference to any amounts which would be so recognised if the company had drawn up such accounts for that accounting period.

(5) Head 2 is any amounts of damages, proceeds of insurance or other compensation (so far as not falling within Head 1) which are brought into account as credits in calculating the profits of the trade for the accounting period.

(6) Head 3 is any amounts (so far as not falling within Head 1) which are brought into account as receipts under section 181 of CTA 2009 (adjustment on change of basis) in calculating the profits of the trade for the accounting period.

(7) Head 4 is any amounts (so far as not falling within Head 1) which are brought into account as credits under Chapter 4 of Part 8 of CTA 2009 (realisation of intangible fixed assets) in calculating the profits of the trade for the accounting period.

(8) Head 5 is any profits from the sale by the company of the whole or part of any patent rights held for the purposes of the trade which are taxed under section 912 of CTA 2009 in the accounting period.

357CB Finance income

(1) For the purposes of this Part "finance income", in relation to a trade of a company, means—

(a) any credits which are treated as receipts of the trade by virtue of—

(i) section 297 of CTA 2009 (credits in respect of loan relationships), or

(ii) section 573 of CTA 2009 (credits in respect of derivative contracts),

(b) any amount which in accordance with generally accepted accounting practice falls to be recognised as arising from a financial asset, and

(c) any return, in relation to an amount, which—

(i) is produced for the company by an arrangement to which it is party, and

(ii) is economically equivalent to interest.

(2) In subsection (1)—

"economically equivalent to interest" is to be construed in accordance with section 486B(2) and (3) of CTA 2009, and

"financial asset" means a financial asset as defined for the purposes of generally accepted accounting practice.

(3) For the purposes of subsection (1)(c), the amount of a return is the amount which by virtue of the return would, in calculating the company's chargeable profits, be treated under section 486B of CTA 2009 (disguised interest to be regarded as profit from loan relationship) as a profit arising to the company from a loan relationship.

But, in calculating that profit for the purposes of this subsection, sections 486B(7) and 486C to 486E of that Act are to be ignored.

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Relevant IP income

357CC Relevant IP income

(1) For the purposes of this Part "relevant IP income" means income falling within any of the Heads set out in—
  (a) subsection (2) (sales income),
  (b) subsection (6) (licence fees),
  (c) subsection (7) (proceeds of sale etc),
  (d) subsection (8) (damages for infringement),
  (e) subsection (9) (other compensation).

This is subject to section 357CE (excluded income).

(2) Head 1 is income arising from the sale by the company of any of the following items—
  (a) items in respect of which a qualifying IP right held by the company has been granted ("qualifying items");
  (b) items incorporating one or more qualifying items;
  (c) items that are wholly or mainly designed to be incorporated into items within paragraph (a) or (b).

(3) For the purposes of this Part an item and its packaging are not to be treated as a single item, unless the packaging performs a function that is essential for the use of the item for the purposes for which it is intended to be used.

(4) In subsection (3) "packaging", in relation to an item, means any form of container or other packaging used for the containment, protection, handling, delivery or presentation of the item, including by way of attaching the item to, or winding the item round, some other article.

(5) In a case where a qualifying item and an item that is designed to incorporate that item ("the parent item") are sold together as, or as part of, a single unit for a single price, the reference in subsection (2)(b) to an item incorporating a qualifying item includes a reference to the parent item.

(6) Head 2 is income consisting of any licence fee or royalty which the company receives under an agreement granting another person any of the following rights only—
  (a) a right in respect of any qualifying IP right held by the company,
  (b) any other right in respect of a qualifying item or process, and
  (c) in the case of an agreement granting any right within paragraph (a) or (b), a right granted for the same purposes as those for which that right was granted.

In this subsection "qualifying process" means a process in respect of which a qualifying IP right held by the company has been granted.

(7) Head 3 is any income arising from the sale or other disposal of a qualifying IP right or an exclusive licence in respect of such a right.

(8) Head 4 is any amount received by the company in respect of an infringement, or alleged infringement, of a qualifying IP right held by the company at the time of the infringement or alleged infringement.

(9) Head 5 is any amount of damages, proceeds of insurance or other compensation, other than an amount in respect of an infringement or alleged infringement of a qualifying IP right, which is received by the company in respect of an event and—

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(a) is paid in respect of any items that fell within subsection (2) at the time of that event, or

(b) represents a loss of income which would, if received by the company at the time of that event, have been relevant IP income.

(10) But income is not relevant IP income by virtue of subsection (8) or (9) unless the event in respect of which the income is received, or any part of that event, occurred at a time when—

(a) the company was a qualifying company, and

(b) an election under section 357A had effect in relation to it.

(11) In a case where the whole of that event does not occur at such a time, subsection (8) or (9) (as the case may be) applies only to so much of the amount received by the company in respect of the event as on a just and reasonable apportionment is properly attributable to such a time.

(12) Any reference in this section to a qualifying IP right held by the company includes a reference to a qualifying IP right in respect of which the company holds an exclusive licence.

357CD Notional royalty

(1) This section applies where—

(a) a company, for the purposes of any trade of the company, holds any rights mentioned in paragraph (a), (b) or (c) of section 357BB(1) (rights to which this Part applies) or an exclusive licence in respect of any such rights, and

(b) the rights are relevant qualifying IP rights.

(2) For the purposes of this section a qualifying IP right is a "relevant qualifying IP right" in relation to an accounting period if—

(a) the total gross income of the trade of the company for the accounting period includes any income arising from things done by the company that involve the exploitation by the company of that right, and

(b) that income is not relevant IP income or excluded income.

Such income is referred to in this section as "IP-derived income".

(3) The company may elect that the notional royalty in respect of the trade for the accounting period is to be treated for the purposes of this Part as if it were relevant IP income.

(4) The notional royalty in respect of a trade of a company for an accounting period is the appropriate percentage of the IP-derived income for that accounting period.

(5) The "appropriate percentage" is the proportion of any IP-derived income for an accounting period which the company would pay another person ("P") for the right to exploit the relevant qualifying IP rights in that accounting period if the company were not otherwise able to exploit them.

(6) For the purposes of determining the appropriate percentage under this section, assume that—

(a) the company and P are dealing at arm's length,

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(b) the company, or the company and persons authorised by it, will have the right to exploit the relevant qualifying IP rights to the exclusion of any other person (including P),

(c) the company will have the same rights in relation to the relevant qualifying IP rights as it actually has,

(d) the relevant qualifying IP rights are conferred on the relevant day,

(e) the appropriate percentage for the accounting period is determined at the beginning of the accounting period,

(f) the appropriate percentage for the accounting period will apply for each succeeding accounting period for which the company will have the right to exploit the relevant qualifying IP rights, and

(g) no income other than IP-derived income will arise from anything done by the company that involves the exploitation by the company of the relevant qualifying IP rights.

(7) In subsection (6)(d) "the relevant day", in relation to a relevant qualifying IP right or a licence in respect of such a right, means—

(a) the first day of the accounting period, or

(b) if later, the day on which the company first began to hold the right or licence.

(8) In determining the appropriate percentage, the company must act in accordance with—

(a) Article 9 of the OECD Model Tax Convention, and

(b) the OECD transfer pricing guidelines.

(9) In this section "excluded income" means any income falling within any of the Heads in section 357CE.

357CE Excluded income

(1) For the purposes of this Part income falling within any of the Heads set out in the following subsections is not relevant IP income—

(a) subsection (2) (ring fence income),

(b) subsection (3) (income attributable to non-exclusive licences).

(2) Head 1 is income arising from oil extraction activities or oil rights.

In this subsection "oil extraction activities" and "oil rights" have the same meaning as in Part 8 (see sections 272 and 273).

(3) Head 2 is income which on a just and reasonable apportionment is properly attributable to a licence (a "non-exclusive licence") held by the company which—

(a) is a licence in respect of an item or process, but

(b) is not an exclusive licence in respect of a qualifying IP right.

(4) In a case where—

(a) a company holds an exclusive licence in respect of a qualifying IP right, and

(b) the licence also confers on the company (or on the company and persons authorised by it) any right in respect of the invention otherwise than to the exclusion of all other persons,

the licence is to be treated for the purposes of this Part as if it were two separate licences, one an exclusive licence that does not confer any such rights, and the other a non-exclusive licence conferring those rights.

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357CF Mixed sources of income

(1) This section applies to any income that—
- (a) is mixed income, or
- (b) is paid under a mixed agreement.

(2) "Mixed income" means the proceeds of sale in a case where an item falling within subsection (2) of section 357CC and an item not falling within that subsection are sold together as, or as part of, a single unit for a single price.

(3) A "mixed agreement" is an agreement providing for—
- (a) one or more of the matters in paragraphs (a) to (c) of subsection (4), and
- (b) one or more of the matters in paragraphs (d) to (g) of that subsection.

(4) The matters are—
- (a) the sale of an item falling within section 357CC(2),
- (b) the grant of any right falling within paragraph (a), (b) or (c) of section 357CC(6),
- (c) a sale or disposal falling within section 357CC(7),
- (d) the sale of any other item,
- (e) the grant of any other right,
- (f) any other sale or disposal,
- (g) the provision of any services.

(5) So much of the income as on a just and reasonable apportionment is properly attributable to—
- (a) the sale of an item falling within section 357CC(2),
- (b) the grant of any right falling within paragraph (a), (b) or (c) of section 357CC(6), or
- (c) a sale or disposal falling within section 357CC(7),

is to be regarded for the purposes of this Part as relevant IP income.

(6) But where the amount of income that on such an apportionment is properly attributable to any of the matters in paragraphs (d) to (g) of subsection (4) is a trivial proportion of the income to which this section applies, all of that income is to be regarded for the purposes of this Part as relevant IP income.

Calculating profits of trade

357CG Adjustments in calculating profits of trade

(1) This section applies for the purposes of determining the relevant IP profits of a trade of a company for an accounting period.

(2) In calculating the profits of the trade for the accounting period—
- (a) there are to be added the amounts in subsection (3), and
- (b) there are to be deducted the amounts in subsection (4).

(3) The amounts to be added are—
- (a) the amount of any debits which are treated as expenses of the trade by virtue of—
  - (i) section 297 of CTA 2009 (debits in respect of loan relationships), or

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(ii) section 573 of CTA 2009 (debits in respect of derivative contracts), [F217] …

(b) the amount of any additional deduction for the accounting period obtained by the company under Part 13 of CTA 2009 for expenditure on research and development in relation to the trade.

[[F218](c) the amount of any additional deduction for the accounting period obtained by the company under Part 15A of CTA 2009 in respect of qualifying expenditure on a television programme, and

(d) the amount of any additional deduction for the accounting period obtained by the company under Part 15B of CTA 2009 in respect of qualifying expenditure on a video game.**]**

(4) The amounts to be deducted are **[**[F219]—

(a) the amount of any R&D expenditure credits (within the meaning of Chapter 6A of Part 3 of CTA 2009) brought into account in calculating the profits of the trade for the accounting period, and**]**

(b) any amounts of finance income brought into account in calculating the profits of the trade for the accounting period.

(For the meaning of "finance income", see section 357CB.)

(5) In a case where there is a shortfall in R&D expenditure in relation to the trade for a relevant accounting period (see section 357CH), the amount of R&D expenditure brought into account in calculating the profits of the trade for that accounting period is to be increased by the amount mentioned in section 357CH(2).

[[F220](5A) In a case where—

(a) the company is—

(i) a television production company in relation to a television programme, or

(ii) a video games development company in relation to a video game, and

(b) there is a shortfall in qualifying expenditure in relation to the separate programme trade or (as the case may be) the separate video game trade for a relevant accounting period (see section 357CHA),

the amount of qualifying expenditure brought into account in calculating the profits of the trade for that accounting period is to be increased by the amount mentioned in section 357CHA(2).**]**

(6) For the purposes of **[**[F221]subsections (5) and (5A)**]** —

[[F222]"qualifying expenditure"—

(a) in relation to a company that is a television production company, has the same meaning as in Chapter 3 of Part 15A of CTA 2009, and

(b) in relation to a company that is a video games development company, has the same meaning as in Chapter 3 of Part 15B of that Act,**]**

"R&D expenditure" means expenditure on research and development in relation to the trade,

"relevant accounting period", in relation to a company, means—

(a) the first accounting period for which—

(i) the company is a qualifying company, and

(ii) an election under section 357A has effect in relation to it, and

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(b) each accounting period that begins before the end of the period of 4 years beginning with that accounting period, [F223]...

"research and development" means activities, other than oil and gas exploration and appraisal, that fall to be treated as research and development in accordance with generally accepted accounting practice.

[[F224]"the separate programme trade", in relation to a television production company, has the same meaning as in Chapter 2 of Part 15A of CTA 2009 (see section 1216B),

"the separate video game trade", in relation to a video games development company, has the same meaning as in Chapter 2 of Part 15B of CTA 2009 (see section 1217B),

"television production company" has the same meaning as in Part 15A of CTA 2009 (see section 1216AE), and

"video games development company" has the same meaning as in Part 15B of CTA 2009 (see section 1217AB).**]**

Textual Amendments

F217 Word in s. 357CG(3)(a) omitted (with effect in accordance with Sch. 18 para. 23 of the amending Act) by virtue of Finance Act 2013 (c. 29), **Sch. 18 paras. 18(2)**, 22; S.I. 2013/1817, art. 2(2); S.I. 2014/1962, art. 2(3)

F218 S. 357CG(3)(c)(d) inserted (with effect in accordance with Sch. 18 para. 23 of the amending Act) by Finance Act 2013 (c. 29), **Sch. 18 paras. 18(2)**, 22; S.I. 2013/1817, art. 2(2); S.I. 2014/1962, art. 2(3)

F219 Words in s. 357CG(4) inserted (with effect in accordance with Sch. 15 para. 27 of the amending Act) by Finance Act 2013 (c. 29), **Sch. 15 para. 10(a)**

F220 S. 357CG(5A) inserted (with effect in accordance with Sch. 18 para. 23 of the amending Act) by Finance Act 2013 (c. 29), **Sch. 18 paras. 18(3)**, 22; S.I. 2013/1817, art. 2(2); S.I. 2014/1962, art. 2(3)

F221 Words in s. 357CG(6) substituted (with effect in accordance with Sch. 18 para. 23 of the amending Act) by Finance Act 2013 (c. 29), **Sch. 18 paras. 18(4)(a)**, 22; S.I. 2013/1817, art. 2(2); S.I. 2014/1962, art. 2(3)

F222 Words in s. 357CG(6) inserted (with effect in accordance with Sch. 18 para. 23 of the amending Act) by Finance Act 2013 (c. 29), **Sch. 18 paras. 18(4)(b)**, 22; S.I. 2013/1817, art. 2(2); S.I. 2014/1962, art. 2(3)

F223 Word in s. 357CG(6) omitted (with effect in accordance with Sch. 18 para. 23 of the amending Act) by virtue of Finance Act 2013 (c. 29), **Sch. 18 paras. 18(4)(c)**, 22; S.I. 2013/1817, art. 2(2); S.I. 2014/1962, art. 2(3)

F224 Words in s. 357CG(6) inserted (with effect in accordance with Sch. 18 para. 23 of the amending Act) by Finance Act 2013 (c. 29), **Sch. 18 paras. 18(4)(d)**, 22; S.I. 2013/1817, art. 2(2); S.I. 2014/1962, art. 2(3)

357CH Shortfall in R&D expenditure

(1) There is a shortfall in R&D expenditure in relation to a trade of a company for a relevant accounting period if the actual R&D expenditure of the trade for the accounting period (as adjusted under subsections (8) to (11)) is less than 75% of the average amount of R&D expenditure.

(2) The amount that is to be added to the actual R&D expenditure for the purposes of section 357CG(5) is an amount equal to the difference between—

(a) 75% of the average amount of R&D expenditure, and

(b) the actual R&D expenditure, as adjusted under subsections (8) to (11).

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(3) In this section—

(a) the "actual R&D expenditure" of a trade of a company for an accounting period is the amount of R&D expenditure that (ignoring section 357CG(5)) is brought into account in calculating the profits of the trade for the accounting period, and

(b) "R&D expenditure" and "relevant accounting period" have the meaning given by section 357CG(6).

(4) The average amount of R&D expenditure is—

$$\frac{E}{N} \times 365$$

where—

E is the amount of R&D expenditure that—

(a) has been incurred by the company during the relevant period, and

(b) has been brought into account in calculating the profits of the trade for any accounting period ending before the first relevant accounting period, and

N is the number of days in the relevant period.

(5) The relevant period is the shorter of—

(a) the period of 4 years ending immediately before the first relevant accounting period, and

(b) the period beginning with the day on which the company begins to carry on the trade and ending immediately before the first relevant accounting period.

(6) For a relevant accounting period of less than 12 months, the average amount of R&D expenditure is proportionately reduced.

(7) Subsections (8) to (11) apply for the purposes of determining—

(a) whether there is a shortfall in R&D expenditure for a relevant accounting period, and

(b) if there is such a shortfall, the amount to be added by virtue of subsection (2).

(8) If the amount of the actual R&D expenditure for a relevant accounting period is greater than the average amount of R&D expenditure, the difference between the two amounts is to be added to the actual R&D expenditure for the next relevant accounting period.

(9) If—

(a) there is not a shortfall in R&D expenditure for a relevant accounting period, but

(b) in the absence of any additional amount, there would be a shortfall in R&D expenditure for that accounting period,

the remaining portion of the additional amount is to be added to the actual R&D expenditure for the next relevant accounting period.

(10) For the purposes of this section—

"additional amount", in relation to a relevant accounting period, means any amount added to the actual R&D expenditure for that accounting period by virtue of subsection (8), (9) or (11), and

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"the remaining portion" of an additional amount is so much of that amount as exceeds the difference between—

(a) the actual R&D expenditure for the relevant accounting period in the absence of the additional amount, and

(b) 75% of the average amount of R&D expenditure.

(11) If—

(a) there is not a shortfall in R&D expenditure for a relevant accounting period, and

(b) there would not be a shortfall in R&D expenditure for that accounting period in the absence of any additional amount,

the additional amount is to be added to the actual R&D expenditure for the next relevant accounting period (in addition to any additional amount so added by virtue of subsection (8)).

[F225 357CH Shortfall in qualifying expenditure

(1) There is a shortfall in qualifying expenditure in relation to the separate programme trade of a television production company or (as the case may be) the separate video game trade of a video games development company for a relevant accounting period if the actual qualifying expenditure of the trade for the accounting period (as adjusted under subsections (8) to (11)) is less than 75% of the average amount of qualifying expenditure.

(2) The amount that is to be added to the actual qualifying expenditure for the purposes of section 357CG(5A) is an amount equal to the difference between—

(a) 75% of the average amount of qualifying expenditure, and

(b) the actual qualifying expenditure, as adjusted under subsections (8) to (11).

(3) In this section—

(a) the "actual qualifying expenditure" of a trade of a company for an accounting period is the amount of qualifying expenditure that (ignoring section 357CG(5A)) is brought into account in calculating the profits of the trade for the accounting period, and

(b) the following terms have the meaning given by section 357CG(6)—

"qualifying expenditure",
"relevant accounting period",
"the separate programme trade",
"the separate video game trade",
"television production company",
"video games development company".

(4) The average amount of qualifying expenditure is—

$$E\ N \times 365$$

where—

E is the amount of qualifying expenditure that—

(a) has been incurred by the company during the relevant period, and

(b) has been brought into account in calculating the profits of the trade for any accounting period ending before the first relevant accounting period, and

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N is the number of days in the relevant period.

(5) The relevant period is the shorter of—

(a) the period of 4 years ending immediately before the first relevant accounting period, and

(b) the period beginning with the day on which the company begins to carry on the trade and ending immediately before the first relevant accounting period.

(6) For a relevant accounting period of less than 12 months, the average amount of qualifying expenditure is proportionately reduced.

(7) Subsections (8) to (11) apply for the purposes of determining—

(a) whether there is a shortfall in qualifying expenditure for a relevant accounting period, and

(b) if there is such a shortfall, the amount to be added by virtue of subsection (2).

(8) If the amount of the actual qualifying expenditure for a relevant accounting period is greater than the average amount of qualifying expenditure, the difference between the two amounts is to be added to the actual qualifying expenditure for the next relevant accounting period.

(9) If—

(a) there is not a shortfall in qualifying expenditure for a relevant accounting period, but

(b) in the absence of any additional amount, there would be a shortfall in qualifying expenditure for that accounting period,

the remaining portion of the additional amount is to be added to the actual qualifying expenditure for the next relevant accounting period.

(10) For the purposes of this section—

"additional amount", in relation to a relevant accounting period, means any amount added to the actual qualifying expenditure for that accounting period by virtue of subsection (8), (9) or (11), and

"the remaining portion" of an additional amount is so much of that amount as exceeds the difference between—

(a) the actual qualifying expenditure for the relevant accounting period in the absence of the additional amount, and

(b) 75% of the average amount of qualifying expenditure.

(11) If—

(a) there is not a shortfall in qualifying expenditure for a relevant accounting period, and

(b) there would not be a shortfall in qualifying expenditure for that accounting period in the absence of any additional amount,

the additional amount is to be added to the actual qualifying expenditure for the next relevant accounting period (in addition to any additional amount so added by virtue of subsection (8)).**]**

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Textual Amendments

F225 S. 357CHA inserted (with effect in accordance with Sch. 18 para. 23 of the amending Act) by Finance Act 2013 (c. 29), **Sch. 18 paras. 19**, 22; S.I. 2013/1817, art. 2(2); S.I. 2014/1962, art. 2(3)

Routine return figure

357CI Routine return figure

(1) To determine the routine return figure in relation to a trade of a company for an accounting period—

Step 1 Take the aggregate of any routine deductions made by the company in calculating the profits of the trade for the accounting period. For the meaning of "routine deductions", see sections 357CJ and 357CK.

Step 2 Multiply that amount by 0.1.

Step 3 Calculate X% of the amount given by Step 2."X%" is the percentage given by Step 2 in section 357C(1).

(2) In a case where—

(a) the company ("C") is a member of a group,

(b) another member of the group incurs expenses on behalf of C,

(c) had they been incurred by C, C would have made a deduction in respect of the expenses in calculating the profits of the trade for the accounting period, and

(d) the deduction would have been a routine deduction,

C is to be treated for the purposes of subsection (1) as having made such a routine deduction.

(3) Where expenses are incurred by any member of the group on behalf of C and any other member of the group, subsection (2) applies in relation to so much of the amount of the expenses as on a just and reasonable apportionment may properly be regarded as incurred on behalf of C.

357CJ Routine deductions

(1) For the purposes of section 357CI "routine deductions" means deductions falling within any of the Heads set out in—

(a) subsection (2) (capital allowances),

(b) subsection (3) (costs of premises),

(c) subsection (4) (personnel costs),

(d) subsection (5) (plant and machinery costs),

(e) subsection (6) (professional services),

(f) subsection (7) (miscellaneous services).

This is subject to section 357CK (deductions that are not routine deductions).

(2) Head 1 is any allowances under CAA 2001.

(3) Head 2 is any deductions made by the company in respect of any premises occupied by the company.

(4) Head 3 is any deductions made by the company in respect of—

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(a) any director or employee of the company, or
(b) any externally provided workers.

(5) Head 4 is any deductions made by the company in respect of any plant or machinery used by the company.

(6) Head 5 is any deductions made by the company in respect of any of the following services—
(a) legal services, other than IP-related services;
(b) financial services, including—
(i) insurance services, and
(ii) valuation or actuarial services;
(c) services provided in connection with the administration or management of the company's directors and employees;
(d) any other consultancy services.

(7) Head 6 is any deductions made by the company in respect of any of the following services—
(a) the supply of water, fuel or power;
(b) telecommunications services;
(c) computing services, including computer software;
(d) postal services;
(e) the transportation of any items;
(f) the collection, removal and disposal of refuse.

(8) In this section—

"externally provided worker" has the same meaning as in Part 13 of CTA 2009 (see section 1128 of that Act),

"IP-related services" means services provided in connection with—
(a) any application for a right to which this Part applies, or
(b) any proceedings relating to the enforcement of any such right,

"premises" includes any land,

"telecommunications service" means any service that consists in the provision of access to, and of facilities for making use of, any telecommunication system (whether or not one provided by the person providing the service), and

"telecommunication system" means any system (including the apparatus comprised in it) which exists for the purpose of facilitating the transmission of communications by any means involving the use of electrical or electro-magnetic energy.

(9) The Treasury may by order amend this section.

357CK Deductions that are not routine deductions

(1) For the purposes of section 357CI a deduction is not a "routine deduction" if it falls within any of the Heads set out in—
(a) subsection (2) (loan relationships and derivative contracts),
(b) subsection (3) (R&D expenses),
(c) subsection (4) (capital allowances for R&D or patents),

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(d) subsection (5) (R&D-related employee share acquisitions).

[F226(e) [subsection (7A) (television production expenditure),

(f) subsection (7B) (video games development expenditure).]

(2) Head 1 is any debits which are treated as expenses of the trade by virtue of —

(a) section 297 of CTA 2009 (debits in respect of loan relationships), or

(b) section 573 of CTA 2009 (debits in respect of derivative contracts).

(3) Head 2 is—

(a) the amount of any expenditure on research and development in relation to the trade

[F227(i) for which an additional deduction for the accounting period is obtained by the company under Part 13 of CTA 2009, and

[F228, or

(ii) in respect of which the company is entitled to an R&D expenditure credit for the accounting period under Chapter 6A of Part 3 of CTA 2009,]

(b) [F229where the company obtains an additional deduction as mentioned in paragraph (a)(i),] the amount of that additional deduction.

(4) Head 3 is any allowances under—

(a) Part 6 of CAA 2001 (research and development allowances), or

(b) Part 8 of CAA 2001 (patent allowances).

(5) Head 4 is the appropriate proportion of any deductions allowed under Part 12 of CTA 2009 (relief for employee share acquisitions) in a case where—

(a) shares are acquired by an employee or another person because of the employee's employment by the company, and

(b) the employee is wholly or partly engaged directly and actively in relevant research and development (within the meaning of section 1042 of CTA 2009).

(6) In subsection (5) "the appropriate proportion", in relation to a deduction allowed in respect of an employee, is the proportion of the staffing costs in respect of the employee which are attributable to relevant research and development for the purposes of Part 13 of CTA 2009 (see section 1124 of that Act).

"Staffing costs" has the same meaning as in that Part (see section 1123 of that Act).

(7) Subsections (5) and (6) of section 1124 of CTA 2009 apply for the purposes of subsection (5)(b) as they apply for the purposes of that section.

[F230(7A) [Head 5 is—

(a) the amount of any qualifying expenditure on a television programme for which an additional deduction for the accounting period is obtained by the company under Part 15A of CTA 2009, and

(b) the amount of that additional deduction.

(7B) Head 6 is—

(a) the amount of any qualifying expenditure on a video game for which an additional deduction for the accounting period is obtained by the company under Part 15B of CTA 2009, and

(b) the amount of that additional deduction.]

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(8) The Treasury may by order amend this section.

Textual Amendments

F226 S. 357CK(1)(e)(f) inserted (with effect in accordance with Sch. 18 para. 23 of the amending Act) by Finance Act 2013 (c. 29), **Sch. 18 paras. 20(2)**, 22; S.I. 2013/1817, art. 2(2); S.I. 2014/1962, art. 2(3)

F227 Words in s. 357CK(3)(a) renumbered as s. 357CK(3)(a)(i) (with effect in accordance with Sch. 15 para. 27 of the amending Act) by Finance Act 2013 (c. 29), **Sch. 15 para. 11(a)**

F228 S. 357CK(3)(a)(ii) and word inserted (with effect in accordance with Sch. 15 para. 27 of the amending Act) by Finance Act 2013 (c. 29), **Sch. 15 para. 11(b)**

F229 Words in s. 357CK(3)(b) inserted (with effect in accordance with Sch. 15 para. 27 of the amending Act) by Finance Act 2013 (c. 29), **Sch. 15 para. 11(c)**

F230 S. 357CK(7A)(7B) inserted (with effect in accordance with Sch. 18 para. 23 of the amending Act) by Finance Act 2013 (c. 29), **Sch. 18 paras. 20(3)**, 22; S.I. 2013/1817, art. 2(2); S.I. 2014/1962, art. 2(3)

Election for small claims treatment

357CL Companies eligible to elect for small claims treatment

(1) A company may elect for small claims treatment for an accounting period if condition A or B is met in relation to the accounting period.

(2) Condition A is that the aggregate of the amounts of qualifying residual profit of each trade of the company for the accounting period does not exceed £1,000,000.

(3) Condition B is that—

(a) the aggregate of the amounts of qualifying residual profit of each trade of the company for the accounting period does not exceed the relevant maximum, and

(b) the company did not take Step 6 in section 357C(1) or 357DA(1) for the purpose of calculating the relevant IP profits of any trade of the company for any previous accounting period beginning within the relevant 4-year period.

(4) In subsection (3)(b) "the relevant 4-year period" means the period of 4 years ending immediately before the accounting period mentioned in subsection (3)(a).

(5) If the company has no associated company in the accounting period, the relevant maximum is £3,000,000.

(6) If the company has one or more associated companies in the accounting period, the relevant maximum is—

£ 3,000,000 1 + N

where N is the number of those associated companies in relation to which an election under section 357A has effect for the accounting period.

(7) For an accounting period of less than 12 months, the relevant maximum is proportionately reduced.

(8) Any amount of qualifying residual profit of a trade of the company that is not greater than nil is to be disregarded for the purposes of this section.

Status: *Point in time view as at 01/04/2014.*
Changes to legislation: *Corporation Tax Act 2010 is up to date with all changes known to be in force on or before 12 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(9) Sections 25 to 30 (definition of "associated companies") have effect for the purposes of this section.

357CM Small claims amount

(1) This section applies where a company elects for small claims treatment for an accounting period.

(2) The small claims amount in relation to each trade of the company for the accounting period is—

(a) if the amount in subsection (3) is lower than the small claims threshold, 75% of the qualifying residual profit of the trade for the accounting period;

(b) in any other case, the amount given by—

SCT T

where—

SCT is the small claims threshold, and

T is the number of trades of the company.

(3) The amount referred to in subsection (2)(a) is—

0.75 × Q R P

where QRP is the aggregate of the amounts of qualifying residual profit of each trade of the company for the accounting period (but see subsection (4)).

(4) Any amount of qualifying residual profit of a trade of the company that is not greater than nil is to be disregarded for the purposes of subsection (3).

(5) If the company has no associated company in the accounting period, the small claims threshold is £1,000,000.

(6) If the company has one or more associated companies in the accounting period, the small claims threshold is—

£ 1,000,000 1 + N

where N is the number of those associated companies in relation to which an election under section 357A has effect for the accounting period.

(7) For an accounting period of less than 12 months, the small claims threshold is proportionately reduced.

(8) Sections 25 to 30 (definition of "associated companies") have effect for the purposes of this section.

Marketing assets return figure

357CN Marketing assets return figure

(1) The marketing assets return figure in relation to a trade of a company for an accounting period is—

NMR − AMR

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where—

NMR is the notional marketing royalty in respect of the trade for the accounting period (see section 357CO), and

AMR is the actual marketing royalty in respect of the trade for the accounting period (see section 357CP).

(2) Where—
  (a) AMR is greater than NMR, or
  (b) the difference between NMR and AMR is less than 10% of the qualifying residual profit of the trade for the accounting period,

the marketing assets return figure is nil.

357CO Notional marketing royalty

(1) The notional marketing royalty in respect of a trade of a company for an accounting period is the appropriate percentage of the relevant IP income for that accounting period.

In this section "relevant IP income", in relation to a trade of a company for an accounting period, means so much of the total gross income of the trade for the accounting period as is relevant IP income.

(2) The "appropriate percentage" is the proportion of any relevant IP income for an accounting period which the company would pay another person ("P") for the right to exploit the relevant marketing assets in that accounting period if the company were not otherwise able to exploit them.

(3) For the purposes of this section a marketing asset is a "relevant marketing asset" in relation to an accounting period if the relevant IP income of the trade of the company for the accounting period includes any income arising from things done by the company that involve the exploitation by the company of that marketing asset.

(4) For the purposes of determining the appropriate percentage under this section, assume that—
  (a) the company and P are dealing at arm's length,
  (b) the company, or the company and persons authorised by it, will have the right to exploit the relevant marketing assets to the exclusion of any other person (including P),
  (c) the company will have the same rights in relation to the relevant marketing assets as it actually has,
  (d) the right to exploit the relevant marketing assets is conferred on the relevant day,
  (e) the appropriate percentage for the accounting period is determined at the beginning of the accounting period,
  (f) the appropriate percentage for the accounting period will apply for each succeeding accounting period for which the company will have the right to exploit the relevant marketing assets, and
  (g) no income other than relevant IP income will arise from anything done by the company that involves the exploitation by the company of the relevant marketing assets.

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(5) In subsection (4)(d) "the relevant day", in relation to a relevant marketing asset, means—
  (a) the first day of the accounting period, or
  (b) if later, the day on which the company first acquired the relevant marketing asset or the right to exploit the asset.

(6) In determining the appropriate percentage, the company must act in accordance with—
  (a) Article 9 of the OECD Model Tax Convention, and
  (b) the OECD transfer pricing guidelines.

(7) In this section "marketing asset" means any of the following (whether or not capable of being transferred or assigned)—
  (a) anything in respect of which proceedings for passing off could be brought, including a registered trade mark (within the meaning of the Trade Marks Act 1994),
  (b) anything that corresponds to a marketing asset within paragraph (a) and is recognised under the law of a country or territory outside the United Kingdom,
  (c) any signs or indications (so far as not falling within paragraph (a) or (b)) which may serve, in trade, to designate the geographical origin of goods or services, and
  (d) any information which relates to customers or potential customers of the company, or any other member of a group of which the company is a member, and is intended to be used for marketing purposes.

357CP Actual marketing royalty

(1) The actual marketing royalty in respect of a trade of a company for an accounting period is X% of the aggregate of any sums which—
  (a) were paid by the company for the purposes of acquiring any relevant marketing assets, or the right to exploit any such assets, and
  (b) were brought into account as debits in calculating the profits of the trade for the accounting period.

(2) In this section—
  "relevant marketing assets" has the same meaning as in section 357CO, and
  "X%" is the percentage given by Step 2 in section 357C(1).

Profits arising before grant of right

357CQ Profits arising before grant of right

(1) This section applies where a company—
  (a) holds a right mentioned in paragraph (a), (b) or (c) of section 357BB(1) (rights to which this Part applies) or an exclusive licence in respect of such a right, or
  (b) would hold such a right or licence but for the fact that the company disposed of any rights in the invention or (as the case may be) the licence before the right was granted.

(2) The company may elect that, for the purposes of determining the relevant IP profits of a trade of the company for the accounting period in which the right is granted, there is

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to be added the amount determined in accordance with subsection (3) (the " additional amount ").

(3) The additional amount is the difference between—
- (a) the aggregate of the relevant IP profits of the trade for each relevant accounting period, and
- (b) the aggregate of what the relevant IP profits of the trade for each relevant accounting period would have been if the right had been granted on the relevant day.

(4) For the purposes of determining the additional amount, the amount of any relevant IP profits to which section 357A does not apply by virtue of Chapter 5 (relevant IP losses) is to be disregarded.

(5) In this section "relevant accounting period" means—
- (a) the accounting period of the company in which the right is granted, and
- (b) any earlier accounting period of the company which meets the conditions in subsection (6).

(6) The conditions mentioned in subsection (5)(b) are—
- (a) that it is an accounting period for which an election made by the company under section 357A has effect,
- (b) that it is an accounting period for which the company is a qualifying company, and
- (c) that it ends on or after the relevant day.

(7) In this section "the relevant day" is the later of—
- (a) the first day of the period of 6 years ending with the day on which the right is granted, or
- (b) the day on which—
  - (i) the application for the grant of the right was filed, or
  - (ii) in the case of a company that holds an exclusive licence in respect of the right, the licence was granted.

(8) Where the company would be a qualifying company for an accounting period but for the fact that the right had not been granted at any time during that accounting period, the company is to be treated for the purposes of this section as if it were a qualifying company for that accounting period.

(9) Where the company would be a qualifying company for the accounting period in which the right was granted but for the fact that the company disposed of the rights or licence mentioned in subsection (1)(b) before the right was granted, the company is to be treated for the purposes of section 357A as if it were a qualifying company for that accounting period.

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CHAPTER 4

STREAMING

357D Alternative method of calculating relevant IP profits: "streaming"

(1) A company may elect to apply section 357DA (instead of section 357C) for the purposes of determining the relevant IP profits of any trade of the company for an accounting period.

(2) An election made under subsection (1) is known as a "streaming election".

(3) A streaming election has effect—
  (a) for the accounting period for which it is made, and
  (b) for each subsequent accounting period.

This is subject to section 357DB.

(4) If any of the mandatory streaming conditions in section 357DC is met in relation to a trade of a company for an accounting period, the company must apply section 357DA (instead of section 357C) for the purposes of determining the relevant IP profits of the trade for that accounting period.

357DA Relevant IP profits

(1) To determine the relevant IP profits of a trade of a company for an accounting period in accordance with this section—

Step 1 Take any amounts which are brought into account as credits in calculating the profits of the trade for the accounting period, other than any amounts of finance income (see section 357CB), and divide them into two "streams", amounts of relevant IP income (see sections 357CC and 357CD) and amounts that are not amounts of relevant IP income. The stream consisting of relevant IP income is "the relevant IP income stream".

Step 2 Take any amounts which are brought into account as debits in calculating the profits of the trade for the accounting period, other than any amounts referred to in section 357CG(3), and allocate them on a just and reasonable basis between the two streams. (See also section 357CG(5).)

Step 3 Deduct from the relevant IP income stream the amounts allocated to that stream under Step 2.

Step 4 Deduct from the amount given by Step 3 the routine return figure (see subsection (4)). The amount given by this step is the "qualifying residual profit".

If the amount of the qualifying residual profit is not greater than nil, go to Step 7.

Step 5 If the company has elected for small claims treatment, calculate the small claims amount in relation to the trade (see section 357CM). If the company has not, go to Step 6.

Step 6 Deduct from the qualifying residual profit the marketing assets return figure (see section 357CN and subsection (6)).

Step 7 If the company has made an election under section 357CQ (which provides in certain circumstances for profits arising before the grant of a right to be treated as relevant IP profits), add to the amount given by Step 5 or 6 (or, if the amount of the qualifying residual profit was not greater than nil, Step 4) any amount determined in accordance with subsection (3) of that section.

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(2) If the amount given by subsection (1) is greater than nil, that amount is the relevant IP profits of the trade for the accounting period.

(3) If the amount given by subsection (1) is less than nil, that amount is the relevant IP losses of the trade for the accounting period (see Chapter 5).

(4) The routine return figure, in relation to a trade of a company for an accounting period, is 10% of the aggregate of any routine deductions which—
   (a) have been made by the company in calculating the profits of the trade for the accounting period, and
   (b) have been allocated to the relevant IP income stream under Step 2.

   In this subsection "routine deductions" is to be read in accordance with sections 357CJ and 357CK.

(5) Subsections (2) and (3) of section 357CI have effect for the purposes of subsection (4) of this section as they have effect for the purposes of that section.

(6) For the purposes of determining the marketing assets return figure in Step 6, section 357CP (actual marketing royalty) has effect as if the reference to X% of the aggregate of any sums falling within subsection (1) of that section were a reference to the aggregate of any such sums which have been allocated to the relevant IP income stream under Step 2.

357DB Method of allocation

(1) In this section "method of allocation" means the method of allocating, for the purposes of Step 2 in section 357DA(1), the amounts mentioned in that step.

(2) A company that applies section 357DA for the purposes of determining the relevant IP profits of a trade of the company for an accounting period must use the same method of allocation in relation to the trade for that accounting period as it used in the last accounting period of the company for which it applied that section for the purposes of determining the relevant IP profits of the trade.

(3) But subsection (2) does not apply if there is a change of circumstances relating to the trade which makes the use of that method of allocation in relation to the trade for the accounting period inappropriate.

(4) In such a case, the company may—
   (a) use a different method of allocation in relation to the trade for the accounting period (and subsection (2) applies accordingly for subsequent accounting periods), or
   (b) elect not to apply section 357DA for the purposes of determining the relevant IP profits of the trade for the accounting period.

(5) Subsection (4)(b) does not prevent the company making a fresh streaming election in relation to the trade for any subsequent accounting period.

357DC The mandatory streaming conditions

(1) Mandatory streaming condition A is met in relation to a trade of a company for an accounting period if—

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(a) any amount brought into account as a credit in calculating the profits of the trade for the accounting period is not fully recognised as revenue for the accounting period, and

(b) the amount, or the aggregate of any such amounts, is substantial.

(2) An amount is a "substantial" amount for the purposes of this section if it is greater than—

(a) £2,000,000, or

(b) 20% of the total gross income of the trade for the accounting period,

whichever is the lower.

(3) But an amount is not a substantial amount for the purposes of this section if it does not exceed £50,000.

(4) The reference in subsection (1)(a) to an amount brought into account as a credit includes a reference to any amount brought into account by virtue of section 147 of TIOPA 2010 (basic transfer-pricing rule).

(5) Mandatory streaming condition B is met in relation to a trade of a company for an accounting period if the total gross income of the trade for the accounting period includes—

(a) relevant IP income, and

(b) a substantial amount of licensing income that is not relevant IP income.

(6) In subsection (5) "licensing income" means income consisting of any licence fee, royalty or other payment which the company has received under an agreement granting another person any right in respect of any intellectual property held by the company.

"Intellectual property" has the meaning given by section 712(3) of CTA 2009.

(7) Mandatory streaming condition C is met in relation to a trade of a company for an accounting period if the total gross income of the trade for the accounting period includes—

(a) income that is not relevant IP income, and

(b) a substantial amount of relevant Head 2 income.

(8) Income is "relevant Head 2 income" for the purposes of subsection (7) if—

(a) it is relevant IP income received under an agreement falling within subsection (6) of section 357CC, and

(b) every qualifying IP right—

(i) in respect of which a right within paragraph (a) of that subsection is granted by the agreement, or

(ii) which is granted in respect of an invention in respect of which a right within paragraph (b) of that subsection is granted by the agreement,

is a right in respect of which the company holds an exclusive licence.

(9) In a case where—

(a) relevant IP income is received under an agreement falling within section 357CC(6), but

(b) the condition in paragraph (b) of subsection (8) above is not met,

so much of the relevant IP income as on a just and reasonable apportionment is attributable to any qualifying IP right falling within that paragraph is relevant Head 2 income for the purposes of subsection (7).

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CHAPTER 5

RELEVANT IP LOSSES

357E Company with relevant IP losses: set-off amount

Where a company would be entitled to make a deduction under section 357A(2) in calculating the profits of a trade of the company for an accounting period but for the fact that there are relevant IP losses of the trade for the accounting period, there is a "set-off amount" in relation to the trade of the company for the accounting period which is equal to the amount of the relevant IP losses.

357EA Effect of set-off amount on company with more than one trade

(1) This section applies where—
  (a) there is a set-off amount in relation to a trade of a company for an accounting period, and
  (b) the company carries on any other trade.

(2) The set-off amount is to be reduced (but not to below nil) by any relevant IP profits of that other trade for the accounting period.

(3) Section 357A does not apply in relation to so much of the amount of relevant IP profits of that other trade for the accounting period as is equal to the amount by which the set-off amount is reduced under subsection (2).

357EB Allocation of set-off amount within a group

(1) This section applies where—
  (a) there is a set-off amount in relation to a trade of a company for an accounting period,
  (b) the company is a member of a group, and
  (c) the set-off amount has not been reduced to nil by the operation of section 357EA(2).

(2) The set-off amount (or so much of it as remains after the operation of section 357EA(2)) is to be reduced (but not to below nil) by any relevant IP profits of a trade of a relevant group member for the relevant accounting period.

(3) For the purposes of this section—
  (a) "relevant group member" means another member of the group that has made an election under section 357A and is a qualifying company for the relevant accounting period, and
  (b) "relevant accounting period", in relation to a company, means the accounting period of the company in or at the end of which the accounting period mentioned in subsection (1)(a) ends.

(4) Section 357A does not apply in relation to so much of the amount of relevant IP profits of the trade of the relevant group member for the relevant accounting period as is equal to the amount by which the set-off amount (or so much of it as remains after the operation of section 357EA(2)) is reduced under subsection (2).

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(5) Where there is more than one relevant group member, the relevant group members may jointly determine the order in which subsection (2) is to apply to them.

(6) If no determination is made under subsection (5), subsection (2) is to apply first to the trade that has the greatest amount of relevant IP profits of any trade of any of the relevant group members for a relevant accounting period, then to the trade that has the second greatest amount of relevant IP profits of any of those trades for such a period, and so on.

357EC Carry-forward of set-off amount

(1) This section applies where—
- (a) there is a set-off amount in relation to a trade of a company for an accounting period, and
- (b) the set-off amount has not been reduced to nil by the operation of section 357EA(2) or 357EB(2).

(2) The set-off amount (or so much of it as remains after the operation of section 357EA(2) or 357EB(2)) is to be reduced (but not to below nil) by the amount of any relevant IP profits of the trade of the company for the current accounting period.

The "current accounting period" is the accounting period immediately following the accounting period mentioned in subsection (1)(a).

(3) Section 357A does not apply in relation to so much of the amount of relevant IP profits of the trade of the company for the current accounting period as is equal to the amount by which the set-off amount (or so much of it as remains after the operation of section 357EA(2) or 357EB(2)) is reduced under subsection (2).

(4) If any portion of the set-off amount remains after the operation of subsection (2), that portion ("the remaining portion") is to be treated as the set-off amount in relation to the trade of the company for the current accounting period (and the provisions of this Chapter apply accordingly).

(5) If there are relevant IP losses of the trade of the company for the current accounting period, the set-off amount in relation to the trade of the company for that accounting period is the aggregate of the remaining portion and an amount equal to the amount of those relevant IP losses (and the provisions of this Chapter apply accordingly).

357ED Company ceasing to carry on trade, etc

(1) This section applies where—
- (a) there is a set-off amount in relation to a trade of a company for an accounting period, and
- (b) at any time in the accounting period immediately following that accounting period, the company meets any of the conditions in subsection (2).

(2) The conditions are—
- (a) that the company ceases to carry on the trade,
- (b) that the company ceases to be within the charge to corporation tax in respect of the trade, or
- (c) that any election made by the company under section 357A ceases to have effect.

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(3) Sections 357EA to 357EC continue to have effect in relation to the set-off amount subject to the following provisions of this section.

(4) Section 357EB has effect as if—

(a) the reference in subsection (1)(b) to the company being a member of a group were a reference to the company having been a member of the group at the time referred to in subsection (1)(b) of this section,

(b) for subsection (2) there were substituted—

"(2) The set-off amount (or so much of it as remains after the operation of section 357EA(2)) is to become, or be added to, the set-off amount in relation to a trade of a relevant group member for the relevant accounting period.",

(c) subsection (4) were omitted,

(d) for the words after "determine" in subsection (5) there were substituted " the relevant group member to which subsection (2) is to apply ", and

(e) for subsection (6) there were substituted—

"(6) If no determination is made under subsection (5), subsection (2) is to apply to the trade that has the greatest amount of relevant IP profits of any trade of any of the relevant group members for a relevant accounting period.

(7) If there is no relevant group member with any relevant IP profits of a trade for the relevant accounting period, subsection (2) is to apply to the trade that has the greatest set-off amount in relation to any trade of any of the relevant group members for a relevant accounting period."

(5) Sections 357EA to 357EC cease to have effect in relation to the set-off amount in relation to the trade of the company for an accounting period if—

(a) the company is not carrying on any other trade in that accounting period, and

(b) in the case of a company that was a member of a group at the time referred to in subsection (1)(b) of this section, none of the members of the group is a relevant group member (within the meaning of section 357EB).

(6) In such a case, the set-off amount (so far as remaining after the operation of those sections) is to be reduced to nil.

357EE Transfer of a trade between group members

(1) This section applies where—

(a) there is a set-off amount in relation to a trade of a company for an accounting period,

(b) the company is a member of a group,

(c) the company ceases to carry on the trade, and

(d) another company ("the transferee") that is a member of the group begins to carry on that trade.

(2) For the purposes of this Chapter an amount equal to the set-off amount is to become, or be added to, the set-off amount in relation to the trade of the transferee for the accounting period in which the transferee begins to carry on the trade.

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357EF Payments between group members in consequence of section 357EB

(1) This section applies if—

(a) there is a set-off amount in relation to a trade of a company for an accounting period,

(b) subsection (2) of section 357EB has effect in relation to a relevant group member for the relevant accounting period (within the meaning of that section),

(c) the company and the relevant group member have an agreement between them in relation to the relevant IP losses of the company, and

(d) as a result of the agreement the company makes a payment to the relevant group member that does not exceed the reduction in the relevant IP profits of the relevant group member arising under section 357EB(4).

(2) The payment—

(a) is not to be taken into account in determining the profits or losses of either company for corporation tax purposes, and

(b) is not for any purposes of the Corporation Tax Acts to be regarded as a distribution.

(3) In a case where section 357ED applies (company ceasing to carry on trade, etc), the reference in subsection (1)(d) to the reduction in the relevant IP profits of the relevant group member is to be read as a reference to the amount that becomes, or is added to, the set-off amount in relation to a trade of the relevant group member for the relevant accounting period under section 357EB(2).

CHAPTER 6

ANTI-AVOIDANCE

Licences conferring exclusive rights

357F Licences conferring exclusive rights

A licence that confers any right in respect of a qualifying IP right to the exclusion of all other persons is not to be regarded as an exclusive licence if the main purpose, or one of the main purposes, of conferring the right is to secure that the licence is an exclusive licence for the purposes of this Part.

Incorporation of qualifying items

357FA Incorporation of qualifying items

(1) Income arising from the sale of any item that incorporates a qualifying item is not relevant IP income if the main purpose, or one of the main purposes, of incorporating the qualifying item is to secure that income arising from any such sale is relevant IP income.

(2) "Qualifying item" has the same meaning as in section 357CC(2).

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Tax advantage schemes

357FB Tax advantage schemes

(1) This section applies where—

(a) a company is entitled to make a deduction under section 357A(2) in calculating the profits of a trade of the company for an accounting period,

(b) the company is or has at any time been a party to a scheme, and

(c) the main purpose, or one of the main purposes, of the company or, where the company is a member of a group, any member of the group in being a party to the scheme is (or was) to obtain the chance of securing a relevant tax advantage.

(2) There is a "relevant tax advantage" for the purposes of this section if—

(a) (apart from this section) there would be an increase in the amount of any deduction made under section 357A(2) in calculating the profits of a trade of the company or (as the case may be) any other member of the group for any accounting period, and

(b) the increase would arise from—

(i) the avoidance of the operation of any provision of this Part,

(ii) artificially inflating the amount of relevant IP income brought into account in calculating those profits (see subsection (3)), or

(iii) a mismatch between relevant IP income and expenditure (see subsection (4)).

(3) The reference in subsection (2)(b) to artificially inflating the amount of relevant IP income brought into account in calculating the profits mentioned in subsection (2)(a) is a reference to doing any of the following—

(a) bringing into account in calculating those profits an amount of relevant IP income that wholly or substantially corresponds to an increase in the amounts brought into account as debits in calculating those profits;

(b) bringing into account in calculating those profits an additional amount of relevant IP income that wholly or substantially corresponds to a decrease in the amount of income that is not relevant IP income which is brought into account in calculating those profits.

(4) For the purposes of this section there is a mismatch between relevant IP income and expenditure if—

(a) any relevant IP income brought into account in calculating the profits mentioned in subsection (2)(a) is attributable to any qualifying IP right or an exclusive licence in respect of any such right, and

(b) any expenditure incurred in relation to that right is brought into account in calculating the profits of a trade of the company or (as the case may be) any other member of the group for an accounting period for which an election under section 357A did not have effect.

(5) The amount of the deduction which may be made by the company for the accounting period mentioned in subsection (1)(a) is the amount that would secure that no relevant tax advantage arises (and may be nil).

Status: *Point in time view as at 01/04/2014.*
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(6) In this section "scheme" includes any scheme, arrangements or understanding of any kind whatever, whether or not legally enforceable, involving a single transaction or two or more transactions.

CHAPTER 7

SUPPLEMENTARY

Elections under section 357A

357G Making of election under section 357A

(1) An election made by a company under section 357A is made by giving notice to an officer of Revenue and Customs.

(2) The notice must specify the first accounting period of the company for which the election is to have effect.

(3) The notice must be given on or before the last day on which an amendment of the company's tax return for that accounting period could be made under paragraph 15 of Schedule 18 to FA 1998.

(4) The election has effect in relation to each trade carried on by the company.

(5) Subject to section 357GA, the election has effect for the accounting period specified in the notice and all subsequent accounting periods of the company.

357GA Revocation of election made under section 357A

(1) A company may revoke an election made by it under section 357A by giving notice to an officer of Revenue and Customs.

(2) The notice must specify the first accounting period of the company for which the revocation is to have effect.

(3) The notice must be given on or before the last day on which an amendment of the company's tax return for that accounting period could be made under paragraph 15 of Schedule 18 to FA 1998.

(4) The revocation has effect in relation to the accounting period specified in the notice and all subsequent accounting periods of the company.

(5) An election made under section 357A by a company that has given notice under this section does not have effect in relation to any accounting period of the company that begins before the end of the period of 5 years beginning with the day after the last day of the accounting period specified in the notice.

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Partnerships

357GB Application of this Part in relation to partnerships

(1) This section applies if a firm (within the meaning of CTA 2009) carries on a trade and any partner in the firm is a company within the charge to corporation tax.

Such a partner is referred to in this section as a "corporate partner".

(2) Subject to the following provisions of this section, this Part applies in relation to the firm as it applies in relation to a company.

(3) Any election under this Part—
- (a) may be made or revoked not by the firm but instead by any one or more of the corporate partners (whether jointly or otherwise), and
- (b) has effect in relation to each corporate partner making or revoking it as if made or revoked by the firm.

(4) Accordingly, any reference in section 357G(3) or 357GA(3) (time limit for making or revoking elections under section 357A) to the company making or revoking the election is to be read as a reference to the corporate partner so doing.

(5) Section 1261 of CTA 2009 (accounting periods of firms) applies for the purposes of this Part as it applies for the purposes of Part 17 of that Act.

(6) Section 357B (meaning of "qualifying company") has effect as if in subsection (1) the words "in the case of a company that is a member of a group" were omitted.

(7) For the purposes of this Part the firm meets the development condition in relation to a right to which this Part applies if—
- (a) the firm has at any time carried out qualifying development in relation to the right, or
- (b) there is a relevant corporate partner in the firm who meets the development condition in relation to the right.

(8) A "relevant corporate partner" is a corporate partner who is entitled to a share of at least 40% of the profits or losses of the firm for any accounting period of the firm.

(9) Section 357BD applies for the purposes of subsection (7)(a) of this section as it applies for the purposes of section 357BC.

(10) Section 357BE (active ownership condition) has effect as if the reference in subsection (4) to section 357BC(2) or (3) included a reference to subsection (7)(a) of this section.

(11) Sections 357CL and 357CM (election for small claims treatment) have effect as if—
- (a) any reference to a company having one or more associated companies were a reference to any corporate partner in relation to which an election under section 357CL has effect having one or more associated companies, and
- (b) any reference to a company having no associated company were a reference to each such corporate partner having no associated company.

(12) Subsection (13) applies where a corporate partner is a party to an arrangement at any time during an accounting period of the firm which produces for the corporate partner a return within section 357CB(1)(c).

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(13) For the accounting period of the firm the corporate partner's share of a profit or loss of a trade carried on by the firm is determined for corporation tax purposes as if no election under section 357A had effect in relation to the trade.

Cost-sharing arrangements

357GC Application of this Part in relation to cost-sharing arrangements

(1) This section applies where a company is a party to an arrangement under which—
- (a) one of the parties to the arrangement holds a qualifying IP right or an exclusive licence in respect of such a right,
- (b) each of the parties to the arrangement is required to contribute to the cost of, or perform activities for the purpose of, creating or developing the invention or any item or process incorporating the invention,
- (c) under the arrangement each of those parties—
  - (i) is entitled to a share of any income attributable to the right or licence, or
  - (ii) has one or more rights in respect of the invention, and
- (d) the amount of any income received by each of those parties is proportionate to its participation in the arrangement as described in paragraph (b).

(2) The company is to be treated for the purposes of this Part as if it held the qualifying IP right or (as the case may be) the exclusive licence in respect of the qualifying IP right.

(3) But this section does not apply where the arrangement produces for the company a return within section 357CB(1)(c).

(4) The reference in subsection (1)(b) to developing the invention includes developing ways in which the invention may be used or applied.

Interpretation

357GD Meaning of "group"

(1) For the purposes of this Part a company ("company A") is a member of a group at any time if any other company is at that time associated with company A.

(2) The group consists of company A and each company in relation to which the condition in subsection (1) is met.

(3) For the purposes of this section a company ("company B") is associated with company A at a time ("the relevant time") if any of the following five conditions is met.

(4) The first condition is that the financial results of company A and company B, for a period that includes the relevant time, meet the consolidation condition.

(5) The second condition is that there is a connection between company A and company B for the accounting period of company A in which the relevant time falls.

(6) The third condition is that, at the relevant time, company A has a major interest in company B or company B has a major interest in company A.

(7) The fourth condition is that—

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(a) the financial results of company A and a third company, for a period that includes the relevant time, meet the consolidation condition, and
(b) at the relevant time the third company has a major interest in company B.

(8) The fifth condition is that—
(a) there is a connection between company A and a third company for the accounting period of company A in which the relevant time falls, and
(b) at the relevant time the third company has a major interest in company B.

(9) In this section, the financial results of any two companies for any period meet "the consolidation condition" if—
(a) they are required to be fully comprised in group accounts,
(b) they would be required to be fully comprised in such accounts but for the application of an exemption, or
(c) they are in fact fully comprised in such accounts.

(10) In subsection (9) "group accounts" means accounts prepared under—
(a) section 399 of the Companies Act 2006, or
(b) any corresponding provision of the law of a country or territory outside the United Kingdom.

(11) The following provisions apply for the purposes of this section—
sections 466 to 471 of CTA 2009 (companies connected for accounting period), and
sections 473 and 474 of CTA 2009 (meaning of "major interest").

357GE Other interpretation

(1) In this Part—
"invention", in relation to a right to which this Part applies, means the item or process in respect of which the right is granted,
"item" includes any substance,
"the OECD Model Tax Convention" means—
(a) the version of the Model Tax Convention on Income and on Capital published in July 2010 by the Organisation for Economic Co-operation and Development ("the OECD"), or
(b) such other document approved and published by the OECD in place of that (or a later) version or in place of that Convention as is designated for the time being by order made by the Treasury,
"the OECD transfer pricing guidelines" means—
(a) the version of the Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations published in July 2010 by the OECD, or
(b) such other document approved and published by the OECD in place of that (or a later) version or in place of those Guidelines as is designated for the time being by order made by the Treasury,

including, in either case, such material published by the OECD as part of (or by way of update or supplement to) the version or other document concerned as may be so designated, and

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"qualifying residual profit" of a trade, in relation to any accounting period, is the amount obtained by the application of Steps 1 to 4 in section 357C or (as the case may be) section 357DA in relation to the trade for the accounting period.

(2) Any reference in this Part to calculating the profits of a trade of a company for an accounting period is a reference to calculating those profits for corporation tax purposes (and any reference to the profits or losses of a trade of a company for an accounting period is to be read accordingly).**]**

PART 9

LEASING PLANT OR MACHINERY

CHAPTER 1

INTRODUCTION

358 Introduction to Part

(1) This Part makes provision about the taxation of leasing transactions involving companies.

(2) Chapter 2 makes provision about the treatment for corporation tax purposes of companies which are lessors or lessees under long funding leases of plant or machinery.

(3) The sales of lessors Chapters make provision about the taxation of a company which is within the charge to corporation tax in respect of a business of leasing plant or machinery (within the meaning of Chapter 3 or 4)—
- (a) on the sale of, or certain other changes in interests in, the company, and
- (b) in certain circumstances where the company's interest in the business changes.

(4) In this Part "the sales of lessors Chapters" means Chapters 3 to 6.

(5) In the sales of lessors Chapters—
- (a) Chapter 3 deals with the case of a qualifying change of ownership in relation to the company where it carries on the business otherwise than in partnership,
- (b) Chapter 4 deals with—
  - (i) the case of a qualifying change in the company's interest in the business where it carries on the business in partnership with other persons, and
  - (ii) the case of a qualifying change of ownership in relation to any such company,
- (c) Chapter 5 contains anti-avoidance provisions, and
- (d) Chapter 6 provides for the general interpretation of those Chapters.

(6) For the meaning of "qualifying change of ownership" in the sales of lessors Chapters, see sections 392 to 398.

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(7) For the meaning of "qualifying change in a company's interest in a business" in Chapter 4, see section 415.

CHAPTER 2

LONG FUNDING LEASES OF PLANT OR MACHINERY

Introduction

359 Overview of Chapter

(1) This Chapter makes provision about the calculation for corporation tax purposes of the profits of companies which are—
  (a) lessors of plant or machinery under long funding finance leases (see sections 360 to 362),
  (b) lessors of plant or machinery under long funding operating leases (see sections 363 to 369),
  (c) lessees of plant or machinery under long funding finance leases (see sections 377 and 378), or
  (d) lessees of plant or machinery under long funding operating leases (see sections 379 and 380).

(2) Sections 370 to 376 make provision about cases where sections 360 to 369 are not to apply.

(3) For the meaning of expressions used in this section and in this Chapter generally, see section 381 and, in particular—
  (a) subsection (1) of that section (which provides for the application of Chapter 6A of Part 2 of CAA 2001 (interpretation of provisions about long funding leases) to this Chapter), and
  (b) subsections (2) and (3) of that section (which specify the provisions of that Chapter in which some expressions used in this Chapter are defined).

Lessors under long funding finance leases

360 Lessor under long funding finance lease: rental earnings

(1) This section applies for any period of account of a company in which it is the lessor of any plant or machinery under a long funding finance lease.

(2) The amount to be brought into account as the lessor's income from the lease for the period is the amount of the rental earnings in respect of the lease for the period.

(3) The amount of those rental earnings is the amount which, in accordance with generally accepted accounting practice, falls (or would fall) to be treated as the gross return on investment for that period in respect of the lease.

(4) If the lease is one which, in accordance with such practice, falls (or would fall) to be treated as a loan for the period of account, so much of the rentals under the lease as

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falls (or would fall) to be treated as interest is treated for the purposes of this section as rental earnings.

361 Lessor under long funding finance lease: exceptional items

(1) This section applies if—
- (a) a company is or has been the lessor under a long funding finance lease, and
- (b) an exceptional profit or loss arises to the company in connection with the lease.

(2) A profit or loss is exceptional for the purposes of subsection (1) if—
- (a) in accordance with generally accepted accounting practice it falls (or would fall) to be recognised for accounting purposes in a period of account, but
- (b) apart from this section, it would not be brought into account in calculating the profits of the company for corporation tax purposes.

(3) Such a profit is treated for corporation tax purposes as income of the company attributable to the lease.

(4) Such a loss is treated for corporation tax purposes as a revenue expense incurred by the company in connection with the lease.

(5) It does not matter for the purposes of this section whether the profit or loss is of an income or capital nature.

(6) The reference in subsection (2) to an amount falling to be recognised for accounting purposes in a period of account is a reference to an amount falling to be recognised for accounting purposes in—
- (a) the company's profit and loss account, income statement or statement of comprehensive income for that period,
- (b) the company's statement of total recognised gains and losses, statement of recognised income and expense, statement of changes in equity or statement of income and retained earnings for that period, or
- (c) any other statement of items taken into account in calculating the company's profits or losses for that period.

362 Lessor under long funding finance lease making termination payment

(1) This section applies if—
- (a) a company is or has been the lessor under a long funding finance lease,
- (b) the lease terminates, and
- (c) a sum calculated by reference to the termination value is paid to the lessee.

(2) No deduction in respect of the sum is allowed in calculating the profits of the company for corporation tax purposes.

(3) This section does not prevent a deduction in respect of a sum so far as it is brought into account in determining the company's rental earnings.

(4) For the meaning of “termination value”, see section 381(3)(m).

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Lessors under long funding operating leases

363 Lessor under long funding operating lease: periodic deduction

(1) This section applies if a company is the lessor of any plant or machinery under a long funding operating lease for the whole or part of a period of account.

(2) A deduction is allowed in calculating the profits of the company for the period of account for corporation tax purposes.

(3) The amount of the deduction is so much of the expected gross reduction in value over the term of the lease as is attributable to the period of account.

(4) The expected gross reduction in value over the term of the lease is—
- (a) the starting value of the plant or machinery, less
- (b) the amount which at the commencement of the term of the lease is expected to be its residual value (or, if section 365 applies, would have been expected to be that value had that value been estimated at that time).

(5) The expected gross reduction in value over the term of the lease that is attributable to the period of account is found by apportioning that reduction on a time basis according to the proportion of the term of the lease that falls in the period of account.

(6) For the meaning of "starting value", see—
- (a) section 364 ("starting value": general), and
- (b) section 365 ("starting value" where plant or machinery originally unqualifying).

(7) For the meaning of "residual value", see section 381(4).

364 "Starting value": general

(1) This section is about the meaning of "starting value" in section 363 in relation to a long funding operating lease ("the section 363 lease").

(2) But this section does not apply if the conditions in section 365(2) ("starting value" where plant or machinery originally unqualifying) are met.

(3) If the only use of the plant or machinery by the lessor has been the leasing of it under the section 363 lease as a qualifying activity, the starting value is the amount of the expenditure incurred by the lessor on the provision of the plant or machinery ("cost").

(4) If subsection (3) does not apply, the starting value depends on the last previous use of the plant or machinery by the lessor.

(5) If that use was the leasing of it under another long funding operating lease as a qualifying activity, the starting value is the market value of the plant or machinery at the commencement of the term of the section 363 lease ("market value").

(6) If that use was the leasing of it under a long funding finance lease as a qualifying activity, the starting value is the value at which the plant or machinery is recognised in the books or other finance records of the lessor at the commencement of the term of the section 363 lease.

(7) If that use was for the purposes of a qualifying activity other than leasing under a long funding lease, the starting value is the lower of cost and market value.

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(8) For the meaning of "qualifying activity", see section 381(4).

365 "Starting value" where plant or machinery originally unqualifying

(1) This section applies if the conditions in subsection (2) are met in relation to a long funding operating lease to which section 363 applies.

(2) The conditions are that—
- (a) the lessor owns the plant or machinery as a result of having incurred expenditure on its provision for purposes other than those of a qualifying activity,
- (b) the plant or machinery is brought into use by the lessor for the purposes of a qualifying activity on or after 1 April 2006, and
- (c) that qualifying activity is the leasing of the plant or machinery under the lease.

(3) For the purposes of section 363 the starting value is the lower of—
- (a) first use market value, and
- (b) first use amortised market value.

(4) "First use market value" means the market value of the plant or machinery at the time when it is first brought into use for the purposes of the qualifying activity.

(5) "First use amortised value" means the value that the plant or machinery would have at the time when it is first brought into use for the purposes of the qualifying activity on the assumptions in subsection (6).

(6) The assumptions are that—
- (a) the cost of acquiring the plant or machinery had been written off on a straight line basis over its remaining useful economic life, and
- (b) any further capital expenditure incurred had been written off on a straight line basis over so much of its remaining economic life as remains at the time when the expenditure is incurred.

(7) For the meaning of "qualifying activity", "remaining useful economic life" and writing off on a straight line basis, see section 381(4), (3)(i) and (5) respectively.

366 Long funding operating lease: lessor's additional expenditure

(1) This section applies if in any period of account—
- (a) a company is the lessor of any plant or machinery under a long funding operating lease,
- (b) the company incurs capital expenditure in relation to the plant or machinery (the "additional expenditure"), and
- (c) the additional expenditure is not reflected in the market value of the plant or machinery at the commencement time (see subsection (7)).

(2) An additional deduction is allowed in calculating the profits of the company for each period of account—
- (a) which ends after the incurring of the additional expenditure, and
- (b) in which the company is the lessor of the plant or machinery under the lease.

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(3) The amount of the deduction is so much of the expected reduction in value of the additional expenditure ("the expected reduction") as is attributable to the period of account.

(4) The expected reduction is the amount of the additional expenditure, less the remaining residual value of the plant or machinery resulting from that expenditure.

(5) For how to determine that remaining residual value, see—
  (a) section 367 (determination of remaining residual value resulting from lessor's first additional expenditure), and
  (b) section 368 (determination of remaining residual value resulting from lessor's further additional expenditure).

(6) The amount of the expected reduction attributable to the period of account is found by apportioning that reduction on a time basis according to the proportion of the term of the lease that falls in the period of account.

(7) In this section "the commencement time" means—
  (a) except where section 365 applies, the commencement of the term of the lease, and
  (b) if that section applies, the time when the plant or machinery is first brought into use by the lessor for the purposes of the qualifying activity.

367 Determination of remaining residual value resulting from lessor's first additional expenditure

(1) This section sets out how the remaining residual value of the plant or machinery resulting from the additional expenditure ("RRV") is determined for the purposes of section 366(4) if section 366 has not applied in relation to any previous additional expenditure incurred by the company in relation to the leased plant or machinery.

(2) RRV depends on whether—
  (a) the amount ("ARV") which is expected to be the residual value of the plant or machinery at the time when the additional expenditure is incurred, exceeds
  (b) the amount ("CRV") which at the commencement of the term of the lease is expected to be its residual value (or, if section 365 applies, would have been expected to be that value had that value been estimated at that time).

(3) If ARV exceeds CRV, RRV is the part of the excess that is a result of the additional expenditure.

(4) Otherwise, RRV is nil.

(5) For the meaning of "residual value", see section 381(4).

368 Determination of remaining residual value resulting from lessor's further additional expenditure

(1) This section sets out how the remaining residual value of the plant or machinery resulting from the additional expenditure ("RRV") is determined for the purposes of section 366(4) if section 366 has applied in relation to previous additional expenditure incurred by the company in relation to the leased plant or machinery.

(2) RRV depends on whether—

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(a) the amount ("FARV") which is expected to be the residual value of the plant or machinery at the time when the further additional expenditure is incurred, exceeds

(b) the sum of the amounts in subsection (3).

(3) Those amounts are—

(a) the amount which at the commencement of the term of the lease is expected to be the residual value of the plant or machinery (or, if section 365 applies, would have been expected to be that value had that value been estimated at that time), and

(b) any amounts that were subtracted under section 366(4) as the remaining residual value of the plant or machinery resulting from the previous additional expenditure.

(4) If FARV exceeds the sum of the amounts in subsection (3), RRV is the portion of the excess that is a result of the further additional expenditure.

(5) Otherwise, RRV is nil.

(6) For the meaning of "residual value", see section 381(4).

369 Lessor under long funding operating lease: termination of lease

(1) This section applies in calculating the profits of a company for corporation tax purposes if it is the lessor immediately before the termination of a long funding operating lease.

(2) If the termination amount (see section 381(3)(l)) exceeds the sum of the amounts in subsection (3), an amount equal to the excess is treated as income of the company attributable to the lease arising in the period of account in which it terminates.

(3) The amounts referred to in subsection (2) are—

(a) the total amounts paid to the lessee that are calculated by reference to the termination value (see section 381(3)(m)),

(b) the excess relevant value for section 363 (see subsection (6)), and

(c) the excess expenditure for section 366 (see subsection (7)).

(4) If the sum of the amounts in subsection (3) exceeds the termination amount, the excess is treated as a revenue expense incurred by the company in connection with the lease in the period of account in which it terminates.

(5) No deduction is allowed in respect of any sums within subsection (3)(a).

(6) "The excess relevant value for section 363" is the amount (if any) by which—

(a) the starting value of the plant or machinery for the purposes of section 363(4) (lessor under long funding operating lease: periodic deduction), exceeds

(b) the total of the deductions allowable under section 363 for periods of account for the whole or part of which the company was the lessor.

(7) "The excess expenditure for section 366" is the amount (if any) by which—

(a) the total of any amounts of capital expenditure incurred by the company which constitute additional expenditure in the case of the lease for the purposes of section 366 (long funding operating lease: lessor's additional expenditure), exceeds

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(b) the total of any deductions allowable under section 366 for periods of account for the whole or part of which the company was the lessor.

Cases where sections 360 to 369 do not apply

370 Plant or machinery held as trading stock

(1) Sections 360 to 369 do not apply in relation to a long funding lease in the case of a company which is or has been the lessor of any plant or machinery under the lease if the condition in subsection (2) is met.

(2) The condition is that any part of the expenditure incurred by the company on the acquisition of the plant or machinery for leasing under the lease—
   (a) is allowable as a deduction (apart from sections 360 to 369) in calculating its profits or losses for corporation tax purposes, and
   (b) is so allowable as a result of the plant or machinery forming part of its trading stock.

(3) For the purposes of this section the cases in which expenditure incurred by a company on the acquisition of any plant or machinery for leasing under a lease is allowable as such a deduction include any case where—
   (a) the company becomes entitled to the deduction at any time after the expenditure is incurred, and
   (b) the deduction arises as a result of the plant or machinery forming part of its trading stock at that time.

371 Adjustments where sections 360 to 369 subsequently disapplied by section 370

(1) This section applies if—
   (a) at any time any of sections 360 to 369 has applied for determining the amounts to be taken into account in calculating the profits or losses of a company for corporation tax purposes, and
   (b) subsequently the condition in section 370(2) is met.

(2) If this section applies—
   (a) the amounts mentioned in subsection (1)(a), and
   (b) any other amounts which, as a result of section 370, are to be taken into account in calculating the profits or losses of the company for corporation tax purposes,

   are subject to such adjustments as are just and reasonable.

(3) All such assessments and adjustments of assessments are to be made as are necessary to give effect to this section.

372 Lessor also lessee under non-long funding lease

(1) This section applies if—
   (a) a company is the lessee of any plant or machinery under a lease ("lease A"),
   (b) lease A is not a long funding lease,
   (c) the company enters into a lease ("lease B") of any of that plant or machinery (as lessor), and

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(d) lease B is a long funding lease.

(2) Sections 360 to 369 do not apply in relation to lease B.

(3) This section must be treated as never having applied in relation to lease B if lease A—
(a) becomes a long funding lease as a result of section 70H of CAA 2001 (tax return by lessee treating lease as long funding lease), and
(b) has not ceased to be such a lease.

373 Other avoidance

(1) Sections 360 to 369 do not apply in relation to a long funding lease in the case of a company which is or has been the lessor of any plant or machinery under the lease if conditions A, B and C are met.

(2) Condition A is that the lease forms part of any arrangement entered into by the company which includes one or more other transactions.

(3) Condition B is that the main purpose, or one of the main purposes, of the arrangement is to secure that, over the lease period, there would be a substantial difference between the GAAP total and the tax total.

(4) "The GAAP total" means the sum of the amounts under the arrangement which are, in accordance with generally accepted accounting practice—
(a) recognised in determining the company's profit or loss for any period, or
(b) taken into account in calculating the amounts which are so recognised.

(5) "The tax total" means the sum of the amounts under the arrangement which would (apart from this section) be taken into account in calculating the profits or losses of the company for corporation tax purposes.

(6) Condition C is that the difference referred to in subsection (3) would be attributable (wholly or partly) to the application of any of sections 360 to 369 in relation to the company by reference to the plant or machinery under the lease.

(7) This section is supplemented by sections 374 and 375.

374 Provision supplementing section 373

(1) It does not matter whether the arrangement referred to in condition A in section 373(2) is entered into before, after or at the inception of the long funding lease.

(2) It does not matter whether the parties to any transaction which forms part of that arrangement differ from the parties to any of the other transactions.

(3) The cases in which two or more transactions are to be taken as forming part of an arrangement for the purposes of section 373 include any case in which it would be reasonable to assume that one or more of them—
(a) would not have been entered into independently of the other or others, or
(b) if entered into independently of the other or others, would not have taken the same form or been on the same terms.

(4) For the purposes of condition B in section 373(3) "the lease period" means the period which—
(a) begins with the inception of the lease, and

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(b) ends with the end of the term of the lease.

(5) The reference in section 373(4) to an amount being recognised in determining a company's profit or loss for a period is to an amount being recognised for accounting purposes in—

(a) the company's profit and loss account, income statement or statement of comprehensive income for that period,

(b) the company's statement of total recognised gains and losses, statement of recognised income and expense, statement of changes in equity or statement of income and retained earnings for that period, or

(c) any other statement of items taken into account in calculating the company's profits or losses for that period.

375 Adjustments where sections 360 to 369 subsequently disapplied by section 373

(1) This section applies if—

(a) at any time any of sections 360 to 369 has applied for determining the amounts to be taken into account in calculating the profits or losses of the company for corporation tax purposes, and

(b) subsequently conditions A, B and C in section 373 are met.

(2) If this section applies—

(a) the amounts mentioned in subsection (1)(a), and

(b) any other amounts which, as a result of section 373, are to be taken into account in calculating the profits or losses of the company for corporation tax purposes,

are subject to such adjustments as are just and reasonable.

(3) All such assessments and adjustments of assessments are to be made as are necessary to give effect to this section.

376 Films

(1) If a company is or has been a lessor under a long funding lease of a film, sections 360 to 369 do not apply in respect of the lease.

(2) "Film" has the same meaning as in Part 15 of CTA 2009 (see section 1181 of that Act).

Lessees under long funding finance leases

377 Lessee under long funding finance lease: limit on deductions

(1) This section applies if a company is the lessee of any plant or machinery under a long funding finance lease for the whole or part of any period of account.

(2) In calculating the company's profits for the period of account for corporation tax purposes, the amount deducted in respect of amounts payable under the lease must not exceed the finance charges.

(3) In subsection (2) "the finance charges" means the amounts which, in accordance with generally accepted accounting practice, fall (or would fall) to be shown in the company's accounts as finance charges in respect of the lease.

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(4) If the lease is one which, in accordance with such practice, falls (or would fall), to be treated as a loan, subsections (2) and (3) apply as if the lease were one which, in accordance with such practice, fell to be treated as a finance lease.

378 Lessee under long funding finance lease: termination

(1) This section applies if—
  (a) a company is or has been the lessee under a long funding finance lease, and
  (b) in connection with the termination of the lease, a payment calculated by reference to the termination value falls to be made to the company.

(2) The payment is not to be brought into account in determining the profits of the company for any period of account for corporation tax purposes.

(3) Subsection (2) does not affect the amount of any disposal value that falls to be brought into account by the company under CAA 2001.

(4) For the meaning of "termination value", see section 381(3)(m).

Lessees under long funding operating leases

379 Lessee under long funding operating lease

(1) This section applies if a company is the lessee of any plant or machinery under a long funding operating lease for the whole or part of any period of account.

(2) The deductions allowed in calculating the profits of the company for the period of account for corporation tax purposes are reduced.

(3) The amount of the reduction is so much of the expected gross reduction in value over the term of the lease as is attributable to the period of account.

(4) The expected gross reduction in value over the term of the lease is the starting value of the plant or machinery, less its expected end value.

(5) For the meaning of "starting value", see section 380.

(6) The expected end value of plant or machinery is the amount which—
  (a) at the commencement of the term of the lease is expected to be its market value at the end of the term, or
  (b) if section 380(3) applies, would have been expected to be that value had that value been estimated at the commencement of the term.

(7) The expected gross reduction in value over the term of the lease that is attributable to the period of account is found by apportioning that reduction on a time basis according to the proportion of the term of the lease that falls in the period of account.

380 "Starting value" in section 379

(1) This section is about the meaning of "starting value" in section 379 in relation to a long funding operating lease ("the section 379 lease").

(2) Except where subsection (3) applies, the starting value is the market value of the plant or machinery at the commencement of the term of the section 379 lease.

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(3) This subsection applies if the lessee—
- (a) has the use of the plant or machinery as a result of having incurred expenditure on its provision for purposes other than those of a qualifying activity, but
- (b) brings the plant or machinery into use for the purposes of a qualifying activity on or after 1 April 2006.

(4) If subsection (3) applies, the starting value is the lower of—
- (a) first use market value, and
- (b) first use amortised market value.

(5) "First use market value" means the market value of the plant or machinery at the time when it is first brought into use for the purposes of the qualifying activity.

(6) "First use amortised market value" means the value that the plant or machinery would have at the time when it is first brought into use for the purposes of the qualifying activity on the assumption in subsection (7).

(7) That assumption is that the market value of the plant or machinery at the commencement of the term of the section 379 lease had been written off on a straight line basis over its remaining useful economic life.

(8) For the meaning of "qualifying activity", "remaining useful economic life" and writing off on a straight line basis, see section 381(4), (3)(i) and (5) respectively.

Interpretation

381 Interpretation of Chapter

(1) Chapter 6A of Part 2 of CAA 2001 (interpretation of provisions about long funding leases) applies in relation to this Chapter as it applies in relation to that Part.

(2) Accordingly—

"the finance lease test" means the finance lease test in section 70N of CAA 2001,

"long funding lease" has the meaning given by section 70G of that Act,

"long funding finance lease" means a long funding lease that meets the finance lease test as a result of section 70N(1)(a) of that Act, and

"long funding operating lease" means a long funding lease that is not a long funding finance lease.

(3) As to the meaning of the following other expressions used in this Chapter and defined in Chapter 6A of Part 2 of CAA 2001, see—
- (a) for "commencement", in relation to the term of a lease, section 70YI(1) of that Act,
- (b) for "inception", section 70YI(1) of that Act,
- (c) for "lease", section 70YI(1) of that Act,
- (d) for "lessee", section 70YI(1) of that Act,
- (e) for "lessor", section 70YI(1) of that Act,
- (f) for "market value", in relation to plant or machinery, section 70YI(2) of that Act,
- (g) for "plant or machinery", in relation to a lease, section 70YI(3) of that Act,

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(h) for "plant or machinery lease", section 70YI(1) of that Act,
(i) for "remaining useful economic life", section 70YI(1) of that Act,
(j) for "the term", in relation to a lease, section 70YI(1) of that Act,
(k) for "termination", section 70YI(1) of that Act,
(l) for "termination amount", section 70YG of that Act, and
(m) for "termination value", section 70YH of that Act.

(4) In this Chapter—

"qualifying activity" has the same meaning as in Part 2 of CAA 2001, and

"residual value", in relation to any plant or machinery leased under a long funding operating lease, means—

(a) the estimated market value of the plant or machinery on a disposal at the end of the term of the lease, less
(b) the estimated costs of that disposal.

(5) Any reference in this Chapter to a sum being written off on a straight line basis over a period of time (the "writing-off period") is a reference to—

(a) the sum being apportioned between each of the periods of account in which any part of the writing-off period falls,
(b) that apportionment being made on a time basis, according to the proportion of the writing-off period that falls in each of the periods of account, and
(c) the sum being written off accordingly.

CHAPTER 3

SALES OF LESSORS: LEASING BUSINESS CARRIED ON BY A COMPANY ALONE

Introduction

382 Introduction to Chapter

(1) This Chapter applies if there is a **[**[F231]relevant change in the relationship between**]** a company carrying on a business of leasing plant or machinery otherwise than in partnership with other persons **[**[F232]and a principal company of the company.**]**.

(2) For the meaning of "business of leasing plant or machinery", see sections 387 to 391.

(3) For the meaning of **[**[F233]"relevant change in the relationship between a company and a principal company of the company", see sections 392 to 394.**]**

(4) As to cases where there is a qualifying change of ownership in relation to a company carrying on a business of leasing plant or machinery in partnership with other persons, see Chapter 4.

Textual Amendments

F231 Words in s. 382(1) substituted (with effect in accordance with Sch. 18 para. 9 of the amending Act) by Finance Act 2010 (c. 13), **Sch. 18 para. 2(2)(a)**

F232 Words in s. 382(1) inserted (with effect in accordance with Sch. 18 para. 9 of the amending Act) by Finance Act 2010 (c. 13), **Sch. 18 para. 2(2)(b)**

Status: *Point in time view as at 01/04/2014.*
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F233 Words in s. 382(3) substituted (with effect in accordance with Sch. 18 para. 9 of the amending Act) by Finance Act 2010 (c. 13), **Sch. 18 para. 2(3)**

Income and matching expense in different accounting periods

383 Income and matching expense in different accounting periods

(1) This section applies if on any day ("the relevant day")—

(a) a company carries on a business of leasing plant or machinery otherwise than in partnership,

(b) the company is within the charge to corporation tax in respect of the business, and

(c) there is a qualifying change of ownership in relation to the company.

[[F234](1A) For the meaning of "qualifying change of ownership", see sections 394A to 398A.**]**

(2) On the relevant day—

(a) the company is treated as receiving an amount of income, and

(b) the accounting period of the company ends.

(3) The income—

(a) is treated as a receipt of the business, and

(b) is brought into account in calculating for corporation tax purposes the profits of the business for that accounting period.

(4) On the day following the relevant day—

(a) the company is treated as incurring an expense, and

(b) a new accounting period of the company begins.

(5) The expense—

(a) is treated as an expense of the business, and

(b) is allowed as a deduction in calculating for corporation tax purposes the profits of the business for that new accounting period.

(6) This section is supplemented by sections 384 to 386.

Textual Amendments

F234 S. 383(1A) inserted (with effect in accordance with Sch. 18 para. 9 of the amending Act) by Finance Act 2010 (c. 13), **Sch. 18 para. 3**

384 Amount of income and expense

(1) The amount of the income under section 383 is calculated in accordance with sections 399 to 407.

(2) The amount of the expense under section 383 is the same as the amount of the income.

Status: *Point in time view as at 01/04/2014.*
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385 [[F235]No carry back of loss against the income]

(1) This section applies if the business carried on by the company is a trade carried on wholly or partly in the United Kingdom the profits of which are chargeable to corporation tax under Chapter 2 of Part 3 of CTA 2009 (trading income).

[[F236](2) No part of a loss may be deducted under section 37(3)(b) (relief for trade losses against total profits of earlier accounting periods) from so much of the company's total profits as derive from the income.

(3) For the purpose of determining how much of those profits derive from the income, those profits are to be calculated on the basis that the income is the final amount to be added.]

Textual Amendments

F235 Words in s. 385 heading substituted (with effect in accordance with s. 24(9) of the amending Act) by Finance Act 2012 (c. 14), **s. 24(2)(b)**

F236 S. 385(2)(3) substituted (with effect in accordance with s. 24(9) of the amending Act) by Finance Act 2012 (c. 14), **s. 24(2)(a)**

386 Relief for expense otherwise giving rise to carried forward loss

(1) This section applies if—

(a) there is a qualifying change of ownership in relation to a company on any day ("the relevant day"),

(b) on the following day the company is treated under section 383 as incurring an expense of a business and an accounting period of the company ("period 1") begins,

(c) the company makes a loss in period 1 or a later accounting period,

(d) apart from this section some or all of that loss ("the carried forward loss") would be carried forward to the next accounting period of the company after the accounting period in which the loss is made ("the subsequent period"),

(e) some or all of the carried forward loss ("the derived loss") derives from—

(i) the expense under section 383, or

(ii) an expense treated as arising under subsection (2) and allowed as a deduction for the accounting period in which the loss is made, and

(f) the subsequent period starts within the period of 5 years beginning immediately after the relevant day and does not start as a result of section 383 or 425.

(2) Instead of being so carried forward, the derived loss is to be treated for corporation tax purposes as giving rise to an expense of an amount equal to—

$$DL + \frac{DL \times D \times R}{365}$$

where—
DL is the derived loss,
D is the number of days in the accounting period in which the loss is made, and

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R is the percentage rate applicable to section 826 of ICTA under section 178 of FA 1989.

(3) The amount of the expense under this section is allowed as a deduction in calculating for corporation tax purposes the profits of the business for the subsequent period.

(4) For the purpose of determining how much of the carried forward loss derives from the expense under section 383 or an expense within subsection (1)(e)(ii), the loss is to be calculated on the basis that that expense is the final amount to be deducted.

"Business of leasing plant or machinery"

387 "Business of leasing plant or machinery"

(1) This section determines for the purposes of this Chapter whether, on any day ("the relevant day"), a company ("the relevant company") carries on a business of leasing plant or machinery.

(2) A business carried on by the relevant company is a business of leasing plant or machinery on the relevant day if condition A or B is met.

(3) Condition A is that at least half of the relevant plant or machinery value relates to **[**[F237]plant or machinery falling within subsection (7)**]**.

(4) Subsection (3) is supplemented by section 388.

[[F238](5) Condition B is that at least half of the relevant company's income in the past 12 months derives from plant or machinery falling within subsection (7).**]**

(6) Subsection (5) is supplemented by section 391.

[[F239](7) Plant or machinery falls within this subsection if—

(a) it is or at any time in the past 12 months has been leased out by the relevant company or a qualifying associate,

(b) the lease under which it is or has been leased out is a plant or machinery lease but not an excluded lease of background plant or machinery for a building (see section 437(3)), and

(c) if the plant or machinery satisfies paragraph (a) only because it is or has been leased out by a qualifying associate, the lessee under the lease is or was someone other than the relevant company.

(8) For the purposes of subsection (7)—

(a) plant or machinery is "leased out" by a person if it is subject to a plant or machinery lease under which that person is a lessor,

(b) " associate " means a person connected with the relevant company (see also subsection (9)), and

(c) a person is a "qualifying associate" if the person is an associate at the start of the relevant day or at any earlier time in the past 12 months (whether or not a time when the plant or machinery was leased out by the person).

(9) If the relevant company is owned by a consortium or is a qualifying 75% subsidiary of a company owned by a consortium, the reference in subsection (8)(b) to a person connected with the relevant company also includes—

(a) any member of the consortium, and

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(b) any person connected with such a member.

(10) A reference in this section to the past 12 months is to the period of 12 months ending with the relevant day.**]**

Textual Amendments

F237 Words in s. 387(3) substituted (with effect in accordance with Sch. 6 para. 27 of the amending Act) by Finance Act 2011 (c. 11) , **Sch. 6 para. 2(2)**

F238 S. 387(5) substituted (with effect in accordance with Sch. 6 para. 27 of the amending Act) by Finance Act 2011 (c. 11) , **Sch. 6 para. 2(3)**

F239 S. 387(7)-(10) substituted for s. 387(7)(8) (with effect in accordance with Sch. 6 para. 27 of the amending Act) by Finance Act 2011 (c. 11) , **Sch. 6 para. 2(4)**

388 "Relevant plant or machinery value" for condition A in section 387

(1) This section applies for the purposes of condition A in section 387.

(2) The relevant plant or machinery value is the sum of the amounts in subsection (3), but subject to section 390 (relevant plant or machinery value where relevant company lessee under long funding lease etc).

(3) The amounts are—

(a) the amounts (if any) that would be shown in respect of plant or machinery in the appropriate balance sheet of the relevant company drawn up as at the start of the relevant day, and

(b) the amounts (if any) that would be shown in the appropriate balance sheet of the relevant company drawn up as at the end of the relevant day in respect of relevant transferred plant or machinery.

(4) For the purposes of subsection (3)(b) plant or machinery is "relevant transferred plant or machinery" if an amount in respect of it would be shown in the appropriate balance sheet of an associated company drawn up as at the start of the relevant day.

(5) This section is supplemented by section 389.

389 Provision supplementing section 388

(1) For the purposes of section 388 and this section the amounts shown in the appropriate balance sheet of any company in respect of any plant or machinery are—

(a) the amounts shown in that balance sheet as the net book value (or carrying amount) in respect of the plant or machinery, and

(b) the amounts shown in that balance sheet as the net investment in respect of finance leases of the plant or machinery.

(2) If—

(a) any of the plant or machinery is a fixture in any land (see section 437(5)), and

(b) the amount which falls (or would fall) to be shown in an appropriate balance sheet as the net book value (or carrying amount) of the land includes (or would include) an amount in respect of the fixture,

the amount of the net book value (or carrying amount) in respect of the fixture is determined on a just and reasonable basis.

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(3) If—

(a) any of the plant or machinery is subject to a finance lease (see section 437(4)), and

(b) any land or other asset which is not plant or machinery is subject to that lease,

the amount of the net investment in respect of the finance lease of that plant or machinery is determined on a just and reasonable basis.

(4) In section 388 and this section any reference to any amount shown in the appropriate balance sheet of a company is to the amount which, on the assumptions in subsection (5), falls (or would fall) to be shown in a balance sheet of the company.

(5) The assumptions are—

(a) that the balance sheet is drawn up in accordance with generally accepted accounting practice, and

(b) that, if the company acquired any plant or machinery in circumstances in which this paragraph applies, the plant or machinery had been acquired for an amount equal to its **[**[F240]ascribed value**]** as at the relevant day.

(6) Paragraph (b) of subsection (5) applies if—

(a) the relevant day falls on or after 22 March 2006,

(b) the plant or machinery was acquired directly or indirectly from a person who was connected with the company when the acquisition took place, and

(c) either the acquisition took place on or after 5 December 2005 or the person from whom the plant or machinery was so acquired was also connected with the company on that date.

Textual Amendments

F240 Words in s. 389(5)(b) substituted (with effect in accordance with Sch. 6 para. 27 of the amending Act) by Finance Act 2011 (c. 11), **Sch. 6 para. 3**

390 Relevant plant or machinery value where relevant company lessee under long funding lease etc

(1) Any amount included in the amounts mentioned in section 388(2) in respect of plant or machinery to which this section applies is to be deducted from the sum mentioned in that section.

(2) But the **[**[F241]ascribed value**]** as at the relevant day of any plant or machinery to which this section applies is to be added to that sum or, if that sum is nil, is the relevant plant or machinery value.

(3) This section applies to plant or machinery if—

(a) condition A or B is met at the start of the relevant day, or

(b) the plant or machinery is acquired by the relevant company from an associated company on the relevant day and condition A or B is met at the end of that day.

(4) Condition A is that the relevant company is the lessee of the plant or machinery under a long funding finance lease or a long funding operating lease.

(5) Condition B is that the relevant company is treated as the owner of the plant or machinery under section 67 of CAA 2001 (hire purchase and similar contracts).

Status: *Point in time view as at 01/04/2014.*
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Textual Amendments

F241 Words in s. 390(2) substituted (with effect in accordance with Sch. 6 para. 27 of the amending Act) by Finance Act 2011 (c. 11), **Sch. 6 para. 4**

391 Relevant company's income for condition B in section 387

(1) This section applies for the purposes of condition B in section 387.

(2) The reference to the relevant company's income is to its income as calculated for corporation tax purposes.

(3) Any apportionment necessary to determine the amount of the relevant company's income attributable to the period of 12 months ending with the relevant day is to be made on a time basis.

(4) But—

(a) that basis does not apply if it would work in an unjust or unreasonable way in relation to any person, and

(b) in that case the apportionment is to be made instead on a just and reasonable basis.

(5) The proportion of the income that derives from **[**[F242]plant or machinery falling within section 387(7)**]** is to be determined on a just and reasonable basis.

Textual Amendments

F242 Words in s. 391(5) substituted (with effect in accordance with Sch. 6 para. 27 of the amending Act) by Finance Act 2011 (c. 11), **Sch. 6 para. 5**

[[F243] *"Relevant change in relationship"]*

Textual Amendments

F243 S. 392 and cross-heading substituted (with effect in accordance with Sch. 18 para. 9 of the amending Act) by Finance Act 2010 (c. 13) , **Sch. 18 para. 4**

[[F243]392 "Relevant change in relationship"

For the purposes of the sales of lessors Chapters there is a relevant change in the relationship between a company ("A") and a principal company of A on any day in any of the circumstances in section 393 or 394 (qualifying 75% subsidiaries and consortium relationships) **[**[F244]or section 394ZA (company joining tonnage tax group)**]]**.

Textual Amendments

F244 Words in s. 392 inserted (with effect in accordance with s. 24(10) of the amending Act) by Finance Act 2012 (c. 14), **s. 24(3)**

Status: *Point in time view as at 01/04/2014.*
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393 Qualifying 75% subsidiaries

(1) A company ("B") is a principal company of A if—
  (a) A is a qualifying 75% subsidiary of B, and
  (b) B is not a qualifying 75% subsidiary of another company.

(2) There is a relevant change in the relationship between A and B (as a principal company) on any day if A ceases to be a qualifying 75% subsidiary of B on that day.

(3) A company ("C") is a principal company of A if—
  (a) A is a qualifying 75% subsidiary of B,
  (b) B is a qualifying 75% subsidiary of C, and
  (c) C is not a qualifying 75% subsidiary of another company.

(4) There is a relevant change in the relationship between A and C (as a principal company) on any day if—
  (a) A ceases to be a qualifying 75% subsidiary of B on that day, or
  (b) B ceases to be a qualifying 75% subsidiary of C on that day.

(5) If C is a qualifying 75% subsidiary of another company ("D"), D is a principal company of A unless D is a qualifying 75% subsidiary of another company, and so on.

(6) Accordingly, there is a relevant change in the relationship between A and a principal company of A on any day if—
  (a) in determining which company is a principal company, regard is had to any company which is a qualifying 75% subsidiary of another, and
  (b) that company ceases to be a qualifying 75% subsidiary of the other on that day.

(7) This section is supplemented by section 398 ("qualifying 75% [F245]... subsidiary" etc).

Textual Amendments

F245 Words in s. 393(7) omitted (with effect in accordance with s. 29(8) of the amending Act) by virtue of Finance Act 2010 (c. 13), **s. 29(2)**

394 Consortium relationships

(1) A company ("E") is a principal company of A if—
  (a) A is owned by a consortium of which E is a member, or
  (b) A is a qualifying **[**[F246]75%**]** subsidiary of a company owned by a consortium of which E is a member,

  and E is not a qualifying 75% subsidiary of another company.

(2) There is a relevant change in the relationship between A and E (as a principal company) on any day if the ownership proportion at the end of the day is less than the ownership proportion at the start of the day.

(3) In this section "the ownership proportion" is whichever is the lowest of the following percentages—
  (a) the percentage of the ordinary share capital of A that is beneficially owned by E,

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(b) the percentage to which E is beneficially entitled of any profits available for distribution to equity holders of A, and

(c) the percentage to which E would be beneficially entitled of any assets of A available for distribution to its equity holders on a winding up.

(4) But if A is a qualifying **[**[F247]75%**]** subsidiary of a company, subsection (3) is to be read as if references to that company were substituted for references to A.

(5) A company ("F") is a principal company of A if, in a case where E is a qualifying 75% subsidiary of F but F is not a qualifying 75% subsidiary of another company—

(a) A is owned by a consortium of which E is a member, or

(b) A is a qualifying **[**[F248]75%**]** subsidiary of a company owned by a consortium of which E is a member.

(6) There is a relevant change in the relationship between A and F (as a principal company) on any day if—

(a) the ownership proportion at the end of the day is less than the ownership proportion at the start of the day, or

(b) E ceases to be a qualifying 75% subsidiary of F on that day.

(7) If F is a qualifying 75% subsidiary of another company ("G"), G is a principal company of A unless G is a qualifying 75% subsidiary of another company, and so on.

(8) Accordingly, there is a relevant change in the relationship between A and a principal company of A on any day if—

(a) in determining which company is a principal company, regard is had to any company which is a qualifying 75% subsidiary of another, and

(b) that company ceases to be a qualifying 75% subsidiary of the other on that day,

(as well as if the ownership proportion at the end of the day is less than the ownership proportion at the start of the day).

(9) This section is supplemented by—

(a) section 397 (companies owned by consortiums and members of consortiums), and

(b) section 398 ("qualifying 75% [F249]... subsidiary" etc).

Textual Amendments

F246 Figure in s. 394(1)(b) substituted (with effect in accordance with s. 29(8) of the amending Act) by Finance Act 2010 (c. 13), **s. 29(3)(a)**

F247 Figure in s. 394(4) substituted (with effect in accordance with s. 29(8) of the amending Act) by Finance Act 2010 (c. 13), **s. 29(3)(a)**

F248 Figure in s. 394(5)(b) substituted (with effect in accordance with s. 29(8) of the amending Act) by Finance Act 2010 (c. 13), **s. 29(3)(a)**

F249 Words in s. 394(9)(b) omitted (with effect in accordance with s. 29(8) of the amending Act) by virtue of Finance Act 2010 (c. 13), **s. 29(3)(b)**

[[F250]**394ZA Company joining tonnage tax group**

There is a relevant change in the relationship between A and a principal company of A on any day if—

Status: *Point in time view as at 01/04/2014.*
Changes to legislation: *Corporation Tax Act 2010 is up to date with all changes known to be in force on or before 12 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(a) on that day A becomes a member of a tonnage tax group for the purposes of Schedule 22 to FA 2000 without entering tonnage tax on that day, or

(b) the day ends immediately before the day on which, for the purposes of that Schedule, A both becomes a member of a tonnage tax group and enters tonnage tax.**]**

Textual Amendments

F250 S. 394ZA inserted (with effect in accordance with s. 24(10) of the amending Act) by Finance Act 2012 (c. 14), **s. 24(4)**

[F251 "Qualifying change of ownership"

Textual Amendments

F251 S. 394A and cross-heading inserted (with effect in accordance with Sch. 18 para. 9 of the amending Act) by Finance Act 2010 (c. 13), **Sch. 18 para. 5**

394A "Qualifying change of ownership"

F252**[** For the purposes of the sales of lessors Chapters there is a qualifying change of (1)**]** ownership in relation to a company ("A") on any day if there is a relevant change in the relationship on that day between A and a principal company of A unless any of the following apply—

(a) section 395(2),

(b) section 396(2), or

(c) section 398A(2) or (5).

F253**[** If the qualifying change of ownership would (but for this subsection) occur on any (2) day as a result of—

(a) section 393 or 394ZA, or

(b) section 394 or 394ZA,

it is treated instead for the purposes of the sales of lessors Chapters as occurring on that day solely as a result of section 394ZA.**]]**

Textual Amendments

F252 S. 394A(1) renumbered (with effect in accordance with s. 24(10) of the amending Act) by Finance Act 2012 (c. 14), **s. 24(5)(a)**

F253 S. 394A(2) inserted (with effect in accordance with s. 24(10) of the amending Act) by Finance Act 2012 (c. 14), **s. 24(5)(b)**

395 No qualifying change of ownership in certain intra-group reorganisations

(1) This section applies if—

(a) a relevant change in the relationship between a company ("A") and a principal company of A occurs on any day,

Status: *Point in time view as at 01/04/2014.*
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(b) that change occurs by reference to A or any other company ceasing to be a qualifying 75% subsidiary on that day, and

(c) A, and every company by reference to which that change occurs, are qualifying 75% subsidiaries of the principal company concerned at the start and end of that day.

(2) For the purposes of the sales of lessors Chapters, there is no qualifying change of ownership in relation to A on that day as a result of that change in the relationship.

396 No qualifying change of ownership where principal company's interest in consortium company unchanged

(1) This section applies if—

(a) a company ("A") is owned by a consortium, and

(b) a relevant change in the relationship between A and a principal company of A occurs on any day,

but the principal company's interest in A remains unchanged.

(2) For the purposes of the sales of lessors Chapters, there is no qualifying change of ownership in relation to A on that day as a result of that change in that relationship.

(3) For the purposes of this section the principal company's interest in A remains unchanged if the percentage of the ordinary share capital of A that is beneficially owned directly or indirectly by the principal company is the same at the beginning and end of that day.

(4) Sections 1155 to 1157 apply for construing subsection (3).

397 Companies owned by consortiums and members of consortiums

(1) This section defines what a company being owned by, or a member of, a consortium means for the purposes of the sales of lessors Chapters.

(2) A company is owned by a consortium if—

(a) it is not a qualifying 75% subsidiary of any company,

(b) at least 75% of its ordinary share capital is beneficially owned between them by other companies, and

(c) none of those other companies owns less than 5% of that capital.

(3) Those other companies are the members of the consortium.

398 "Qualifying 75% [F254] ... subsidiary" etc

(1) For the purposes of the sales of lessors Chapters, a company ("the subsidiary company") is a qualifying 75% subsidiary of another company ("the parent company") if condition A or B is met and condition C is met.

(2) Condition A is that—

(a) the subsidiary company has ordinary share capital, and

(b) the subsidiary company is a 75% subsidiary of the parent company.

(3) Condition B is that—

(a) the subsidiary company does not have ordinary share capital, and

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(b) the parent company has control of the subsidiary company.

(4) Condition C is that the parent company—

(a) is beneficially entitled to at least 75% of any profits available for distribution to equity holders of the subsidiary company, and

(b) would be beneficially entitled to at least 75% of any assets of the subsidiary company available for distribution to its equity holders on a winding up.

[F255](5) . . . . . .

[F256](6) . . . . . .

(7) Chapter 6 of Part 5 (equity holders and profits or assets available for distribution)—

(a) applies for the purposes of section 394(3)(b) and (c) (including that section as applied for the purposes of section 406(5)) and of section 405(5)(b) and (c) as that Chapter applies for the purposes of section 143(3)(b) and (c) (condition 1: surrendering company owned by consortium) and section 144(3)(b) and (c) (condition 1: claimant company owned by consortium), and

(b) applies for the purposes of subsection (4)(a) and (b) as that Chapter applies for the purposes of section 151(4)(a) and (b) (meaning of " 75% subsidiary "[F257]...).

(8) But in a case where the subsidiary company does not have ordinary share capital, Chapter 6 of Part 5 applies for those purposes as if the members of that company were equity holders of that company for the purposes of that Chapter.

Textual Amendments

F254 Words in s. 398 heading omitted (with effect in accordance with s. 29(8) of the amending Act) by virtue of Finance Act 2010 (c. 13) , **s. 29(4)**

F255 S. 398(5) omitted (with effect in accordance with s. 29(8) of the amending Act) by virtue of Finance Act 2010 (c. 13), **s. 29(4)(a)**

F256 S. 398(6) omitted (with effect in accordance with s. 29(8) of the amending Act) by virtue of Finance Act 2010 (c. 13), **s. 29(4)(a)**

F257 Words in s. 398(7)(b) omitted (with effect in accordance with s. 29(8) of the amending Act) by virtue of Finance Act 2010 (c. 13), **s. 29(4)(b)**

[F258 Election out of qualifying change of ownership

Textual Amendments

F258 Ss. 398A-398G and cross-heading inserted (with effect in accordance with Sch. 18 para. 9 of the amending Act) by Finance Act 2010 (c. 13), **Sch. 18 para. 6** (with Sch. 18 paras. 11-13)

398A Election out of qualifying change of ownership

(1) This section applies if—

(a) on any day **[**[F259] before 23 March 2011 **]** (" the relevant day ") a company ("A") carries on a business of leasing plant or machinery otherwise than in partnership,

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(b) there is a relevant change in the relationship between A and a principal company of A ("P") on the relevant day, and

(c) an election that this section is to apply is made by A.

(2) For the purposes of the sales of lessors Chapters, there is no qualifying change of ownership in relation to A on the relevant day as a result of the change in the relationship but—

(a) subsections (2)(b) and (4)(b) of section 383 nevertheless apply,

(b) section 398D (and section 398C so far as relating to it) has effect during the relevant period, and

(c) sections 398E to 398G (and section 398C so far as relating to section 398E) have effect on the relevant day and during the relevant period.

(3) "The relevant period" is the period—

(a) beginning with the day after the relevant day, and

(b) ending with the day on which there is next a relevant change in the relationship between A and a principal company of A falling within subsection (4) (or continuing indefinitely if there is not another such relevant change).

(4) A relevant change in the relationship between A and a principal company of A falls within this subsection if, as a result of it, the (unadjusted) basic amount (see section 399) is (or, but for a further election, would be) treated as a receipt of the business of leasing plant or machinery carried on by A.

(5) Where during the relevant period there is a relevant change in the relationship between A and a principal company of A but the relevant period is not brought to an end by it, for the purposes of the sales of lessors Chapters there is no qualifying change of ownership in relation to A as a result of the change in the relationship.

Textual Amendments

F259 Words in s. 398A(1)(a) inserted (retrospective to 23.3.2011) by Finance Act 2011 (c. 11), **s. 54(1)**(2)

398B The election

(1) The election under section 398A must state the date of the relevant day.

(2) The election must be made—

(a) by notice to an officer of Revenue and Customs, and

(b) during the period of two years beginning with the relevant day.

(3) The election is irrevocable.

(4) All such assessments and adjustments of assessments are to be made as are necessary to give effect to the election.

398C Special treatment of A's trade or business that includes leasing

(1) Sections 398D and 398E make special provision about the trade or property business consisting of or including A's business of leasing plant or machinery.

(2) In those sections " the relevant activity " means—

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(a) if A's business of leasing plant or machinery constitutes or forms part of a trade, that trade, and
(b) if it forms part of a property business, that property business.

398D Restrictions on use of losses etc

(1) No loss may be deducted under—
(a) Chapter 2 of Part 4,
(b) section 62, or
(c) section 189,
from so much of the total profits of A as are attributable to the carrying on of the relevant activity except to the extent that the loss or charge is attributable to the carrying on of the relevant activity.

(2) Group relief is not to be given under Part 5 against so much of the total profits of A as are attributable to the carrying on of the relevant activity.

(3) No deficit may be set off under section 461 of CTA 2009 (non-trading deficit from loan relationship) against profits attributable to the carrying on of the relevant activity except to the extent that the deficit is attributable to the carrying on of the relevant activity.

(4) No loss may be set off under section 753 of CTA 2009 (non-trading loss on intangible fixed assets) against so much of the total profits of A as are attributable to the carrying on of the relevant activity except to the extent that the loss or charge is attributable to the carrying on of the relevant activity.

(5) No deduction is to be allowed under section 1219 of CTA 2009 (expenses of management of investment business) from so much of the total profits of A as are attributable to the carrying on of the relevant activity except to the extent that the expenses concerned are attributable to the carrying on of the relevant activity.

[[F260](6) Subsection (6A) applies if A is a CFC within the meaning of Part 9A of TIOPA 2010 and the CFC charge is charged in relation to the accounting period ending with the relevant day.

(6A) No sum may be set off under section 371UD of TIOPA 2010 against the sum charged on a chargeable company so far as the sum charged is attributable to the CFC's chargeable profits so far as, in turn, attributable to the carrying on of the relevant activity.**]**

(7) If A would otherwise be a tonnage tax company under Schedule 22 to FA 2000 (tonnage tax) it is to be treated as not being such a company.

Textual Amendments

F260 S. 398D(6)(6A) substituted for s. 398D(6) (17.7.2012) by Finance Act 2012 (c. 14), **Sch. 20 para. 38**

398E Restriction on artificial losses or reductions in profits

(1) This section applies if any expenditure incurred by A in carrying on the relevant activity has an unallowable purpose.

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(2) In calculating the profits or losses of A for any accounting period for the purposes of corporation tax so much of the expenditure as, on a just and reasonable apportionment, is attributable to the unallowable purpose is to be left out of account.

(3) Expenditure has an unallowable purpose if the main purpose, or one of the main purposes, of A in incurring it is to obtain a relevant tax advantage ("the unallowable purpose").

(4) A "relevant tax advantage" is—

(a) a reduction in the profits which, for the purposes of corporation tax, are attributable to the carrying on of the relevant activity by A,

(b) the creation of a loss which, for those purposes, is so attributable, or

(c) an increase in losses which, for those purposes, are so attributable.

398F Limit on availability of capital allowances to A

(1) Expenditure incurred by A in providing plant or machinery is not qualifying expenditure for the purposes of Part 2 of CAA 2001 if the expenditure is incurred on the acquisition or creation of an independent asset.

(2) An asset is an "independent" asset if, in the normal course of business—

(a) it could be used individually (whether or not it could also be used in conjunction with another asset or other assets as a constituent part of a single asset consisting of more than one asset (a "combined asset")), or

(b) it could be used (at different times) as a constituent part of different combined assets.

398G Transfers into and out of A

(1) Section 948 does not apply where A is the predecessor or the successor.

[F261](2) . . . . . .

[[F262](3) If any event occurs that requires A to bring the disposal value of plant or machinery into account under Part 2 of CAA 2001, that Part has effect as if the disposal value that A is required to bring into account were the higher of—

(a) the disposal value determined in accordance with that Part, and

(b) the ascribed value of the plant or machinery.

(4) Section 265 of CAA 2001 (successions) is subject to this section. **]]**

Textual Amendments

F261 S. 398G(2) omitted (with effect in accordance with Sch. 6 para. 27 of the amending Act) by virtue of Finance Act 2011 (c. 11), **Sch. 6 para. 6(2)**

F262 S. 398G(3)(4) substituted for s. 398G(3) (with effect in accordance with Sch. 6 para. 27 of the amending Act) by Finance Act 2011 (c. 11), **Sch. 6 para. 6(3)**

Status: *Point in time view as at 01/04/2014.*
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The amount of the income

399 The amount of the income: the basic amount

(1) This section determines the amount of the income under section 383 when a qualifying change of ownership in relation to a company carrying on a business of leasing plant or machinery occurs on any day.

(2) The amount of the income is found by—
- (a) applying the formula in subsection (3) to give the basic amount, and
- (b) making any adjustment in accordance with any of sections 404 to 406 to the basic amount.

(3) The formula is—

PM – TWDV

(4) For this purpose—

" PM " has the meaning given by sections 400 to 402, and

" TWDV " has the meaning given by section 403.

(5) In those sections references to the relevant company and the relevant day are to the company and the day mentioned in subsection (1).

400 "PM" in section 399

(1) For the purposes of this section and sections 401 and 402 references to plant or machinery, in the case of any company, include all plant or machinery, whether or not subject to a lease, except for plant or machinery within subsection (2).

(2) Plant or machinery is within this subsection if—
- (a) the company has not incurred expenditure on its provision that is qualifying expenditure for the purposes of Part 2 of CAA 2001,
- (b) the company is a lessor of it under a long funding lease,
- (c) as a result of section 67 of that Act (hire-purchase and similar contracts) it is treated for the purposes of that Part as owned by a person other than the company, or
- (d) it is to be ignored as a result of section 407(2) (migration).

(3) For the purposes of section 399, "PM" is the sum of—
- (a) the amounts (if any) which would be shown in respect of plant or machinery in the appropriate balance sheet of the relevant company drawn up as at the start of the relevant day, and
- (b) the amounts (if any) which would be shown in the appropriate balance sheet of the relevant company drawn up as at the end of the relevant day in respect of relevant transferred plant or machinery.

(4) For the purposes of subsection (3)(b), plant or machinery is "relevant transferred plant or machinery" if an amount in respect of it would be shown in the appropriate balance sheet of an associated company drawn up as at the start of the relevant day.

(5) This section is supplemented by section 401 and is subject to section 402 ("PM" where relevant company lessee under long funding lease etc).

Status: *Point in time view as at 01/04/2014.*
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401 Provisions supplementing section 400

(1) For the purposes of section 400 and this section the amounts shown in the appropriate balance sheet of any company in respect of any plant or machinery are—

(a) the amounts shown in that balance sheet as the net book value (or carrying amount) in respect of the plant or machinery, and

(b) the amounts shown in that balance sheet as the net investment in respect of finance leases of the plant or machinery.

(2) If—

(a) any of the plant or machinery is a fixture in any land (see section 437(5)), and

(b) the amount which falls (or would fall) to be shown in an appropriate balance sheet as the net book value (or carrying amount) of the land includes (or would include) an amount in respect of the fixture,

the amount of the net book value (or carrying amount) in respect of the fixture is determined on a just and reasonable basis.

(3) If—

(a) any of the plant or machinery is subject to a finance lease (see section 437(4)), and

(b) any land or asset which is not plant or machinery is subject to that lease,

the amount of the net investment in respect of the finance lease of that plant or machinery is determined on a just and reasonable basis.

(4) In section 400 and this section any reference to any amount shown in the appropriate balance sheet of a company is to the amount which, on the assumptions in subsection (5), falls (or would fall) to be shown in a balance sheet of the company.

(5) The assumptions are—

(a) that the balance sheet is drawn up in accordance with generally accepted accounting practice, and

(b) that, if the company acquired any plant or machinery in circumstances in which this paragraph applies, the plant or machinery had been acquired for an amount equal to its **[**[F263]ascribed value**]** as at the relevant day.

(6) Paragraph (b) of subsection (5) applies if—

(a) the relevant day falls on or after 22 March 2006,

(b) the plant or machinery was acquired directly or indirectly from a person who was connected with the company when the acquisition took place, and

(c) either the acquisition took place on or after 5 December 2005 or the person from whom the plant or machinery was so acquired was also connected with the company on that date.

Textual Amendments

F263 Words in s. 401(5)(b) substituted (with effect in accordance with Sch. 6 para. 27 of the amending Act) by Finance Act 2011 (c. 11), **Sch. 6 para. 7**

Status: *Point in time view as at 01/04/2014.*
Changes to legislation: *Corporation Tax Act 2010 is up to date with all changes known to be in force on or before 12 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

402 "PM" where relevant company lessee under long funding lease etc

(1) Any amount included in the amounts mentioned in paragraph (a) or (b) of section 400(3) in respect of plant or machinery to which this section applies is to be deducted from the sum mentioned in that section.

(2) But the **[**[F264]ascribed value**]** as at the relevant day of any plant or machinery to which this section applies is to be added to that sum or, if that sum is nil, is "PM".

(3) This section applies to plant or machinery if—

(a) condition A or B is met at the start of the relevant day, or

(b) the plant or machinery is acquired by the relevant company from an associated company on the relevant day and condition A or B is met at the end of that day.

(4) Condition A is that the relevant company is the lessee of the plant or machinery under a long funding finance lease or a long funding operating lease.

(5) Condition B is that the relevant company is treated as the owner of the plant or machinery under section 67 of CAA 2001 (hire purchase and similar contracts).

Textual Amendments

F264 Words in s. 402(2) substituted (with effect in accordance with Sch. 6 para. 27 of the amending Act) by Finance Act 2011 (c. 11), **Sch. 6 para. 8**

403 "TWDV" in section 399

(1) For the purposes of section 399, " TWDV " means the sum of—

(a) the total amount of unrelieved qualifying expenditure in single asset pools for the new chargeable period that is carried forward in the pools from the previous chargeable period under section 59 of CAA 2001,

(b) the total amount of unrelieved qualifying expenditure in class pools for the new chargeable period that is carried forward in the pools from the previous chargeable period under that section, and

(c) the amount of unrelieved qualifying expenditure in the main pool for the new chargeable period that is carried forward in the pool from the previous chargeable period under that section.

(2) For the purposes of this section—

(a) " the new chargeable period " means the accounting period of the relevant company that begins on the day following the relevant day (see section 383(4)(b)), and

[[F265](b) in calculating the amounts of unrelieved qualifying expenditure mentioned in subsection (1)(a) to (c), any part of those amounts that is relevant new expenditure is to be left out of account.**]**

[[F266](3) Relevant new expenditure" means—

(a) expenditure attributable to plant or machinery acquired by the relevant company on the relevant day except for plant or machinery acquired on that day from an associated company, and

(b) expenditure incurred on the relevant day but attributable to plant or machinery acquired by the relevant company before that day.

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(4) In subsection (3)—

(a) " acquired " includes brought into use or made available for use for the first time for the purposes of the business, and

(b) a reference to anything acquired or incurred includes anything treated as acquired or treated as incurred.**]**

Textual Amendments

F265 S. 403(2)(b) substituted (with effect in accordance with Sch. 6 para. 27 of the amending Act) by Finance Act 2011 (c. 11), **Sch. 6 para. 9(2)**

F266 S. 403(3)(4) inserted (with effect in accordance with Sch. 6 para. 27 of the amending Act) by Finance Act 2011 (c. 11), **Sch. 6 para. 9(3)**

404 Amount to be nil if basic amount negative

If the basic amount given by the formula in section 399(3) is a negative amount, the amount is taken instead to be nil.

405 Adjustment to the basic amount: qualifying 75% subsidiaries

(1) This section applies if—

(a) the qualifying change of ownership occurs on any day as a result of section 393 (qualifying 75% subsidiaries),

(b) the change occurs by reference to a company ("A") ceasing to be a qualifying 75% subsidiary of another company ("B") on that day, and

(c) on that day A meets one of the conditions in subsection (2).

(2) The conditions are—

(a) that A becomes owned by a consortium of which B is a member, or

(b) that A becomes a qualifying **[**[F267]75%**]** subsidiary of a company owned by a consortium of which B is a member.

(3) The basic amount is adjusted so that the amount of the income is limited to the appropriate percentage of the basic amount.

(4) The appropriate percentage is found by subtracting the ownership percentage at the end of the day from 100%.

(5) For this purpose "the ownership percentage" is whichever is the lowest of the following percentages—

(a) the percentage of the ordinary share capital of A that is beneficially owned by B,

(b) the percentage to which B is beneficially entitled of any profits available for distribution to equity holders of A, and

(c) the percentage to which B would be beneficially entitled of any assets of A available for distribution to its equity holders on a winding up.

(6) But if A becomes a qualifying **[**[F268]75%**]** subsidiary of a company, subsection (5) is to be read as if references to that company were substituted for references to A.

Status: *Point in time view as at 01/04/2014.*
Changes to legislation: *Corporation Tax Act 2010 is up to date with all changes known to be in force on or before 12 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Textual Amendments

F267 Figure in s. 405(2)(b) substituted (with effect in accordance with s. 29(8) of the amending Act) by Finance Act 2010 (c. 13), **s. 29(5)**

F268 Figure in s. 405(6) substituted (with effect in accordance with s. 29(8) of the amending Act) by Finance Act 2010 (c. 13), **s. 29(5)**

406 Adjustment to the basic amount: consortium relationships

(1) This section applies if the qualifying change of ownership occurs as a result of section 394 (consortium relationships).

(2) In a case where that change arises only because the ownership proportion at the end of the day on which the change occurs is less than the ownership proportion at the start of the day, the amount of the income is limited to the appropriate proportion of the basic amount.

(3) The appropriate proportion is found by subtracting the ownership proportion at the end of the day from the ownership proportion at the start of the day.

(4) In any other case, the amount of the income is limited to the ownership proportion at the start of the day on which the change occurs of the basic amount.

(5) In this section " the ownership proportion " has the same meaning as in section 394 (see section 394(3) and (4)).

407 Migration

(1) This section applies if on any day (" the relevant day ")—

(a) a company begins to be within the charge to corporation tax in respect of a business of leasing plant or machinery which it carries on otherwise than in partnership, and

(b) a qualifying change of ownership in relation to the company occurs.

(2) For the purposes of this Chapter, any plant or machinery is to be ignored in calculating the amount of the income treated as received on the relevant day if an amount would be shown in respect of it in a balance sheet of the company drawn up immediately before that day in accordance with generally accepted accounting practice.

"Associated company"

408 "Associated company"

(1) This section gives the meaning of " associated company " for the purposes of this Chapter.

(2) References to an associated company in any provision other than subsection (6)(b) are to a company which is an associated company of the company that is the relevant company for the purposes of that provision on the day that is the relevant day for those purposes.

(3) A company is an "associated company" of another company on any day if, at the start of that day—

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(a) one of the two has control of the other, or
(b) both are under the control of the same person or persons,

(4) Section 450 (meaning of " control " for the purposes of Part 10 (close companies)) applies for the purposes of subsection (3).

(5) Subsection (6) applies if at the start of any day a company ("the consortium company") —
(a) is owned by a consortium, or
(b) is a qualifying **[**[F269]75%**]** subsidiary of a company owned by a consortium.

(6) On that day the following companies are also associated companies of the consortium company—
(a) any relevant member of the consortium on that day, and
(b) any company which is an associated company of any relevant member of the consortium on that day.

(7) For the purposes of subsection (6) a member of the consortium is a "relevant" member on any day if—
(a) it is a member of the consortium at the start of the day,
(b) one or more qualifying changes of ownership occur in relation to the consortium company on that day, and
(c) any of those changes occur in a case where the member of the consortium is regarded as " E " for the purposes of section 394 (consortium relationships).

Textual Amendments
F269 Figure in s. 408(5)(b) substituted (with effect in accordance with s. 29(8) of the amending Act) by Finance Act 2010 (c. 13), **s. 29(6)**

CHAPTER 4

SALES OF LESSORS: LEASING BUSINESS CARRIED ON BY A COMPANY IN PARTNERSHIP

Introduction

409 Introduction to Chapter

(1) This Chapter applies if, in the case of a company carrying on a business of leasing plant or machinery in partnership with other persons—
(a) there is a qualifying change in the company's interest in the business, (see sections 415 and 416), or
(b) there is a qualifying change of ownership in relation to the company (see sections 392 to 398).

(2) Sections 417 to 424 apply in the case mentioned in subsection (1)(a).

(3) Sections 425 to 429 apply in the case mentioned in subsection (1)(b).

Status: *Point in time view as at 01/04/2014.*
Changes to legislation: *Corporation Tax Act 2010 is up to date with all changes known to be in force on or before 12 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(4) Sections 410 to 414 determine for the purposes of this Chapter whether on any day a business carried on by a company in partnership with other persons is a business of leasing plant or machinery.

(5) In sections 410 to 414—
- (a) that day is referred to as "the relevant day",
- (b) that company is referred to as "the partner company", and
- (c) that partnership is referred to as "the partnership".

(6) Elsewhere in this Chapter references to the partner company are to the company referred to in subsection (1)(a) or, as the case may be, subsection (1)(b).

"Business of leasing plant or machinery"

410 "Business of leasing plant or machinery"

(1) A business carried on by the partnership is a business of leasing plant or machinery on the relevant day if condition A or B is met.

(2) Condition A is that at least half of the relevant plant or machinery value relates to **[**[F270] plant or machinery falling within subsection (6)**]**.

(3) Subsection (2) is supplemented by section 411.

[[F271](4) Condition B is that at least half of the partnership's income in the past 12 months derives from plant or machinery falling within subsection (6).**]**

(5) Subsection (4) is supplemented by section 414.

[[F272](6) Plant or machinery falls within this subsection if—
- (a) it is or at any time in the past 12 months has been leased out by the partnership or a qualifying associate,
- (b) the lease under which it is or has been leased out is a plant or machinery lease but not an excluded lease of background plant or machinery for a building (see section 437(3)), and
- (c) if the plant or machinery satisfies paragraph (a) only because it is or has been leased out by a qualifying associate, the lessee under the lease is or was someone other than the partnership.

(7) For the purposes of subsection (6)—
- (a) plant or machinery is "leased out" by a person if it is subject to a plant or machinery lease under which that person is a lessor,
- (b) " associate " means a person who is a partner in the partnership or connected with a partner in the partnership (see also subsection (8)), and
- (c) a person is a "qualifying associate" if the person is an associate at the start of the relevant day or at any earlier time in the past 12 months (whether or not a time when the plant or machinery was leased out by the person).

(8) In relation to a corporate partner who is owned by a consortium or is a qualifying 75% subsidiary of a company owned by a consortium, the reference in subsection (7)(b) to a person connected with a partner also includes—
- (a) any member of the consortium, and
- (b) any person connected with such a member.

Status: *Point in time view as at 01/04/2014.*
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(9) A reference in this section to the past 12 months is to the period of 12 months ending with the relevant day.**]**

Textual Amendments

F270 Words in s. 410(2) substituted (with effect in accordance with Sch. 6 para. 27 of the amending Act) by Finance Act 2011 (c. 11), **Sch. 6 para. 11(2)**

F271 S. 410(4) substituted (with effect in accordance with Sch. 6 para. 27 of the amending Act) by Finance Act 2011 (c. 11), **Sch. 6 para. 11(3)**

F272 S. 410(6)-(9) substituted for s. 410(6)(7) (with effect in accordance with Sch. 6 para. 27 of the amending Act) by Finance Act 2011 (c. 11), **Sch. 6 para. 11(4)**

411 "Relevant plant or machinery value" for condition A in section 410

(1) This section applies for the purposes of condition A in section 410.

(2) The relevant plant or machinery value is the sum of the amounts in subsection (3), but subject to section 413 (relevant plant or machinery value where partnership lessee under long funding lease).

(3) The amounts are—

(a) the amounts (if any) that would be shown in respect of plant or machinery in the appropriate balance sheet of the partnership drawn up as at the start of the relevant day, and

(b) the amounts (if any) that would be shown in the appropriate balance sheet of the partnership drawn up as at the end of the relevant day in respect of relevant transferred plant or machinery.

(4) For the purposes of subsection (3)(b) plant or machinery is "relevant transferred plant or machinery" if an amount in respect of it would be shown in the appropriate balance sheet of any company mentioned in subsection (5) drawn up as at the start of the relevant day.

(5) Those companies are—

(a) the partner company,

(b) any company which is an associated company of the partner company on the relevant day (see section 430),

(c) any other corporate partner in relation to whose interest in the business there is a qualifying change on the relevant day,

(d) any other corporate partner in relation to which there is a qualifying change of ownership on the relevant day, and

(e) any company which is an associated company of any other corporate partner mentioned in paragraph (c) or (d) on the relevant day.

(6) For the purposes of subsection (5) "any other corporate partner" means a company which—

(a) carries on the business at the start of the relevant day, and

(b) is within the charge to corporation tax in respect of the business.

(7) This section is supplemented by section 412.

Status: *Point in time view as at 01/04/2014.*
Changes to legislation: *Corporation Tax Act 2010 is up to date with all changes known to be in force on or before 12 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

412 Provision supplementing section 411

(1) For the purposes of section 411 and this section the amounts shown in the appropriate balance sheet of the partnership or, as the case may be, any company in respect of any plant or machinery are—

(a) the amounts shown in that balance sheet as the net book value (or carrying amount) in respect of the plant or machinery, and

(b) the amounts shown in that balance sheet as the net investment in respect of finance leases of the plant or machinery.

(2) If—

(a) any of the plant or machinery is a fixture in any land (see section 437(5)), and

(b) the amount which falls (or would fall) to be shown in an appropriate balance sheet as the net book value (or carrying amount) of the land includes (or would include) an amount in respect of the fixture,

the amount of the net book value (or carrying amount) in respect of the fixture is determined on a just and reasonable basis.

(3) If—

(a) any of the plant or machinery is subject to a finance lease (see section 437(4)), and

(b) any land or other asset which is not plant or machinery is subject to that lease,

the amount of the net investment in respect of the finance lease of that plant or machinery is determined on a just and reasonable basis.

(4) In section 411 and this section any reference to any amount shown in the appropriate balance sheet of the partnership or a company is to the amount which, on the assumptions in subsection (5), falls (or would fall) to be shown in a balance sheet of the partnership or, as the case may be, the company.

(5) The assumptions are that—

(a) the balance sheet is drawn up in accordance with generally accepted accounting practice, and

(b) if the partnership acquired any plant or machinery in circumstances in which this paragraph applies, the plant or machinery had been acquired for an amount equal to its **[**[F273]ascribed value**]** as at the relevant day.

(6) Paragraph (b) of subsection (5) applies if—

(a) the relevant day falls on or after 22 March 2006,

(b) the plant or machinery was acquired directly or indirectly from a person who was connected with the partnership when the acquisition took place, and

(c) either the acquisition took place on or after 5 December 2005 or the person from whom the plant or machinery was so acquired was also connected with the partnership on that date.

Textual Amendments

F273 Words in s. 412(5)(b) substituted (with effect in accordance with Sch. 6 para. 27 of the amending Act) by Finance Act 2011 (c. 11), **Sch. 6 para. 12**

Status: *Point in time view as at 01/04/2014.*
Changes to legislation: *Corporation Tax Act 2010 is up to date with all changes known to be in force on or before 12 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

413 Relevant plant or machinery value where partnership lessee under long funding lease etc

(1) Any amount included in the amounts mentioned in section 411(2) in respect of plant or machinery to which this section applies is to be deducted from the sum mentioned in that section.

(2) But the **[**[F274]ascribed value**]** as at the relevant day of any plant or machinery to which this section applies is to be added to that sum or, if that sum is nil, is the relevant plant or machinery value.

(3) This section applies to plant or machinery if—

(a) condition A or B is met at the start of the relevant day, or

(b) the plant or machinery is acquired by the partnership from any company mentioned in section 411(5) on the relevant day and condition A or B is met at the end of that day.

(4) Condition A is that the partnership is the lessee of the plant or machinery under a long funding finance lease or a long funding operating lease.

(5) Condition B is that the partnership is treated as the owner of the plant or machinery under section 67 of CAA 2001 (hire purchase and similar contracts).

Textual Amendments

F274 Words in s. 413(2) substituted (with effect in accordance with Sch. 6 para. 27 of the amending Act) by Finance Act 2011 (c. 11), **Sch. 6 para. 13**

414 Partnership's income for condition B in section 410

(1) This section applies for the purposes of condition B in section 410.

(2) The reference to the partnership's income is to its income as calculated for corporation tax purposes.

(3) Any apportionment necessary to determine the amount of the partnership's income attributable to the period of 12 months ending with the relevant day is to be made on a time basis.

(4) But—

(a) that basis does not apply if it would work in an unjust or unreasonable way in relation to any person, and

(b) in that case the apportionment is to be made instead on a just and reasonable basis.

(5) The proportion of the income that derives from **[**[F275]plant or machinery falling within section 410(6)**]** is to be determined on a just and reasonable basis.

Textual Amendments

F275 Words in s. 414(5) substituted (with effect in accordance with Sch. 6 para. 27 of the amending Act) by Finance Act 2011 (c. 11), **Sch. 6 para. 14**

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"Qualifying change" in company's interest in a business

415 "Qualifying change" in company's interest in a business

(1) For the purposes of the sales of lessors Chapters there is a qualifying change in a company's interest in a business on any day if its relevant percentage share at the end of the day is less than its relevant percentage share at the start of the day.

(2) In this section "relevant percentage share", in relation to a company's interest in a business, means its percentage share in the profits or loss of the business (determined in accordance with section 416).

(3) For the purposes of this section any reference to a company's share in the profits or loss of the business includes a nil share (whether as a result of the dissolution of the partnership or otherwise).

416 Determining the percentage share in the profits or loss of business

(1) For the purposes of this Chapter a company's percentage share in the profits or loss of a business at any time is determined on a just and reasonable basis.

(2) In making that determination, regard must be had, in particular, to any matter that would be taken into account in determining under section 1262 of CTA 2009 (but without regard to sections 1263 and 1264 of that Act) the company's share at that time in the profits or loss of the business.

Qualifying changes in partner company's interest in business

417 Partner company's income and other companies' matching expense

(1) This section applies if on any day ("the relevant day")—
- (a) the partner company carries on a business of leasing plant or machinery in partnership with other persons,
- (b) the partner company is within the charge to corporation tax in respect of the business, and
- (c) there is a qualifying change in the partner company's interest in the business on the relevant day (see sections 415 and 416).

(2) On the relevant day—
- (a) the partner company is treated as receiving an amount of income, and
- (b) any other company which carries on the business on that day and which is within the charge to corporation tax in respect of the business is treated as incurring an expense.

(3) The income—
- (a) is treated as a receipt of the partner company's notional business (see subsection (6)), and
- (b) is brought into account in calculating for corporation tax purposes the profits of that business for the accounting period in which it is treated as received.

(4) Except where subsection (5) applies, the expense—
- (a) is treated as an expense of the other company's notional business, and

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(b) is allowed as a deduction in calculating for corporation tax purposes the profits of that business for the accounting period in which it is treated as incurred.

(5) If at the end of the relevant day the other company is the only person carrying on the business, the expense—

(a) is treated as an expense incurred by the other company in its carrying on of the business (at a time when it is the only person carrying it on), and

(b) is allowed as a deduction in calculating for corporation tax purposes the profits of the business for the accounting period in which it is treated as incurred.

(6) In this Chapter a company's "notional business" means the business the profits or losses of which are determined, in relation to the company, under section 1259 of CTA 2009 (calculation of firm's profits and losses).

(7) This section is supplemented by sections 418 and 419.

(8) This section is subject to section 420 (exception: companies carrying on business ceasing to share in its profits).

418 Amount of income and expense

(1) The amount of the income under section 417 is calculated in accordance with sections 421 to 423.

(2) The amount of the expense of the other company under section 417 is calculated in accordance with section 424.

419 Relief for expense otherwise giving rise to carried forward loss

(1) This section applies if—

(a) a company is treated under section 417(5) as incurring an expense in an accounting period of the company ("period 1"),

(b) the company makes a loss in period 1 or a later accounting period,

(c) apart from this section some or all of that loss ("the carried forward loss") would be carried forward to the next accounting period of the company after the accounting period in which the loss is made ("the subsequent period"),

(d) some or all of the carried forward loss ("the derived loss") derives from—

(i) the expense under section 417(5), or

(ii) an expense treated as arising under subsection (2) and allowed as a deduction for the accounting period in which the loss is made, and

(e) the subsequent period starts within the period of 5 years beginning with the relevant day within the meaning of section 417 and does not start as a result of section 383 or 425.

(2) Instead of being so carried forward, the derived loss is to be treated for corporation tax purposes as giving rise to an expense of an amount equal to—

$$DL + \frac{DL \times D \times R}{365}$$

where—
DL is the derived loss,

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D is the number of days in the accounting period in which the loss is made, and
R is the percentage rate applicable to section 826 of ICTA under section 178 of FA 1989.

(3) The amount of the expense under this section is allowed as a deduction in calculating for corporation tax purposes the profits of the business for the subsequent period.

(4) For the purpose of determining how much of a loss derives from an expense under section 417(5) or an expense within subsection (1)(d)(ii), the loss is to be calculated on the basis that that expense is the final amount to be deducted.

420 Exception: companies carrying on business ceasing to share in its profits

(1) Section 417 does not apply if conditions A, B and C are met.

(2) Condition A is that at the end of the relevant day none of the companies by which the business was carried on any longer has any share in the profits or loss of the business.

(3) Condition B is that, in consequence of what happens on the relevant day, the disposal value of all the plant and machinery that was used for the purposes of the business and in respect of which capital allowances have been claimed is to be brought into account under section 61 of CAA 2001.

(4) Condition C is that the disposal value to be brought into account in relation to all the plant or machinery is the price that the plant or machinery would fetch in the open market on that day.

421 The amount of the income: the basic amount

(1) This section determines the amount of the income under section 417 when a qualifying change in the interest of the partner company in a business of leasing plant or machinery occurs on any day ("the relevant day").

(2) The amount of the income is found by—
  (a) applying the formula in subsection (3) to give the basic amount, and
  (b) making such adjustment to the basic amount as is required in accordance with section 422 or 423.

(3) The formula is—

$$PM - TWDV$$

(4) In this section "PM" has the meaning given by section 400, but—
  (a) reading any reference in that section to the relevant company as a reference to the partnership, and
  (b) reading the reference in section 400(4) to an associated company as a reference to a qualifying company (see subsection (7)).

(5) In this section "TWDV" means the sum of—
  (a) the total amount of unrelieved qualifying expenditure in single asset pools for the new chargeable period that would be carried forward in the pools from the old chargeable period under section 59 of CAA 2001 (unrelieved qualifying expenditure),

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(b) the total amount of unrelieved qualifying expenditure in class pools for the new chargeable period that would be carried forward in the pools from the old chargeable period under that section, and

(c) the amount of unrelieved qualifying expenditure in the main pool for the new chargeable period that would be carried forward in the pool from the old chargeable period under that section.

(6) For the purposes of subsection (5)—

(a) it is to be assumed that the chargeable period (within the meaning of CAA 2001) of the partnership ends on the relevant day ("the old chargeable period") and a new one begins on the following day ("the new chargeable period"), and

[[F276](b) in calculating the amounts of unrelieved qualifying expenditure mentioned in subsection (5)(a) to (c), any part of those amounts that is relevant new expenditure is to be left out of account.**]**

[[F277](6A) Relevant new expenditure" means—

(a) expenditure attributable to plant or machinery acquired by the partnership on the relevant day except for plant or machinery acquired on that day from a qualifying company, and

(b) expenditure incurred on the relevant day but attributable to plant or machinery acquired by the partnership before that day.

(6B) In subsection (6A)—

(a) " acquired " includes brought into use or made available for use for the first time for the purposes of the business, and

(b) a reference to anything acquired or incurred includes anything treated as acquired or treated as incurred.**]**

(7) In this section "qualifying company" means each of the following—

(a) the partner company,

(b) any company which is an associated company of the partner company on the relevant day,

(c) any other corporate partner in relation to whose interest in the business there is a qualifying change on the relevant day,

(d) any other corporate partner in relation to which there is a qualifying change of ownership on the relevant day, and

(e) any company which is an associated company of any other corporate partner mentioned in paragraph (c) or (d) on the relevant day.

(8) For the purposes of subsection (7) "any other corporate partner" means a company which—

(a) carries on the business at the start of the relevant day, and

(b) is within the charge to corporation tax in respect of the business.

Textual Amendments

F276 S. 421(6)(b) substituted (with effect in accordance with Sch. 6 para. 27 of the amending Act) by Finance Act 2011 (c. 11), **Sch. 6 para. 15(2)**

F277 S. 421(6A)(6B) inserted (with effect in accordance with Sch. 6 para. 27 of the amending Act) by Finance Act 2011 (c. 11), **Sch. 6 para. 15(3)**

Status: *Point in time view as at 01/04/2014.*
Changes to legislation: *Corporation Tax Act 2010 is up to date with all changes known to be in force on or before 12 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

422 Amount to be nil if basic amount negative

If the basic amount given by the formula in section 421(3) is a negative amount, the amount is taken instead to be nil.

423 Adjustment to the basic amount

(1) The amount of the company's income under section 417 is limited to the appropriate percentage of the basic amount.

(2) The appropriate percentage is found by subtracting the company's relevant percentage share at the end of the day on which it is treated as receiving the income from its relevant percentage share at the start of the day.

(3) In this section "relevant percentage share" has the same meaning as it has for the purposes of section 415 (see subsection (2) of that section).

424 The amount of expense

(1) This section applies if, as a result of a qualifying change in the partner company's interest in a business on any day—
  (a) the company is treated as receiving an amount of income under section 417 on that day,
  (b) any other company is treated as incurring an expense under that section on that day,
  (c) the other company's percentage share in the profits or loss of the business is greater at the end than at the start of that day, and
  (d) the increase (or any part of the increase) is wholly attributable to the change in the partner company's interest in the business.

(2) Except where subsection (4) applies, the amount of the expense of the other company is limited to the appropriate percentage of the amount of the income.

(3) The appropriate percentage is—

$$\frac{OCI}{PCD}$$

where—
OCI is the increase in the other company's percentage share in the profits or loss of the business that is wholly attributable to the change in the partner company's interest in the business, and
PCD is the decrease in the partner company's percentage share in the profits or loss of the business.

(4) If section 417(5) applies (business carried on by the other company alone), the amount of the expense of the other company is equal to the amount of the income.

(5) For the purposes of this section any reference to an increase in the other company's percentage share in any profits or loss of the business includes an increase from a nil share (whether as a result of its becoming a partner or otherwise).

Status: *Point in time view as at 01/04/2014.*
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Qualifying changes of ownership in relation to partner company

425 Partner company's income and matching expense in different accounting periods

(1) This section applies if on any day ("the relevant day")—
- (a) a company carries on a business of leasing plant or machinery in partnership with other persons (see sections 410 to 414),
- (b) the company is within the charge to corporation tax in respect of the business, and
- (c) there is a qualifying change of ownership in relation to the company.

(2) On the relevant day—
- (a) the company is treated as receiving an amount of income, and
- (b) the accounting period of the company ends.

(3) The income—
- (a) is treated as a receipt of the company's notional business (see section 417(6)), and
- (b) is brought into account in calculating for corporation tax purposes the profits of that business for that accounting period.

(4) On the day following the relevant day—
- (a) the company is treated as incurring an expense, and
- (b) a new accounting period of the company begins.

(5) The expense—
- (a) is treated as an expense of the company's notional business, and
- (b) is allowed as a deduction in calculating for corporation tax purposes the profits of that business for that new accounting period.

(6) This section is supplemented by sections 426 to 428.

426 Amount of income and expense

(1) The amount of the income under section 425 is calculated in accordance with section 429.

(2) The amount of the expense under section 425 is the same as the amount of the income.

427 [F278No carry back of loss against the income]

(1) This section applies if the notional business carried on by the company is a trade carried on wholly or partly in the United Kingdom the profits of which are chargeable to corporation tax under Chapter 2 of Part 3 of CTA 2009 (trading income).

[F279(2) No part of a loss may be deducted under section 37(3)(b) (relief for trade losses against total profits of earlier accounting periods) from so much of the company's total profits as derive from the income.

(3) For the purpose of determining how much of those profits derive from the income, those profits are to be calculated on the basis that the income is the final amount to be added.]

Status: *Point in time view as at 01/04/2014.*
Changes to legislation: *Corporation Tax Act 2010 is up to date with all changes known to be in force on or before 12 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Textual Amendments

F278 Words in s. 427 heading substituted (with effect in accordance with s. 24(9) of the amending Act) by Finance Act 2012 (c. 14), **s. 24(6)(b)**

F279 S. 427(2)(3) substituted (with effect in accordance with s. 24(9) of the amending Act) by Finance Act 2012 (c. 14), **s. 24(6)(a)**

428 Relief for expense otherwise giving rise to carried forward loss

(1) This section applies if—

(a) there is a qualifying change of ownership in relation to a company on any day ("the relevant day"),

(b) on the following day the company is treated under section 425 as incurring an expense of a business and an accounting period of the company ("period 1") begins,

(c) the company makes a loss in period 1 or a later accounting period,

(d) apart from this section some or all of that loss ("the carried forward loss") would be carried forward to the next accounting period of the company after the accounting period in which the loss is made ("the subsequent period"),

(e) some or all of the carried forward loss ("the derived loss") derives from—

(i) the expense under section 425, or

(ii) an expense treated as arising under subsection (2) and allowed as a deduction for the accounting period in which the loss is made, and

(f) the subsequent period starts within the period of 5 years beginning immediately after the relevant day and does not start as a result of section 383 or 425.

(2) Instead of being so carried forward, the derived loss is to be treated for corporation tax purposes as giving rise to an expense of an amount equal to—

$$DL + \frac{DL \times D \times R}{365}$$

where—
DL is the derived loss,
D is the number of days in the accounting period in which the loss is made, and
R is the percentage rate applicable to section 826 of ICTA under section 178 of FA 1989.

(3) The amount of the expense under this section is allowed as a deduction in calculating for corporation tax purposes the profits of the business for the subsequent period.

(4) For the purpose of determining how much of the carried forward loss derives from the expense under section 425 or an expense within subsection (1)(e)(ii), the loss is to be calculated on the basis that that expense is the final amount to be deducted.

429 The amount of the income

(1) This section determines the amount of the income under section 425 when a qualifying change of ownership in relation to a company carrying on a business of leasing plant or machinery in partnership with other persons occurs on any day ("the relevant day").

Status: *Point in time view as at 01/04/2014.*
Changes to legislation: *Corporation Tax Act 2010 is up to date with all changes known to be in force on or before 12 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(2) The amount of the income is found by first—
  (a) applying the formula in section 421(3) to give the basic amount (as if the company were "the partner company" mentioned in section 421), and
  (b) making any adjustment in accordance with any of sections 404 to 406 to the basic amount.

(3) The amount is then limited to the appropriate percentage of the amount given as a result of subsection (2).

(4) If there is no qualifying change in the company's interest in the business on the relevant day, the appropriate percentage is the percentage share of the company in the profits or loss of the business on the relevant day.

(5) If there is a qualifying change in the company's interest in the business on the relevant day, the appropriate percentage is the percentage share of the company in the profits or loss of the business at the end of the relevant day.

Interpretation

430 "Associated company"

(1) This section gives the meaning of "associated company" for the purposes of this Chapter.

(2) A company is an "associated company" of another company on any day if, at the start of that day—
  (a) one of the two has control of the other, or
  (b) both are under the control of the same person or persons.

(3) Section 450 (meaning of "control" for the purposes of Part 10 (close companies)) applies for the purposes of subsection (2).

(4) Subsections (5) and (6) apply if, at the start of any day, a company ("the consortium company")—
  (a) is owned by a consortium, or
  (b) is a qualifying **[**[F280]75%**]** subsidiary of a company owned by a consortium.

(5) If there is any qualifying change in the consortium company's interest in a business on that day, references to an associated company of the consortium company on that day include—
  (a) any member of the consortium at the start of that day, and
  (b) any company which is an associated company of any such member on that day.

(6) If there is any qualifying change of ownership in relation to the consortium company on that day, but there is no qualifying change in its interest in a business on that day, references to an associated company of the consortium company on that day include—
  (a) any relevant member of the consortium on that day, and
  (b) any company which is an associated company of any relevant member of the consortium on that day.

(7) For the purposes of subsection (6) a member of the consortium is a "relevant" member on the day on which the qualifying change of ownership occurs if—
  (a) it is a member of the consortium at the start of the day, and

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(b) the change is a relevant change within section 394(2), (6) or (8) (consortium relationships) in relation to which the member is regarded as "E" for the purposes of section 394.

Textual Amendments

F280 Figure in s. 430(4)(b) substituted (with effect in accordance with s. 29(8) of the amending Act) by Finance Act 2010 (c. 13), **s. 29(6)**

431 "Profits" and "loss"

(1) In this Chapter "profits" does not include chargeable gains.

(2) References in this Chapter to "loss" are to be read accordingly.

CHAPTER 5

SALES OF LESSORS: ANTI-AVOIDANCE PROVISIONS

432 Restrictions on relief for Chapter 3 or 4 expenses: introduction

(1) Section 433 applies if—

(a) a company is treated as incurring an expense under any provision of Chapter 3 or 4,

(b) the expense arises directly or indirectly in consequence of, or otherwise in connection with, any arrangements,

(c) the main purpose, or one of the main purposes, of the arrangements is to secure that the company is treated as incurring the expense, and

(d) the company makes a loss that wholly or partly derives from the expense.

[[F281](1A) For the purposes of subsection (1), an expense is to be disregarded if, and to the extent that, section 730D(2) (disallowance of deductible amounts: profit transfers) applies to it.**]**

(2) The restrictions in section 433 apply in respect of so much of the loss as derives from the expense (in that section referred to as "the restricted loss amount").

(3) For the purpose of determining how much of a loss derives from the expense, the loss is to be calculated on the basis that the expense is the final amount to be deducted.

(4) In this section "arrangements" includes any agreement, understanding, scheme, transaction or series of transactions—

(a) whether or not legally enforceable, and

(b) whether or not the company is a party to the arrangements.

Textual Amendments

F281 S. 432(1A) inserted (with effect in accordance with Sch. 14 para. 3 of the amending Act) by Finance Act 2013 (c. 29), **Sch. 14 para. 2(2)**

Status: *Point in time view as at 01/04/2014.*
Changes to legislation: *Corporation Tax Act 2010 is up to date with all changes known to be in force on or before 12 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

433 Restrictions applying to the restricted loss amount

(1) The restrictions in subsections (2), (5) and (6) apply to the restricted loss amount.

(2) Relief is not to be given to the company under any provision specified in subsection (3) in respect of the restricted loss amount, except by way of set off against any relevant leasing income (see subsection (4)).

(3) Those provisions are—
- (a) section 45 (carry forward of trade loss against subsequent trade profits),
- (b) section 62 (relief for losses made in UK property business),
- (c) section 63 (company with investment business ceasing to carry on UK property business),
- (d) section 66 (relief for losses made in overseas property business), and
- (e) section 91 (relief for losses from miscellaneous transactions).

(4) In subsection (2) "relevant leasing income" means any income deriving from any plant or machinery lease which—
- (a) is not an excluded lease of background plant or machinery for a building (see section 437(3)), and
- (b) is entered into before the day on which the company is treated as incurring the expense mentioned in section 432(1)(a).

(5) If the business carried on by the company is a trade, relief is not to be given to the company under section 37 (relief for trade losses against total profits) in respect of the restricted loss amount.

(6) The restricted loss amount is not available for set off by way of group relief in accordance with Chapter 2 of Part 5 (surrender of company's losses etc for an accounting period).

434 Introduction to sections 435 and 436

(1) Sections 435 and 436 apply if a question arises as to the application of Chapter 3 or 4.

(2) For the purposes of this section and sections 435 and 436 "a question as to the application of Chapter 3 or 4" means **[**[F282]question A, B or C**]**.

(3) Question A is whether any company carries on a business of leasing plant or machinery (whether alone or in partnership) for the purposes of any provision of the sales of lessors Chapters.

(4) Question B is the question of the amount (if any) of any income or expense which any company is treated as receiving or incurring under any provision of the sales of lessors Chapters.

[[F283](5) Question C is the question of the amount of any disposal value to be substituted by section 398G(3).**]**

Textual Amendments

F282 Words in s. 434(2) substituted (with effect in accordance with Sch. 6 para. 27 of the amending Act) by Finance Act 2011 (c. 11), **Sch. 6 para. 17(2)**

Status: *Point in time view as at 01/04/2014.*
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F283 S. 434(5) inserted (with effect in accordance with Sch. 6 para. 27 of the amending Act) by Finance Act 2011 (c. 11), **Sch. 6 para. 17(3)**

435 Disregard of increases and decreases [F284in certain amounts]

(1) This section applies if—

[F285(a) an amount mentioned in subsection (1A) is to be ascertained for the purpose of determining a question as to the application of Chapter 3 or 4,]

(b) apart from this section, there would be a reduction or increase in any such amount,

(c) the reduction or increase arises directly or indirectly in consequence of, or otherwise in connection with, any arrangements, and

(d) the main purpose, or one of the main purposes, of the arrangements is to secure that there is a relevant tax advantage.

[F286(1A) The amounts are—

(a) the relevant plant or machinery value,

(b) the value of plant or machinery falling within section 387(7) or 410(6),

(c) the relevant company's or partnership's income in the period of 12 months ending with the relevant day,

(d) the amount of PM,

(e) the amount of TWDV,

(f) the amount of any disposal value to be substituted by section 398G(3), and

(g) any underlying amount required to calculate or verify an amount mentioned in any of the preceding paragraphs.]

(2) There is a relevant tax advantage if (apart from this section)—

(a) any company would not be regarded for the purposes of any provision of Chapter 3 or 4 as carrying on a business of leasing plant or machinery (whether alone or in partnership),

(b) the amount of any income which any company is treated as receiving under any such provision would be reduced, F287...

(c) the amount of any expense which any company is treated as incurring under any such provision would be increased [F288, or

(d) the amount of any disposal value to be substituted by section 398G(3) would be reduced.]

(3) For the purpose of determining the question as to the application of Chapter 3 or 4, the reduction or increase in the amount [F289to be ascertained] must be ignored.

(4) In this section—

"arrangements" includes any agreement, understanding, scheme, transaction or series of transactions—

(a) whether or not legally enforceable, and

(b) whether or not the company for which the relevant tax advantage is intended to be secured is a party to the arrangements,

"increase" includes an increase from nil, and

"reduction" includes a reduction to nil.

Status: *Point in time view as at 01/04/2014.*
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Textual Amendments

F284 Words in s. 435 heading substituted (with effect in accordance with Sch. 6 para. 27 of the amending Act) by Finance Act 2011 (c. 11), **Sch. 6 para. 18(6)**

F285 S. 435(1)(a) substituted (with effect in accordance with Sch. 6 para. 27 of the amending Act) by Finance Act 2011 (c. 11), **Sch. 6 para. 18(2)**

F286 S. 435(1A) inserted (with effect in accordance with Sch. 6 para. 27 of the amending Act) by Finance Act 2011 (c. 11), **Sch. 6 para. 18(3)**

F287 Word in s. 435(2)(b) omitted (with effect in accordance with Sch. 6 para. 27 of the amending Act) by virtue of Finance Act 2011 (c. 11), **Sch. 6 para. 18(4)(a)**

F288 S. 435(2)(d) and word inserted (with effect in accordance with Sch. 6 para. 27 of the amending Act) by Finance Act 2011 (c. 11), **Sch. 6 para. 18(4)(b)**

F289 Words in s. 435(3) substituted (with effect in accordance with Sch. 6 para. 27 of the amending Act) by Finance Act 2011 (c. 11), **Sch. 6 para. 18(5)**

436 Balance sheet amounts determined on assumption company has no liabilities

(1) This section applies if—

(a) a company owns any plant or machinery at any time on any day ("the relevant day"),

(b) for the purpose of determining a question as to the application of Chapter 3 or 4 regard must be had to the amount (if any) which falls (or would fall) to be shown in any balance sheet of the company in respect of the plant or machinery, and

(c) condition A or B is met.

(2) Condition A is met if, apart from this section, there would be no amount which would fall to be shown in the balance sheet of the company in respect of the plant or machinery.

(3) Condition B is met if the amount which, apart from this section, would fall to be shown in the balance sheet of the company in respect of the plant or machinery is less than the amount which would fall to be so shown on the assumption in subsection (4).

(4) The assumption is that the company has no liabilities of any kind at any time on the relevant day.

(5) For the purpose of determining the question as to the application of Chapter 3 or 4, the amount which falls (or would fall) to be shown in any balance sheet of the company in respect of the plant or machinery is to be determined on the assumption in subsection (4) (as well as on the other assumptions applicable under other provisions of those Chapters).

(6) In this section "liabilities" includes any share capital issued by the company which falls to be treated for accounting purposes as a liability.

[[F290](7) Except for subsection (6), this section applies to a partnership as it applies to a company, and references to "company" are to be read accordingly.**]**

Status: *Point in time view as at 01/04/2014.*
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Textual Amendments

F290 S. 436(7) inserted (with effect in accordance with Sch. 6 para. 27 of the amending Act) by Finance Act 2011 (c. 11), **Sch. 6 para. 19**

CHAPTER 6

SALES OF LESSORS: GENERAL INTERPRETATION

437 Interpretation of the sales of lessors Chapters

(1) This section applies for the purposes of the sales of lessors Chapters.

(2) "Company" means a body corporate.

(3) "Excluded lease of background plant or machinery for a building" has the meaning given in Chapter 6A of Part 2 of CAA 2001 (see section 70R of that Act).

(4) "Finance lease", in the case of any person, means a lease that, in accordance with generally accepted accounting practice, falls (or would fall) to be treated as a finance lease or loan in the accounts of that person.

(5) "Fixture"—

(a) means any plant or machinery that is so installed or otherwise fixed in or to a building or other description of land as to become, in law, part of that building or other land, and

(b) includes any boiler or water-filled radiator installed in a building as part of a space or water heating system.

(6) "Long funding finance lease", "long funding lease" and "long funding operating lease" have the meanings given in Part 2 of CAA 2001 (see section 70YI(1) of that Act).

(7) "Plant or machinery" has the same meaning as in Part 2 of CAA 2001.

(8) "Plant or machinery lease" has the meaning given in Chapter 6A of that Part (see section 70YI(1) of that Act).

[[F291](8A) Property business" means a UK property business or an overseas property business. **]**

[F292](9) . . . . . .

Textual Amendments

F291 S. 437(8A) inserted (with effect in accordance with Sch. 18 para. 9 of the amending Act) by Finance Act 2010 (c. 13), **Sch. 18 para. 7**

F292 S. 437(9) omitted (with effect in accordance with Sch. 6 para. 27 of the amending Act) by virtue of Finance Act 2011 (c. 11), **Sch. 6 para. 21**

Status: *Point in time view as at 01/04/2014.*
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[F293 437A Determining the ascribed value of plant or machinery

(1) For the purposes of the sales of lessors Chapters, the ascribed value of plant or machinery at any given time (" the relevant time ") is the value determined in accordance with this section.

(2) Subsection (3) applies to plant or machinery if—
- (a) it is subject to a plant or machinery lease at the relevant time,
- (b) the relevant company or partnership is a lessor under the lease, and
- (c) subsection (5) does not apply to it.

(3) The ascribed value of plant or machinery to which this subsection applies is the higher of—
- (a) the market value of the plant or machinery at the relevant time, and
- (b) the present value at that time of the lease referred to in subsection (2).

(4) Subsection (5) applies to plant or machinery if—
- (a) it is subject to a plant or machinery lease at the relevant time,
- (b) the lease is an equipment lease within the meaning of Chapter 14 of Part 2 of CAA 2001 (fixtures),
- (c) the relevant company or partnership is the equipment lessor in respect of the lease (see section 174 of that Act), and
- (d) the equipment lessor is treated at that time as the owner of the plant or machinery by virtue of an election made in reliance on section 177(1)(a)(i) of that Act (which permits elections if the conditions in section 178 are met in relation to the lease).

(5) The ascribed value of plant or machinery to which this subsection applies is the present value at the relevant time of the lease referred to in subsection (4).

(6) The ascribed value of plant or machinery to which neither subsection (3) nor subsection (5) applies is the market value of the plant or machinery at the relevant time.

Textual Amendments

F293 Ss. 437A-437C inserted (with effect in accordance with Sch. 6 para. 27 of the amending Act) by Finance Act 2011 (c. 11), **Sch. 6 para. 22**

437B Section 437A: supplementary

(1) This section supplements section 437A.

(2) Market value is to be determined on the assumption of a disposal by an absolute owner free from all leases and other encumbrances (including any agreement or arrangement that is or includes a plant or machinery lease).

(3) If plant or machinery is a fixture, its market value is so much of the market value of the relevant land and the fixture together as is attributable to the fixture on a just and reasonable apportionment.

(4) " Relevant land " has the meaning given in section 173(2) of CAA 2001.

Status: *Point in time view as at 01/04/2014.*
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Textual Amendments

F293 Ss. 437A-437C inserted (with effect in accordance with Sch. 6 para. 27 of the amending Act) by Finance Act 2011 (c. 11), **Sch. 6 para. 22**

437C Present value of a lease

(1) For the purposes of section 437A, the present value of a lease is the present value of the amounts mentioned in subsection (2).

(2) The amounts are—
  (a) the amounts payable under the lease after the relevant time, and
  (b) any residual amount.

(3) Subsection (2)(a) does not apply to amounts payable by the lessor or to amounts that represent—
  (a) charges for services, or
  (b) qualifying UK or foreign tax to be paid by the lessor.

(4) Present value is to be calculated by using the interest rate implicit in the lease.

(5) The interest rate implicit in the lease is the interest rate that would apply in accordance with normal commercial criteria, including, in particular, generally accepted accounting practice (where applicable).

(6) But if a rate cannot be determined in accordance with subsection (5), the interest rate implicit in the lease is taken to be 1% above LIBOR.

(7) For this purpose—
  (a) LIBOR means the London interbank offered rate on the applicable day for deposits for a term of 12 months in the applicable currency,
  (b) the applicable day is the day comprising or including the relevant time (or, if that day is not a business day, the first business day after it), and
  (c) the applicable currency is the currency in which payments under the lease are payable.

(8) If—
  (a) the lessee has an option to continue the lease for a period after expiry of its initial term, and
  (b) it is reasonably certain at the relevant time that the lessee will exercise that option,

  references in this section to amounts payable under the lease include amounts payable under the lease as continued for any such period.

(9) If the lease also relates to land or assets that are not plant or machinery, the present value of the lease is so much of the present value of the amounts mentioned in subsection (2) as is attributable to the plant or machinery on a just and reasonable apportionment.

(10) In this section, "qualifying UK or foreign tax" and "residual amount" have the meaning given in section 70YE of CAA 2001.]

Status: *Point in time view as at 01/04/2014.*
Changes to legislation: *Corporation Tax Act 2010 is up to date with all changes known to be in force on or before 12 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Textual Amendments

F293 Ss. 437A-437C inserted (with effect in accordance with Sch. 6 para. 27 of the amending Act) by Finance Act 2011 (c. 11), **Sch. 6 para. 22**

PART 10

CLOSE COMPANIES

CHAPTER 1

OVERVIEW OF PART

438 Overview of Part

(1) Chapter 2 defines "close company" and other expressions used in this Part.

(2) Chapter 3 imposes a charge to tax in connection with loans or advances by close companies to participators.

[[F294](2A) Chapter 3A imposes a charge to tax in connection with other arrangements involving close companies and participators.

(2B) Chapter 3B makes provision about the treatment of certain repayments and return payments made in respect of loans, advances and other arrangements.**]**

(3) Chapter 4 contains a power to obtain information in connection with close companies.

(4) For the meaning of "participator", see section 454.

Textual Amendments

F294 S. 438(2A)(2B) inserted (retrospective to 20.3.2013) by Finance Act 2013 (c. 29), **Sch. 30 para. 2(1)**(2)

CHAPTER 2

BASIC DEFINITIONS

Modifications etc. (not altering text)

C26 Pt. 10 Ch. 2 applied (with modifications) (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), **s. 376(1)** (as amended by 2010 c. 4, s. 1184(1), Sch. 1 para. 610(2) (with **Sch. 2**))

C27 Pt. 10 Ch. 2 applied (with modifications) (with effect in accordance with s. 1184(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **s. 456(7)** (as substituted by 2010 c. 4, s. 1184(1), Sch. 1 para. 466(2) (with **Sch. 2**))

Status: *Point in time view as at 01/04/2014.*
Changes to legislation: *Corporation Tax Act 2010 is up to date with all changes known to be in force on or before 12 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Meaning of "close compan"y: general

439 "Close company"

(1) For the purposes of the Corporation Tax Acts, a "close company" is a company in relation to which condition A or B is met.

(2) Condition A is that the company is under the control—
  (a) of 5 or fewer participators, or
  (b) of participators who are directors.

(3) Condition B is that 5 or fewer participators, or participators who are directors, together possess or are entitled to acquire—
  (a) such rights as would, in the event of the winding up of the company ("the relevant company") on the basis set out in section 440, entitle them to receive the greater part of the assets of the relevant company which would then be available for distribution among the participators, or
  (b) such rights as would, in that event, so entitle them if there were disregarded any rights which any of them or any other person has as a loan creditor (in relation to the relevant company or any other company).

(4) For exceptions to this section, see sections 442 to 447 (companies which are not to be close companies).

(5) Section 451 (section 450: rights to be attributed etc) applies for the purposes of subsection (3) and section 440 as it applies for the purposes of section 450.

(6) See also section 441 (treatment of some persons as participators or directors for the purposes of subsection (3)).

(7) For the meaning of—
  (a) "control", see sections 450 and 451,
  (b) "director", see section 452, and
  (c) "loan creditor", see section 453.

440 Basis of winding up under section 439(3)

(1) This section applies for the purposes of section 439(3).

(2) In the notional winding up of the relevant company, the part of the assets available for distribution among the participators which any person is entitled to receive is the aggregate of—
  (a) any part of those assets which the person would be entitled to receive in the event of the winding up of the relevant company, and
  (b) any part of those assets which the person would be entitled to receive if—
    (i) any other company which is a participator in the relevant company and is entitled to receive any assets in the notional winding up were also wound up on the basis set out in this section, and
    (ii) the part of the assets of the relevant company to which the other company is entitled were distributed among the participators in the other company in proportion to their respective entitlement to the assets of the other company available for distribution among the participators.

Status: *Point in time view as at 01/04/2014.*
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(3) In the application of subsection (2)—
  (a) to the notional winding up of the other company mentioned in paragraph (b) of that subsection, and
  (b) to any further notional winding up required by that paragraph (or by any further application of that paragraph),

references to "the relevant company" are to be read as references to the company concerned.

441 Treatment of some persons as participators or directors for the purposes of section 439(3)

(1) The following provisions apply for the purpose of determining whether under subsection (3) of section 439 five or fewer participators, or participators who are directors, together possess or are entitled to acquire rights such as are mentioned in paragraph (a) or (b) of that subsection.

(2) A person is to be treated as a participator in or director of the relevant company if the person is a participator in or director of any other company which would be entitled to receive assets in the notional winding up of the relevant company on the basis set out in section 440.

(3) No account is to be taken of a participator which is a company unless the company possesses or is entitled to acquire the rights in a fiduciary or representative capacity.

(4) But subsection (3) does not apply for the purposes of section 440.

Companies which are not to be close companies

442 Particular types of company

A company is not to be treated as a close company if—
  (a) it is non-UK resident,
  (b) it is a registered industrial and provident society, or
  (c) it is a building society.

443 Companies controlled by or on behalf of Crown

(1) A company is not to be treated as a close company as a result of section 439(2) if it is controlled by or on behalf of the Crown.

(2) A company is "controlled by or on behalf of the Crown", for the purposes of this section, if it is under the control of the Crown or of persons acting on behalf of the Crown, independently of any other person.

(3) But a company is not controlled by or on behalf of the Crown, for the purposes of this section, if it is a close company as a result of being under the control of persons acting independently of the Crown.

444 Companies involved with non-close companies

(1) A company is not to be treated as a close company if condition A or B is met.

Status: *Point in time view as at 01/04/2014.*
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(2) Condition A is that the company—
- (a) is controlled by one or more companies none of which is a close company, and
- (b) cannot be treated as a close company except by taking, as one of the 5 or fewer participators requisite for its being so treated, a company which is not a close company.

(3) Condition B is that the company—
- (a) would not be a close company were it not for paragraph (a) of section 439(3) or paragraph (d) of section 450(3), and
- (b) would not be a close company if the references in those paragraphs to participators did not include loan creditors which are companies other than close companies.

(4) References in subsections (2) and (3) to a close company include a company which, if UK resident, would be a close company.

445 Section 444: registered pension schemes

(1) If shares in a company ("C") are held on trust for a registered pension scheme, the persons holding the shares are to be treated, for the purposes of section 444(2) and (3)—
- (a) as the beneficial owners of the shares, and
- (b) in that capacity, as a company which is not a close company.

(2) But subsection (1) does not apply if the scheme is established wholly or mainly for the benefit of—
- (a) directors, employees, past directors or past employees of a company within subsection (3), or
- (b) dependants of an individual within paragraph (a).

(3) The companies within this subsection are—
- (a) C,
- (b) an associated company of C,
- (c) a company which is under the control of—
  - (i) a director of C,
  - (ii) an associate of a director of C, or
  - (iii) two or more persons each of whom is such a director or associate, and
- (d) a close company.

(4) For the meaning of—
- (a) "associate", see section 448, and
- (b) "associated company", see section 449.

446 Particular types of quoted company

(1) A company is not to be treated as a close company at a particular time if—
- (a) shares in the company carrying at least 35% of the voting power in the company have been allotted unconditionally to, or acquired unconditionally by, and are at that time beneficially held by, the public, and

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(b) any such shares have within the preceding 12 months been the subject of dealings on a recognised stock exchange, and the shares have within those 12 months been listed on such an exchange.

(2) But subsection (1) does not apply to a company at any time when the total percentage of the voting power in the company possessed by all of the company's principal members exceeds 85%.

(3) For the purposes of this section, a person is a principal member of a company if the person possesses a percentage of the voting power in the company of more than 5% (but see subsection (4)).

(4) If there are more than 5 persons within subsection (3), a person is a principal member of the company only if—

(a) the person is one of the 5 persons who possess the greatest percentages, or

(b) in a case where there are no such 5 persons because two or more persons possess equal percentages of the voting power in the company, the person is one of the 6 or more persons (including those two or more who possess equal percentages) who possess the greatest percentages.

(5) In determining for the purposes of this section the voting power which a person possesses, there is to be attributed to the person any voting power which would be attributed to the person if section 451(3) to (6) applied for the purposes of this section.

(6) In this section "shares"—

(a) include stock, but

(b) do not include shares entitled to a fixed rate of dividend, whether with or without a further right to participate in profits.

(7) See also section 447 (section 446: meaning of "shares held beneficially by the public" etc).

447 Section 446: meaning of "shares beneficially held by the public" etc

(1) For the purposes of section 446, shares in a company (C) are beneficially held by the public if they are—

(a) beneficially held by a UK resident company which is not a close company, or by a non-UK resident company which would not be a close company if it were UK resident,

(b) held on trust for a registered pension scheme, or

(c) not comprised in a principal member's holding.

(2) But shares are not beneficially held by the public if they are held—

(a) by a director of C,

(b) by an associate of such a director,

(c) by a company which is under the control of one or more persons each of whom is such a director or associate,

(d) by an associated company of C, or

(e) as part of a fund the capital or income of which is applicable or applied wholly or mainly for the benefit of any of individuals within subsection (3).

(3) Those individuals are—

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(a) employees, directors, past employees or past directors of C or of any company within subsection (2)(c) or (d), and
(b) dependants of any individuals within paragraph (a).

(4) The reference in section 446(1) to shares which have been allotted unconditionally to, or acquired unconditionally by, the public is to be read in accordance with subsections (1) to (3).

(5) For the purposes of subsection (1), a principal member's holding consists of the shares which carry the voting power possessed by him.

(6) The reference in subsection (2) to shares held by any person includes shares the rights or powers attached to which would be attributed to the person if section 451(3) applied for the purposes of that subsection.

(7) Subsections (3) to (5) of section 446 (meaning of "principal member" and determination of voting power possessed) apply for the purposes of this section as they apply for the purposes of that section.

(8) In this section, "shares" includes stock.

Meaning of other expressions in this Part

448 "Associate"

(1) In this Part "associate", in relation to a person ("P"), means—
(a) any relative or partner of P,
(b) the trustees of any settlement in relation to which P is a settlor,
(c) the trustees of any settlement in relation to which any relative of P (living or dead) is or was a settlor,
(d) if P has an interest in any shares or obligations of a company which are subject to any trust, the trustees of any settlement concerned,
(e) if P—
(i) is a company, and
(ii) has an interest in any shares or obligations of a company which are subject to any trust,
any other company which has an interest in those shares or obligations,
(f) if P has an interest in any shares or obligations of a company which are part of the estate of a deceased person, the personal representatives of the deceased, or
(g) if P—
(i) is a company, and
(ii) has an interest in any shares or obligations of a company which are part of the estate of a deceased person,
any other company which has an interest in those shares or obligations.

(2) In this section, "relative" means—
(a) a spouse or civil partner,
(b) a parent or remoter forebear,
(c) a child or remoter issue, or
(d) a brother or sister.

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449 "Associated company"

For the purposes of this Part, a company is another's "associated company" at a particular time if, at that time or at any other time within the preceding 12 months—

(a) one of them has control of the other, or

(b) both are under the control of the same person or persons.

Modifications etc. (not altering text)

C28 Ss. 449-451 applied (with modifications) by Income and Corporation Taxes Act 1988 (c. 1), s. 815(5) (as substituted (with effect in accordance with s. 1184(1) of the amending Act) by 2010 c. 4, s. 1184(1), **Sch. 1 para. 116(b)** (with Sch. 2))

450 "Control"

(1) This section applies for the purpose of this Part.

(2) A person ("P") is treated as having control of a company ("C") if P—

(a) exercises,

(b) is able to exercise, or

(c) is entitled to acquire,

direct or indirect control over C's affairs.

(3) In particular, P is treated as having control of C if P possesses or is entitled to acquire—

(a) the greater part of the share capital or issued share capital of C,

(b) the greater part of the voting power in C,

(c) so much of the issued share capital of C as would, on the assumption that the whole of the income of C were distributed among the participators, entitle P to receive the greater part of the amount so distributed, or

(d) such rights as would entitle P, in the event of the winding up of C or in any other circumstances, to receive the greater part of the assets of C which would then be available for distribution among the participators.

(4) Any rights that P or any other person has as a loan creditor are to be disregarded for the purposes of the assumption in subsection (3)(c).

(5) If two or more persons together satisfy any of the conditions in subsections (2) and (3), they are treated as having control of C.

(6) See also section 451 (section 450: rights to be attributed etc).

Modifications etc. (not altering text)

C28 Ss. 449-451 applied (with modifications) by Income and Corporation Taxes Act 1988 (c. 1), s. 815(5) (as substituted (with effect in accordance with s. 1184(1) of the amending Act) by 2010 c. 4, s. 1184(1), **Sch. 1 para. 116(b)** (with Sch. 2))

C29 Ss. 450, 451 applied by Taxes Management Act 1970 (c. 9), s. 109F(4) (as inserted (with effect in accordance with s. 381(1) of the amending Act) by 2010 c. 8, s. 381(1), **Sch. 7 para. 54** (with Sch. 9 paras. 1-9, 22))

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C30 Ss. 450, 451 applied by Finance Act 1996 (c. 8), Sch. 15 para. 11(2D)(a) (as substituted (with effect in accordance with s. 1184(1) of the amending Act) by 2010 c. 4, s. 1184(1), **Sch. 1 para. 293** (with Sch. 2))

451 Section 450: rights to be attributed etc

(1) This section applies for the purposes of section 450.

(2) A person is treated as entitled to acquire anything which the person—
- (a) is entitled to acquire at a future date, or
- (b) will at a future date be entitled to acquire.

(3) If a person—
- (a) possesses any rights or powers on behalf of another person (A), or
- (b) may be required to exercise any rights or powers on A's direction or behalf,

those rights or powers are to be attributed to A.

(4) There may also be attributed to a person all the rights and powers—
- (a) of any company of which the person has, or the person and associates of the person have, control,
- (b) of any two or more companies within paragraph (a),
- (c) of any associate of the person, or
- (d) of any two or more associates of the person.

(5) The rights and powers which may be attributed under subsection (4)—
- (a) include those attributed to a company or associate under subsection (3), but
- (b) do not include those attributed to an associate under subsection (4).

(6) Such attributions are to be made under subsection (4) as will result in a company being treated as under the control of 5 or fewer participators if it can be so treated.

Modifications etc. (not altering text)

C28 Ss. 449-451 applied (with modifications) by Income and Corporation Taxes Act 1988 (c. 1), s. 815(5) (as substituted (with effect in accordance with s. 1184(1) of the amending Act) by 2010 c. 4, s. 1184(1), **Sch. 1 para. 116(b)** (with Sch. 2))

C29 Ss. 450, 451 applied by Taxes Management Act 1970 (c. 9), s. 109F(4) (as inserted (with effect in accordance with s. 381(1) of the amending Act) by 2010 c. 8, s. 381(1), **Sch. 7 para. 54** (with Sch. 9 paras. 1-9, 22))

C30 Ss. 450, 451 applied by Finance Act 1996 (c. 8), Sch. 15 para. 11(2D)(a) (as substituted (with effect in accordance with s. 1184(1) of the amending Act) by 2010 c. 4, s. 1184(1), **Sch. 1 para. 293** (with Sch. 2))

452 "Director"

(1) In this Part, "director", in relation to a company, includes—
- (a) a person occupying the position of director of the company, by whatever name called,
- (b) a person in accordance with whose directions or instructions the directors of the company are accustomed to act, and

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(c) a person within subsection (2).

(2) A person (P) is within this subsection if P—

(a) is a manager of the company or otherwise concerned in the management of the company's trade or business, and

(b) is—

(i) the beneficial owner of, or

(ii) directly or indirectly able to control,

at least 20% of the ordinary share capital of the company.

(3) For the purposes of subsection (2)(b), P is treated as owning or controlling (as the case may be) what any associate of P owns or controls.

453 "Loan creditor"

(1) For the purposes of this Part, "loan creditor", in relation to a company, means a creditor—

(a) in respect of any debt within subsection (2), or

(b) in respect of any redeemable loan capital issued by the company.

But this is subject to subsection (4).

(2) Debt is within this subsection if it is incurred by the company—

(a) for any money borrowed or capital assets acquired by the company,

(b) for any right to receive income created in favour of the company, or

(c) for consideration the value of which to the company was (at the time when the debt was incurred) substantially less than the amount of the debt (including any premium on the debt).

(3) A person who—

(a) is not the creditor in respect of any debt or loan capital to which subsection (1) applies, but

(b) has a beneficial interest in that debt or loan capital,

is, to the extent of that interest, treated for the purposes of this Part as a loan creditor in respect of that debt or loan capital (but this is subject to subsection (4)).

(4) A person carrying on a business of banking is not treated as a loan creditor in respect of any debt or loan capital incurred or issued by the company for money lent by the person to the company in the ordinary course of that business.

(5) See also section 519(2) of CTA 2009 (bond-holder under investment bond arrangements is loan creditor in respect of bond-issuer).

454 "Participator"

(1) For the purposes of this Part, "participator", in relation to a company, means a person having a share or interest in the capital or income of the company.

(2) In particular, "participator" includes—

(a) a person who possesses, or is entitled to acquire, share capital or voting rights in the company,

(b) a loan creditor of the company,

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(c) a person who possesses a right to receive or participate in distributions of the company or any amounts payable by the company (in cash or in kind) to loan creditors by way of premium on redemption,

(d) a person who is entitled to acquire such a right as is mentioned in paragraph (c), and

(e) a person who is entitled to secure that income or assets (whether present or future) of the company will be applied directly or indirectly for the person's benefit.

(3) For the purposes of subsection (2), a person is treated as entitled to do anything which the person—

(a) is entitled to do at a future date, or

(b) will at a future date be entitled to do.

(4) In subsection (2) "distribution" is to be construed without regard to section 1000(2) (extended definition of distribution for close companies).

(5) See also section 519(2) of CTA 2009 (investment bond arrangements to be ignored in the application of subsection (2)(e)).

(6) This section does not affect any provision of this Part requiring a participator in one company to be treated as being also a participator in another company.

Modifications etc. (not altering text)

C31 S. 454 applied (with effect in accordance with s. 381(1) of the amending Act) by Taxation (International and Other Provisions) Act 2010 (c. 8), **ss. 341(5)**, 381(1) (with Sch. 9 paras. 1-9, 22, 31)

CHAPTER 3

CHARGE TO TAX IN CASE OF LOAN TO PARTICIPATOR

Charge to tax in case of loan to participator

455 Charge to tax in case of loan to participator

[[F295](1) This section applies if a close company makes a loan or advances money to—

(a) a relevant person who is a participator in the company or an associate of such a participator,

(b) the trustees of a settlement one or more of the trustees or actual or potential beneficiaries of which is a participator in the company or an associate of such a participator, or

(c) a limited liability partnership or other partnership one or more of the partners in which is an individual who is—

(i) a participator in the company, or

(ii) an associate of an individual who is such a participator.**]**

(2) There is due from the company, as if it were an amount of corporation tax chargeable on the company for the accounting period in which the loan or advance is made, an amount equal to 25% of the amount of the loan or advance.

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(3) Tax due under this section in relation to a loan or advance is due and payable in accordance with section 59D of TMA 1970 on the day following the end of the period of 9 months from the end of the accounting period in which the loan or advance was made.

(4) For the purposes of this section and sections 456 to 459, the cases in which a close company is to be treated as making a loan to a person include a case where—
  (a) that person incurs a debt to the close company, or
  (b) a debt due from that person to a third party is assigned to the close company.

  In such a case, the close company is to be treated as making a loan of an amount equal to the debt.

(5) If a company (C) controls another company (D), a participator in C is to be treated for the purposes of this section as being also a participator in D.

(6) In this Chapter, "relevant person" means—
  (a) an individual, or
  (b) a company receiving a loan or advance in a fiduciary or representative capacity.

(7) For exceptions to the charge under this section, see section 456.

(8) See also—
  (a) section 458 (relief in case of repayment or release of loan),
  (b) section 459 (loan treated as made to participator), and
  (c) sections 460 to 462 (loan treated as made by close company).

Textual Amendments

F295 S. 455(1) substituted (with retrospective effect in accordance with Sch. 30 para. 3(2) of the amending Act) by Finance Act 2013 (c. 29), **Sch. 30 para. 3(1)**

Exceptions to the charge to tax under section 455

456 Exceptions to the charge under section 455

(1) Section 455 does not apply to a loan or advance made in the ordinary course of a business carried on by a company if the business includes the lending of money.

(2) Section 455(4)(a) does not apply to a debt incurred for the supply by a close company of goods or services in the ordinary course of its trade or business unless the credit given exceeds 6 months or is longer than that normally given to the company's customers.

(3) Section 455 does not apply to a loan or advance made to—
  (a) a director of a close company,
  (b) an employee of such a company,
  (c) a director of an associated company of such a company, or
  (d) an employee of such an associated company,

  if conditions A, B and C are met (but see subsection (7)).

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(4) Condition A is that—
  (a) the amount of the loan or advance does not exceed £15,000, and
  (b) that amount does not exceed £15,000 when taken together with any other outstanding loans and advances which were made to the borrower by—
    (i) the close company, or
    (ii) any of its associated companies.

(5) Condition B is that the borrower works full-time for the close company or any of its associated companies.

(6) Condition C is that the borrower does not have a material interest in the close company or in any of its associated companies.

(7) If the borrower acquires such a material interest at a time when the whole or part of any loan or advance within subsection (3) remains outstanding, the close company is to be treated as making to the borrower at that time a loan or advance of an amount equal to the sum outstanding.

(8) For the meaning of "material interest in a company", see section 457.

457 Section 456: meaning of "material interest in a company"

(1) A person has a material interest in a company for the purposes of section 456 if condition A or B is met.

(2) Condition A is that the person (with or without one or more associates) or any associate of that person (with or without one or more other such associates) is—
  (a) the beneficial owner of, or
  (b) directly or indirectly able to control,

  more than 5% of the ordinary share capital of the company.

(3) Condition B is that, in the case of a close company, the person (with or without one or more associates) or any associate of that person (with or without one or more other such associates) possesses or is entitled to acquire such rights as would—
  (a) in the event of the winding up of the company, or
  (b) in any other circumstances,

  give an entitlement to receive more than 5% of the assets which would then be available for distribution among the participators.

Relief in case of repayment or release of loan

458 Relief in case of repayment or release of loan

(1) Subsection (2) applies if a close company has made a loan or advance which gave rise to a charge to tax on the company under section 455.

(2) Relief is to be given from that tax, or a proportionate part of it, if—
  (a) the loan or advance or part of it is repaid to the company, or
  (b) the whole or part of the debt in respect of the loan or advance is released or written off.

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(3) Relief under this section is to be given on a claim, which must be made within 4 years from the end of the financial year in which the repayment is made or the release or writing off occurs.

(4) Subsection (5) applies if—

(a) the repayment of the whole or part of a loan or advance occurs on or after the day on which tax under section 455 becomes due and payable in relation to the loan or advance, or

(b) the release or writing off of the whole or part of the debt in respect of a loan or advance occurs on or after the day on which tax under that section becomes due and payable in relation to the loan or advance.

(5) Relief in respect of the repayment, release or writing off may not be given under this section at any time before the end of the period of 9 months from the end of the accounting period in which the repayment, release or writing off occurred.

(6) Schedule 1A to TMA 1970 (claims and elections not included in return) applies to a claim for relief under this section unless—

(a) the claim is included (by amendment or otherwise) in the return for the period in which the loan or advance was made, and

(b) the relief may be given at the time the claim is made.

Loan treated as made to participator

459 Loan treated as made to participator

(1) This section applies if under arrangements made by a person (P)—

(a) a close company makes a loan or advance which, apart from this section, does not give rise to a charge to tax under section 455, and

(b) a person other than the close company makes a payment or transfers property to, or releases or satisfies (in whole or in part) a liability of, a relevant person who is a participator in the company or an associate of such a participator.

(2) Sections 455 to 458 **[**[F296]and 464C and 464D**]** apply as if the loan or advance had been made to the relevant person.

(3) But this section does not apply if—

(a) the arrangements mentioned in subsection (1) are made by P in the ordinary course of a business carried on by P, or

(b) the total income of the relevant person includes, in respect of the matter mentioned in subsection (1)(b), an amount not less than the loan or advance.

(4) If a company (C) controls another company (D), a participator in C is to be treated for the purposes of this section as being also a participator in D.

Textual Amendments

F296 Words in s. 459(2) inserted (retrospective to 20.3.2013) by Finance Act 2013 (c. 29), **Sch. 30 para. 4(1)(2)**

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Loan treated as made by close company

460 Loan treated as made by close company

(1) This section applies if a company (C) which is controlled by another company makes a loan or advance which, apart from this section, does not give rise to a charge to tax under section 455.

(2) If C is controlled by a close company at the time the loan or advance is made, sections 455 to 459 apply as if the loan or advance had been made by the close company.

(3) If C is not controlled by a close company at that time but a close company subsequently acquires control of it, sections 455 to 459 apply as if the loan or advance had been made by the close company immediately after the time when it acquired control.

(4) If two or more close companies together control C or together acquire control of C, subsection (2) or (as the case may be) subsection (3) is to have effect—
   (a) as if each of them controlled C, and
   (b) as if the loan or advance had been made by each of those close companies.

   But the loan or advance is to be apportioned between those close companies in such proportion as may be appropriate having regard to the nature and amount of their respective interests in C.

(5) For an exception to this section, see section 461.

(6) See also section 462 (determination of particular questions as a result of this section).

(7) References in this section and sections 461 and 462 to a company making a loan include references to cases in which the company is, or if it were a close company would be, regarded as making a loan because of section 455(4).

461 Exception to section 460

(1) Section 460 does not apply if it is shown that no person has made any arrangements (otherwise than in the ordinary course of a business carried on by the person) as a result of which there is a connection—
   (a) between—
      (i) the making of the loan or advance, and
      (ii) the acquisition of control, or
   (b) between—
      (i) the making of the loan or advance, and
      (ii) the provision by the close company of funds for C.

(2) The close company is to be treated for the purposes of subsection (1) as providing funds for C if it directly or indirectly makes a payment or transfers property to, or releases or satisfies (in whole or in part) a liability of, C.

462 Determination of particular questions as a result of section 460

(1) This section applies if, as a result of section 460, sections 455 to 459 have effect as if a loan or advance made by C had been made by another company.

(2) Any question under those sections whether—

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(a) the company making the loan or advance did so in the ordinary course of a business carried on by it which includes the lending of money,
(b) the loan or advance or part of it has been repaid to the company, or
(c) the company has released or written off the whole or part of the debt in respect of the loan or advance,

is to be determined by reference to C.

Taxation of debtor on release of loan to trustees of settlement which has ended

463 Taxation of debtor on release of loan to trustees of settlement which has ended

(1) This section applies if each of conditions A to D is met.

(2) Condition A is that a company (X) is or was chargeable to tax under section 455 (charge to tax in the case of loan to participator) in respect of a loan or advance made to the trustees of a settlement.

(3) Condition B is that X releases or writes off the whole or part of the debt in respect of the loan or advance.

(4) Condition C is that the person from which the debt was due at the time of the release or writing off is a company (Y).

(5) Condition D is that the release or writing off takes place after the settlement has ended.

(6) When the release or writing off takes place, Y is treated as receiving an amount to which the charge to corporation tax on income applies.

(7) The amount which Y is treated as receiving is equal to—

$$N + \left(N \times \frac{R}{100 - R}\right)$$

where—
N is the amount released or written off, and
R is a percentage rate equal to the dividend ordinary rate specified in section 8(1) of ITA 2007 for the tax year in which the release or writing off takes place.

464 Section 463: other person treated as releasing or writing off debt

(1) This section applies if sections 455 to 459 have effect under section 460 (loan treated as made by close company) as if a loan or advance had been made by a company ("A"), rather than the company ("B") which—
(a) actually made it,
(b) is regarded as having made it under section 455(4) (deemed loan where debt incurred or assigned to close company), or
(c) would be so regarded if it were a close company.

(2) If the whole or part of the debt is released or written off by B, A rather than B is treated, for the purposes of section 463, as releasing it or writing it off.

Status: *Point in time view as at 01/04/2014.*
Changes to legislation: *Corporation Tax Act 2010 is up to date with all changes known to be in force on or before 12 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

[F297CHAPTER 3A

CHARGE TO TAX: OTHER ARRANGEMENTS

Textual Amendments

F297 Pt. 10 Ch. 3A inserted (with retrospective effect in accordance with Sch. 30 para. 5(2) of the amending Act) by Finance Act 2013 (c. 29), **Sch. 30 para. 5(1)**

464A Charge to tax: arrangements conferring benefit on participator

(1) This section applies if—

(a) a close company is at any time a party to tax avoidance arrangements, and

(b) as a result of those arrangements, a benefit is conferred (whether directly or indirectly) on an individual who is—

(i) a participator in the company, or

(ii) an associate of such a participator.

(2) But this section does not apply if, or to the extent that, the conferral of the benefit gives rise to—

(a) a charge to tax on the company under section 455, or

(b) a charge to income tax on the participator or associate.

(3) There is due from the company, as if it were an amount of corporation tax chargeable on the company for the accounting period in which the benefit is conferred on the participator or associate, an amount equal to 25% of the value of the benefit conferred.

(4) Tax due under this section in relation to a benefit conferred on a participator or associate is due and payable in accordance with section 59D of TMA 1970 on the day following the end of the period of 9 months from the end of the accounting period in which the benefit was conferred.

(5) If a company (C) controls another company (D), a participator in C is to be treated for the purposes of this section as being also a participator in D.

(6) For the purposes of this section, arrangements are "tax avoidance arrangements" if the main purpose, or one of the main purposes, of the arrangements is—

(a) to avoid or reduce, or obtain a relief or increased relief from, a charge to tax on the company under section 455, or

(b) to obtain a tax advantage for the participator or associate.

(7) In this section—

"arrangements" includes any arrangements, scheme or understanding of any kind, whether or not legally enforceable, involving a single transaction or two or more transactions, and

"tax advantage" has the meaning given in section 1139, reading references to tax in that section as references to income tax.

464B Relief in case of return payment to company

(1) Subsection (2) applies if a benefit has been conferred which gave rise to a charge to tax on the company under section 464A.

Status: *Point in time view as at 01/04/2014.*
Changes to legislation: *Corporation Tax Act 2010 is up to date with all changes known to be in force on or before 12 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(2) Relief is to be given from that tax, or a proportionate part of it, if—
  (a) a payment ("the return payment") is made to the company in respect of the benefit, and
  (b) no consideration is given for the return payment.

(3) Relief under this section is to be given on a claim, which must be made within 4 years from the end of the financial year in which the return payment is made to the company.

(4) Subsection (5) applies if the return payment is made on or after the day on which tax under section 464A becomes due and payable in relation to the benefit.

(5) Relief in respect of the return payment may not be given under this section at any time before the end of the period of 9 months from the end of the accounting period in which the return payment was made.

(6) Schedule 1A to TMA 1970 (claims and elections not included in return) applies to a claim for relief under this section unless—
  (a) the claim is included (by amendment or otherwise) in the return for the period in which the benefit was conferred, and
  (b) the relief may be given at the time the claim is made.**]**

[[F298]CHAPTER 3B

REPAYMENTS AND RETURN PAYMENTS

Textual Amendments

F298 Pt. 10 Ch. 3B inserted (with retrospective effect in accordance with Sch. 30 para. 6(2) of the amending Act) by Finance Act 2013 (c. 29), **Sch. 30 para. 6(1)**

464C Treatment of certain repayments and return payments

(1) Where—
  (a) within any period of 30 days—
    (i) the qualifying amount of repayments made to a close company in respect of one or more chargeable payments made by the company to a person totals £5,000 or more, and
    (ii) the available amount of the relevant chargeable payments made by the company to the person or an associate of the person totals £5,000 or more, and
  (b) the relevant chargeable payments are made in an accounting period subsequent to that in which the chargeable payments mentioned in paragraph (a)(i) were made,

  the qualifying amount of the repayments, so far as not exceeding the available amount of the relevant chargeable payments, is to be treated for the purposes of this Chapter as a repayment of the relevant chargeable payments.

(2) A chargeable payment is a relevant chargeable payment for the purposes of subsection (1) if (or to the extent that) it is not repaid within the period of 30 days mentioned in that subsection.

Status: *Point in time view as at 01/04/2014.*
Changes to legislation: *Corporation Tax Act 2010 is up to date with all changes known to be in force on or before 12 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(3) Where—

(a) immediately before a repayment is made in respect of one or more chargeable payments made by a close company to a person, the total amount owed to the company by the person in respect of chargeable payments is £15,000 or more,

(b) at the time the repayment is made, arrangements had been made for one or more chargeable payments to be made to replace some or all of the amount repaid, and

(c) the available amount of the chargeable payments made by the company to the person or an associate of the person under the arrangements totals £5,000 or more,

the qualifying amount of the repayment, so far as not exceeding the available amount of the chargeable payments mentioned in paragraph (c), is to be treated for the purposes of this Chapter as a repayment of those chargeable payments.

(4) An amount contained in a chargeable payment is an available amount—

(a) for the purposes of subsection (1), to the extent that no repayment has been treated as made in respect of it by the previous operation of that subsection, and

(b) for the purposes of subsection (3), to the extent that no repayment has been treated as made in respect of it—

(i) by the operation of subsection (1), or

(ii) by the previous operation of subsection (3).

(5) An amount contained in a repayment is a qualifying amount to the extent that it has not been treated by the previous operation of this section as a repayment of a chargeable payment.

(6) This section does not apply in relation to a repayment which gives rise to a charge to income tax on the participator or associate by reference to whom the loan, advance or benefit was a chargeable payment.

(7) The Treasury may by order vary a sum specified in subsection (1) or (3).

(8) An order under subsection (7) may contain incidental, supplemental, consequential and transitional provision and savings.

464D Section 464C: supplementary

(1) All such assessments and adjustments of assessments are to be made as are necessary to give effect to section 464C(1) and (3).

(2) If a person who has made a tax return becomes aware that, after making it, anything in it has become incorrect because of the operation of section 464C(1) or (3), the person must give notice to an officer of Revenue and Customs specifying how the return needs to be amended.

(3) The notice must be given within 3 months beginning with the day on which the person became aware that anything in the return had become incorrect because of the operation of section 464C(1) or (3).

(4) In section 464C, "chargeable payment" means—

(a) a loan or advance made by a close company which gives rise to a charge to tax under section 455, or

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(b) the conferral of a benefit on an individual in circumstances which give rise to a charge to tax under section 464A.

(5) In a case within subsection (4)(b)—

(a) the conferral of the benefit is to be treated for the purposes of section 464C as a loan made by the close company to the individual to the value of the benefit conferred, and

(b) any payment in respect of which (apart from section 464C) relief is due to the close company under section 464B is to be treated for the purposes of section 464C as a repayment of the loan.**]**

CHAPTER 4

POWER TO OBTAIN INFORMATION

465 Power to obtain information

[F299](1) . . . . . .

(2) Subsections (3) and (4) apply if a company ("the issuing company") appears to an officer of Revenue and Customs to be a close company.

(3) The officer may, for the purposes of Chapter 3 **[**[F300]or 3A **]** , by notice require the issuing company to provide the officer with—

(a) particulars of any bearer securities issued by the company,

(b) the names and addresses of the persons to whom the securities were issued, and

(c) details of the amounts issued to each person.

(4) The officer may, for the purposes of Chapter 3 **[**[F300]or 3A**]** , by notice require—

(a) any person to whom bearer securities were issued by the company, or

(b) any person to or through whom bearer securities issued by the company were subsequently sold or transferred,

to provide any further information that the officer reasonably requires with a view to enabling the officer to find out the names and addresses of the persons beneficially interested in the securities.

(5) In this section "securities" includes—

(a) shares, stocks, bonds, debentures and debenture stock, and

(b) any promissory note or other instrument evidencing indebtedness to a loan creditor of the company.

Textual Amendments

F299 S. 465(1) omitted (with effect in accordance with Sch. 23 para. 65 of the amending Act) by virtue of Finance Act 2011 (c. 11), **Sch. 23 paras. 64(2)(b)**, 65(1)(a) (with Sch. 23 paras. 50, 65(1)(b))

F300 Words in s. 465 inserted (17.7.2013) by Finance Act 2013 (c. 29), **Sch. 30 para. 7**

Status: *Point in time view as at 01/04/2014.*
Changes to legislation: *Corporation Tax Act 2010 is up to date with all changes known to be in force on or before 12 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

PART 11

CHARITABLE COMPANIES ETC

CHAPTER 1

INTRODUCTION

466 Overview of Part

(1) This Part makes provision about some gifts and payments made to charitable companies, including provision applying the charge to corporation tax on income and conferring exemptions (see sections 471 to 474).

(2) This Part also provides for some of the income of charitable companies and others to be exempt from corporation tax (see sections 475 to 477 and Chapter 3).

(3) In the case of a charitable company which has a non-exempt amount for an accounting period (see section 493), the exemptions under this Part are subject to restrictions (see section 492).

(4) The non-exempt amount for an accounting period depends on the charitable company's attributable income and gains for the period and its non-charitable expenditure for the period (see sections 493 and 496 to 517).

(5) See also Schedule 19 to FA 2008, which contains provision for transitional payments to charitable companies and certain other bodies in respect of gifts made in the tax years 2008-09 to 2010-11.

[F301]467 Meaning of "charitable company"

. . . . . .

Textual Amendments

F301 S. 467 omitted (with effect in accordance with art. 21 of the commencing S.I.) by virtue of Finance Act 2010 (c. 13), **Sch. 6 paras. 27(4)**, 34(2); S.I. 2012/736, art. 21

468 Meaning of "eligible body"

Each of the following is an eligible body for the purposes of this Part—

(a) the Trustees of the National Heritage Memorial Fund,

(b) the Historic Buildings and Monuments Commission for England,

(c) the Trustees of the British Museum, **[**[F302]and**]**

(d) the Trustees of the Natural History Museum, [F303]...

[F303](e) . . . . . .

Textual Amendments

F302 Word in s. 468 inserted (1.4.2012) by The Public Bodies (Abolition of the National Endowment for Science, Technology and the Arts) Order 2012 (S.I. 2012/964), arts. 1(2), 3(1), **Sch.**

Status: *Point in time view as at 01/04/2014.*
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F303 S. 468(e) and word omitted (1.4.2012) by virtue of The Public Bodies (Abolition of the National Endowment for Science, Technology and the Arts) Order 2012 (S.I. 2012/964), arts. 1(2), 3(1), **Sch.**

469 Conditions for qualifying as a scientific research association

(1) For the purposes of this Part a body qualifies as a scientific research association for an accounting period if—
  (a) it is an association (see subsection (5)(a)), and
  (b) it meets conditions A and B with respect to the accounting period.

(2) Condition A is that the body has as its object the undertaking of research and development which may lead to or facilitate an extension of any class or classes of trade.

(3) Condition B is that the memorandum of association or other similar instrument regulating the body's functions precludes the direct or indirect payment or transfer to any of its members of any of its income or property by way of dividend, gift, division, bonus or otherwise by way of profit.

(4) For the purposes of compliance with condition B it is not necessary that the memorandum of association or other similar instrument regulating the body's functions should prevent the payment to its members of—
  (a) reasonable remuneration for goods, labour or power supplied, or for services provided,
  (b) reasonable interest for money lent, or
  (c) reasonable rent for premises.

(5) The Treasury may by regulations—
  (a) make provision specifying what is to be treated as being, or as not being, an association for the purposes of subsection (1)(a), or
  (b) prescribe circumstances in which a body is to be treated as not meeting condition A or B with respect to an accounting period.

(6) The Treasury may by regulations make provision specifying for the purposes of condition A—
  (a) circumstances in which a body is to be treated as having, or as not having, the undertaking of research and development as its object,
  (b) circumstances in which the undertaking of research and development is to be treated as being, or as not being, capable of leading to or facilitating an extension of a class of trade, or
  (c) what is to be treated as being, or as not being, a class of trade.

470 Meaning of "research and development" in section 469

(1) Section 1138 (meaning of "research and development") applies for the purposes of section 469(2).

(2) Regulations under section 1006(3) of ITA 2007 (power to prescribe activities which are, or are not, research and development), as that section applies by virtue of section 1138(3), may make provision for the purposes of section 469(2) which is additional to, or different from, the provision made for other purposes under section 1006(3).

Status: *Point in time view as at 01/04/2014.*
Changes to legislation: *Corporation Tax Act 2010 is up to date with all changes known to be in force on or before 12 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

CHAPTER 2

GIFTS AND OTHER PAYMENTS

Gifts and other payments to charitable companies

471 Gifts qualifying for gift aid relief: income tax treated as paid

(1) This section applies if a gift is made to a charitable company by an individual and the gift is a qualifying donation for the purposes of Chapter 2 of Part 8 of ITA 2007 (gift aid).

(2) The charitable company is treated as receiving, under deduction of income tax at the basic rate for the tax year in which the gift is made, a gift of an amount equal to the grossed up amount of the gift.

(3) References in this section to the grossed up amount of the gift are to the amount of the gift grossed up by reference to the basic rate for the tax year in which the gift is made.

(4) The income tax treated as deducted is treated as income tax paid by the charitable company.

472 Gifts qualifying for gift aid relief: corporation tax liability and exemption

(1) If a charitable company receives a gift from an individual and the gift is a qualifying donation for the purposes of Chapter 2 of Part 8 of ITA 2007 (gift aid), the grossed up amount of the gift is treated as an amount in respect of which the company is chargeable to corporation tax, under the charge to corporation tax on income.

(2) But the grossed up amount of the gift is not taken into account in calculating total profits so far as that grossed up amount is applied to charitable purposes only.

(3) References in this section to the grossed up amount of a gift are to the amount of the gift grossed up by reference to the basic rate for the tax year in which the gift is made.

(4) The exemption under subsection (2) requires a claim.

[F304](5) . . . . . .

Textual Amendments

F304 S. 472(5) omitted (retrospective to 6.4.2012) by virtue of Finance Act 2012 (c. 14), **s. 50(2)(d)**(4)

[[F305]472A Gifts under payroll deduction schemes: corporation tax liability and exemption

(1) If a charitable company receives a gift from an individual and the gift is a donation for the purposes of Part 12 of ITEPA 2003 (payroll giving), the gift is treated as an amount in respect of which the charitable company is chargeable to corporation tax, under the charge to corporation tax on income.

(2) But the gift is not taken into account in calculating total profits so far as it is applied to charitable purposes only.

(3) The exemption under subsection (2) requires a claim.]

Status: *Point in time view as at 01/04/2014.*
Changes to legislation: *Corporation Tax Act 2010 is up to date with all changes known to be in force on or before 12 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Textual Amendments

F305 S. 472A inserted (with effect in accordance with Sch. 8 para. 8(1)(2) of the amending Act) by Finance Act 2010 (c. 13), **Sch. 8 para. 1(2)**

473 Gifts of money from companies: corporation tax liability and exemption

(1) If a charitable company receives a gift of a sum of money from a company which is not a charity, the gift is treated as an amount in respect of which the charitable company is chargeable to corporation tax, under the charge to corporation tax on income.

(2) But the gift is not taken into account in calculating total profits so far as it is applied to charitable purposes only.

(3) The exemption under subsection (2) requires a claim.

474 Payments from other charities: corporation tax liability and exemption

(1) Subsection (2) applies if a charitable company receives from another charity a payment which—

(a) is not made for full consideration in money or money's worth,

(b) is not chargeable to corporation tax apart from this section, and

(c) is not of a description which (on a claim) would be exempt from corporation tax under any of the exemptions conferred by this Part.

(2) The payment is treated as an amount in respect of which the charitable company is chargeable to corporation tax, under the charge to corporation tax on income.

(3) But the payment is not taken into account in calculating total profits so far as it is applied to charitable purposes only.

(4) In the case of a payment to which section 494 of ITA 2007 (discretionary payments by trustees) applies, the references in subsections (2) and (3) to the payment are to be read as references to the grossed up amount of the discretionary payment within the meaning of that section.

(5) The exemption under subsection (3) requires a claim.

Gifts to eligible bodies

475 Gifts qualifying for gift aid relief: income tax treated as paid and exemption

(1) This section applies if a gift is made to an eligible body by an individual and the gift is a qualifying donation for the purposes of Chapter 2 of Part 8 of ITA 2007 (gift aid).

(2) The eligible body is treated as receiving, under deduction of income tax at the basic rate for the tax year in which the gift is made, a gift of an amount equal to the grossed up amount of the gift.

(3) References in this section to the grossed up amount of the gift are to the amount of the gift grossed up by reference to the basic rate for the tax year in which the gift is made.

(4) The income tax treated as deducted is treated as income tax paid by the eligible body.

Status: *Point in time view as at 01/04/2014.*
Changes to legislation: *Corporation Tax Act 2010 is up to date with all changes known to be in force on or before 12 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(5) The grossed up amount of the gift is not taken into account in calculating total profits.

(6) The exemption under subsection (5) requires a claim.

F306(7) . . . . . .

(8) In the case of an eligible body which is a charitable company, this section applies instead of sections 471 and 472.

Textual Amendments

F306 S. 475(7) omitted (retrospective to 6.4.2012) by virtue of Finance Act 2012 (c. 14), **s. 50(2)(e)**(4)

476 Gifts of money from companies: exemption

(1) If an eligible body receives a gift of a sum of money from a company, the gift is not taken into account in calculating total profits.

(2) The exemption under subsection (1) requires a claim.

(3) In the case of an eligible body which is a charitable company, this section applies instead of section 473.

Gifts to scientific research associations

477 Gifts of money from companies: exemption

(1) A gift of a sum of money that a body receives from a company is not taken into account in calculating total profits if the body receiving the gift qualifies as a scientific research association for the relevant accounting period.

(2) The exemption under subsection (1) requires a claim.

(3) In subsection (1) "the relevant accounting period" means the accounting period for which the exemption is to be claimed.

(4) In the case of a body which qualifies as a scientific research association and is also a charitable company, this section applies instead of section 473.

[F307Claims

Textual Amendments

F307 S. 477A and cross-heading inserted (8.4.2010) by Finance Act 2010 (c. 13), **Sch. 8 para. 7**

477A Claims in relation to gift aid relief

[This section applies to claims for repayment of income tax treated as having been paid F308(A1) by virtue of—

(a) section 471 (gifts qualifying for gift aid relief: charitable companies), or

(b) section 475 (gifts qualifying for gift aid relief: eligible bodies).**]**

Status: *Point in time view as at 01/04/2014.*
Changes to legislation: *Corporation Tax Act 2010 is up to date with all changes known to be in force on or before 12 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(1) This section **[**[F309]also**]** applies to claims for amounts to be exempt from tax by virtue of—

(a) section 472 (gifts qualifying for gift aid relief: charitable companies), or

(b) section 475 (gifts qualifying for gift aid relief: eligible bodies).

(2) A claim to which this section applies may be made—

(a) to an officer of Revenue and Customs, or

(b) where the claimant is a company, by being included in the claimant's company tax return.

(3) In this section—

" free-standing claim " means a claim made as mentioned in subsection (2)(a), and

" tax return claim " means a claim made as mentioned in subsection (2)(b).

(4) The Commissioners for Her Majesty's Revenue and Customs may by regulations make provision—

(a) limiting the number of free-standing claims that may be made by a person in a tax year, or

(b) requiring a claim for an amount below an amount specified in the regulations to be made as a tax return claim.

(5) The regulations may make different provision for different cases or purposes.**]**

Textual Amendments

F308 S. 477A(A1) inserted (retrospective to 8.4.2010) by Finance Act 2012 (c. 14), **Sch. 15 paras. 3(2)**, 17(1)

F309 Word in s. 477A(1) inserted (retrospective to 8.4.2010) by Finance Act 2012 (c. 14), **Sch. 15 paras. 3(3)**, 17(1)

CHAPTER 3

OTHER EXEMPTIONS

Exemptions

478 Exemption for profits etc of charitable trades

(1) The income mentioned in subsection (2) is not taken into account in calculating total profits if the condition in subsection (3) is met.

(2) The income referred to in subsection (1) is—

(a) profits of a charitable trade carried on by a charitable company, and

(b) post-cessation receipts arising from a charitable trade carried on by a charitable company which are received by the company or to which it is entitled.

(3) The condition is that the profits are, or (as the case may be) the post-cessation receipt is, applied to the purposes of the charitable company only.

Status: *Point in time view as at 01/04/2014.*
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(4) In this section "post-cessation receipt" means an amount that is a post-cessation receipt for the purposes of Part 3 of CTA 2009 (see sections 190 to 195 of that Act).

(5) The exemption under subsection (1) requires a claim.

479 Meaning of "charitable trade"

(1) For the purposes of this Part a trade carried on by a charitable company is a charitable trade if—
  (a) the trade is exercised in the course of carrying out a primary purpose of the charitable company, or
  (b) the work in connection with the trade is mainly carried out by beneficiaries of the charitable company.

(2) For the purposes of subsection (1)(a), if a trade is exercised partly in the course of carrying out a primary purpose of the charitable company and partly otherwise, each part is to be treated as a separate trade.

(3) For the purposes of subsection (1)(b), if work in connection with a trade is carried out partly but not mainly by beneficiaries, the part in connection with which work is carried out by beneficiaries and the other part are to be treated as separate trades.

(4) If different parts of a trade are treated as separate trades under subsection (2) or (3), a just and reasonable apportionment is to be made for that purpose of—
  (a) expenses and receipts of the trade, and
  (b) any amounts which are post-cessation receipts arising from the trade for the purposes of Part 3 of CTA 2009.

480 Exemption for profits of small-scale trades

(1) The income mentioned in subsection (2) is not taken into account in calculating total profits if conditions A and B are met.

(2) The income referred to in subsection (1) is—
  (a) the profits of a trade carried on by a charitable company, and
  (b) post-cessation receipts arising from a trade carried on by a charitable company which are received by the company or to which it is entitled.

(3) Subsection (1) does not apply in respect of—
  (a) profits of a trade that are, apart from this section, exempt from corporation tax chargeable under Part 3 of CTA 2009, or
  (b) post-cessation receipts that are, apart from this section, exempt from corporation tax chargeable under Chapter 15 of Part 3 of CTA 2009.

(4) Condition A is—
  (a) in the case of the profits of a trade, that the profits are profits of an accounting period in relation to which the condition specified in section 482 (condition as to trading and miscellaneous incoming resources) is met, and
  (b) in the case of a post-cessation receipt, that it is received in such an accounting period.

(5) Condition B is that the profits are, or (as the case may be) the receipt is, applied to the purposes of the charitable company only.

Status: *Point in time view as at 01/04/2014.*
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(6) The exemption under subsection (1) requires a claim.

(7) In this section "post-cessation receipt" means an amount that is a post-cessation receipt for the purposes of Part 3 of CTA 2009 (see sections 190 to 195 of that Act).

481 Exemption from charges under provisions to which section 1173 applies

(1) Any income or gains of a charitable company that is or are chargeable to corporation tax under or by virtue of any provision to which section 1173 applies is not or are not taken into account in calculating total profits if conditions A and B are met.

(2) Subsection (1) does not apply in respect of any income or gains that is or are chargeable to corporation tax by virtue of any of—
- (a) section 818(1) (gains from transactions in land),
- (b) section 1086(2) (chargeable payments connected with exempt distributions), and
- (c) any other enactment specified in an order made by the Treasury.

(3) Subsection (1) does not apply in respect of any income that is, or gains that are, apart from this section, exempt from corporation tax chargeable under or by virtue of any provision to which section 1173 applies.

(4) Condition A is that the income is, or the gains are, for an accounting period in relation to which the condition specified in section 482 (condition as to trading and miscellaneous incoming resources) is met.

(5) Condition B is that the income is, or the gains are, applied to the purposes of the charitable company only.

(6) The exemption under subsection (1) requires a claim.

482 Condition as to trading and miscellaneous incoming resources

(1) The condition in this section is met in relation to an accounting period if—
- (a) the sum of the charitable company's trading incoming resources and miscellaneous incoming resources for the accounting period does not exceed the requisite limit for the period, or
- (b) the charitable company had, at the beginning of the period, a reasonable expectation that it would not do so.

(2) The charitable company's "trading incoming resources" for the accounting period are—
- (a) the incoming resources which are required to be taken into account in calculating the profits of, or losses made in, the period for any non-exempt trade carried on by the company, and
- (b) the incoming resources which are post-cessation receipts arising from such a trade.

"Post-cessation receipt" has the meaning given by section 480(7).

(3) For the purposes of subsection (2) a trade is a "non-exempt trade" if any profits of the trade would not, apart from section 480, be exempt from corporation tax chargeable under Part 3 of CTA 2009.

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(4) The charitable company's "miscellaneous incoming resources" for the accounting period are the incoming resources which are required to be taken into account in calculating non-exempt miscellaneous income or non-exempt miscellaneous losses for the period.

(5) In subsection (4)—

"non-exempt miscellaneous income" means income or gains chargeable to corporation tax under or by virtue of any provision to which section 1173 applies that is not, or are not, apart from section 480 or 481, exempt from corporation tax chargeable under or by virtue of that provision, and

"non-exempt miscellaneous losses" means losses arising from a transaction which is of such a nature that if income or gains had arisen from it the income would have been non-exempt miscellaneous income.

(6) The requisite limit—

(a) is 25% of the charitable company's total incoming resources for the accounting period, but

(b) must not be less than £5,000 or more than £50,000.

(7) If the accounting period is shorter than 12 months, the amounts of £5,000 and £50,000 mentioned in subsection (6)(b) are proportionately reduced.

483 Exemption for profits from fund-raising events

(1) The profits of a trade carried on by a charitable company are not taken into account in calculating total profits so far as they—

(a) arise from an event that is VAT-exempt in relation to the company, and

(b) are applied to charitable purposes or transferred to a charity.

(2) The profits of a trade carried on by a body to which subsection (3) applies are not taken into account in calculating total profits so far as they—

(a) arise from an event that is VAT-exempt in relation to the body, and

(b) are applied to charitable purposes or transferred to a charity.

(3) This subsection applies to any voluntary organisation that is a qualifying body for the purposes of Group 12 of Schedule 9 to the Value Added Tax Act 1994 (fund-raising events by charities and other qualifying bodies).

(4) The exemptions under this section require a claim.

(5) For the purposes of this section an event is VAT-exempt in relation to a person if the supply of goods and services by that person in connection with the event would be exempt from value added tax under Group 12 of Schedule 9 to the Value Added Tax Act 1994.

484 Exemption for profits from lotteries

(1) The profits accruing to a charitable company from a lottery are not taken into account in calculating total profits if conditions A and B are met.

(2) Condition A is that—

(a) the lottery is an exempt lottery within the meaning of the Gambling Act 2005 by virtue of Part 1 or 4 of Schedule 11 to that Act,

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(b) the lottery is promoted in accordance with a lottery operating licence within the meaning of Part 5 of the Gambling Act 2005, or

(c) the lottery is promoted and conducted in accordance with Article 133 or 135 of the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985 (S.I. 1985/1204 (N.I. 11)).

(3) Condition B is that the profits are applied to the purposes of the charitable company only.

(4) The exemption under subsection (1) requires a claim.

485 Exemption for property income etc

(1) Income which is chargeable to corporation tax under Part 3 of CTA 2009 (trading income) as a result of section 287 of that Act is not taken into account in calculating total profits so far as—

(a) it arises in respect of rents or other receipts from an estate, interest or right in or over land, and

(b) the estate, interest or right is vested in any person for charitable purposes.

(2) Income which is chargeable to corporation tax under Part 4 of CTA 2009 (property income) is not taken into account in calculating total profits so far as—

(a) it arises in respect of an estate, interest or right in or over land, and

(b) the estate, interest or right is vested in any person for charitable purposes.

(3) Distributions to which section 548 (Real Estate Investment Trusts: distributions) applies and which are chargeable to corporation tax under Part 4 of CTA 2009 are not taken into account in calculating total profits so far as they arise in respect of shares vested in any person for charitable purposes.

(4) Subsections (1) to (3) apply so far as the income is applied to charitable purposes only.

(5) The exemptions under this section require a claim.

486 Exemption for investment income and non-trading profits from loan relationships

(1) The income mentioned in subsection (2) is not taken into account in calculating total profits if—

(a) it is income of a charitable company, or

(b) it is required, under an Act (including an Act of the Scottish Parliament), court judgment, charter, trust deed or will, to be applied to charitable purposes only.

(2) The income referred to in subsection (1) is—

(a) profits which are charged to tax under section 299 of CTA 2009 (non-trading profits from loan relationships),

(b) a dividend or other distribution of a company, and

(c) income treated for the purposes of Chapter 5 of Part 10 of CTA 2009 (distributions from unauthorised unit trusts) as received by a unit holder from a scheme to which section 972 of that Act applies (unauthorised unit trust schemes).

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(3) Subsection (1) applies, in relation to the income mentioned in subsection (2)(b), only so far as the income falls within, and is dealt with under, Part 9A of CTA 2009 (see section 931W of that Act as to provisions given priority over Part 9A).

(4) Subsection (1) applies, in relation to the income mentioned in subsection (2)(c), only so far as the income falls within, and is dealt with under, Part 10 of CTA 2009 (see section 982 of that Act as to provisions given priority over Part 10).

(5) Subsection (1) applies so far as the income is applied to charitable purposes only.

(6) The exemption under subsection (1) requires a claim.

487 Exemption for public revenue dividends

(1) Public revenue dividends on securities which are in the name of trustees are not taken into account in calculating total profits so far as the dividends are applicable and applied only for the repair of—
  (a) a cathedral, college, church or chapel, or
  (b) a building used only for the purposes of divine worship.

(2) In this section "public revenue dividends" means—
  (a) income from securities which is payable out of the public revenue of the United Kingdom or Northern Ireland, or
  (b) income from securities issued by or on behalf of a government or a public or local authority in a country outside the United Kingdom.

(3) The exemption under subsection (1) requires a claim.

488 Exemption for certain miscellaneous income

(1) The income mentioned in subsection (3) is not taken into account in calculating total profits if—
  (a) it is income of a charitable company, or
  (b) it is required, under an Act (including an Act of the Scottish Parliament), court judgment, charter, trust deed or will, to be applied to charitable purposes only.

(2) Subsection (1) applies so far as the income is applied to charitable purposes only.

(3) The income referred to in subsection (1) is—
  (a) non-trading gains on intangible fixed assets,
  (b) annual payments charged to tax under Chapter 7 of Part 10 of CTA 2009, and
  (c) qualifying income from intangible fixed assets.

(4) The exemption under subsection (1) requires a claim.

(5) In this section—

"intangible fixed asset" has the same meaning as in Part 8 of CTA 2009 (see section 713 of that Act),

"non-trading credit" has the meaning given by section 301 of CTA 2009,

"non-trading gain" has the meaning given by section 751 of CTA 2009,

"pre-FA 2002 asset" has the meaning given by sections 881 and 892 to 895 of CTA 2009, and

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"qualifying income from intangible fixed assets" means income which—

(a) is in respect of intangible fixed assets which are pre-FA 2002 assets,

(b) is of a kind which, if the intangible fixed assets were not pre-FA 2002 assets, would fall to be brought into account under Chapter 6 of Part 8 of CTA 2009 as non-trading credits, and

(c) does not fall within subsection (3)(a) or (b).

489 Exemption for income from estates in administration

(1) If a charitable company is liable for any corporation tax charged under section 934 of CTA 2009 (charge to tax on estate income), the estate income is not taken into account in calculating total profits.

(2) Subsection (1) applies so far as the estate income is applied to the purposes of the charitable company only.

(3) The exemption under subsection (1) requires a claim.

(4) In this section "estate income" has the same meaning as in Chapter 3 of Part 10 of CTA 2009 (see section 934 of that Act).

Application of exemptions to certain bodies

490 Eligible bodies

(1) The provisions mentioned in subsection (3) apply in relation to an eligible body as they apply in relation to a charitable company.

(2) But in relation to an eligible body those provisions have effect as if the whole income of the body were applied to charitable purposes.

(3) The provisions referred to in subsection (1) are—

(a) sections 478 and 479 (profits of charitable trades),

(b) section 483 (profits from fund-raising events),

(c) section 484 (profits from lotteries),

(d) section 485 (property income etc),

(e) section 486 (investment income etc),

(f) section 488 (certain miscellaneous income), and

(g) section 489 (income from estates in administration).

491 Scientific research associations

(1) The provisions mentioned in subsection (3) (which confer exemptions) apply in relation to a body which qualifies as a scientific research association for the relevant accounting period as they apply in relation to a charitable company.

(2) But in relation to such a body those provisions have effect as if the whole income of the body were applied to charitable purposes.

(3) The provisions referred to in subsection (1) are—

(a) sections 478 and 479 (profits of charitable trades),

(b) section 483 (profits from fund-raising events),

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(c) section 484 (profits from lotteries),
(d) section 485 (property income etc),
(e) section 486 (investment income etc),
(f) section 488 (certain miscellaneous income), and
(g) section 489 (income from estates in administration).

(4) In subsection (1) "the relevant accounting period" means the accounting period for which the exemption in question is to be claimed.

[F310 Claims

Textual Amendments

F310 S. 491A and cross-heading inserted (retrospective to 8.4.2010) by Finance Act 2012 (c. 14), **Sch. 15 paras. 4**, 17(1)

491A Claims in relation to certain reliefs

(1) Subsections (2) to (5) of section 477A (claims in relation to gift aid relief) apply to—
(a) claims for amounts to be exempt from tax by virtue of a provision listed in subsection (2), and
(b) claims for repayment of income tax deducted at source from income which is exempt from tax by virtue of such a provision,

as they apply to claims to which that section applies.

(2) The provisions are—
(a) section 486 (investment income and non-trading profits from loan relationships),
(b) section 487 (public revenue dividends),
(c) section 488 (certain miscellaneous income), and
(d) section 489 (income from estates in administration).**]**

CHAPTER 4

RESTRICTIONS ON EXEMPTIONS

Restrictions on exemptions

492 Restrictions on exemptions

(1) This section applies if a charitable company has a non-exempt amount for an accounting period (see section 493).

(2) The exemptions mentioned in subsection (3) do not apply, and are treated as never having applied, to so much of any income of the charitable company for the accounting period as is attributed under section 494 to the non-exempt amount.

(3) Those exemptions are—
(a) the exemptions under this Part, and

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(b) the exemption under regulation 31(1) of the Offshore Funds (Tax) Regulations 2009 (S.I. 2009/3001) (exemption from corporation tax in respect of certain offshore income gains).

(4) Section 256(4) of TCGA 1992 contains corresponding restrictions which apply in relation to section 256(1) of that Act (gains accruing to charities not to be chargeable gains).

493 The non-exempt amount

(1) A charitable company has a non-exempt amount for an accounting period if it has—
(a) non-charitable expenditure for the period (amount A), and
(b) attributable income and gains for the period (amount B).

(2) The non-exempt amount for the accounting period is—
(a) amount A, or
(b) if less, amount B.

(3) For the purposes of this Part—
(a) a charitable company's "attributable income" for an accounting period is the charitable company's income for the period that is exempt from corporation tax as a result of any of the exemptions mentioned in section 492(3),
(b) a charitable company's "attributable gains" for an accounting period are any gains accruing to the charitable company in the period that as a result of section 256(1) of TCGA 1992 are not chargeable gains, and
(c) a charitable company's "attributable income and gains" for an accounting period is the sum of its attributable income for the period and its attributable gains for the period.

(4) In applying subsection (3)(a) ignore any restrictions on the exemptions under this Part which result from section 492(2).

(5) In applying subsection (3)(b) ignore any restriction on the exemption under section 256(1) of TCGA 1992 which results from section 256(4) of that Act.

494 Attributing income to the non-exempt amount

(1) This section applies if a charitable company has a non-exempt amount for an accounting period.

(2) Attributable income of the charitable company for the accounting period may be attributed to the non-exempt amount but only so far as the non-exempt amount has not been used up.

(3) The non-exempt amount can be used up (in whole or in part) by—
(a) attributable income being attributed to it under this section, or
(b) attributable gains being attributed to it under section 256C of TCGA 1992.

(4) The whole of the non-exempt amount must be used up by—
(a) attributable income being attributed to the whole of it under this section,
(b) attributable gains being attributed to the whole of it under section 256C of TCGA 1992, or

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(c) a combination of attributable income being attributed to some of it under this section and attributable gains being attributed to the rest of it under section 256C of TCGA 1992.

495 How income is attributed to the non-exempt amount

(1) This section is about the ways in which attributable income can be attributed to a non-exempt amount under section 494.

(2) The charitable company may specify the attributable income that is to be attributed to the non-exempt amount.

(3) A specification under subsection (2) is made by notice to an officer of Revenue and Customs.

(4) Subsection (6) applies if—
- (a) an officer of Revenue and Customs requires a charitable company to make a specification under this section, and
- (b) the charitable company has not given notice under subsection (3) of the specification before the end of the required period.

(5) The required period is 30 days beginning with the day on which the officer made the requirement.

(6) An officer of Revenue and Customs may determine the attributable income that is to be attributed to the non-exempt amount.

Non-charitable expenditure

496 Meaning of "non-charitable expenditure"

(1) For the purposes of this Part a charitable company's non-charitable expenditure for an accounting period is—
- (a) any loss made in the accounting period in a trade carried on by the charitable company unless—
  - (i) the trade is a charitable trade, or
  - (ii) the trade is not a charitable trade but profits of the trade arising in the period would be exempt from corporation tax as a result of one of the exemptions in section 480, 483 or 484,
- (b) any loss made in the accounting period in a trade, or in a UK property business or an overseas property business, carried on by the charitable company, if—
  - (i) the loss relates to land, and
  - (ii) profits of the trade, or income of the business, generated from the land in the period would not be exempt from corporation tax as a result of the exemptions in section 485,
- (c) any loss made in the accounting period in a miscellaneous transaction entered into by the charitable company otherwise than in the course of carrying out a charitable purpose,
- (d) any expenditure incurred by the charitable company in the accounting period which is not incurred for charitable purposes only and is not required to be taken into account in calculating—

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(i) the profits of, or losses made in, any trade, UK property business or overseas property business carried on by the charitable company, or

(ii) the profit or loss made in any miscellaneous transaction entered into by the charitable company,

F311(e) . . . . . .

F311(f) . . . . . .

(g) the amount of any of the charitable company's funds that is invested in the accounting period in an investment which is not an approved charitable investment (see section 511), and

(h) any amount lent in the accounting period by the charitable company, if the loan is neither an investment nor an approved charitable loan (see section 514).

But anything which falls within more than one of the above paragraphs counts as non-charitable expenditure only once.

(2) An amount may also be non-charitable expenditure for an accounting period as a result of section 515 (excess expenditure treated as non-charitable expenditure of earlier periods).

(3) This section needs to be read with—

section 479 (meaning of "charitable trade"),

sections 497 to 501 (supplementary provision in relation to this section, in particular in relation to subsection (1)(d), (g) and (h)),

sections 502 to 510 (transactions with substantial donors),

section 511 (approved charitable investments), and

section 514 (approved charitable loans).

Textual Amendments

F311 S. 496(1)(e)(f) omitted (with effect in accordance with Sch. 3 para. 27 of the amending Act) by virtue of Finance Act 2011 (c. 11), **Sch. 3 para. 22**

497 Section 496: supplementary

(1) This section applies for the purposes of section 496.

(2) A transaction is a miscellaneous transaction if it is of such a nature that, if income or gains had arisen from it (ignoring section 481 (exemption from charges under provisions to which section 1173 applies)), it would have been charged to corporation tax under or by virtue of any provision to which section 1173 applies.

(3) For rules about the calculation of losses, see—

(a) section 47 of CTA 2009 (losses of a trade calculated on same basis as profits),

(b) section 210 of that Act (which applies section 47 of that Act, so that losses of a UK property business or overseas property business are calculated on the same basis as profits), and

(c) section 1306 of that Act (losses from miscellaneous transactions calculated on same basis as miscellaneous income).

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498 Section 496(1)(d): meaning of expenditure

(1) For the purposes of section 496(1)(d) "expenditure" includes expenditure of a capital nature.

(2) None of the following is "expenditure" for those purposes—
- (a) the investment of any of the charitable company's funds,
- (b) the making of a loan by the charitable company, or
- (c) the repayment by the charitable company of the whole or a part of a loan made to it.

499 Section 496(1)(d): accounting period in which certain expenditure treated as incurred

(1) This section applies for the purposes of section 496(1)(d).

(2) Subsection (3) applies to expenditure which is referable to commitments (whether or not of a contractual nature) that the charitable company has entered into before or during an accounting period.

(3) The expenditure is treated as incurred in the accounting period if, had the charitable company been required to draw up accounts that met the requirements mentioned in subsection (4), the expenditure would have been required to be taken into account in preparing those accounts.

(4) The requirements referred to in subsection (3) are—
- (a) that the accounts are drawn up for the accounting period, and
- (b) that UK generally accepted accounting practice applies with respect to them.

500 Section 496(1)(d): payment to body outside the UK

A payment made, or to be made, to a body situated outside the United Kingdom is non-charitable expenditure under section 496(1)(d) if—
- (a) it is incurred for charitable purposes only, but
- (b) the charitable company has not taken such steps as **[**[F312]the Commissioners for Her Majesty's Revenue and Customs consider**]** are reasonable in the circumstances to ensure that the payment will be applied for charitable purposes.

Textual Amendments

F312 Words in s. 500(b) inserted (with effect in accordance with Sch. 8 para. 8(3)(4) of the amending Act) by Finance Act 2010 (c. 13), **Sch. 8 para. 2(2)**

501 Section 496(1)(g) and (h): investments and loans

(1) Subsection (2) applies if in an accounting period a charitable company—
- (a) realises the whole or part of an investment which was made in the period and is not an approved charitable investment (see section 511), or
- (b) is repaid the whole or part of a loan which was made in the period and is neither an investment nor an approved charitable loan (see section 514).

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(2) Any further investment or lending in the accounting period of the sum realised or repaid, so far as it does not exceed the sum originally invested or lent, is not non-charitable expenditure as a result of section 496(1)(g) or (h).

Substantial donor transactions

F313 502 Transactions with substantial donors

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Textual Amendments

F313 Ss. 502-510 repealed (with effect in accordance with Sch. 3 para. 27 of the amending Act) by Finance Act 2011 (c. 11), **Sch. 3 para. 23** (with Sch. 3 para. 30) (as modified (S.) (1.4.2012) by The Housing (Scotland) Act 2010 (Consequential Provisions and Modifications) Order 2012 (S.I. 2012/700), art. 1(3), **Sch. para. 9**)

F313 503 Meaning of "relievable gift"

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Textual Amendments

F313 Ss. 502-510 repealed (with effect in accordance with Sch. 3 para. 27 of the amending Act) by Finance Act 2011 (c. 11), **Sch. 3 para. 23** (with Sch. 3 para. 30) (as modified (S.) (1.4.2012) by The Housing (Scotland) Act 2010 (Consequential Provisions and Modifications) Order 2012 (S.I. 2012/700), art. 1(3), **Sch. para. 9**)

F313 504 Non-charitable expenditure in substantial donor transactions

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Textual Amendments

F313 Ss. 502-510 repealed (with effect in accordance with Sch. 3 para. 27 of the amending Act) by Finance Act 2011 (c. 11), **Sch. 3 para. 23** (with Sch. 3 para. 30) (as modified (S.) (1.4.2012) by The Housing (Scotland) Act 2010 (Consequential Provisions and Modifications) Order 2012 (S.I. 2012/700), art. 1(3), **Sch. para. 9**)

F313 505 Adjustment if section 504(1) and (2) applied to single transaction

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Textual Amendments

F313 Ss. 502-510 repealed (with effect in accordance with Sch. 3 para. 27 of the amending Act) by Finance Act 2011 (c. 11), **Sch. 3 para. 23** (with Sch. 3 para. 30) (as modified (S.) (1.4.2012) by The Housing

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(Scotland) Act 2010 (Consequential Provisions and Modifications) Order 2012 (S.I. 2012/700), art. 1(3), **Sch. para. 9**)

F313 506 Section 504: certain payments and benefits to be ignored

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Textual Amendments

F313 Ss. 502-510 repealed (with effect in accordance with Sch. 3 para. 27 of the amending Act) by Finance Act 2011 (c. 11), **Sch. 3 para. 23** (with Sch. 3 para. 30) (as modified (S.) (1.4.2012) by The Housing (Scotland) Act 2010 (Consequential Provisions and Modifications) Order 2012 (S.I. 2012/700), art. 1(3), **Sch. para. 9**)

F313 507 Transactions: exceptions

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Textual Amendments

F313 Ss. 502-510 repealed (with effect in accordance with Sch. 3 para. 27 of the amending Act) by Finance Act 2011 (c. 11), **Sch. 3 para. 23** (with Sch. 3 para. 30) (as modified (S.) (1.4.2012) by The Housing (Scotland) Act 2010 (Consequential Provisions and Modifications) Order 2012 (S.I. 2012/700), art. 1(3), **Sch. para. 9**)

F313 508 Donors: exceptions

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Textual Amendments

F313 Ss. 502-510 repealed (with effect in accordance with Sch. 3 para. 27 of the amending Act) by Finance Act 2011 (c. 11), **Sch. 3 para. 23** (with Sch. 3 para. 30) (as modified (S.) (1.4.2012) by The Housing (Scotland) Act 2010 (Consequential Provisions and Modifications) Order 2012 (S.I. 2012/700), art. 1(3), **Sch. para. 9**)

F313 509 Connected charities

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Textual Amendments

F313 Ss. 502-510 repealed (with effect in accordance with Sch. 3 para. 27 of the amending Act) by Finance Act 2011 (c. 11), **Sch. 3 para. 23** (with Sch. 3 para. 30) (as modified (S.) (1.4.2012) by The Housing (Scotland) Act 2010 (Consequential Provisions and Modifications) Order 2012 (S.I. 2012/700), art. 1(3), **Sch. para. 9**)

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[F313]510 Substantial donor transactions: supplementary

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Textual Amendments

F313 Ss. 502-510 repealed (with effect in accordance with Sch. 3 para. 27 of the amending Act) by Finance Act 2011 (c. 11), **Sch. 3 para. 23** (with Sch. 3 para. 30) (as modified (S.) (1.4.2012) by The Housing (Scotland) Act 2010 (Consequential Provisions and Modifications) Order 2012 (S.I. 2012/700), art. 1(3), **Sch. para. 9**)

Approved charitable investments and loans

511 Approved charitable investments

An investment is an approved charitable investment for the purposes of section 496 (meaning of "non-charitable expenditure") if it is an investment of any of the following types.

Type 1

An investment to which section 512 applies.

Type 2

An investment in a common investment fund established under—

(a) section 22 of the Charities Act 1960,

(b) section 24 of the Charities Act 1993,

(bb) **[**[F314]section 96 of the Charities Act 2011, or**]**

(c) section 25 of the Charities Act (Northern Ireland) 1964.

Type 3

An investment in a common deposit fund established under—

(a) section 22A of the Charities Act 1960, [F315]...

(b) section 25 of the Charities Act 1993. **[**[F316]or

(c) section 100 of the Charities Act 2011.**]**

Type 4

An investment in a fund which—

(a) is similar to a fund mentioned in relation to Type 2 or 3, and

(b) is established for the exclusive benefit of charities by or under a provision relating to any particular charities or class of charities contained in an Act (including an Act of the Scottish Parliament).

Type 5

An interest in land, other than an interest held as security for a debt.

Type 6

Any of the following issued by Her Majesty's Government in the United Kingdom—

(a) bills,

(b) Certificates of Tax Deposit,

(c) Savings Certificates, and

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(d) Tax Reserve Certificates.

Type 7

Northern Ireland Treasury Bills.

Type 8

Units in a unit trust scheme (as defined in section 237(1) of FISMA 2000) or in a recognised scheme (as defined in section 237(3) of FISMA 2000).“Units” is defined in section 237(2) of FISMA 2000.

Type 9

A deposit with a bank (as defined in section 1120)—

(a) in respect of which interest is payable at a commercial rate, and

(b) which is not made as part of an arrangement under which a loan is made by the bank to some other person.

Type 10

A deposit with—

(a) the National Savings Bank,

(b) a building society, or

(c) a credit institution which operates on mutual principles and which is authorised by an appropriate governmental body in the territory in which the deposit is taken.

Type 11

Certificates of deposit (including uncertificated eligible debt security units as defined in section 986(3) of ITA 2007).

Type 12

A loan or other investment as to which an officer of Revenue and Customs is satisfied, on a claim, that it is made for the benefit of the charitable company and not for the avoidance of tax (whether by the company or any other person).

Textual Amendments

F314 Words in s. 511 substituted (14.3.2012) by Charities Act 2011 (c. 25), s. 355, **Sch. 7 para. 142(2)** (with s. 20(2), Sch. 8)

F315 Word in s. 511 repealed (14.3.2012) by Charities Act 2011 (c. 25), s. 355, Sch. 7 para. 142(3), **Sch. 10** (with s. 20(2), Sch. 8)

F316 Words in s. 511 inserted (14.3.2012) by Charities Act 2011 (c. 25), s. 355, **Sch. 7 para. 142(3)** (with s. 20(2), Sch. 8)

512 Securities which are approved charitable investments

(1) The investments to which this section applies are investments in securities—

(a) issued or guaranteed by the government of a member State of the European Union,

(b) issued or guaranteed by the government or a governmental body of any territory or part of a territory,

(c) issued by an international entity listed in the Annex to Council Directive 2003/48/EC (directive on taxation of interest payments),

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(d) issued by an entity meeting the four criteria set out at the end of that Annex,
(e) issued by a building society,
(f) issued by a credit institution which operates on mutual principles and which is authorised by an appropriate governmental body in the territory in which the securities are issued,
(g) issued by an open-ended investment company,
(h) issued by a company and listed on a recognised stock exchange, or
(i) issued by a company but not listed on a recognised stock exchange.

(2) Subsection (1) is subject to section 513.

(3) In this section and in section 513—

"debentures" includes—

(a) debenture stock and bonds (whether constituting a charge on assets or not), and
(b) loan stock or notes,

"open-ended investment company" is to be read in accordance with sections 613 and 615,

"securities" includes shares and debentures, and

"shares" includes stocks.

513 Conditions to be met for some securities

(1) Section 512 does not apply to an investment by virtue of subsection (1)(b), (c) or (d) of that section unless—
(a) condition A is met in relation to the securities, and
(b) if the securities are shares or debenture stock, condition B is met in relation to the securities.

But see subsection (3) of this section.

(2) In the case of an investment in securities issued by a company which is incorporated, section 512 does not apply to the investment by virtue of subsection (1)(i) of that section unless—
(a) condition A is met in relation to the securities,
(b) if the securities are shares or debenture stock, condition B is met in relation to the securities, and
(c) condition C is met in relation to the company.

But see subsection (3) of this section.

(3) Conditions A and B need not be met if the securities are traded or quoted on a money market supervised by the government or a governmental body of any territory or part of a territory.

(4) Condition A is that the securities are traded or quoted on—
(a) a recognised investment exchange (as defined in section 285(1) of FISMA 2000), or
(b) an investment exchange which constitutes the principal or only market established in a territory on which securities admitted to official listing are dealt in or traded.

(5) Condition B is that—

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(a) the securities are fully paid up,
(b) the terms of the issue of the securities require them to be fully paid up within the period of 9 months beginning with the day after the day on which they are issued, or
(c) the securities are shares issued with no nominal value.

(6) Condition C is that—
(a) throughout the last business day before the investment day, the company has total issued and paid up share capital of at least £1,000,000 (or the equivalent of £1,000,000 in some other currency), and
(b) in each of the 5 years immediately before the calendar year in which the investment day falls, the company paid a dividend on all the shares issued by the company (excluding any shares issued after the dividend was declared and any shares which by their terms of issue did not rank for dividend for that year).

(7) For the purposes of the words in brackets in subsection (6)(a) use the exchange rate prevailing in the United Kingdom at the close of business on the last business day before the investment day.

(8) For the purposes of subsection (6)(b) a company formed—
(a) to take over the business of another company or other companies, or
(b) to acquire the securities of, or control of, another company or other companies,
is treated as having paid a dividend in any year in which a dividend has been paid by the other company or all of the other companies (as the case may be).

(9) It is irrelevant that the company is formed for other purposes in addition to those mentioned in paragraph (a) or (b) of subsection (8).

(10) In this section—
"business day" means, in relation to an investment, a business day in the place where the investment is made, and
"the investment day" means, in relation to an investment, the day on which the investment is made.

514 Approved charitable loans

(1) A loan is an approved charitable loan for the purposes of section 496 (meaning of "non-charitable expenditure") if it meets conditions A and B.

(2) Condition A is that the loan is not made by way of investment.

(3) Condition B is that either—
(a) the loan is made to another charity for charitable purposes only,
(b) it is made to a beneficiary of the charitable company in the course of carrying out the purposes of the charitable company,
(c) it consists of money placed on current account with a bank otherwise than as part of an arrangement under which a loan is made by a bank to some other person, or
(d) an officer of Revenue and Customs is satisfied, on a claim, that the loan is made for the benefit of the charitable company and not for the avoidance of tax (whether by the charitable company or by some other person).

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(4) In this section "bank" has the meaning given by section 1120.

Carry back of excess non-charitable expenditure

515 Excess expenditure treated as non-charitable expenditure of earlier periods

(1) This section applies if a charitable company's non-charitable expenditure for an accounting period exceeds its available income and gains for the period.

(2) The excess is the charitable company's "excess expenditure" for the accounting period.

(3) The charitable company's excess expenditure for the accounting period is treated for the purposes of this Part as non-charitable expenditure for earlier accounting periods so far as it can be attributed to earlier accounting periods under section 516.

(4) For the purposes of this Part a charitable company's "available income and gains" for an accounting period is the sum of—
   (a) the amount in respect of which the charitable company is chargeable for the period under the charge to corporation tax on income after giving effect to any exemption under this Part,
   (b) any chargeable gains accruing to the charitable company in the period,
   (c) the charitable company's attributable income and gains for the period (see section 493), and
   (d) any non-taxable sums received by the charitable company in the period.

(5) In subsection (4) "non-taxable sums" means donations, legacies and other sums of a similar nature which, ignoring exemptions from corporation tax under this Part and under section 256 of TCGA 1992, are not liable to corporation tax.

(6) Any restrictions on the exemptions under this Part which result from sections 492(2) and 494 are to be ignored in calculating the amount mentioned in subsection (4)(a).

(7) Any restriction on the exemption under section 256(1) of TCGA 1992 which results from section 256(4) of that Act is to be ignored in calculating the amount of any chargeable gains to be taken into account in accordance with subsection (4)(b).

516 Rules for attributing excess expenditure to earlier periods

(1) The rules in this section apply for attributing a charitable company's excess expenditure for an accounting period to earlier accounting periods under section 515.

(2) The excess expenditure for an accounting period may be attributed to an earlier accounting period if—
   (a) the earlier period ends not more than 6 years before the end of the period in question, and
   (b) the charitable company's available income and gains for the earlier period exceed its non-charitable expenditure for the earlier period.

(3) If the conditions in subsection (2) are met in the case of more than one earlier accounting period, the excess expenditure is to be attributed to a later accounting period in priority to an earlier accounting period.

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(4) The amount of excess expenditure that is to be attributed to an earlier accounting period must not be greater than the amount by which the charitable company's available income and gains for the earlier period exceed its non-charitable expenditure for the earlier period.

(5) For the purposes of subsections (2)(b) and (4) the charitable company's non-charitable expenditure for the earlier accounting period includes any excess expenditure attributed to the earlier period as a result of a previous operation of this section, but ignores the attribution in question.

517 Adjustments in consequence of section 515

Such adjustments must be made (whether by way of the making of assessments or otherwise) as may be required in consequence of section 515.

PART 12

REAL ESTATE INVESTMENT TRUSTS

CHAPTER 1

INTRODUCTION

Introductory

518 Introduction to Part

(1) This Part—

(a) enables a group of companies which carries on property rental business and which meets requirements specified in Chapter 2 to opt to benefit from exemptions from corporation tax on profits and gains in accordance with Chapter 3, and

(b) imposes liabilities to tax on members of the group and the recipients of distributions made by the principal company of the group.

(2) This Part makes corresponding provision in relation to a company which carries on property rental business and which meets requirements specified in Chapter 2.

(3) In addition—

(a) Chapter 4 deals with some of the consequences of becoming, or becoming a member of, a UK REIT,

(b) Chapters 5, 6 and 7 contain provision relating to (respectively) assets of, distributions made by, and gains arising to a UK REIT,

(c) Chapter 8 contains provision about failure to meet requirements specified in Chapter 2,

(d) Chapter 9 contains provision about ceasing to be, or to be a member of, a UK REIT,

(e) Chapter 10 provides for the application of this Part in relation to property rental business carried on by way of a joint venture, and

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(f) Chapter 11 contains miscellaneous provision and definitions.

(4) In this Part "UK REIT" means—
(a) a group UK REIT (see section 523(5)), or
(b) a company UK REIT (see section 524(5)).

Key concepts

519 "Property rental business"

(1) In this Part "property rental business" means—
(a) UK property business (within the meaning given by section 205 of CTA 2009), and
(b) overseas property business (within the meaning given by section 206 of that Act).

(2) For the purposes of subsection (1) ignore the effect of section 42(2) of CTA 2009 (which provides for receipts and expenses in connection with tied premises to be treated as part of a trade and not as part of a property business).

(3) The definition of "property rental business" is subject to—
(a) section 598(3) (which provides that certain lettings of property by a joint venture company or a member of a joint venture group are not property rental business),
(b) section 604 (which provides that business of a specified class is not property rental business), and
(c) section 605 (which provides that business giving rise to income of a specified class is not property rental business).

(4) Business carried on by a non-UK company which is a member of a group is property rental business for the purposes of this Part if the business would be property rental business if carried on by a UK company.

520 "UK property rental business" of non-UK companies

(1) In this Part references to "UK property rental business", in relation to a non-UK company, are to the company's property rental business in the United Kingdom.

(2) Subsection (3) applies if—
(a) a non-UK company which is a member of a group UK REIT has UK property rental business, and
(b) the profits of that business would be chargeable to income tax under Chapter 3 of Part 3 of ITTOIA 2005.

(3) Profits of the UK property rental business—
(a) are to be treated for the purposes of this Part as if they were (subject to the application of this Part) chargeable to corporation tax, and
(b) are not to be charged to income tax.

521 "UK company" and "non-UK company"

(1) In this Part "UK company" means a company which is—

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(a) UK resident, and
(b) not resident in another place in accordance with the law of that place relating to taxation.

(2) References in this Part to a "non-UK company", in the case of a group of companies, are to be read in accordance with subsection (1) (and references in such a case to a company which is a "UK member" or "non-UK member" of the group are to be read accordingly).

522 "Residual business"

In this Part "residual business" means business which is not property rental business.

CHAPTER 2

REQUIREMENTS FOR BEING A UK REIT

Becoming a UK REIT

523 Notice for a group of companies to become a UK REIT

(1) A group of companies becomes a group UK REIT if the principal company of the group gives a notice under this section.

(2) A notice under this section is a notice specifying a date from which the group is to be a UK REIT.

(3) The principal company of a group may only give a notice under this section if—
(a) it is a UK company, and
(b) section 236 of FISMA 2000 (open-ended investment companies) does not apply to it.

(4) If the principal company of a group gives a notice under this section, the group is a UK REIT from the date specified in the notice.

(5) In this Part "group UK REIT" means a group of companies the principal company of which has given a notice under this section.

(6) This section is subject to section 527(2) (requirements to be a group UK REIT).

524 Notice for a company to become a UK REIT

(1) A company becomes a company UK REIT if it gives a notice under this section.

(2) A notice under this section is a notice specifying a date from which the company is to be a UK REIT.

(3) A company may only give a notice under this section if—
(a) it is a UK company, and
(b) section 236 of FISMA 2000 (open-ended investment companies) does not apply to it.

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(4) If a company gives a notice under this section, the company is a UK REIT from the date specified in the notice.

(5) In this Part "company UK REIT" means a company which has given a notice under this section.

(6) This section is subject to section 527(3) (requirements to be a company UK REIT).

525 Notice under section 523 or 524: supplementary

(1) A notice under section 523 or 524—

(a) must be given in writing to an officer of Revenue and Customs,

(b) must be given before the date specified in the notice,

(c) must be accompanied by a statement by the company giving the notice that each of **[**[F317]conditions A, B, C, E and F**]** in section 528 (conditions for company) is reasonably expected to be met in relation to the company throughout accounting period 1, and

(d) must contain such other information, and be accompanied by such other documents, as may be prescribed by regulations made by the Commissioners for Her Majesty's Revenue and Customs.

(2) Subsection (3) applies if the company giving the notice—

(a) does not expect to meet condition C in section 528 on the first day of accounting period 1, but

(b) reasonably expects to meet that condition throughout the rest of accounting period 1.

(3) If this subsection applies—

(a) subsection (1)(c) does not apply, but

(b) the notice must be accompanied by a statement by the company containing the assertions specified in subsection (4).

(4) Those assertions are—

(a) that conditions A, B, [F318]... E and F in section 528 are reasonably expected to be met in relation to the company throughout accounting period 1, and

(b) that condition C in that section is reasonably expected to be met in relation to the company for at least a part of the first day of accounting period 1, and throughout the remainder of the period.

[F319](5) . . . . . .

[F319](6) . . . . . .

[F319](7) . . . . . .

[F319](8) . . . . . .

(9) For the meaning of "accounting period 1", see section 609.

Textual Amendments

F317 Words in s. 525(1)(c) substituted (with effect in accordance with Sch. 4 para. 13(1) of the amending Act) by Finance Act 2012 (c. 14), **Sch. 4 para. 2(2)**

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F318 Word in s. 525(4)(a) omitted (with effect in accordance with Sch. 4 para. 13(1) of the amending Act) by virtue of Finance Act 2012 (c. 14), **Sch. 4 para. 2(3)**

F319 S. 525(5)-(8) omitted (with effect in accordance with Sch. 4 para. 13(1) of the amending Act) by virtue of Finance Act 2012 (c. 14), **Sch. 4 para. 2(4)**

526 Duration of status as UK REIT

Once a group or a company becomes a UK REIT, the group or company continues to be a UK REIT until it ceases to be a UK REIT in accordance with section 571, 572 or 578.

Being a UK REIT in relation to an accounting period

527 Being a UK REIT in relation to an accounting period

(1) This section sets out the requirements that must be met if a group or company is to be a UK REIT in relation to an accounting period.

(2) In order for a group of companies in respect of which a notice has been given under section 523 to be a group UK REIT in relation to an accounting period—

(a) each of the conditions in section 528 (conditions for company) must be met in relation to the principal company throughout the accounting period,

[[F320](aa) the condition in section 528A (further condition relating to shares) must be met in relation to the period,**]**

(b) the group must throughout the period have property rental business in relation to which conditions A and B in section 529 are met (whether or not the group also has other business),

(c) the condition in section 530 (distribution of profits) must be met in relation to the period,

(d) conditions A and B in section 531 (balance of business) must be met in relation to the period, and

(e) the principal company must prepare for the period, and submit to an officer of Revenue and Customs, financial statements under section 532.

(3) In order for a company which has given a notice under section 524 to be a company UK REIT in relation to an accounting period—

(a) each of the conditions in section 528 (conditions for company) must be met in relation to the company throughout the accounting period,

[[F321](aa) the condition in section 528A (further condition relating to shares) must be met in relation to the period,**]**

(b) the company must throughout the period have property rental business in relation to which conditions A and B in section 529 are met (whether or not the company also has other business),

(c) the condition in section 530 (distribution of profits) must be met in relation to the period, and

(d) conditions A and B in section 531 (balance of business) must be met in relation to the period.

(4) Subsections (2) and (3) are subject to any relaxation of any condition in section 525, 558 or 559 or Chapter 8.

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[[F322](5) Subsections (2)(a) and (3)(a) are also subject to subsections (6) to (8).

(6) If the accounting period ends during the first 3-year period, condition D in section 528 does not have to be met.

(7) If the accounting period begins, but does not end, during the first 3- year period, condition D in section 528 only has to be met throughout the part of the accounting period falling after the end of the first 3- year period.

(8) In subsections (6) and (7) "the first 3-year period" means the period of 3 years beginning with the date specified in the notice given under section 523 or 524.**]**

Textual Amendments

F320 S. 527(2)(aa) inserted (with effect in accordance with Sch. 4 para. 21 of the amending Act) by Finance Act 2012 (c. 14), **Sch. 4 para. 14**

F321 S. 527(3)(aa) inserted (with effect in accordance with Sch. 4 para. 21 of the amending Act) by Finance Act 2012 (c. 14), **Sch. 4 para. 14**

F322 S. 527(5)-(8) inserted (with effect in accordance with Sch. 4 para. 13(2) of the amending Act) by Finance Act 2012 (c. 14), **Sch. 4 para. 3**

528 Conditions for company

(1) Condition A is that the company is a UK company.

(2) Condition B is that section 236 of FISMA 2000 (open-ended investment companies) does not apply to the company.

(3) Condition C is that the shares forming the company's ordinary share capital are **[**[F323]admitted to trading**]** on a recognised stock exchange.

(4) Condition D is that the company **[**[F324]meets the non-close condition.**]**

[F325](a) . . . . . .

[F326](b) . . . . . .

[[F327](4A) Institutional investor" means any of the following persons—

(a) the trustee or manager of—

(i) an authorised unit trust scheme (as defined in section 237(3) of FISMA 2000), or

(ii) a unit trust scheme (as defined in section 237(1) of FISMA 2000) which is authorised under the law of a territory outside the United Kingdom in a way which makes it, under that law, the equivalent of an authorised unit trust scheme (as defined in section 237(3) of that Act);

(b) a company—

(i) which is an open-ended investment company (as defined in section 236(1) of FISMA 2000) incorporated by virtue of regulations under section 262 of that Act, or

(ii) which is incorporated under the law of a territory outside the United Kingdom and is, under that law, the equivalent of an open-ended investment company (as defined in section 236(1) of FISMA 2000);

(c) a person acting on behalf of a limited partnership which is a collective investment scheme (as defined in section 235 of FISMA 2000);

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(d) the trustee or manager of a pension scheme (as defined in section 150(1) of FA 2004);

(e) a person acting in the course of a long-term insurance business (that is, the activity of effecting or carrying out contracts of long-term insurance within the meaning of the Financial Services and Markets (Regulated Activities) Order 2001 (S.I. 2001/544)) who—

(i) is authorised under FISMA 2000 to carry on such business, or

(ii) has an equivalent authorisation under the law of a territory outside the United Kingdom to carry on such business;

(f) a charity;

(g) a person registered under any of the following provisions (which provide for registers of social landlords)—

(i) in England, section 111 of the Housing and Regeneration Act 2008;

(ii) in Scotland, section 20 of the Housing (Scotland) Act 2010 (asp 17);

(iii) in Wales, section 1 of the Housing Act 1996;

(iv) in Northern Ireland, Article 14 of the Housing (Northern Ireland) Order 1992 (S.I. 1992/1725 (N.I. 15));

(h) a person who cannot be liable for corporation tax or income tax (as relevant) on the ground of sovereign immunity.

[[F328](i) a UK REIT;

(j) a person who is resident in a territory outside the United Kingdom in accordance with the law of that territory relating to taxation and is, under the law of that territory, the equivalent of a UK REIT**]**

(4B) The Treasury may by regulations amend the definition of "institutional investor" by inserting, omitting or amending a description of person in subsection (4A).**]**

[[F329](4C) The non-close condition is met—

(a) in relation to a company, if—

(i) it is not a close company, or

(ii) it is a close company but only because it has an institutional investor as a direct or indirect participator, and

(b) in relation to a person or scheme other than a company, if it would fall within paragraph (a)(i) or (ii) if—

(i) the person's business or the scheme were a company, and

(ii) the interests of persons in the business or scheme were shares in the company.**]**

(5) For the purposes of **[**[F330]determining whether the non-close condition is met**]** a company is to be treated as a close company if it is prevented from being a close company only by section 444 or 447(1)(a).

[[F331](5B) For the purposes of subsection (4C)(a)(ii)—

(a) a person is a "direct participator" if the person is a participator for the purposes of Part 10 of CTA 2010 (see section 454), and

(b) a person is an "indirect" participator in a company if the person has a share or interest in the capital or income of the company through another body corporate or other bodies corporate.

(5C) In determining whether a person is an indirect participator—

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(a) reference to having a share or interest in the capital or income of a company through a body corporate is to be read in accordance with sub-paragraphs (9) and (10) of paragraph 46 of Schedule 5AAA to TCGA 1992 (meaning of direct or indirect participator), and

(b) a person is regarded for the purposes of those sub-paragraphs, and for the purposes of subsection (5B)(b) of this section, as having a share or interest in the capital or income of a company if the person would be a participator in the company as a result of section 454(2) of CTA 2010.**]**

(6) Condition E is that—

(a) each share issued by the company either—

(i) forms part of the company's ordinary share capital, or

(ii) is a non-voting restricted preference share, and

(b) there is no more than one class of ordinary share issued by the company.

(7) For the purposes of condition E—

(a) "restricted preference share" means a share which is a restricted preference share (within the meaning of section 160) or would be but for the fact that it carries a right of conversion into shares or securities in the company, and

(b) a share is "non-voting" if it carries no right to vote at a general meeting of the company or if it carries a right to vote which is contingent on the non-payment of a dividend and which has not become exercisable.

(8) Condition F is that in the case of a loan in respect of which the company is a debtor—

(a) the loan creditor is not entitled to an amount by way of interest which depends to any extent on the results of all or part of the company's business or on the value of any of the company's assets,

(b) the loan creditor is not entitled to an amount by way of interest which exceeds a reasonable commercial return on the consideration lent, and

(c) the loan creditor is entitled on repayment to an amount which either does not exceed the consideration lent or is reasonably comparable with the amount generally repayable (in respect of an equal amount of consideration) under the terms of issue of securities listed on a recognised stock exchange.

(9) For the purposes of condition F a loan is not dependent on the results of the company's business merely because the terms of the loan provide—

(a) for the interest to be reduced in the event of the results improving, or

(b) for the interest to be increased in the event of the results deteriorating.

Textual Amendments

F323 Words in s. 528(3) substituted (with effect in accordance with Sch. 4 para. 21 of the amending Act) by Finance Act 2012 (c. 14), **Sch. 4 para. 15**

F324 Words in s. 528(4) inserted (retrospectively) by Finance Act 2024 (c. 3), **Sch. 7 para. 3(2)(a)(6)**

F325 S. 528(4)(a) omitted (retrospectively) by virtue of Finance Act 2024 (c. 3), **Sch. 7 para. 3(2)(b)(6)**

F326 S. 528(4)(b) omitted (retrospectively) by virtue of Finance Act 2024 (c. 3), **Sch. 7 para. 3(2)(b)(6)**

F327 S. 528(4A)(4B) inserted (with effect in accordance with Sch. 4 para. 13(2)(3) of the amending Act) by Finance Act 2012 (c. 14), **Sch. 4 para. 4(3)**

F328 S. 528(4A)(i)(j) inserted (1.4.2014) by The Real Estate Investment Trust (Amendments to the Corporation Tax Act 2010 and Consequential Amendments) Regulations 2014 (S.I. 2014/518), regs. 1(1), **2(2)** (with reg. 1(2)-(4))

F329 S. 528(4C) inserted (retrospectively) by Finance Act 2024 (c. 3), **Sch. 7 para. 3(3)(6)**

Status: *Point in time view as at 01/04/2014.*
Changes to legislation: *Corporation Tax Act 2010 is up to date with all changes known to be in force on or before 12 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

F330 Words in s. 528(5) substituted (retrospectively) by Finance Act 2024 (c. 3), **Sch. 7 para. 3(4)(6)**
F331 S. 528(5B)(5C) inserted (retrospectively) by Finance Act 2024 (c. 3), **Sch. 7 para. 3(5)(6)**

[F332 528A Further condition relating to shares

(1) In the case of a group UK REIT, the condition in this section is met in relation to an accounting period if—
  (a) throughout the accounting period, the shares forming the principal company's ordinary share capital meet the requirement of section 1137(2)(b) (definition of "listed" in relation to shares), or
  (b) during the accounting period, shares forming part of the principal company's ordinary share capital are traded on a recognised stock exchange.

(2) In the case of a company UK REIT, the condition in this section is met in relation to an accounting period if—
  (a) throughout the accounting period, the shares forming the company's ordinary share capital meet the requirement of section 1137(2)(b) (definition of "listed" in relation to shares), or
  (b) during the accounting period, shares forming part of the company's ordinary share capital are traded on a recognised stock exchange.

(3) This section is subject to section 528B.**]**

Textual Amendments
F332 Ss. 528A 528B inserted (with effect in accordance with Sch. 4 para. 21 of the amending Act) by Finance Act 2012 (c. 14), **Sch. 4 para. 16**

[F332 528B Relaxation of section 528A condition for accounting periods 1 to 3

(1) This section relaxes the requirements of section 528A in relation to accounting period 1, accounting period 2 and accounting period 3.

(2) In the case of a group UK REIT, the condition in section 528A is met in relation to accounting period 1, accounting period 2 and accounting period 3 if—
  (a) at the end of the relevant period, the shares forming the principal company's ordinary share capital meet the requirement of section 1137(2)(b) (definition of "listed" in relation to shares), or
  (b) during the relevant period, shares forming part of the principal company's ordinary share capital are traded on a recognised stock exchange.

(3) In the case of a company UK REIT, the condition in section 528A is met in relation to accounting period 1, accounting period 2 and accounting period 3 if—
  (a) at the end of the relevant period, the shares forming the company's ordinary share capital meet the requirement of section 1137(2)(b) (definition of "listed" in relation to shares), or
  (b) during the relevant period, shares forming part of the company's ordinary share capital are traded on a recognised stock exchange.

(4) In this section—

Status: *Point in time view as at 01/04/2014.*
Changes to legislation: *Corporation Tax Act 2010 is up to date with all changes known to be in force on or before 12 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

"accounting period 2" means the accounting period following accounting period 1,

"accounting period 3" means the accounting period following accounting period 2, and

"the relevant period" means the period consisting of accounting period 1, accounting period 2 and accounting period 3.**]**

Textual Amendments

F332 Ss. 528A 528B inserted (with effect in accordance with Sch. 4 para. 21 of the amending Act) by Finance Act 2012 (c. 14), **Sch. 4 para. 16**

529 Conditions as to property rental business

(1) Condition A is that the property rental business involves at least 3 properties.

(2) Condition B is that no single property represents more than 40% of the total value of the properties involved in the property rental business.

(3) For the purposes of conditions A and B the property rental businesses of the members of a group are to be treated as a single business.

(4) For the purposes of conditions A and B—

(a) a reference to a property "involved" in a business is a reference to an estate, interest, or right by the exploitation of which the business is conducted,

(b) a property is a single property if it is designed, fitted or equipped for the purpose of being rented, and it is rented or available for rent, as a commercial or residential unit (separate from any other commercial or residential unit),

(c) assets must be valued in accordance with international accounting standards,

(d) where international accounting standards offer a choice of valuation between cost basis and fair value, fair value must be used, and

(e) no account is to be taken of liabilities secured against or otherwise relating to assets (whether generally or specifically).

(5) If a percentage of the profits of property rental business of a member of a group UK REIT is excluded from a financial statement in accordance with section 533(3), that percentage of the member's property rental business is to be ignored for the purposes of subsection (2).

530 Condition as to distribution of profits

[[F333](1) In the case of a group UK REIT, the condition in this section is met in relation to an accounting period if—

(a) so much of the group's UK profits arising in the period as are UK REIT investment profits (see section 549A), and

(b) at least 90% of the rest of the group's UK profits arising in the period,

are distributed by the principal company of the group on or before the filing date for the principal company's tax return for the period (see paragraph 14 of Schedule 18 to FA 1998).**]**

Status: *Point in time view as at 01/04/2014.*
Changes to legislation: *Corporation Tax Act 2010 is up to date with all changes known to be in force on or before 12 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(2) In subsection (1) "UK profits" means the sum of the profits of members of the group as shown in the financial statement under section 532(2)(b) (group's property rental business in UK).

(3) Subsection (1) is to be ignored so far as—

(a) the condition applies to profits of the property rental business attributable to a member of the group, and

(b) compliance with the condition by the member would (if the condition applied to it) be unlawful as a result of a relevant enactment.

[[F334](4) In the case of a company UK REIT, the condition in this section is met in relation to an accounting period if—

(a) so much of the profits of the company's property rental business arising in the period as are UK REIT investment profits (see section 549A), and

(b) at least 90% of the rest of the profits of the company's property rental business arising in the period,

are distributed on or before the filing date for the company's tax return for the period (see paragraph 14 of Schedule 18 to FA 1998).

(4A) For the purposes of subsection (4) profits of the company's property rental business are to be calculated in accordance with section 599.**]**

(5) Subsection (4) is to be ignored so far as compliance with the condition would be unlawful as a result of a relevant enactment.

(6) A distribution that is withheld in order to prevent or reduce a charge to tax arising under section 551 (distribution to holder of excessive rights) is to be treated for the purposes of this section as having been made.

[[F335](6A) In this section, references (however expressed) to a distribution are to either or both of the following—

(a) a dividend in cash, and

(b) share capital issued in lieu of a cash dividend.

(6B) Section 1051(2) to (4) (meaning of "share capital issued in lieu of a cash dividend") applies for the purposes of subsection (6A) as it applies for the purposes of section 1049(1)(a).

(6C) Subsection (6D) applies if—

(a) (apart from that subsection) there would be a a failure to meet the condition in this section in relation to an accounting period, and

(b) that failure would arise solely by reason of the operation, by virtue of section 599A(2), of section 412(2) of ITTOIA 2005 (substitution of market value) in relation to any distributions within subsection (6A)(b).

(6D) Subsection (1) or (4) (as the case may be) is to have effect in relation to that accounting period as if for the words "on or before" there were substituted "before the end of the period of **[**[F336]6**]** months beginning with".**]**

(7) In this section "relevant enactment" means—

(a) an enactment (including Northern Ireland legislation and an Act of the Scottish Parliament), or

(b) an enactment of a jurisdiction outside the United Kingdom if the enactment is prescribed, or is of a kind prescribed, for the purposes of this paragraph

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in regulations made by the Commissioners for Her Majesty's Revenue and Customs.

Textual Amendments

F333 S. 530(1) substituted (17.7.2013) by Finance Act 2013 (c. 29), **Sch. 19 para. 2(2)**

F334 S. 530(4)(4A) substituted for s. 530(4) (17.7.2013) by Finance Act 2013 (c. 29), **Sch. 19 para. 2(3)**

F335 S. 530(6A)-(6D) inserted (with effect in accordance with Sch. 4 para. 12 of the amending Act) by Finance (No. 3) Act 2010 (c. 33), **Sch. 4 para. 4(4)**

F336 Word in s. 530(6D) substituted (with effect in accordance with Sch. 4 para. 26(1) of the amending Act) by Finance Act 2012 (c. 14), **Sch. 4 para. 22**

[F337530A Condition as to distribution of profits: increase in profits after delivery of tax return

(1) Section 530(1) applies subject to subsection (2) below in relation to an accounting period if—

(a) the principal company of the group delivered with its tax return for the period the financial statement under section 532(2)(b) showing the amount of the UK profits of the group arising in the period, and

(b) as at the relevant date, those profits have been increased from the amount originally shown in the statement.

(2) Any distribution of those profits made by the principal company before the end of the relevant period is to be treated as having been made within the deadline set by section **[**F338530(1) **]** .

(3) But the total amount of profits that may be treated as having been distributed within that deadline by virtue of subsection (2) is limited to 90% of the amount of the increase in profits.

(4) In subsections (1) and (2) (and this subsection)—

"the relevant date" means the date on which the principal company's tax return can no longer be amended,

"the relevant period" means the period of 3 months beginning with the relevant date, and

"UK profits" has the meaning given by section 530(2).

(5) Section 530(4) applies subject to subsection (6) below in relation to an accounting period if—

(a) the company delivered its tax return for the period showing the amount of the profits of its property rental business arising in the period as calculated in accordance with section 599, and

(b) as at the relevant date, those profits have been increased from the amount originally shown in the return.

(6) Any distribution of those profits made before the end of the relevant period is to be treated as having been made within the deadline set by section **[**F339530(4)**]** .

(7) But the total amount of profits that may be treated as having been distributed within that deadline by virtue of subsection (6) is limited to 90% of the amount of the increase in profits.

Status: *Point in time view as at 01/04/2014.*
Changes to legislation: *Corporation Tax Act 2010 is up to date with all changes known to be in force on or before 12 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(8) In subsections (5) and (6) (and this subsection)—

"the relevant date" means the date on which the company's tax return can no longer be amended, and

"the relevant period" means the period of 3 months beginning with the relevant date.

(9) In this section "distribution" is to be read in accordance with section 530(6A) and (6B).**]**

[[F340](10) This section cannot be relied upon to satisfy the requirement of section 530(1)(a) or (4)(a).**]**

Textual Amendments

F337 S. 530A inserted (with effect in accordance with Sch. 4 para. 26(2) of the amending Act) by Finance Act 2012 (c. 14), **Sch. 4 para. 23**

F338 Word in s. 530A(2) substituted (17.7.2013) by Finance Act 2013 (c. 29), **Sch. 19 para. 3(2)**

F339 Word in s. 530A(6) substituted (17.7.2013) by Finance Act 2013 (c. 29), **Sch. 19 para. 3(3)**

F340 S. 530A(10) inserted (17.7.2013) by Finance Act 2013 (c. 29), **Sch. 19 para. 3(4)**

531 Conditions as to balance of business

(1) Condition A is that in the accounting period profits of property rental business are at least 75% of the aggregate profits of the group or company (as the case may be).

(2) "Aggregate profits", in the case of a group, means the sum of—

(a) the profits of property rental business of members of the group (as shown in the financial statement under section 532(2)(a)), and

(b) the profits of residual business of members of the group (as shown in the financial statement under section 532(2)(c)).

(3) "Aggregate profits", in the case of a company, means the sum of—

(a) profits of property rental business of the company, and

(b) profits of residual business of the company.

(4) In the case of a company, references in subsections (1) and (3) to profits are to profits before deduction of tax, calculated in accordance with international accounting standards, and excluding—

(a) realised and unrealised gains and losses on the disposal of property,

(b) changes in the fair value of hedging derivative contracts (within the meaning given by section 599(4)), and

(c) items which are outside the ordinary course of the group's or, as the case may be, the company's business (irrespective of their treatment in the group's or company's accounts), having regard to that group's or company's past transactions.

[[F341](4A) In the case of a group, for the purposes of subsections (1) and (2) a distribution falling within section 549A(6) or (8) received by a member of the group is to be treated as profits of a property rental business in accordance with section 549A(1) notwithstanding section 549A(5).

Status: *Point in time view as at 01/04/2014.*
Changes to legislation: *Corporation Tax Act 2010 is up to date with all changes known to be in force on or before 12 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(4B) In the case of a company, for the purposes of subsections (1) and (3) a distribution falling within section 549A(6) or (8) received by the company is to be treated as profits of a property rental business in accordance with section 549A(1) notwithstanding section 549A(5).**]**

[[F342](5) Condition B is that at the beginning of the accounting period the sum of—

(a) the value of the assets relating to property rental business, and

(b) the value of the assets relating to residual business so far as consisting of cash **[**[F343]or relevant UK REIT shares **]** ,

is at least 75% of the total value of assets held by the group or company (as the case may be).**]**

(6) For the purposes of condition B as it applies in the case of a group—

(a) the amount shown in the financial statement under section 532(2)(a) as the amount of the assets of members of the group is to be treated as the amount of the assets relating to property rental business, and

(b) the amount shown in the financial statement under section 532(2)(c) as the amount of the assets of members of the group is to be treated as the amount of the assets relating to residual business **[**[F344](and the amount of the group's cash **[**[F345]and relevant UK REIT shares **]** is to be determined accordingly)**]** .

(7) For the purposes of condition B as it applies in the case of a company—

(a) an asset relates to property rental business if it would be shown as an asset if separate accounts were prepared for the property rental business,

(b) assets must be valued in accordance with international accounting standards,

(c) where international accounting standards offer a choice of valuation between cost basis and fair value, fair value must be used, and

(d) no account is to be taken of liabilities secured against or otherwise relating to assets (whether generally or specifically).

[[F346](8) In this section "cash" means—

(a) money held on deposit (whether or not in sterling),

(b) stocks or bonds of any description included in Part 1 of Schedule 11 to FA 1942 (gilts), or

(c) money held in any other way, or any investment of any other form, specified in regulations made by the Commissioners for Her Majesty's Revenue and Customs.**]**

[[F347](9) In this section "relevant UK REIT shares" means—

(a) in the case of a group UK REIT, shares held by a member of the group in the principal company of another group UK REIT or in a company UK REIT, and

(b) in the case of a company UK REIT, shares held by the company in the principal company of a group UK REIT or in another company UK REIT.**]**

Textual Amendments

F341 S. 531(4A)(4B) inserted (17.7.2013) by Finance Act 2013 (c. 29), **Sch. 19 para. 4(2)**

F342 S. 531(5) substituted (with effect in accordance with Sch. 4 para. 32(1) of the amending Act) by Finance Act 2012 (c. 14), **Sch. 4 para. 27(2)**

F343 Words in s. 531(5)(b) inserted (with effect in accordance with Sch. 19 para. 13(1) of the amending Act) by Finance Act 2013 (c. 29), **Sch. 19 para. 4(3)**

Status: *Point in time view as at 01/04/2014.*
Changes to legislation: *Corporation Tax Act 2010 is up to date with all changes known to be in force on or before 12 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

F344 Words in s. 531(6)(b) inserted (with effect in accordance with Sch. 4 para. 32(1) of the amending Act) by Finance Act 2012 (c. 14), **Sch. 4 para. 27(3)**

F345 Words in s. 531(6)(b) inserted (with effect in accordance with Sch. 19 para. 13(1) of the amending Act) by Finance Act 2013 (c. 29), **Sch. 19 para. 4(4)**

F346 S. 531(8) inserted (with effect in accordance with Sch. 4 para. 32(1) of the amending Act) by Finance Act 2012 (c. 14), **Sch. 4 para. 27(4)**

F347 S. 531(9) inserted (with effect in accordance with Sch. 19 para. 13(1) of the amending Act) by Finance Act 2013 (c. 29), **Sch. 19 para. 4(5)**

532 Financial statements for group UK REITs

(1) This section and section 533 set out the requirements referred to in section 527(2)(e) for financial statements in relation to a group UK REIT for an accounting period.

(2) The principal company must prepare—
- (a) a financial statement for the group's property rental business for the accounting period,
- (b) a financial statement for the group's property rental business in the United Kingdom for the period, and
- (c) a financial statement for the group's residual business for the period.

(3) The reference in subsection (2)(b) to the group's property rental business in the United Kingdom is a reference to—
- (a) property rental business of UK members of the group, and
- (b) UK property rental business of other members.

533 Financial statements: supplementary

(1) A financial statement under section 532(2)(a) or (c) must specify, in relation to each member of the group—
- (a) profits (calculated in accordance with international accounting standards),
- (b) expenses (calculated in accordance with international accounting standards),
- (c) profits before tax excluding gains or losses on property (whether realised or not) calculated in accordance with international accounting standards, and
- (d) assets valued—
  - (i) at the beginning of the accounting period,
  - (ii) in accordance with international accounting standards,
  - (iii) using fair value where there is a choice, and
  - (iv) ignoring liabilities secured against or otherwise relating to the assets.

(2) A financial statement under section 532(2)(b) must specify profits (calculated in accordance with section 599) for each member of the group.

(3) If a non-member of the group holds a percentage of the beneficial interest in a member of the group (other than the principal company), the financial statements under section 532(2) must exclude that percentage of profits, expenses, gains, losses, assets and liabilities of the member.

(4) Percentages of beneficial interest for the purposes of subsection (3) are to be determined by reference to beneficial entitlement to profits available for distribution to equity holders.

Status: *Point in time view as at 01/04/2014.*
Changes to legislation: *Corporation Tax Act 2010 is up to date with all changes known to be in force on or before 12 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(5) The Commissioners for Her Majesty's Revenue and Customs may by regulations—
- (a) make further provision relating to the content of a financial statement under section 532,
- (b) prescribe the form of a financial statement, and
- (c) specify a time before which a financial statement must be submitted to an officer of Revenue and Customs.

(6) Regulations under subsection (5)(a) may in particular—
- (a) permit or require apportionment or otherwise prescribe or refer to accounting practice;
- (b) provide for the inclusion or exclusion of specified profits, expenses, gains, losses, assets and liabilities;
- (c) make provision about the treatment of an interest in a business held by a member.

CHAPTER 3

TAX TREATMENT OF PROFITS AND GAINS OF UK REITS

534 Profits

(1) Profits of property rental business of a UK company which is, or is a member of, a UK REIT are not charged to corporation tax.

(2) Profits of UK property rental business of a non-UK member of a group UK REIT are not charged to corporation tax.

(3) Profits which—
- (a) arise from residual business of a UK company which is, or is a member of, a UK REIT, and
- (b) are charged to corporation tax,

are to be so charged at a rate determined without reference to sections 18 to 23 (small profits rate and marginal relief).

(4) If a percentage of the profits of property rental business of a member of a group UK REIT is excluded from a financial statement in accordance with section 533(3), that percentage of those profits is to be treated for corporation tax purposes as profits of residual business of the member.

(5) For the purposes of subsections (1) and (2) profits are to be calculated in accordance with section 599.

535 Gains

(1) A gain on the disposal of an asset is not a chargeable gain if—
- (a) the gain accrues to a company which is, or is a member of, a UK REIT, and
- (b) condition A or B is met in relation to the asset.

(2) Condition A is that the asset was used wholly and exclusively for the purposes of property rental business of the company.

Status: *Point in time view as at 01/04/2014.*
Changes to legislation: *Corporation Tax Act 2010 is up to date with all changes known to be in force on or before 12 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(3) Condition B is that the asset was used during one or more periods of (in total) less than a year—
  (a) partly for the purposes of property rental business of the company, and
  (b) partly for the purposes of residual business of the company,

but was otherwise used as mentioned in subsection (2).

(4) Subsection (5) applies if a gain accrues to a company which is, or is a member of, a UK REIT on the disposal of an asset which for one or more periods of (in total) at least a year has been used—
  (a) partly for the purposes of property rental business of the company, and
  (b) partly for the purposes of residual business of the company.

(5) Such part of the gain as may reasonably be attributed to property rental business of the company, having regard to—
  (a) the extent to which the asset was used for the different purposes, and
  (b) the length of the periods during which it was used for those purposes,

is not a chargeable gain.

(6) Gains which—
  (a) accrue to residual business of a company which is, or is a member of, a UK REIT, and
  (b) are charged to corporation tax,

are to be so charged at a rate determined without reference to sections 18 to 23 (small profits rate and marginal relief).

(7) If a percentage of the gains of property rental business of a member of a group UK REIT is excluded from a financial statement in accordance with section 533(3), that percentage of those gains is to be treated for corporation tax purposes as gains of the member's residual business.

(8) This section has effect in relation to a non-UK member of a group UK REIT as if references to property rental business of the member were to its UK property rental business.

(9) This section is to be read as if it were contained in TCGA 1992.

CHAPTER 4

ENTERING THE UK REIT REGIME

536 Effects of entry: corporation tax

(1) Property rental business carried on before entry by a company which becomes, or becomes a member of, a UK REIT (an "incoming company") is to be treated for corporation tax purposes as ceasing at entry.

(2) Assets which immediately before entry are involved in property rental business of an incoming company are to be treated for corporation tax purposes as being—
  (a) sold by the pre-entry company immediately before entry, and
  (b) reacquired immediately after entry by the company so far as it carries on property rental business.

Status: *Point in time view as at 01/04/2014.*
Changes to legislation: *Corporation Tax Act 2010 is up to date with all changes known to be in force on or before 12 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(3) The sale and reacquisition deemed under subsection (2) is to be treated as being for a consideration equal to the market value of the assets.

(4) A gain accruing as a result of subsection (2) is not a chargeable gain.

(5) For corporation tax purposes, one accounting period of an incoming company ends on entry and a new one begins.

(6) In the case of a group UK REIT—

(a) if a percentage of the assets of a member of the group is excluded from a financial statement in accordance with section 533(3), that percentage of those assets is to be ignored in the application of subsection (2) to the member, and

(b) this section has effect in relation to a non-UK member of the group as if references to property rental business were references to UK property rental business of the member.

(7) This section does not apply if—

(a) a company which was a member of one group UK REIT becomes a member of a different group UK REIT, or

(b) a company which was a company UK REIT becomes a member of a group UK REIT.

(8) This section and section 537 are subject to section 559 (demergers: company leaving group UK REIT).

(9) For the meaning of "entry", see section 607(1).

537 Effects of entry: CAA 2001

(1) Subsections (2) to (4) apply for the purposes of CAA 2001.

(2) The sale and reacquisition deemed under section 536(2)—

(a) does not give rise to allowances or charges, and

(b) does not enable an election to be made under section 198 or 199 of CAA 2001 (apportionment).

(3) Section 536(3) (deemed consideration for sale and reacquisition) does not apply.

(4) Anything done by or to a company which becomes, or becomes a member of, a UK REIT in relation to an asset which is deemed under section 536(2) to be sold and reacquired is to be treated after entry as having been done by or to the company so far as it carries on property rental business.

[F348]538 Entry charge

. . . . . .

Textual Amendments

F348 Ss. 538-540 omitted (17.7.2012) by virtue of Finance Act 2012 (c. 14), **Sch. 4 para. 33** (with Sch. 4 para. 33(2))

Status: *Point in time view as at 01/04/2014.*
Changes to legislation: *Corporation Tax Act 2010 is up to date with all changes known to be in force on or before 12 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

[F348]539 Calculation of the notional amount

. . . . . .

Textual Amendments

F348 Ss. 538-540 omitted (17.7.2012) by virtue of Finance Act 2012 (c. 14), **Sch. 4 para. 33** (with Sch. 4 para. 33(2))

[F348]540 Election to treat notional income as arising in instalments

. . . . . .

Textual Amendments

F348 Ss. 538-540 omitted (17.7.2012) by virtue of Finance Act 2012 (c. 14), **Sch. 4 para. 33** (with Sch. 4 para. 33(2))

CHAPTER 5

ASSETS ETC

Ring-fencing of property rental business

541 Ring-fencing of property rental business

(1) This section applies—
- (a) in the case of a group UK REIT, to the group and to each company which is a member of the group, and
- (b) to a company UK REIT.

(2) For corporation tax purposes property rental business of the group or company is treated as a separate business, distinct from—
- (a) business of the pre-entry group or pre-entry company,
- (b) residual business of the group or company, and
- (c) business of the post-cessation group or post-cessation company.

(3) For corporation tax purposes the group or company is treated as a separate group or company so far as it carries on property rental business, distinct from—
- (a) the pre-entry group or pre-entry company,
- (b) the group or company so far as it carries on residual business, and
- (c) the post-cessation group or post-cessation company.

(4) In particular—
- (a) a loss made in property rental business may not be set off against profits of residual business,
- (b) a loss made in residual business may not be set off against profits of property rental business,

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(c) a loss made in business carried on before entry may not be set off against profits of property rental business,

(d) a loss made in property rental business may not be set off against profits of business carried on after cessation (in respect of business of any kind), and

(e) receipts accruing after entry but relating to business carried on before entry are not treated as receipts of property rental business.

(5) Nothing in this section prevents a loss made in business carried on before entry from being set off against profits of residual business.

(6) In subsections (4) and (5) references to a loss include references to a deficit, expense, charge or allowance.

(7) If a percentage of the profits of property rental business of a member of a group UK REIT is excluded from a financial statement in accordance with section 533(3), that percentage of those profits is to be treated for the purposes of this section as profits of the member's residual business.

(8) This section has effect in relation to a non-UK member of a group, as if references to property rental business were references to UK property rental business.

(9) For the meaning of "cessation", see section 607(2).

542 Disapplication of certain provisions

(1) Section 66 (ring-fencing of losses from overseas property business) does not apply to property rental business of a UK company which is, or is a member of, a UK REIT.

(2) Sections 166 to 171 of TIOPA 2010 (transfer pricing: exemption for small and medium enterprises) do not apply to a UK company which is, or is a member of, a UK REIT (whether to property rental business or residual business of the company).

Profits: financing-cost ratio

543 Profit: financing-cost ratio

(1) This section applies to a UK REIT if the result of the calculation in subsection (2) is less than 1.25 for an accounting period **[**[F349](unless it is nil or a negative amount)**]** .

(2) The calculation is—

$$\frac{PP}{PFC}$$

where—
PP is the UK REIT's property profits for the accounting period (see section 544(1)), and
PFC is the UK REIT's property financing costs for the accounting period (see section 544(3)).

[[F350](3) The excess is charged to corporation tax in relation to the accounting period under the charge to corporation tax on income.

(3A) "The excess" means—

Status: *Point in time view as at 01/04/2014.*
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(a) the amount equal to—
(i) PFC, minus
(ii) the property financing costs which would cause the calculation in subsection (2) to equal 1.25 for the accounting period, or
(b) if less, the amount equal to 20% of PP.**]**

(4) The excess is treated as profits of residual business—
(a) in the case of a group UK REIT, of the principal company of the group, and
(b) in the case of a company UK REIT, of the company.

(5) Accordingly it is charged to corporation tax at the rate mentioned in section 534(3) (rate at which profits of residual business are charged).

(6) No loss, deficit, expense or allowance may be set off against the excess.

(7) The Commissioners for Her Majesty's Revenue and Customs may waive a charge to corporation tax under this section in respect of an accounting period if they think that—
(a) the company was in severe financial difficulties at a time in the accounting period,
(b) the result of the calculation in subsection (2) is less than 1.25 in respect of the accounting period because of circumstances that arose unexpectedly, and
(c) in those circumstances the company could not reasonably have taken action to avoid the result being less than 1.25.

(8) The Treasury may make regulations which specify criteria to be applied by the Commissioners in determining whether to waive a charge under subsection (7).

Textual Amendments

F349 Words in s. 543(1) inserted (with effect in accordance with Sch. 4 para. 42 of the amending Act) by Finance Act 2012 (c. 14), **Sch. 4 para. 40(2)**

F350 S. 543(3)(3A) substituted for s. 543(3) (with effect in accordance with Sch. 4 para. 42 of the amending Act) by Finance Act 2012 (c. 14), **Sch. 4 para. 40(3)**

544 Meaning of "property profits" and "property financing costs"

(1) For the purposes of section 543 "property profits" for an accounting period means—
(a) in the case of a group UK REIT, the sum of the profits of property rental business of members of the group that arise in the period, as shown in the financial statement under section 532(2)(b), and
(b) in the case of a company UK REIT, the amount of the profits of the company's property rental business (calculated in accordance with section 599) that arise in the period.

(2) References in subsection (1) to a company's profits are to its profits before the offset of—
(a) capital allowances,
(b) losses from a previous accounting period, and
(c) amounts taken into account as a result of section 599(3).

(3) For the purposes of section 543 "property financing costs" for an accounting period means—

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(a) in the case of a group UK REIT, the amount of the financing costs incurred in respect of **[**[F351]the group's property rental business in the United Kingdom**]**, excluding financing costs owed by one member of the group to another, as shown in the financial statement under section 532(2)(a), and

(b) in the case of a company UK REIT, the amount of the financing costs incurred in the period in respect of the company's property rental business.

[[F352](3A) The reference in subsection (3)(a) to the group's property rental business in the United Kingdom is a reference to—

(a) property rental business of UK members of the group, and

(b) UK property rental business of other members.**]**

(4) In subsection (3) "financing costs" means the cost of debt finance.

(5) In calculating the costs of debt finance in relation to an accounting period the matters to be taken into account **[**[F353]are—

(a) interest payable on borrowing,

(b) amortisation of discounts relating to borrowing,

(c) amortisation of premiums relating to borrowing,

(d) the financing expense implicit in payments made under finance leases, [F354]...

(e) alternative finance return (as defined in sections 511 to 513 of CTA 2009)**]**,

[[F355](f) periodic payments or receipts so far as they—

(i) are from any derivative contract or other arrangement entered into as a hedge of risk in connection with borrowing, and

(ii) are attributable to the hedge, and

(g) amortisation of discounts and premiums relating to a derivative contract or other arrangement within paragraph (f)**]**.

[[F356](6) The Treasury may by regulations amend the list of matters in subsection (5) by inserting, omitting or amending a description of a matter.**]**

Textual Amendments

F351 Words in s. 544(3)(a) substituted (retrospectively) by Finance Act 2024 (c. 3), **Sch. 7 para. 7(2)(4)**

F352 S. 544(3A) inserted (retrospectively) by Finance Act 2024 (c. 3), **Sch. 7 para. 7(3)(4)**

F353 Words in s. 544(5) substituted (with effect in accordance with Sch. 4 para. 42 of the amending Act) by Finance Act 2012 (c. 14), **Sch. 4 para. 41(2)**

F354 Word in s. 544(5)(d) omitted (1.4.2014) by virtue of The Real Estate Investment Trust (Amendments to the Corporation Tax Act 2010 and Consequential Amendments) Regulations 2014 (S.I. 2014/518), regs. 1(1), **2(3)(a)** (with reg. 1(2)-(4))

F355 S. 544(5)(f)(g) inserted (1.4.2014) by The Real Estate Investment Trust (Amendments to the Corporation Tax Act 2010 and Consequential Amendments) Regulations 2014 (S.I. 2014/518), regs. 1(1), **2(3)(b)** (with reg. 1(2)-(4))

F356 S. 544(6) inserted (with effect in accordance with Sch. 4 para. 42 of the amending Act) by Finance Act 2012 (c. 14), **Sch. 4 para. 41(3)**

Status: *Point in time view as at 01/04/2014.*
Changes to legislation: *Corporation Tax Act 2010 is up to date with all changes known to be in force on or before 12 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Cancellation of tax advantage

545 Cancellation of tax advantage

(1) If an officer of Revenue and Customs thinks that a company which is, or is a member of, a UK REIT has tried to obtain a tax advantage for itself or another person, the officer may give a notice to the company specifying the tax advantage.

(2) Subsections (3) and (4) apply if a notice is given under subsection (1).

(3) The tax advantage is to be counteracted, in accordance with the notice, by an adjustment by way of—
- (a) an assessment;
- (b) the cancellation of a right of repayment;
- (c) a requirement to return a repayment already made;
- (d) the calculation or recalculation of profits or gains, or liability to tax, on a basis specified in the notice.

(4) An officer of Revenue and Customs may (in addition to the adjustment under subsection (3)) assess the company to such amount of corporation tax or income tax (as the case may be) as the officer thinks is equivalent to the value of the tax advantage.

(5) For the purposes of this section "tax advantage" has the meaning given by section 1139[F357]....

(6) But a company does not obtain a tax advantage merely because it is, or is a member of, a UK REIT unless the company does anything (whether before or while it is, or is a member of, the UK REIT) which in the opinion of an officer of Revenue and Customs is wholly or principally designed—
- (a) to create or inflate or apply a loss, deduction or expense (whether or not made or incurred by the company), or
- (b) to have another effect of a kind specified for the purposes of this subsection by regulations made by the Treasury.

Textual Amendments

F357 Words in s. 545(5) omitted (17.7.2012) by virtue of Finance Act 2012 (c. 14), **Sch. 4 para. 34(1)** (with Sch. 4 para. 34(2))

546 Appeal against notice under section 545

(1) A company which receives a notice under section 545(1) may appeal.

(2) An appeal must be made by notice given in writing to an officer of Revenue and Customs during the period of 30 days beginning with the date on which the notice under section 545(1) is given.

(3) On an appeal under subsection (2) that is notified to the tribunal, the tribunal may—
- (a) quash the notice under section 545(1),
- (b) affirm the notice, or
- (c) vary the notice.

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Funds awaiting reinvestment

547 Funds awaiting reinvestment

(1) This section applies if a—

(a) company UK REIT or a member of a group UK REIT disposes of an asset used wholly and exclusively for the purposes of property rental business, and

(b) the company UK REIT or any member of the group UK REIT holds the proceeds in cash.

(2) Profits or losses arising from a loan relationship entered into in connection with the proceeds—

(a) are to be ignored for the purposes of section 599 (calculation of profits), and

(b) are to be treated for all tax purposes as arising from a loan relationship entered into in connection with residual business.

F358(3) . . . . . .

(4) For the purposes of this section proceeds are held in cash if—

(a) held on deposit (whether or not in sterling),

(b) invested in stocks or bonds of any of the descriptions included in Part 1 of Schedule 11 to FA 1942 (gilts), or

(c) held or invested in such other form as the Commissioners for Her Majesty's Revenue and Customs may specify for the purposes of this section in regulations.

(5) In the case of the disposal of an asset which, for one or more periods of (in total) at least a year, has been used—

(a) partly for the purposes of property rental business of the company, and

(b) partly for the purposes of residual business of the company,

this section applies to such part of the proceeds as may reasonably be attributed to the property rental business (having regard to the extent to which, and the length of the periods during which, the asset was used for the different purposes).

Textual Amendments

F358 S. 547(3) omitted (with effect in accordance with Sch. 4 para. 32(1) of the amending Act) by virtue of Finance Act 2012 (c. 14), **Sch. 4 para. 28**

CHAPTER 6

DISTRIBUTIONS

Recipients of distributions

548 Distributions: liability to tax

(1) This section applies if a shareholder of the principal company of a group UK REIT receives a distribution of amounts shown in the financial statement under section 532(2)(a) (statement of group's property rental business) as—

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(a) profits or gains (or both) of UK members of the group, or

(b) profits or gains (or both) of UK property rental business of non-UK members of the group.

(2) In subsection (1) the reference to the principal company includes a reference to the principal company of the post-cessation group.

(3) This section also applies if a shareholder of a company UK REIT receives a distribution in respect of profits or gains (or both) of property rental business of the company.

(4) In subsection (3) the reference to a company UK REIT includes a reference to the post-cessation company.

(5) If the shareholder is within the charge to corporation tax, the distribution is to be treated as profits of a UK property business (within the meaning given by section 205 of CTA 2009) **[**[F359]so far as the distribution is a distribution of exempt profits **]** .

(6) If the shareholder is not within the charge to corporation tax, the distribution is to be treated as profits of a UK property business (within the meaning given by section 264 of ITTOIA 2005) **[**[F360]so far as the distribution is a distribution of exempt profits**]** .

(7) In the case of a non-UK resident shareholder, the distribution is not non-resident landlord income for the purposes of regulations under section 971 of ITA 2007 (income tax due in respect of income of non-resident landlords).

(8) See sections 973 and 974 of ITA 2007 (income tax due in respect of distributions) for provision about the deduction of sums representing income tax in relation to distributions of a kind mentioned in this section.

[[F361](9) This section does not apply in relation to a distribution falling within section 549A(6) or (8) so far as the distribution is a distribution of exempt profits.

(10) For the purposes of this Chapter a distribution is a "distribution of exempt profits" so far as the distribution falls within section 550(2)(a), (aa), (c) or (d).

(11) In applying section 550 for the purposes of subsection (10) in relation to a distribution made by the principal company of a post-cessation group or by a post-cessation company—

(a) subsection (1)(a) is to be read as referring to the principal company of the post-cessation group, or (as the case may be)

(b) subsection (1)(b) is to be read as referring to the post-cessation company.**]**

Textual Amendments

F359 Words in s. 548(5) inserted (with effect in accordance with Sch. 19 para. 13(2)-(4) of the amending Act) by Finance Act 2013 (c. 29), **Sch. 19 para. 5(2)**

F360 Words in s. 548(6) inserted (with effect in accordance with Sch. 19 para. 13(2)-(4) of the amending Act) by Finance Act 2013 (c. 29), **Sch. 19 para. 5(3)**

F361 S. 548(9)-(11) inserted (with effect in accordance with Sch. 19 para. 13(2)-(4) of the amending Act) by Finance Act 2013 (c. 29), **Sch. 19 para. 5(4)**

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549 Distributions: supplementary

(1) Section 548 does not apply in relation to a shareholder so far as the shareholder—

(a) is a person who is charged to tax under Part 3 of CTA 2009 (trading income) in respect of distributions made by companies that are received in the course of a trade not consisting of insurance business,

(b) is a dealer in securities who is charged to income tax under Part 2 of ITTOIA 2005 (trading income) in respect of distributions made by companies,

(c) is an individual member of Lloyd's (within the meaning given by section 184(1) of FA 1993) and the distribution is made in respect of assets forming part of—

(i) a premium trust fund of the member (within the meaning given by section 174 of FA 1993), or

(ii) an ancillary trust fund of the member (within the meaning given by section 176 of that Act), or

(d) is a corporate member of Lloyd's (within the meaning given by section 230(1) of FA 1994) and the distribution is made in respect of assets forming part of—

(i) a premium trust fund belonging to the member (within the meaning given by section 222 of FA 1994), or

(ii) an ancillary trust fund belonging to the member (within the meaning given by section 223 of that Act).

(2) Section 1109 of this Act and section 397 of ITTOIA 2005 (tax credits in respect of qualifying distributions) do not apply to relevant distributions received by a shareholder **[**[F362]so far as they are distributions of exempt profits **]** .

[[F363](2A) Sections 409 to 414 of ITTOIA 2005 (stock dividend income from UK resident companies) do not apply to relevant distributions received by a shareholder **[**[F364]so far as they are distributions of exempt profits**]** . **]**

(3) "Relevant distribution" means—

(a) in the case of a group UK REIT, a distribution from the principal company of the group of amounts shown in the financial statement under section 532(2)(a) (statement of group's property rental business) as—

(i) profits or gains (or both) of UK members of the group, or

(ii) profits or gains (or both) of UK property rental business of non-UK members of the group, and

(b) in the case of a company UK REIT, a distribution from the company in respect of profits or gains (or both) of its property rental business.

[[F365](3A) Relevant distribution" does not include a distribution falling within section 549A(6) or (8) so far as the distribution is a distribution of exempt profits.**]**

(4) Relevant distributions received by a shareholder **[**[F366](so far as they are distributions of exempt profits)**]** are to be treated for the purposes of section 548(5) and (6) as the profits of a single business (irrespective of whether the shareholder receives different distributions in different capacities).

(5) That single business is separate from—

(a) any other UK property business (within the meaning given by section 205 of CTA 2009) carried on by the shareholder,

(b) any other UK property business (within the meaning given by section 264 of ITTOIA 2005) carried on by the shareholder,

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(c) any overseas property business (within the meaning given by section 206 of CTA 2009) carried on by the shareholder, and

(d) any overseas property business (within the meaning given by section 265 of ITTOIA 2005) carried on by the shareholder.

(6) If a shareholder is a partnership, subsection (4) applies to receipts by a partner of a share of any distribution as it applies to receipts by a shareholder.

Textual Amendments

F362 Words in s. 549(2) inserted (with effect in accordance with Sch. 19 para. 13(2)-(4) of the amending Act) by Finance Act 2013 (c. 29), **Sch. 19 para. 6(2)**

F363 S. 549(2A) inserted (with effect in accordance with Sch. 4 para. 12 of the amending Act) by Finance (No. 3) Act 2010 (c. 33), **Sch. 4 para. 5**

F364 Words in s. 549(2A) inserted (with effect in accordance with Sch. 19 para. 13(2)-(4) of the amending Act) by Finance Act 2013 (c. 29), **Sch. 19 para. 6(2)**

F365 S. 549(3A) inserted (with effect in accordance with Sch. 19 para. 13(2)-(4) of the amending Act) by Finance Act 2013 (c. 29), **Sch. 19 para. 6(3)**

F366 Words in s. 549(4) inserted (with effect in accordance with Sch. 19 para. 13(2)-(4) of the amending Act) by Finance Act 2013 (c. 29), **Sch. 19 para. 6(4)**

[F367 549A Distributions from one UK REIT to another UK REIT

(1) If a company receives a distribution falling within subsection (6) or (8), the distribution is to be treated as profits of a property rental business carried on by the company in the United Kingdom.

Such profits are referred to in this Part as "UK REIT investment profits".

(2) The property rental business mentioned in subsection (1) is to be treated as separate from any other property rental business of the company.

(3) References to profits of property rental business or UK property rental business are to be read as including UK REIT investment profits accordingly, including where the profits referred to are otherwise profits calculated in accordance with international accounting standards or section 599.

(4) Section 549(2) and (2A) applies in relation to distributions falling within subsection (6) or (8) as it applies in relation to relevant distributions.

(5) Subsection (1) applies in relation to a distribution only so far as the distribution is a distribution of exempt profits.

This is subject to section 531(4A) and (4B).

(6) A distribution falls within this subsection if—

(a) it is made by the principal company of a group UK REIT to a shareholder of the company which is—

(i) a member of another group UK REIT, or

(ii) a company UK REIT, and

(b) it is a distribution of amounts shown in the financial statements under section 532(2)(a) (statement of group's property rental business) as—

(i) profits or gains (or both) of UK members of the group, or

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(ii) profits or gains (or both) of UK property rental business of non-UK members of the group.

(7) In subsection (6) the reference to a distribution made by the principal company includes a reference to a distribution made by the principal company of the post-cessation group.

(8) A distribution falls within this subsection if—

(a) it is made by a company UK REIT to a shareholder of the company which is—

(i) a member of a group UK REIT, or

(ii) another company UK REIT, and

(b) it is a distribution in respect of profits or gains (or both) of property rental business of the company.

(9) In subsection (8) the reference to a distribution made by a company UK REIT includes a reference to a distribution made by the post-cessation company.**]**

Textual Amendments

F367 S. 549A inserted (with effect in accordance with Sch. 19 para. 13(2)-(4) of the amending Act) by Finance Act 2013 (c. 29), **Sch. 19 para. 7**

Attribution of distributions

550 Attribution of distributions

(1) Subsection (2) applies to—

(a) distributions made by the principal company of a group UK REIT, and

(b) distributions made by a company UK REIT.

(2) The distributions are to be attributed—

[[F368](a) first, to distributions in satisfaction of the requirement of section 530(1)(a) or 530(4)(a) (as the case may be),

(aa) second, to distributions in satisfaction of the requirement of section 530(1)(b) or 530(4)(b) (as the case may be),**]**

(b) **[**[F369]third**]** , so far as the company determines, to distribution of amounts which derive from activities of a kind in respect of which corporation tax is chargeable in relation to income,

(c) **[**[F370]fourth**]** , to distribution of profits of property rental business (calculated in accordance with section 599),

(d) **[**[F371]fifth**]** , to distribution of relevant non-chargeable gains, and

(e) **[**[F372]sixth **]** , to other distributions.

(3) In subsection (2)(d) "relevant non-chargeable gains" means—

(a) in the case of a group, gains accruing to property rental business of a member of the group, and

(b) in the case of a company, gains accruing to property rental business of the company,

which as a result of section 535 are not chargeable gains.

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Textual Amendments

F368 S. 550(2)(a)(aa) substituted for s. 550(2)(a) (17.7.2013) by Finance Act 2013 (c. 29), **Sch. 19 para. 8(a)**

F369 Word in s. 550(2)(b) substituted (17.7.2013) by Finance Act 2013 (c. 29), **Sch. 19 para. 8(b)**

F370 Word in s. 550(2)(c) substituted (17.7.2013) by Finance Act 2013 (c. 29), **Sch. 19 para. 8(c)**

F371 Word in s. 550(2)(d) substituted (17.7.2013) by Finance Act 2013 (c. 29), **Sch. 19 para. 8(d)**

F372 Word in s. 550(2)(e) substituted (17.7.2013) by Finance Act 2013 (c. 29), **Sch. 19 para. 8(e)**

Distributions to certain shareholders

551 Tax consequences of distribution to holder of excessive rights

(1) Subsection (3) applies if—

(a) a distribution is made to or in respect of a holder of excessive rights (as defined by section 553), and

(b) the distributor has not taken reasonable steps to prevent a distribution to or in respect of such a person from being made.

(2) "The distributor" means—

(a) in the case of a group UK REIT, the principal company of the group, and

(b) in the case of a company UK REIT, the company.

(3) The distributor is treated as receiving an amount of income calculated in accordance with section 552 ("the section 552 amount").

(4) The section 552 amount is chargeable to corporation tax under the charge to corporation tax on income.

(5) It is treated—

(a) as arising in the accounting period in which the distribution was made, and

(b) as profits of residual business of the distributor.

(6) Accordingly it is charged to corporation tax at the rate mentioned in section 534(3) (rate at which profits of residual business are charged).

(7) No loss, deficit, expense or allowance may be set off against the section 552 amount.

552 "The section 552 amount"

(1) For the purposes of section 551, the section 552 amount is calculated by taking 3 steps.

(2) *Step 1*: find the amount given by—

$$DO \times SO \times \frac{BRT}{MCT}$$

where—
DO is—

(a) in the case of a group UK REIT, the amount of the group's UK profits (as defined by section 530(2)) distributed in respect of ordinary shares in the principal company, and

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(b) in the case of a company UK REIT, the amount of profits of property rental business of the company distributed in respect of ordinary shares in the company,

SO is—

(a) the percentage of rights in respect of those shares held by the holder of excessive rights, or

(b) if less, the percentage of rights held by the recipient of the distribution,

in respect of which the distribution is made,

BRT is the basic rate of income tax in force at the time the distribution is made, and

MCT is the rate of corporation tax mentioned in section 534(3) (rate determined without reference to sections 18 to 23).

(3) *Step 2*: find the amount given by—

$$DP \times SP \times \frac{BRT}{MCT}$$

where—

DP is—

(a) in the case of a group UK REIT, the amount of the group's UK profits (as defined by section 530(2)) distributed in respect of preference shares in the principal company, and

(b) in the case of a company UK REIT, the amount of profits of property rental business of the company distributed in respect of preference shares in the company,

SP is—

(a) the percentage of rights in respect of those shares held by the holder of excessive rights, or

(b) if less, the percentage of rights held by the recipient of the distribution,

in respect of which the distribution is made, and

BRT and MCT have the same meaning as they have in subsection (2).

(4) *Step 3*: add together the amounts given by steps 1 and 2.

That amount is the section 552 amount.

553 Meaning of "holder of excessive rights"

(1) For the purposes of section 551 "holder of excessive rights" means a person who meets—

(a) condition A, and

(b) either condition B or C.

(2) Condition A is that the person—

(a) is beneficially entitled (directly or indirectly) to at least 10% of the [[F373]distributions] paid by the distributor,

(b) is beneficially entitled (directly or indirectly) to at least 10% of the distributor's share capital, or

(c) controls (directly or indirectly) at least 10% of the voting rights in the distributor.

(3) Condition B is that the person is a company.

Status: *Point in time view as at 01/04/2014.*
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(4) Condition C is that—

(a) the person is treated as a body corporate for tax purposes—

(i) in accordance with the law of a territory outside the United Kingdom with which arrangements have been entered into to provide relief from double taxation, or

(ii) in accordance with an international agreement containing such arrangements, and

(b) those arrangements have effect by virtue of an Order in Council under section 2 of TIOPA 2010.

(5) In subsection (2) "the distributor" has the meaning given by section 551(2).

Textual Amendments

F373 Word in s. 553(2)(a) substituted (with effect in accordance with Sch. 4 para. 12 of the amending Act) by Finance (No. 3) Act 2010 (c. 33), **Sch. 4 para. 7**

554 Regulations: distributions to holders of excessive rights

(1) The Treasury may by regulations make provision of the kind mentioned in subsection (2) for cases where—

(a) the principal company of a group UK REIT, or

(b) a company UK REIT,

makes a distribution to or in respect of a holder of excessive rights (as defined by section 553).

(2) The provision referred to in subsection (1) is—

(a) provision that a charge does not arise, or is reduced, if the company takes or does not take action of a specified kind;

(b) a requirement for the company to provide the Commissioners for Her Majesty's Revenue and Customs with specified information relating to the distribution and the persons to or in respect of whom it is made.

[F374 554A Meaning of "distribution"

(1) In this Chapter, references (however expressed) to a distribution include share capital issued in lieu of a cash dividend.

(2) Section 1051(2) to (4) (meaning of "share capital issued in lieu of a cash dividend") applies for the purposes of this section as it applies for the purposes of section 1049(1)(a).]

Textual Amendments

F374 S. 554A inserted (with effect in accordance with Sch. 4 para. 12 of the amending Act) by Finance (No. 3) Act 2010 (c. 33), **Sch. 4 para. 8**

Status: *Point in time view as at 01/04/2014.*
Changes to legislation: *Corporation Tax Act 2010 is up to date with all changes known to be in force on or before 12 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

CHAPTER 7

GAINS ETC

Movement of assets

555 Assets: change of use

(1) Subsection (2) applies if—

(a) an asset has been used wholly and exclusively for the purposes of property rental business of a company which is, or is a member of, a UK REIT, and

(b) the asset begins to be used (otherwise than by being disposed of in the course of trade) wholly and exclusively for the purposes of residual business of the company.

(2) The asset is treated as having been at that time—

(a) disposed of by the company so far as it carries on property rental business, and

(b) immediately reacquired by the company so far as it carries on residual business.

(3) The sale and reacquisition deemed under subsection (2) is to be treated as being for a consideration equal to the market value of the asset.

(4) For the purposes of CAA 2001—

(a) a sale and reacquisition deemed under subsection (2)—

(i) does not give rise to allowances or charges, and

(ii) does not make it possible to make an election under section 198 or 199 of that Act (apportionment),

(b) subsection (3) does not apply, and

(c) anything done by or to the company so far as it carries on property rental business before the deemed sale and reacquisition is to be treated after the deemed sale and reacquisition as having been done by or to the company so far as it carries on residual business.

(5) If a percentage of the gains of property rental business of a member of a group UK REIT is excluded from a financial statement in accordance with section 533(3), that percentage of those gains is to be treated for corporation tax purposes as gains of the member's residual business.

(6) This section has effect in relation to a non-UK member of a group UK REIT as if references to property rental business were references to UK property rental business.

(7) Section 535 is relevant to the tax treatment of any gain arising to a company under this section.

556 Disposal of assets

(1) Subsection (2) applies if—

(a) an asset has been used wholly and exclusively for the purposes of property rental business of a company which is, or is a member of, a UK REIT, [F375]...

(b) the asset is disposed of in the course of trade for the purposes of residual business of the company[F376], and

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(c) if the company is a member of a UK REIT, the disposal is not to another member of the UK REIT.**]**

(2) If this subsection applies—

(a) the deemed sale and reacquisition under section 536(2) is to be ignored, and

(b) the asset is to be treated as having been disposed of in the course of the company's residual business.

(3) Subsection (2) is to be taken to apply in particular if—

(a) a property acquired by a company which is, or is a member of, a UK REIT has been developed since acquisition,

(b) the cost of the development exceeds 30% of the fair value of the property (determined in accordance with international accounting standards) at entry or at acquisition, whichever is later, [F377]...

(c) the company disposes of the property within the period of 3 years beginning with the completion of the development**[**[F378], and

(d) if the company is a member of a UK REIT, the disposal is not to another member of the UK REIT.**]**

[F379](4) . . . . . .

(5) If a percentage of the gains of property rental business of a member of a group UK REIT is excluded from a financial statement in accordance with section 533(3), that percentage of those gains is to be treated for corporation tax purposes as gains of the member's residual business.

(6) This section has effect in relation to a non-UK member of a group UK REIT as if references to property rental business were references to UK property rental business.

(7) Section 535 is relevant to the tax treatment of any gain arising to a company under this section.

Textual Amendments

F375 Word in s. 556(1) omitted (with effect in accordance with Sch. 4 para. 44 of the amending Act) by virtue of Finance Act 2012 (c. 14), **Sch. 4 para. 43(2)(a)**

F376 S. 556(1)(c) and preceding word inserted (with effect in accordance with Sch. 4 para. 44 of the amending Act) by Finance Act 2012 (c. 14), **Sch. 4 para. 43(2)(b)**

F377 Word in s. 556(3) omitted (with effect in accordance with Sch. 4 para. 44 of the amending Act) by virtue of Finance Act 2012 (c. 14), **Sch. 4 para. 43(3)(a)**

F378 S. 556(3)(d) and preceding word inserted (with effect in accordance with Sch. 4 para. 44 of the amending Act) by Finance Act 2012 (c. 14), **Sch. 4 para. 43(3)(b)**

F379 S. 556(4) omitted (17.7.2012) by virtue of Finance Act 2012 (c. 14), **Sch. 4 para. 35(1)** (with Sch. 4 para. 35(2))

557 Movement of assets into ring fence

(1) Subsection (2) applies if—

(a) an asset has been used wholly and exclusively for the purposes of residual business of a company which is, or is a member of, a UK REIT, and

(b) the asset begins to be used wholly and exclusively for the purposes of the company so far as it carries on property rental business.

Status: *Point in time view as at 01/04/2014.*
Changes to legislation: *Corporation Tax Act 2010 is up to date with all changes known to be in force on or before 12 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(2) The asset is to be treated as having been at that time—
  (a) disposed of by the company so far as it carries on residual business, and
  (b) immediately reacquired by the company so far as it carries on property rental business.

(3) The sale and reacquisition deemed under subsection (2) is to be treated as being for a consideration equal to the market value of the asset.

(4) For the purposes of CAA 2001—
  (a) a sale and reacquisition deemed under subsection (2)—
    (i) does not give rise to allowances or charges, and
    (ii) does not make it possible to make an election under section 198 or 199 of that Act (apportionment),
  (b) subsection (3) does not apply, and
  (c) anything done by or to the company so far as it carries on residual business before the deemed sale and reacquisition is to be treated after the deemed sale and reacquisition as having been done by or to the company so far as it carries on property rental business.

(5) If a percentage of the gains of property rental business of a member of a group UK REIT is excluded from a financial statement in accordance with section 533(3), that percentage of those gains is to be treated for corporation tax purposes as gains of the member's residual business.

(6) This section has effect in relation to a non-UK member of a group UK REIT as if references to property rental business were references to UK property rental business.

(7) Section 535 is relevant to the tax treatment of any gain arising to a company under this section.

Demergers

558 Demergers: disposal of asset

(1) This section applies in the case of a company UK REIT if—
  (a) the company ("C") disposes of an asset involved in its property rental business to a 75% subsidiary ("S") of C,
  (b) C (so far as it carries on residual business) disposes of its interest in S to another company ("P"),
  (c) on the date when P acquires the interest in S, P gives a notice under section 523 specifying a date that falls within the post-disposal period, and
  (d) the group of which S is a member becomes a group UK REIT from the specified date.

(2) "The post-disposal period" means the period of 6 months beginning with the date of the disposal of the asset by C.

(3) P may give a notice under section 523 in accordance with subsection (1)(c) even if it does not expect to meet conditions **[**[F380] C, E and F**]** in section 528 throughout accounting period 1.

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(4) Sections 536 and 537 (effects of entry) [F381]... do not apply to the group of which S is a member—

(a) in relation to the asset disposed of by C, or

(b) in relation to business conducted by the exploitation of that asset.

(5) Sections 555 and 556 (movement of assets out of ring fence) do not apply to the disposal of the asset by C.

(6) But if, at the end of the post-disposal period, conditions **[**[F382]C, E and F**]** in section 528 are not met in relation to P, subsections (4) and (5) are to be treated as not having had effect.

Textual Amendments

F380 Words in s. 558(3) substituted (with effect in accordance with Sch. 4 para. 13(2) of the amending Act) by Finance Act 2012 (c. 14), **Sch. 4 para. 5**

F381 Words in s. 558(4) omitted (17.7.2012) by virtue of Finance Act 2012 (c. 14), **Sch. 4 para. 36(1)** (with Sch. 4 para. 36(2))

F382 Words in s. 558(6) substituted (with effect in accordance with Sch. 4 para. 13(2) of the amending Act) by Finance Act 2012 (c. 14), **Sch. 4 para. 5**

559 Demergers: company leaving group UK REIT

(1) This section applies in relation to a company if each of conditions A to D is met.

(2) Condition A is that the company ("the exiting company") ceases to be a member of a group UK REIT ("Group 1").

(3) Condition B is that at the time immediately after it ceases to be a member of Group 1—

(a) the exiting company is a member of another group ("Group 2") and—

(i) the principal company of Group 2 meets conditions A and B in section 528,

(ii) Group 2 has property rental business in relation to which conditions A and B in section 529 are met,

(iii) the condition in section 530 is met in relation to the principal company of Group 2, and

(iv) Group 2 meets conditions A and B in section 531, or

(b) the exiting company—

(i) meets conditions A and B in section 528,

(ii) has property rental business in relation to which conditions A and B in section 529 are met, and

(iii) meets the condition in section 530 and conditions A and B in section 531.

(4) Condition C is that—

(a) in a case within subsection (3)(a), the principal company of Group 2 gives a notice under section 523 no later than the date on which the exiting company ceases to be a member of Group 1, and

(b) in a case within subsection (3)(b), the exiting company gives a notice under section 524 no later than the date on which it ceases to be a member of Group 1.

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(5) Condition D is that the date specified in the notice under section 523 or 524 (as the case may be) is the same as that on which the exiting company ceases to be a member of Group 1.

(6) A company may give a notice under section 523 or 524 in accordance with subsection (4) even if it does not expect to meet conditions **[**[F383]C, E and F**]** in section 528 throughout accounting period 1.

(7) If this section applies, the exiting company is to be treated as a member of a group UK REIT (or as a company UK REIT) during the period of 6 months beginning with the time when it ceases to be a member of Group 1.

(8) If this section applies, the following provisions do not have effect—

sections 536 and 537 (effects of entry),

[F384]... and

sections 579 and 580 (effects of cessation).

(9) But if, at the end of the period of 6 months mentioned in subsection (7) conditions **[**[F385]C, E and F**]** in section 528 are not met in relation to the principal company of Group 2 or the exiting company (as the case may be)—

(a) this section does not apply, and

(b) the exiting company is to be treated as having ceased to be a member of a group UK REIT (or a company UK REIT) on the date on which it ceased to be a member of Group 1.

Textual Amendments

F383 Words in s. 559(6) substituted (with effect in accordance with Sch. 4 para. 13(2) of the amending Act) by Finance Act 2012 (c. 14), **Sch. 4 para. 6**

F384 Words in s. 559(8) omitted (17.7.2012) by virtue of Finance Act 2012 (c. 14), **Sch. 4 para. 37**

F385 Words in s. 559(9) substituted (with effect in accordance with Sch. 4 para. 13(2) of the amending Act) by Finance Act 2012 (c. 14), **Sch. 4 para. 6**

Interpretation

560 Interpretation of Chapter

This Chapter (other than section 559) is to be read as if it were contained in TCGA 1992.

CHAPTER 8

BREACH OF CONDITIONS IN CHAPTER 2

561 Notice of breach of relevant Chapter 2 condition

(1) The principal company of a group UK REIT must notify an officer of Revenue and Customs as soon as reasonably practicable if a relevant Chapter 2 condition ceases to be met in relation to the principal company or (as the case may be) the group.

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(2) A company UK REIT must notify an officer of Revenue and Customs as soon as is reasonably practicable if a relevant Chapter 2 condition ceases to be met in relation to the company.

(3) Each of the following is a "relevant Chapter 2 condition"—

conditions C and D in section 528 (conditions for company),
[[F386]the condition in section 528A (further condition relating to shares),**]**
conditions A and B in section 529 (property rental business),
the condition in section 530 (distribution of profits), and
conditions A and B in section 531 (balance of business).

(4) A notification under subsection (1) or (2) must include—

(a) the date on which the condition first ceased to be met and the date (if any) on which it was met again,
(b) a description of the breach, and
(c) details of the steps (if any) taken by the company to prevent a recurrence of the breach.

[[F387](5) The following subsections apply in relation to condition D in section 528.

(6) In accordance with section 527(6) and (7), a notification does not have to be given under subsection (1) or (2) if condition D ceases to be met during the first 3-year period.

(7) If condition D is not met at the start of the first day after the end of the first 3-year period, for the purposes of subsections (1) to (4) condition D is treated as having ceased to be met at the start of that day.

(8) In subsections (6) and (7) "the first 3-year period" has the meaning given by section 527(8).**]**

Textual Amendments

F386 Words in s. 561(3) inserted (with effect in accordance with Sch. 4 para. 21 of the amending Act) by Finance Act 2012 (c. 14), **Sch. 4 para. 17**

F387 S. 561(5)-(8) inserted (with effect in accordance with Sch. 4 para. 13(2) of the amending Act) by Finance Act 2012 (c. 14), **Sch. 4 para. 7**

562 Breach of [[F388]condition C] in section 528 (conditions for company)

(1) This section makes provision about cases relating to breaches of condition C **[**[F389]in section 528**]** in relation to—

(a) the principal company of a group UK REIT, or
(b) a company UK REIT.

(2) If **[**[F390]condition C is**]** not met—

(a) as a result of the principal company of a group UK REIT becoming a member of another group UK REIT, or
(b) as a result of a company UK REIT becoming a member of a group UK REIT,

the **[**[F391]breach is **]** to be ignored.

[F392](3) . . . . . .

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[F392](4) . . . . . .

(5) If—

(a) [[F393]condition C] is not met in relation to an accounting period, and

(b) the case is not one within subsection (2) [F394]...,

the group or company (as the case may be) is to be treated as having ceased to be a UK REIT at the end of the previous accounting period.

Textual Amendments

F388 Words in s. 562 heading substituted (with effect in accordance with Sch. 4 para. 13(2) of the amending Act) by Finance Act 2012 (c. 14), **Sch. 4 para. 8(2)**

F389 Words in s. 562(1) substituted (with effect in accordance with Sch. 4 para. 13(2) of the amending Act) by Finance Act 2012 (c. 14), **Sch. 4 para. 8(3)**

F390 Words in s. 562(2) substituted (with effect in accordance with Sch. 4 para. 13(2) of the amending Act) by Finance Act 2012 (c. 14), **Sch. 4 para. 8(4)(a)**

F391 Words in s. 562(2) substituted (with effect in accordance with Sch. 4 para. 13(2) of the amending Act) by Finance Act 2012 (c. 14), **Sch. 4 para. 8(4)(b)**

F392 S. 562(3)(4) omitted (with effect in accordance with Sch. 4 para. 13(2) of the amending Act) by virtue of Finance Act 2012 (c. 14), **Sch. 4 para. 8(5)**

F393 Words in s. 562(5)(a) substituted (with effect in accordance with Sch. 4 para. 13(2) of the amending Act) by Finance Act 2012 (c. 14), **Sch. 4 para. 8(6)(a)**

F394 Words in s. 562(5)(b) omitted (with effect in accordance with Sch. 4 para. 13(2) of the amending Act) by virtue of Finance Act 2012 (c. 14), **Sch. 4 para. 8(6)(b)**

[[F395]562A Breach of condition D in section 528 (conditions for company)

(1) This section makes provision about cases relating to breaches of condition D in section 528 in relation to—

(a) the principal company of a group UK REIT, or

(b) a company UK REIT.

(2) In accordance with section 527(6) and (7), a breach of condition D during the first 3-year period is to be ignored.

(3) If condition D is not met at the start of the first day after the end of the first 3-year period, the group or company (as the case may be) is to be treated as having ceased to be a UK REIT at the end of the first 3-year period.

(4) If condition D is not met at any time after the start of the day mentioned in subsection (3), the group or company (as the case may be) is to be treated as having ceased to be a UK REIT at—

(a) the end of the accounting period preceding the accounting period in which the breach began, or

(b) if later, the end of the first 3-year period.

(5) Neither subsection (3) nor subsection (4) applies if condition D is not met as a result of—

(a) the principal company of a group UK REIT becoming a member of another group UK REIT, or

(b) a company UK REIT becoming a member of a group UK REIT,

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and, accordingly, the breach is to be ignored.

(6) Subsection (4) does not apply if—

(a) condition D is not met as a result of anything done (or not done) by a person other than the company in question, and

(b) the company remedies the breach not later than the end of the accounting period after that in which the breach began,

and, accordingly, the breach is to be ignored.

(7) But if, in a case within subsection (6), the breach of condition D is not remedied by the time mentioned in that subsection, the group or company (as the case may be) is treated as having ceased to be a UK REIT at the end of the accounting period in which the breach began.

(8) In this section "the first 3-year period" has the meaning given by section 527(8).**]**

Textual Amendments

F395 S. 562A inserted (with effect in accordance with Sch. 4 para. 13(2) of the amending Act) by Finance Act 2012 (c. 14), **Sch. 4 para. 9**

[F396 562B Breach of further condition relating to shares

(1) Subsection (2) applies if the condition in section 528A (further condition relating to shares) is not met in relation to an accounting period.

(2) The group or company (as the case may be) is to be treated as having ceased to be a UK REIT at the end of the previous accounting period.

(3) But subsection (2) does not apply if the condition is not met as a result of—

(a) the principal company of a group UK REIT becoming a member of another group UK REIT, or

(b) a company UK REIT becoming a member of a group UK REIT,

and, accordingly, the breach is to be ignored.

(4) This section is subject to section 562C.**]**

Textual Amendments

F396 Ss. 562B 562C inserted (with effect in accordance with Sch. 4 para. 21 of the amending Act) by Finance Act 2012 (c. 14), **Sch. 4 para. 18**

[F396 562C Breach of further condition relating to shares in accounting periods 1, 2 and 3

(1) Subsection (2) applies if the condition in section 528A, as relaxed by section 528B, is not met in relation to accounting period 1, accounting period 2 and accounting period 3.

(2) The group or company (as the case may be) is to be treated as having ceased to be a UK REIT at the end of accounting period 2.

(3) But subsection (2) does not apply if the condition, as relaxed, is not met as a result of—

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(a) the principal company of a group UK REIT becoming a member of another group UK REIT, or

(b) a company UK REIT becoming a member of a group UK REIT,

and, accordingly, the breach is to be ignored.

(4) In this section "accounting period 2" and "accounting period 3" have the same meaning as in section 528B.**]**

Textual Amendments

F396 Ss. 562B 562C inserted (with effect in accordance with Sch. 4 para. 21 of the amending Act) by Finance Act 2012 (c. 14), **Sch. 4 para. 18**

563 Breach of conditions as to property rental business

(1) Subsection (2) applies if condition A or B in section 529 (property rental business) is not met in the case of a UK REIT throughout an accounting period of—

(a) in the case of a group UK REIT, the principal company of the group, and

(b) in the case of a company UK REIT, the company.

(2) The breach is to be ignored.

564 Breach of condition as to distribution of profits

(1) Subsection (2) applies if the condition in section 530 (distribution of profits) is not met in relation to an accounting period.

(2) The breach is to be ignored; but the amount given by section 565 ("the section 565 amount") is charged to corporation tax under the charge to corporation tax on income.

(3) The section 565 amount is to be treated as profits of residual business—

(a) of the principal company of the group UK REIT, or

(b) of the company UK REIT,

as the case may be.

(4) Accordingly it is charged to corporation tax at the rate mentioned in section 534(3) (rate at which profits of residual business are charged).

[F397](5) . . . . . .

[F397](6) . . . . . .

[F397](7) . . . . . .

[F397](8) . . . . . .

(9) No loss, deficit, expense or allowance may be set off against the section 565 amount.

[[F398](10) In this section and section 565, " distribution " is to be read in accordance with section 530(6A) and (6B). **]**

Status: *Point in time view as at 01/04/2014.*
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Textual Amendments

F397 S. 564(5)-(8) omitted (with effect in accordance with Sch. 4 para. 26(2) of the amending Act) by virtue of Finance Act 2012 (c. 14), **Sch. 4 para. 24**

F398 S. 564(10) inserted (with effect in accordance with Sch. 4 para. 12 of the amending Act) by Finance (No. 3) Act 2010 (c. 33), **Sch. 4 para. 9(3)**

565 "The section 565 amount"

(1) For the purposes of section 564 "the section 565 amount" is found by subtracting D from P.

(2) In the case of a group UK REIT—

P is 90% of the group's UK profits (as defined by section 530(2)) arising in the accounting period, and

D is the gross amount of those profits distributed in respect of the period **[**[F399]within**]** —

(a) the **[**[F400]deadline set by**]** section 530(1), or

(b) any later **[**[F401]deadline set**]** by an officer of Revenue and Customs.

(3) In the case of a company UK REIT—

P is 90% of the company's profits from property rental business arising in the accounting period, and

D is the gross amount of those profits distributed in respect of the accounting period **[**[F402]within**]** —

(a) the **[**[F403]deadline set by**]** section 530(4), or

(b) any later **[**[F404]deadline set**]** by an officer of Revenue of Customs.

[[F405](4) The definition of "D" in subsections (2) and (3) needs to be read with section 530A (so far as applicable).**]**

Textual Amendments

F399 Word in s. 565(2) substituted (with effect in accordance with Sch. 4 para. 26(2) of the amending Act) by Finance Act 2012 (c. 14), **Sch. 4 para. 25(2)(a)**

F400 Words in s. 565(2) substituted (with effect in accordance with Sch. 4 para. 26(2) of the amending Act) by Finance Act 2012 (c. 14), **Sch. 4 para. 25(2)(b)**

F401 Words in s. 565(2) substituted (with effect in accordance with Sch. 4 para. 26(2) of the amending Act) by Finance Act 2012 (c. 14), **Sch. 4 para. 25(2)(c)**

F402 Word in s. 565(3) substituted (with effect in accordance with Sch. 4 para. 26(2) of the amending Act) by Finance Act 2012 (c. 14), **Sch. 4 para. 25(2)(a)**

F403 Words in s. 565(3) substituted (with effect in accordance with Sch. 4 para. 26(2) of the amending Act) by Finance Act 2012 (c. 14), **Sch. 4 para. 25(2)(b)**

F404 Words in s. 565(3) substituted (with effect in accordance with Sch. 4 para. 26(2) of the amending Act) by Finance Act 2012 (c. 14), **Sch. 4 para. 25(2)(c)**

F405 S. 565(4) inserted (with effect in accordance with Sch. 4 para. 26(2) of the amending Act) by Finance Act 2012 (c. 14), **Sch. 4 para. 25(3)**

Status: *Point in time view as at 01/04/2014.*
Changes to legislation: *Corporation Tax Act 2010 is up to date with all changes known to be in force on or before 12 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

566 Breach of condition B in section 531 in accounting period 1

(1) Subsection (2) applies if condition B in section 531 (balance of business: assets involved in property rental business)—

(a) is not met in relation to accounting period 1, but

(b) is met at the beginning of the next accounting period.

(2) The breach is to be ignored; [F406]...

[F407](3) . . . . . .

[F407](4) . . . . . .

[F407](5) . . . . . .

[F407](6) . . . . . .

Textual Amendments

F406 Words in s. 566(2) omitted (with effect in accordance with Sch. 4 para. 32(2) of the amending Act) by virtue of Finance Act 2012 (c. 14), **Sch. 4 para. 29(2)**

F407 S. 566(3)-(6) omitted (with effect in accordance with Sch. 4 para. 32(2) of the amending Act) by virtue of Finance Act 2012 (c. 14), **Sch. 4 para. 29(3)**

[F408]567 Meaning of "the notional amount"

. . . . . .

Textual Amendments

F408 S. 567 omitted (with effect in accordance with Sch. 4 para. 32(2) of the amending Act) by virtue of Finance Act 2012 (c. 14), **Sch. 4 para. 30**

568 Breach of balance of business conditions after accounting period 1

(1) If—

(a) condition A in section 531 (balance of business: profits) is not met in relation to an accounting period other than accounting period 1, but

(b) the profits of property rental business of the UK REIT in question are at least 50% of its aggregate profits for the period,

the breach is to be ignored.

(2) If—

(a) condition B in section 531 (balance of business: assets) is not met in relation to an accounting period other than accounting period 1, but

(b) the **[**[F409]sum of the values mentioned in section 531(5)(a) and (b)**]** is at least 50% of the total value of assets held by the UK REIT,

the breach is to be ignored.

(3) Subsections (1) and (2) are to be read in accordance with section 531.

Status: *Point in time view as at 01/04/2014.*
Changes to legislation: *Corporation Tax Act 2010 is up to date with all changes known to be in force on or before 12 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Textual Amendments

F409 Words in s. 568(2)(b) substituted (with effect in accordance with Sch. 4 para. 32(1) of the amending Act) by Finance Act 2012 (c. 14), **Sch. 4 para. 31**

569 Chapter subject to section 572

This Chapter is subject to section 572 (under which an officer of Revenue and Customs may terminate the UK REIT status of a group or company in certain circumstances).

CHAPTER 9

LEAVING THE UK REIT REGIME

Introduction

570 Overview of Chapter

(1) This Chapter makes provision about how, and in what circumstances, a group or a company ceases to be a UK REIT.

(2) The UK REIT status of a group or company may be terminated—

(a) by a notice given by the principal company of the group or (as the case may be) by the company (see section 571), or

(b) in the cases set out in sections 573 to 577, by a notice given by an officer of Revenue of Customs (see section 572).

(3) In some circumstances a group or company ceases to be a UK REIT automatically (see section 578).

(4) This Chapter also contains provision about the effects of ceasing to be a UK REIT (see sections 579 to 582).

Notice to leave regime

571 Termination by notice: group or company

(1) Subsection (2) applies if—

(a) the principal company of a group UK REIT, or

(b) a company UK REIT,

gives a notice specifying a date at the end of which the group or company is to cease to be a UK REIT.

(2) The group or company ceases to be a UK REIT at the end of that date.

(3) A notice under subsection (1) must be given in writing to an officer of Revenue and Customs.

(4) The date specified in a notice under subsection (1) must be after the date on which the officer receives the notice.

Status: *Point in time view as at 01/04/2014.*
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572 Termination by notice: officer of Revenue and Customs

(1) If an officer of Revenue and Customs gives a notice in writing—

(a) to the principal company of a group UK REIT, or

(b) to a company UK REIT,

the group or company ceases to be a UK REIT.

(2) An officer of Revenue and Customs may give a notice under subsection (1) only in a case within section 573, **[**[F410]573A,**][**[F411]573B,**]** 574, 575, 576 or 577.

(3) A notice under subsection (1) must state the reason for it.

(4) If a notice is given under subsection (1)—

(a) the group or company (as the case may be) is to be taken to have ceased to be a UK REIT at the end of the accounting period before the accounting period during which the event occurs (or the last event occurs) which caused the officer to give the notice, and

(b) the company to which the notice is given may appeal.

(5) An appeal under subsection (4)(b) must be made by notice given in writing to an officer of Revenue and Customs during the period of 30 days beginning with the date on which the notice under subsection (1) is given.

[[F412](5A) Subsection (4)(a) has effect subject to section 573A(8).**]**

[[F413](5B) Subsection (4)(a) has effect subject to section 573B(9).**]**

(6) Section 574(3) modifies subsection (4)(a) for the case described in section 574(2) (breach of condition B in section 531 in accounting period 1).

Textual Amendments

F410 Word in s. 572(2) inserted (with effect in accordance with Sch. 4 para. 13(2) of the amending Act) by Finance Act 2012 (c. 14), **Sch. 4 para. 10(2)**

F411 Word in s. 572(2) inserted (with effect in accordance with Sch. 4 para. 21 of the amending Act) by Finance Act 2012 (c. 14), **Sch. 4 para. 19(2)**

F412 S. 572(5A) inserted (with effect in accordance with Sch. 4 para. 13(2) of the amending Act) by Finance Act 2012 (c. 14), **Sch. 4 para. 10(3)**

F413 S. 572(5B) inserted (with effect in accordance with Sch. 4 para. 21 of the amending Act) by Finance Act 2012 (c. 14), **Sch. 4 para. 19(3)**

573 Notice under section 572: tax advantage

(1) An officer of Revenue and Customs may give a notice under section 572(1) if the condition in this section is met.

(2) The condition is met in the case of a group UK REIT if, during the relevant 10-year period, two notices have been given under section 545 (cancellation of tax advantage) to members of the group.

(3) The condition is met in the case of a company UK REIT if, during the relevant 10-year period, two notices have been given under section 545 to the company.

(4) "The relevant 10-year period" is the period of 10 years beginning with the day on which the first notice was given under section 545.

Status: *Point in time view as at 01/04/2014.*
Changes to legislation: *Corporation Tax Act 2010 is up to date with all changes known to be in force on or before 12 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

[F414 573A Notice under section 572: condition D in section 528 not met

(1) An officer of Revenue and Customs may give a notice under section 572(1) if—
- (a) at any time during the first 3-year period, condition D in section 528 is not met, and
- (b) as at that time, subsection (2) has applied to a member of the group or the company (as the case may be) for a period exceeding 3 years or for a number of periods which in total exceed 3 years.

(2) This subsection applies to a company at any time when—
- (a) the company is, or is a member of, a UK REIT,
- (b) condition D in section 528 is not met in relation to the UK REIT, and
- (c) the first 3-year period in relation to the UK REIT has not ended.

(3) Neither subsection (1)(a) nor subsection (2)(b) covers cases in which condition D in section 528 is not met as a result of—
- (a) the principal company of a group UK REIT becoming a member of another group UK REIT, or
- (b) a company UK REIT becoming a member of a group UK REIT.

(4) Subsection (5) applies if—
- (a) a company ceases to carry on a business ("the transferred business") which it carried on at a time ("the relevant time") when subsection (2) applied to the company, and
- (b) another company ("company X") begins to carry on the transferred business.

In paragraph (a) the reference to a business includes a part of a business.

(5) Subsection (2) is to be taken to have applied at the relevant time to the following companies—
- (a) company X, and
- (b) if company X subsequently ceases to carry on the transferred business (or any part of it), any other companies which from time to time carry on the transferred business (or any part of it).

(6) In this section "the first 3-year period" has the meaning given by section 527(8).

(7) If a notice is given under section 572(1) in a case within this section, subsection (8) applies instead of section 572(4)(a).

(8) The group or company (as the case may be) is to be taken to have ceased to be a UK REIT on—
- (a) the first day of accounting period 1, or
- (b) such later day as may be specified by the officer of Revenue and Customs in the notice.]

Textual Amendments

F414 S. 573A inserted (with effect in accordance with Sch. 4 para. 13(2) of the amending Act) by Finance Act 2012 (c. 14), **Sch. 4 para. 11**

Status: *Point in time view as at 01/04/2014.*
Changes to legislation: *Corporation Tax Act 2010 is up to date with all changes known to be in force on or before 12 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

[F415 573B Notice under section 572: further condition relating to shares not met

(1) In the case of a group UK REIT, an officer of Revenue and Customs may give a notice under section 572(1) if—
   (a) the condition in section 528A (further condition relating to shares) would not be met in relation to an accounting period ("the relevant accounting period") but for section 528B, and
   (b) subsection (2) applies to a company which is a member of the group at any time during the relevant accounting period.

(2) This subsection applies to a company if it has benefited from the relaxation of the condition in section 528A in relation to 3 or more accounting periods (apart from the relevant accounting period).

(3) In the case of a company UK REIT, an officer of Revenue and Customs may give a notice under section 572(1) if—
   (a) the condition in section 528A (further condition relating to shares) would not be met in relation to an accounting period ("the relevant accounting period") but for section 528B, and
   (b) the company has benefited from the relaxation of the condition in section 528A in relation to 3 or more accounting periods (apart from the relevant accounting period).

(4) For the purposes of this section a company benefits from the relaxation of the condition in section 528A if—
   (a) it is a member of a group UK REIT at any time during an accounting period in relation to which the condition in section 528A would not be met but for section 528B, or
   (b) at any time it is a company UK REIT and the condition in section 528A would not be met in relation to an accounting period but for section 528B,

   and the accounting period "in relation to" which the company benefits from the relaxation of the condition in section 528A is the accounting period mentioned in paragraph (a) or (b) (as the case may be).

(5) None of subsections (1)(a), (3)(a), (4)(a) and (4)(b) covers cases in which the condition in section 528A would not be met as a result of—
   (a) the principal company of a group UK REIT becoming a member of another group UK REIT, or
   (b) a company UK REIT becoming a member of a group UK REIT.

(6) Subsection (7) applies if—
   (a) a company ceases to carry on a business ("the transferred business") which it carried on at any time during an accounting period in relation to which the company benefits from the relaxation of the condition in section 528A, and
   (b) another company ("company X") begins to carry on the transferred business.

   In paragraph (a) the reference to a business includes a part of a business.

(7) The following companies are to be taken to benefit from the relaxation of the condition in section 528A in relation to the accounting period in question—
   (a) company X, and
   (b) if company X subsequently ceases to carry on the transferred business (or any part of it), any other companies which from time to time carry on the transferred business (or any part of it).

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Changes to legislation: *Corporation Tax Act 2010 is up to date with all changes known to be in force on or before 12 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(8) If a notice is given under section 572(1) in a case within this section, subsection (9) applies instead of section 572(4)(a).

(9) The group or company (as the case may be) is to be taken to have ceased to be a UK REIT on—

(a) the first day of accounting period 1, or

(b) such later day as may be specified by the officer of Revenue and Customs in the notice.**]**

Textual Amendments

F415 S. 573B inserted (with effect in accordance with Sch. 4 para. 21 of the amending Act) by Finance Act 2012 (c. 14), **Sch. 4 para. 20**

574 Notice under section 572: serious breach

(1) An officer of Revenue and Customs may give a notice under section 572(1) if the officer thinks that—

(a) a breach of a condition in section 529, 530 or 531, or

(b) an attempt by a member of the group or (as the case may be) by the company to obtain a tax advantage,

is so serious that the group or company should cease to be a UK REIT.

(2) Subsection (3) applies if—

(a) the case is one relating to a breach of condition B in section 531 (balance of business: assets) in relation to accounting period 1, and

(b) that condition is not met at the beginning of the next accounting period.

(3) In that case, section 572(4) has effect as if for paragraph (a) there were substituted—

"(a) the group or company (as the case may be) is to be taken to have ceased to be a UK REIT on the first day of accounting period 1, and"

575 Notice under section 572: breach of conditions as to property rental business

(1) An officer of Revenue and Customs may give a notice under section 572(1) if, in 3 consecutive accounting periods, there is a breach of condition A or B in section 529 (property rental business).

(2) An officer of Revenue and Customs may also give a notice under section 572(1) if, during the relevant 10-year period, section 563(2) has been relied on—

(a) more than twice in relation to condition A in section 529, or

(b) more than twice in relation to condition B in that section.

(3) "The relevant 10-year period" is the period of 10 years beginning with the first day on which section 563(2) was relied on.

(4) The following rules apply for the purposes of subsection (2)—

Rule 1 If a breach of condition B in section 529 is a necessary consequence of a breach of condition A in that section in the same accounting period, the breach of condition B is to be ignored (and accordingly the UK REIT is not to be treated as having relied on section 563(2) in relation to the breach of condition B).

Status: *Point in time view as at 01/04/2014.*
Changes to legislation: *Corporation Tax Act 2010 is up to date with all changes known to be in force on or before 12 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Rule 2 If a breach of condition A or B in section 529 lasts for—

(a) more than one accounting period, but

(b) not more than two accounting periods,

the UK REIT is to be treated as having relied on section 563(2) only once.

576 Notice under section 572: breach of conditions as to balance of business

(1) An officer of Revenue and Customs may give a notice under section 572(1) if there is a breach of condition A or B in section 531 (balance of business) in 3 consecutive accounting periods.

(2) An officer of Revenue and Customs may also give a notice under section 572(1) if, during the relevant 10-year period, either subsection (1) or (2) of section 568 has been relied on more than twice.

(3) "The relevant 10-year period" is the period of 10 years beginning with the first day on which subsection (1) or (as the case may be) subsection (2) of section 568 was relied on.

(4) In the case of a breach of condition A in section 531, section 568(1) is to be treated for the purposes of subsection (3) as having first been relied on on the last day of the accounting period in which profits are assessed for the purposes of that condition.

(5) If a breach of condition A or B in section 531 lasts for—

(a) more than one accounting period, but

(b) not more than two accounting periods,

the UK REIT is to be treated for the purposes of subsection (2) as having relied on section 568(1) or (2) (as the case may be) only once.

(6) References in this section to an accounting period do not include a reference to accounting period 1.

577 Notice under section 572: multiple breaches of conditions in Chapter 2

(1) An officer of Revenue and Customs may give a notice under section 572(1) if conditions A, B and C are met.

(2) Condition A is that at least two of the conditions in sections 528 to 531 have been breached during the relevant 10-year period.

(3) Condition B is that the breached conditions are not both (or all) contained in the same section; and for this purpose the condition in section 530 (distribution of profits) is to be treated as contained in section 529.

(4) Condition C is that the UK REIT has relied on some or all of the provisions mentioned in subsection (5)(a) more than 4 times (in total) during the relevant 10-year period.

(5) For the purposes of this section—

(a) the provisions referred to in subsection (4) are—

[[F416]section 562A(6)**]** ,

section 563(2), and

section 568(1) and (2), and

Status: *Point in time view as at 01/04/2014.*
Changes to legislation: *Corporation Tax Act 2010 is up to date with all changes known to be in force on or before 12 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(b) "the relevant 10-year period" is the period of 10 years beginning with the day on which the first of the conditions to be breached was first breached.

(6) If the first of the conditions to be breached is condition A in section 531 (balance of business: profits), that condition is to be treated for the purposes of subsection (5)(b) as breached from the last day of the accounting period in which profits are assessed for the purposes of the condition.

(7) For the purposes of this section the following breaches are to be ignored—

(a) a breach of condition C or D in section 528 (conditions for company) occurring as a result of—

(i) a member of a group UK REIT becoming a member of another group UK REIT, or

(ii) a company UK REIT becoming a member of a group UK REIT,

(b) a breach of condition C [F417]... in section 528 in respect of which section 525(2) to (4) [F417]... applies,

(c) a breach of any of conditions **[**[F418]C, E and F**]** in section 528 in respect of which section 558(3) or 559(6) applies,

(d) a breach of condition A in section 531 in accounting period 1, and

(e) a breach of condition B in section 531 at the beginning of that period.

[[F419](8) In accordance with section 527(6) and (7), a breach of condition D in section 528 during the first 3-year period (as defined in section 527(8)) is also to be ignored for the purposes of this section.**]**

Textual Amendments

F416 Words in s. 577(5)(a) substituted (with effect in accordance with Sch. 4 para. 13(2) of the amending Act) by Finance Act 2012 (c. 14), **Sch. 4 para. 12(2)**

F417 Words in s. 577(7)(b) omitted (with effect in accordance with Sch. 4 para. 13(2) of the amending Act) by virtue of Finance Act 2012 (c. 14), **Sch. 4 para. 12(3)(a)**

F418 Words in s. 577(7)(c) substituted (with effect in accordance with Sch. 4 para. 13(2) of the amending Act) by Finance Act 2012 (c. 14), **Sch. 4 para. 12(3)(b)**

F419 S. 577(8) inserted (with effect in accordance with Sch. 4 para. 13(2) of the amending Act) by Finance Act 2012 (c. 14), **Sch. 4 para. 12(4)**

Automatic termination

578 Automatic termination for breach of certain conditions in section 528

(1) Subsection (2) applies if condition A, B, E or F in section 528 (conditions for company) is not met in relation to an accounting period.

(2) The group or (as the case may be) the company is to be taken to have ceased to be a UK REIT at the end of the previous accounting period.

(3) The company which gave a notice under section 523 or 524 must notify an officer of Revenue and Customs as soon as is reasonably practicable if condition A, B, E or F in section 528 ceases to be met in relation to the company.

Status: *Point in time view as at 01/04/2014.*
Changes to legislation: *Corporation Tax Act 2010 is up to date with all changes known to be in force on or before 12 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Effects of cessation

579 Effects of cessation: corporation tax

(1) Subsections (3) to (7) apply if—
  (a) a group or company ceases to be a UK REIT, or
  (b) a company ceases to be a member of a group UK REIT.

(2) For the purposes of those subsections references to an "exiting company" are to each member of the group UK REIT or (as the case may be) to the company UK REIT.

(3) Property rental business of an exiting company is to be treated for corporation tax purposes as ceasing immediately before cessation.

(4) Assets which immediately before cessation are involved in property rental business of an exiting company are to be treated for corporation tax purposes as being—
  (a) sold immediately before cessation by the company so far as it carries on property rental business, and
  (b) reacquired immediately after cessation by the post-cessation company.

(5) The sale and reacquisition deemed under subsection (4) is to be treated as being for a consideration equal to the market value of the assets.

(6) If a percentage of the assets of an exiting company is excluded from a financial statement in accordance with section 533(3), that percentage of those assets is to be ignored for the purposes of subsection (4).

(7) For corporation tax purposes—
  (a) an accounting period of the company so far as it carries on residual business ends on cessation, and
  (b) a new accounting period of the company begins.

(8) In relation to a non-UK member of a group UK REIT, subsections (3) to (7) have effect as if references to property rental business were references to UK property rental business.

(9) Subsections (3) to (7) do not apply if—
  (a) a member of a group UK REIT becomes a member of another group UK REIT, or
  (b) a company UK REIT becomes a member of a group UK REIT.

(10) This section is subject to section 559 (demergers: company leaving group UK REIT).

580 Effects of cessation: CAA 2001

(1) Subsections (3) to (5) apply for the purposes of CAA 2001 if a group or a company ceases to be a UK REIT.

(2) Subsections (3) to (5) also apply for those purposes if a company ceases to be a member of a group UK REIT.

(3) The sale and reacquisition deemed under section 579(4)—
  (a) does not give rise to allowances or charges, and

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(b) does not enable an election to be made under section 198 or 199 of CAA 2001 (apportionment).

(4) Section 579(5) (deemed consideration for sale and reacquisition) does not apply.

(5) Anything done before cessation by or to a company so far as it carries on property rental business in relation to an asset which is deemed under section 579(4) to be sold and reacquired is to be treated after cessation as having been done by or to the post-cessation company.

(6) This section is subject to section 559 (demergers: company leaving group UK REIT).

Early exit

581 Early exit by notice

(1) Subsection (6) applies if conditions A, B and C are met.

(2) Condition A is that a group or company ceases to be a UK REIT as a result of a notice under section 571.

(3) Condition B is that the group or company had been a UK REIT for a continuous period immediately before cessation of less than 10 years.

(4) Condition C is that, during the post-cessation period, a relevant company, that is to say—
(a) in the case of a group, a member of the group, or
(b) otherwise, the company,
disposes of an asset that was involved in property rental business of the relevant company.

(5) "The post-cessation period" means the period of two years beginning with the date of cessation.

(6) The relevant company's liability to corporation tax is to be determined without regard to—
(a) any deemed disposal under section 536(2) that resulted in a gain,
(b) any deemed disposal under section 555(2), or
(c) any deemed disposal under section 579(4).

(7) Subsection (6) also applies if—
(a) a company ceases to be a member of a group UK REIT,
(b) either—
(i) the group has been a group UK REIT for a continuous period of less than 10 years, or
(ii) the company has been a member of the group for a continuous period of less than 10 years, and
(c) during the post-cessation period the company disposes of an asset that was involved in its property rental business.

(8) This section has effect in relation to a non-UK member of a group as if references to property rental business were references to UK property rental business.

Status: *Point in time view as at 01/04/2014.*
Changes to legislation: *Corporation Tax Act 2010 is up to date with all changes known to be in force on or before 12 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

582 Early exit

(1) This section applies if—
- (a) a group or a company ceases to be a UK REIT as a result of section 572 or 578, and
- (b) the group or company has been a UK REIT for a continuous period immediately before cessation of less than 10 years.

(2) An officer of Revenue and Customs may direct—
- (a) that a provision of this Part applies in relation to the group or company with a specified modification, or
- (b) that a provision of an enactment relating to corporation tax applies, does not apply or applies with modifications in relation to the group or company.

(3) A direction under subsection (2)(a) may in particular—
- (a) alter the time at which the group or company is to be taken to cease to be a UK REIT in accordance with section 572 or 578;
- (b) disapply or alter the effect of section 534(1) or (2) or 535(1).

(4) A direction under subsection (2)(b) may in particular prevent all or a specified part of a loss, deficit or expense from being set off or otherwise used at all or in a specified manner.

(5) In the case of a group, a direction under subsection (2) may relate to the group as a whole or to one or more members.

(6) An appeal may be made—
- (a) in the case of a group in relation to which a direction is given, by the principal company of the group,
- (b) in the case of a company in relation to which a direction is given, by the company.

(7) On an appeal under subsection (6) that is notified to the tribunal, the tribunal may—
- (a) quash the direction,
- (b) affirm the direction, or
- (c) vary the direction.

CHAPTER 10

JOINT VENTURES

Introduction

583 Overview of Chapter

(1) This Chapter makes provision about how this Part applies in relation to property rental business carried on—
- (a) by a joint venture company (as defined by section 584), or
- (b) by one or more members of a joint venture group (as defined by that section).

Status: *Point in time view as at 01/04/2014.*
Changes to legislation: *Corporation Tax Act 2010 is up to date with all changes known to be in force on or before 12 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(2) Sections 586 and 587 are about the notice required for this Part to apply in relation to the property rental business; it is the giving of the notice that makes a group UK REIT or company UK REIT a venturing group or venturing company (see section 585).

(3) Sections 588 to 590 contain provision about the effect of the notice and its duration.

(4) The remainder of the Chapter contains—

(a) specific modifications and other provision relevant to the application of this Part (see sections 591 to 594),

F420(b) . . . . . .

(c) provision about the interpretation of this Chapter (see section 598).

Textual Amendments

F420 S. 583(4)(b) omitted (17.7.2012) by virtue of Finance Act 2012 (c. 14), **Sch. 4 para. 38**

584 Meaning of "joint venture company" and "joint venture group"

(1) In this Chapter "joint venture company" means a company carrying on property rental business ("the joint venture") in circumstances where the condition in subsection (3) is met.

(2) In this Chapter "joint venture group" means a group of companies one or more of which is or are carrying on property rental business ("the joint venture") in circumstances where the condition in subsection (3) is met.

(3) The condition is that an interest in the joint venture is held—

(a) by one or more members of a group UK REIT, or

(b) by a company UK REIT.

585 Meaning of "venturing group" and "venturing company"

(1) In this Chapter "venturing group" means a group UK REIT the principal company of which has given a notice under section 586(1) or 587(1).

(2) In this Chapter "venturing company" means a company UK REIT which has given a notice under section 586(2) or 587(2).

Notice for Part to apply to joint venture

586 Notice for Part to apply: joint venture company

(1) The principal company of a group UK REIT may give notice that this Part is to apply (in accordance with this Chapter) in relation to property rental business carried on by a joint venture company.

(2) A company UK REIT may give notice that this Part is to apply (in accordance with this Chapter) in relation to property rental business carried on by a joint venture company.

(3) A company may give a notice under subsection (1) or (2) only if the 40% tests are met in relation to the joint venture company.

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(4) The 40% tests are met in a case within subsection (1) if members of the group UK REIT are together beneficially entitled to—
  (a) at least 40% of the profits available for distribution to equity holders in the joint venture company, and
  (b) at least 40% of the assets of the joint venture company available to equity holders in the event of a winding up.

(5) The 40% tests are met in a case within subsection (2) if the company UK REIT is beneficially entitled to—
  (a) at least 40% of the profits available for distribution to equity holders in the joint venture company, and
  (b) at least 40% of the assets of the joint venture company available to equity holders in the event of a winding up.

(6) A notice under subsection (1) or (2)—
  (a) must specify the joint venture company concerned,
  (b) may be given only with the consent of that joint venture company,
  (c) must specify a date from which this Part is to apply in relation to the property rental business, and
  (d) must be given in writing to an officer of Revenue and Customs before the date specified under paragraph (c).

(7) A company giving a notice under subsection (1) or (2) may do so—
  (a) at the same time as giving a notice under section 523 or 524 (as the case may be), or
  (b) at any later time when the group or company (as the case may be) is a UK REIT.

(8) See section 588 for provision about the effect of a notice under this section.

587 Notice for Part to apply: joint venture group

(1) The principal company of a group UK REIT may give notice that this Part is to apply (in accordance with this Chapter) in relation to property rental business carried on by one or more members of a joint venture group.

(2) A company UK REIT may give notice that this Part is to apply (in accordance with this Chapter) in relation to property rental business carried on by one or more members of a joint venture group.

(3) A company may give a notice under subsection (1) or (2) only if the 40% tests are met in relation to the joint venture group.

(4) The 40% tests are met in a case within subsection (1) if members of the group UK REIT are together beneficially entitled to—
  (a) at least 40% of the profits available for distribution to equity holders in the principal company of the joint venture group, and
  (b) at least 40% of the assets of the principal company of the joint venture group available to equity holders in the event of a winding up.

(5) The 40% tests are met in a case within subsection (2) if the company UK REIT is beneficially entitled to—

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(a) at least 40% of the profits available for distribution to equity holders in the principal company of the joint venture group, and
(b) at least 40% of the assets of the principal company of the joint venture group available to equity holders in the event of a winding up.

(6) A notice under subsection (1) or (2)—
(a) must specify the principal company of the joint venture group concerned,
(b) may be given only with the consent of that principal company,
(c) must specify a date from which this Part is to apply in relation to the property rental business, and
(d) must be given in writing to an officer of Revenue and Customs before the date specified under paragraph (c).

(7) A company giving a notice under subsection (1) or (2) may do so—
(a) at the same time as giving notice under section 523 or 524 (as the case may be), or
(b) at any later time when the group or company (as the case may be) is a UK REIT.

(8) See section 589 for provision about the effect of a notice under this section.

Effect and duration of notice

588 Effect of notice under section 586

(1) If a notice is given under section 586(1), this Part applies in relation to the property rental business carried on by the joint venture company as if the company were a member of the venturing group.

(2) If a notice is given under section 586(2), this Part applies in relation to the property rental business carried on by the joint venture company as if the venturing company and the joint venture company were the members of a new group UK REIT (a "deemed UK REIT").

(3) For the purposes of subsections (1) and (2) references in this Part to a company which is a member of a group UK REIT include references to—
(a) the joint venture company, and
(b) in a case within subsection (2), the venturing company.

(4) For the purposes of subsection (3)—
(a) references in this Part to a UK company which is a member of a group UK REIT include references to a joint venture company which—
(i) is UK resident, and
(ii) is not resident in another place in accordance with the law of that place relating to taxation, and
(b) references in this Part to a non-UK company which is a member of a group UK REIT include references to a joint venture company which is not within paragraph (a).

(5) For the purposes of subsections (1) and (2) any reference in this Part to—
(a) entry, or
(b) a company becoming a member of a group UK REIT,

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is to be read in relation to the joint venture company as a reference to the date specified under section 586(6)(c).

(6) For the purposes of subsection (2)—

(a) references in this Part to a UK REIT (or group UK REIT) include references to the deemed UK REIT, and

(b) references in this Part to the principal company of a group are to be read as references to the venturing company.

[[F421](7) Subsections (3) to (6) apply (in particular) for the purpose of interpreting section 549A(6)(a)(i) and (8)(a)(i).**]**

Textual Amendments

F421 S. 588(7) inserted (17.7.2013) by Finance Act 2013 (c. 29), **Sch. 19 para. 9**

589 Effect of notice under section 587

(1) If a notice is given under section 587(1), this Part applies in relation to the property rental business carried on by the member or members of the joint venture group as if each member of the group were a member of the venturing group.

(2) If a notice is given under section 587(2), this Part applies in relation to the property rental business carried on by the member or members of the joint venture group as if the venturing company and each member of the group were the members of a new group UK REIT (a "deemed UK REIT").

(3) For the purposes of subsections (1) and (2) references in this Part to a company which is a member of a group UK REIT include references to—

(a) each member of the joint venture group, and

(b) in a case within subsection (2), the venturing company.

(4) For the purposes of subsection (3)—

(a) references in this Part to a UK company which is a member of a group UK REIT include references to a member of the joint venture group if the member is—

(i) UK resident, and

(ii) not resident in another place in accordance with the law of that place relating to taxation, and

(b) references in this Part to a non-UK company which is a member of a group UK REIT include references to any member of the joint venture group not within paragraph (a).

(5) For the purposes of subsections (1) and (2) any reference in this Part to—

(a) entry, or

(b) a company becoming a member of a group UK REIT,

is to be read in relation to a member of a joint venture group as a reference to the date specified under section 587(6)(c).

(6) For the purposes of subsection (2)—

(a) references in this Part to a UK REIT (or group UK REIT) include references to the deemed UK REIT, and

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(b) references in this Part to the principal company of a group are to be read as references to the venturing company.

[[F422](7) Subsections (3) to (6) apply (in particular) for the purpose of interpreting section 549A(6)(a)(i) and (8)(a)(i).**]**

Textual Amendments

F422 S. 589(7) inserted (17.7.2013) by Finance Act 2013 (c. 29), **Sch. 19 para. 10**

590 Duration of notice under section 586 or 587

(1) A notice given under section 586(1) ceases to have effect if—

(a) the venturing group ceases to meet either of the 40% tests in relation to the joint venture company, or

(b) the venturing group ceases to be a UK REIT.

(2) A notice given under section 586(2) ceases to have effect if—

(a) the venturing company ceases to meet either of the 40% tests in relation to the joint venture company, or

(b) the venturing company ceases to be a UK REIT.

(3) A notice given under section 587(1) ceases to have effect if—

(a) the venturing group ceases to meet the 40% tests in relation to the joint venture group, or

(b) the venturing group ceases to be a UK REIT.

(4) A notice given under section 587(2) ceases to have effect if—

(a) the venturing company ceases to meet the 40% tests in relation to the joint venture group, or

(b) the venturing company ceases to be a UK REIT.

(5) If a notice under section 586 or 587 ceases to have effect, this Part ceases to apply as mentioned in section 588 or 589 (as the case may be) in relation to the joint venture company or joint venture group.

(6) But section 581 (early exit) continues to apply to a joint venture company or to the members of a joint venture group despite subsection (5).

(7) For the meaning of "the 40% tests" see—

(a) section 586, in the case of a notice given under that section, and

(b) section 587, in the case of a notice given under that section.

Specific requirements and modifications

591 Conditions as to balance of business

(1) This section applies if—

(a) a notice is given under section 586 in respect of a joint venture company, or

(b) a notice is given under section 587 in respect of a joint venture group.

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(2) Condition A in section 531 (balance of business: profits) must be met in respect of the company or group in relation to each accounting period in relation to which the notice has effect.

(3) Condition B in section 531 (balance of business: assets) must be met in respect of the company or group at the beginning of each accounting period in relation to which the notice has effect.

(4) For the purposes of this section, section 531 applies—
  (a) in the case of a joint venture company, as if it were a company which had given a notice under section 524, and
  (b) in the case of a joint venture group, as if it were a group in respect of which a notice had been given under section 523.

592 Joint venture groups: financial statements

(1) This section applies if a notice is given under section 587 in respect of a joint venture group.

(2) The principal company of the joint venture group must prepare financial statements for the group for each accounting period in relation to which the notice has effect.

(3) The reference in subsection (2) to financial statements is a reference to financial statements of a kind required under section 532(2).

(4) Sections 532(3) and 533 apply to the financial statements under subsection (2) as they apply to financial statements under section 532(2).

(5) Financial statements prepared under subsection (2) must be submitted to an officer of Revenue and Customs.

(6) Financial statements under subsection (2) are in addition to the provision required in respect of the members of the joint venture group (as a result of the application of this Part to the group) in financial statements under section 532.

593 Financial statements under section 532: joint venture groups

(1) This section applies if a notice is given under section 587 in respect of a joint venture group.

(2) The amount to be included in the financial statements under section 532(2) in relation to a member of a joint venture group is the relevant percentage of profits, expenses, gains, losses, assets and liabilities of the member.

(3) "The relevant percentage" means—
  (a) in a case where a notice was given under section 587(1), the percentage of the beneficial interest in the member that is held by members of the venturing group, and
  (b) in a case where a notice was given under section 587(2), the percentage of the beneficial interest in the member that is held by the venturing company.

(4) Section 533 accordingly has effect in relation to the member as if for subsection (3) there were substituted subsections (2) and (3) of this section.

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594 Modifications of Chapter 3

(1) Section 534(4) (profits) has effect in relation to a joint venture company or a member of a joint venture group as if for the words from "is to be treated" to the end there were substituted "is to be ignored for the purposes of this section".

(2) Section 535(7) (gains) has effect in relation to a joint venture company or a member of a joint venture group as if for the words from "is to be treated" to the end there were substituted "is to be ignored for the purposes of this section".

F423 . . . . . .

Textual Amendments

F423 Ss. 595-597 and crossheading omitted (17.7.2012) by virtue of Finance Act 2012 (c. 14), **Sch. 4 para. 39**

F423 595 Joint venture company liable for additional charge

. . . . . .

F423 596 Member of joint venture group liable for additional charge

. . . . . .

F423 597 Cases where no additional charge due

. . . . . .

Supplementary

598 Chapter 10: supplementary

(1) References in this Chapter to an "equity holder", in relation to a company, are to a person who—
   (a) holds ordinary shares in the company, or
   (b) is a loan creditor of the company in relation to a loan other than a normal commercial loan (as defined by section 162).

(2) Percentages of beneficial interest for the purposes of this Chapter are to be determined by reference to beneficial entitlement to profits available for distribution to equity holders.

(3) References in this Part to property rental business, in relation to a joint venture company or a company which is a member of a joint venture group, do not include the letting of property by the company to (as the case may be)—
   (a) the venturing company in respect of the company, or
   (b) a member of the venturing group in respect of the company.

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CHAPTER 11

PART 12: SUPPLEMENTARY

Miscellaneous

599 Calculation of profits

(1) This section is about the calculation of profits for the purposes of any provision of this Part which provides that profits are to be calculated in accordance with this section.

(2) Profits are to be calculated in the same way as profits of a UK property business are calculated for the purposes of the charge to tax under Chapter 3 of Part 4 of CTA 2009 (as to which see, in particular, section 210 of that Act).

(3) Section 211(1) of CTA 2009 (property businesses: disregard of credits and debits from loan relationships and derivative contracts) does not apply in respect of—
- (a) a loan relationship so far as it relates to property rental business,
- (b) a hedging derivative contract so far as it relates to property rental business, or
- (c) embedded derivatives so far as the host contract is entered into for the purposes of property rental business.

(4) For the purposes of subsection (3)—
- (a) a derivative contract is hedging in relation to a company so far as—
  - (i) it is acquired as a hedge of risk in relation to an asset by the exploitation of which property rental business is conducted, or
  - (ii) it is acquired as a hedge of risk in relation to a liability incurred in connection with property rental business,
- (b) a designation of a contract as wholly or partly hedging for the purposes of a company's accounts is conclusive,
- (c) "embedded derivatives" is to be read in accordance with section 584 or 586 (as the case may be) of CTA 2009, and
- (d) "the host contract" means—
  - (i) the contract mentioned in section 584(1)(a) of CTA 2009, or
  - (ii) the contract mentioned in section 586(1)(a) of that Act,

  as the case may be.

(5) In subsection (4)(a)(i) the reference to an asset includes a reference to—
- (a) the value of an asset, and
- (b) profits attributable to it.

(6) Profits are to be calculated without regard to items giving rise to credits or debits which would be within Part 7 of CTA 2009 (derivative contracts) but for section 589(2)(b) and (c) of that Act (exclusion of share-based and unit trust-based contracts).

(7) Income and expenditure relating partly to property rental business and partly to residual business are to be apportioned on a just and reasonable basis.

(8) Section 3(1) of CAA 2001 (claims for capital allowances) does not apply; and any allowance which could be claimed under that provision is to be made automatically and reflected in the calculation of profits.

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[F424 599A Amount of distribution consisting of share capital issued in lieu of cash dividend

(1) For the purposes of this Part, the amount of a distribution, so far as it consists of share capital issued in lieu of a cash dividend, is the cash equivalent of the share capital.

(2) Section 412(1), (2), (4) and (5) of ITTOIA 2005 (meaning of "cash equivalent of share capital") applies for the purposes of this section as it applies in relation to share capital issued as mentioned in section 410(1)(a) of that Act.]

Textual Amendments

F424 S. 599A inserted (with effect in accordance with Sch. 4 para. 12 of the amending Act) by Finance (No. 3) Act 2010 (c. 33), **Sch. 4 para. 10**

Modifications etc. (not altering text)

C32 S. 599A applied by 2007 c. 3, s. 973(3B) (as inserted (with effect in accordance with Sch. 4 para. 12 of the amending Act) by Finance (No. 3) Act 2010 (c. 33), **Sch. 4 para. 2**)

600 Power to make regulations about cases involving related persons

(1) If they consider it expedient in the public interest the Treasury may make regulations about the application of this Part to activities or situations which involve, or arise in connection with, a relationship between a REIT company and another person.

(2) In subsection (1) "REIT company" means—
- (a) a company UK REIT, or
- (b) a company which is a member of a group UK REIT.

(3) The regulations may, in particular—
- (a) treat a specified person, or a person in specified circumstances, as forming part of a group UK REIT for specified purposes;
- (b) provide for a specified provision which applies in respect of a members of a group UK REIT also to apply, with or without modifications, in respect of a specified person or a person in specified circumstances.

(4) Regulations under this section may make provision in relation to accounting periods ending on or after the date on which the regulations are made.

(5) No regulations may be made under this section unless a draft of the statutory instrument containing them has been laid before and approved by a resolution of the House of Commons.

601 Availability of group reliefs

(1) In the application of a provision specified in subsection (2) to a group of companies, the group so far as it carries on property rental business while it is a UK REIT is to be treated as a separate group, distinct from—
- (a) the pre-entry group,
- (b) the group so far as it carries on residual business while it is a UK REIT, and
- (c) the post-cessation group.

(2) The provisions mentioned in subsection (1) are—
- (a) section 171 of TCGA 1992 (transfer of assets within group),

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(b) sections 171A to 171C of TCGA (reallocation of gain or loss within group),
(c) sections 179A and 179B of TCGA 1992 (degrouping: reallocation of gain or loss, or rollover of gain, within group),
(d) Chapters 4 and 6 to 8 of Part 5 of CTA 2009 (loan relationships),
(e) Part 7 of that Act (derivative contracts),
(f) Part 8 of that Act (intangible assets), and
(g) Part 5 of this Act (group relief).

602 Effect of deemed disposal and reacquisition

A deemed disposal and reacquisition of an asset under this Part is to be taken into account for the purposes of any subsequent disposal (whether actual or deemed).

603 Regulations

Regulations under this Part—
(a) may make provision which applies generally or only in specified cases or circumstances,
(b) may make different provision for different cases or circumstances, and
(c) may contain incidental, supplemental, consequential and transitional provision and savings.

Interpretation

604 Property rental business: exclusion of listed business

(1) Business of a class listed in the table in subsection (2) is not property rental business.

(2) This is the table—

Class	***Description***
Class 1	Incidental letting of property (whether in the United Kingdom or elsewhere) which is held in connection with a trade in property.
Class 2	Letting of property which is held for use for administrative purposes in carrying on property rental business but is temporarily surplus to requirements for those purposes, so long as— (a) the space let is small compared to the space occupied for administrative purposes, and (b) the letting is for a term of not more than 3 years.
Class 3	Letting of property if the property would fall in accordance with generally accepted accounting practice to be described as owner-occupied (but see subsection (3)).
Class 4	The provision of services in connection with property outside the United Kingdom where the services would not fall within Chapter 3 of Part 4 of CTA 2009 if provided in connection with property in the United Kingdom.
Class 5	Entering into arrangements which are such that a finance arrangement code (within the meaning given by section 770(2) of

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this Act or section 809BZM(2) of ITA 2007) applies (factoring of income etc: finance arrangements).

(3) For the purposes of class 3, ignore the fact that a property may fall to be described as owner-occupied merely because of the provision by the company of services to an occupant who—
  (a) is in exclusive occupation of the property, and
  (b) is not connected with a member of the group.

(4) The Commissioners for Her Majesty's Revenue and Customs may by regulations—
  (a) add a class to the table in subsection (2),
  (b) amend a class (or provision made in relation to it) or make such provision in relation to a class as the Commissioners consider appropriate, or
  (c) remove a class from the table (or provision made in relation to it).

605 Property rental business: exclusion of business producing listed income

(1) Business is not property rental business so far as it gives rise to income of a class listed in the table in subsection (2).

[[F425](1A) But see section 549A which treats income falling within class 7 of the table as profits of property rental business.**]**

(2) This is the table—

Class	*Description*
Class 1	All income in connection with the operation of a caravan site, if section 20(1) of ITTOIA 2005 (caravan sites) would apply in respect of any receipts in connection with the operation of the site.
Class 2	Rent in respect of an electric-line wayleave.
Class 3	Rent in respect of the siting of a pipeline for gas.
Class 4	Rent in respect of the siting of a pipeline for oil.
Class 5	Rent in respect of the siting of a mast or similar structure designed for use in a mobile telephone network or other system of electronic communication.
Class 6	Rent in respect of the siting of a wind turbine.
Class 7	Dividends from shares in— (a) the principal company of a group UK REIT, or (b) a company UK REIT.
Class 8	Income arising out of an interest in a limited liability partnership where section 1273(4) of CTA 2009 (winding up) applies.

[[F426](2A) The reference in class 7 of the table in subsection (2) to dividends from shares includes share capital issued in lieu of a cash dividend (and the reference in subsection (1) to income is to be read accordingly).

(2B) Section 1051(2) to (4) (meaning of "share capital issued in lieu of a cash dividend") applies for the purposes of subsection (2A) as it applies for the purposes of section 1049(1)(a).**]**

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(3) The Commissioners for Her Majesty's Revenue and Customs may by regulations—
- (a) add a class to the table in subsection (2),
- (b) amend a class (or provision made in relation to it) or make such provision in relation to a class as the Commissioners consider appropriate, or
- (c) remove a class from the table (or provision made in relation to it).

Textual Amendments

F425 S. 605(1A) inserted (17.7.2013) by Finance Act 2013 (c. 29), **Sch. 19 para. 11**

F426 S. 605(2A)(2B) inserted (with effect in accordance with Sch. 4 para. 12 of the amending Act) by Finance (No. 3) Act 2010 (c. 33), **Sch. 4 para. 11**

606 Groups

(1) For the purposes of this Part a company ("the principal company") and all its 75% subsidiaries form a group; and if any of those subsidiaries have 75% subsidiaries the group includes them and their 75% subsidiaries, and so on.

This is subject to subsection (2).

(2) A group does not include—
- (a) a company (other than the principal company) which is not an effective 51% subsidiary of the principal company,
- (b) an insurance company,
- (c) an insurance subsidiary, or
- (d) an open-ended investment company.

(3) A company cannot be a member of more than one group; and if a company would be a member of more than one group, section 170(6) of TCGA 1992 (capital gains tax: groups) applies to determine the group of which it is a member.

(4) Subsection (3) does not apply for the purposes of Chapter 10.

(5) In this section—

"effective 51% subsidiary" has the meaning given by section 170(7) of TCGA 1992 (groups of companies),

"75% subsidiary" has the meaning given by section 1154(3) (subsidiaries),

"insurance company" has the meaning given by **[**[F427]section 65 of FA 2012**]**,

"insurance subsidiary" means a company in which at least 75% of the ordinary shares are held by one or more insurance companies, and

"open-ended investment company" has the meaning given by section 613.

Textual Amendments

F427 Words in s. 606(5) substituted (17.7.2012) by Finance Act 2012 (c. 14), **Sch. 16 para. 219**

607 Meaning of "entry" and "cessation" etc

(1) In this Part "entry" means—
- (a) in the case of a group, the time when the group becomes a group UK REIT, and

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(b) in the case of a company, the time when the company becomes, or becomes a member of, a UK REIT.

(2) In this Part "cessation" means—

(a) in the case of a group, the time when the group ceases to be a UK REIT, and

(b) in the case of a company, the time when the company ceases to be, or to be a member of, a UK REIT.

(3) In this Part, in relation to a group or company—

(a) references to the "pre-entry group" or "pre-entry company" are references to the group or company before entry, and

(b) references to the "post-cessation group" or "post-cessation company" are references to the group or company after cessation.

608 References to assets

(1) A reference in this Part to an asset includes a reference to—

(a) part of an asset, and

(b) an interest in, or right in relation to, an asset.

(2) A reference in this Part to assets used in business of a company includes a reference to assets—

(a) which were acquired for the purpose of that business and which are not being used in another business,

(b) which are available for use in that business, or

(c) which are in any other way held in respect of, or associated or connected with, that business.

(3) For the purposes of this Part an asset is "involved" in a business if it is property involved in the business as described in section 529(4)(a).

609 Definitions

In this Part—

"accounting period 1", in relation to a company that is, or is a member of, a UK REIT, means the accounting period that begins on entry (in accordance with section 536(5)),

"company" has the meaning given by section 170(9) of TCGA 1992, and

"market value" has the same meaning as in TCGA 1992 (see sections 272 and 273 of, and Schedule 11 to, that Act).

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PART 13

OTHER SPECIAL TYPES OF COMPANY ETC

CHAPTER 1

CORPORATE BENEFICIARIES UNDER TRUSTS

Discretionary payments

610 Discretionary payments by trustees to companies

(1) This section applies if—
- (a) the trustees of a settlement make a payment to a company,
- (b) sections 494 and 495 of ITA 2007 (grossing up of trustees' discretionary payments etc) apply in relation to the payment,
- (c) the company is chargeable to corporation tax, and
- (d) the company is not excluded by subsection (2).

(2) A company is excluded if it is—
- (a) a charitable company [F428]...,
- (b) an eligible body as defined in section 468, or
- (c) a scientific research association as defined in section 469.

(3) If this section applies—
- (a) none of the following applies in relation to the payment—
  - (i) section 967,
  - (ii) section 968, and
  - (iii) section 952 of ITA 2007 (set-off claims),
- (b) the payment is to be ignored for the purpose of calculating the company's income for corporation tax purposes, and
- (c) no repayment is to be made of the amount treated under section 494 of ITA 2007 as income tax paid by the company in relation to the payment.

(4) If the company is non-UK resident, this section applies only in relation to so much (if any) of the payment as is income of the company for corporation tax purposes.

(5) "Payment" includes payment in money's worth.

Textual Amendments

F428 Words in s. 610(2)(a) omitted (with effect in accordance with art. 21 of the commencing S.I.) by virtue of Finance Act 2010 (c. 13), **Sch. 6 paras. 27(5)**, 34(2); S.I. 2012/736, art. 21

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Trustees' expenses

611 Income tax provisions to apply in relation to trustees' expenses

(1) This section applies in a case of a kind mentioned in section 499(1) of ITA 2007 (beneficiary entitled to some or all of the income arising to trustees of a settlement).

(2) In relation to the reduction of the beneficiary's income by reference to expenses of the trustees, sections 500 and 503 of ITA 2007 apply for corporation tax purposes as they apply for income tax purposes.

CHAPTER 2

AUTHORISED INVESTMENT FUNDS

Introduction

612 Overview of Chapter

(1) This Chapter contains provision about taxation in relation to—
- (a) open-ended investment companies (see sections 613 and 614),
- (b) authorised unit trusts (see sections 616 to 618), and
- (c) court investment funds (which are treated in accordance with section 620 as authorised unit trusts).

(2) The Chapter also includes provision about—
- (a) open-ended investment companies which take the form of umbrella companies (see section 615), and
- (b) authorised unit trust schemes which take the form of umbrella schemes (see section 619).

(3) The effect of the provision mentioned in subsection (2) is that, for the purposes of this Chapter, each part of the umbrella company or scheme is regarded as an open-ended investment company or authorised unit trust, but the umbrella company or scheme itself is not.

Open-ended investment companies

613 Meaning of "open-ended investment company"

In this Chapter "open-ended investment company" means a company incorporated in the United Kingdom to which section 236 of FISMA 2000 applies.

614 Applicable corporation tax rate

The rate of corporation tax in relation to an open-ended investment company for any financial year is the rate at which income tax at the basic rate is charged for the tax year beginning on 6 April in that financial year (and sections 18 and 19 (relief for companies with small profits) do not apply).

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615 Umbrella companies

(1) In this section "umbrella company" means an open-ended investment company—
  (a) whose instrument of incorporation provides arrangements for separate pooling of the contributions of the shareholders and the profits or income out of which payments are made to them, and
  (b) whose shareholders are entitled to exchange rights in one pool for rights in another.

(2) References in this section to a part of an umbrella company are to a separate pool.

(3) For the purposes of this Chapter—
  (a) each of the parts of an umbrella company is to be regarded as an open-ended investment company, and
  (b) the umbrella company as a whole is not to be regarded as an open-ended investment company.

(4) The umbrella company as a whole is not to be regarded as a company for any other purpose of the Tax Acts unless an enactment expressly provides otherwise.

Authorised unit trusts

616 Meaning of "authorised unit trust" and "unit holder"

(1) In this Chapter "authorised unit trust" means, in relation to an accounting period, a unit trust scheme in respect of which an order under section 243 of FISMA 2000 is in force during the whole or part of the period.

(2) In this Chapter "unit holder" means a person entitled to a share of the investments subject to the trusts of a unit trust scheme.

(3) Subsections (1) and (2) are subject to section 619 (umbrella schemes).

617 Authorised unit trust treated as UK resident company

(1) In respect of income arising to the trustees of an authorised unit trust, and for the purposes of the provisions relating to relief for capital expenditure, the Tax Acts have effect as if—
  (a) the trustees were a UK resident company, and
  (b) the rights of the unit holders were shares in the company.

(2) References in the Corporation Tax Acts to a body corporate are to be read in accordance with subsection (1); and sections 1104 to 1107 (companies required to provide tax certificates) apply with any necessary modifications.

(3) Subsection (1)(b) does not affect the making of distributions which are interest distributions to unit holders.

(4) "Interest distributions" has the meaning given by regulations made under section 17(3) of F(No.2)A 2005.

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618 Applicable corporation tax rate

The rate of corporation tax in relation to an authorised unit trust for any financial year is the rate at which income tax at the basic rate is charged for the tax year beginning on 6 April in that financial year (and sections 18 and 19 (relief for companies with small profits) do not apply).

619 Umbrella schemes

(1) In this section "umbrella scheme" means a unit trust scheme—
- (a) which provides arrangements for separate pooling of the contributions of the participants and the profits or income out of which payments are made to them ("pooling arrangements"),
- (b) under which the participants are entitled to exchange rights in one pool for rights in another, and
- (c) in respect of which an order under section 243 of FISMA 2000 is in force.

(2) References in this section to a part of an umbrella scheme are to such of the pooling arrangements as relate to a separate pool.

(3) For the purposes of this Chapter—
- (a) each of the parts of an umbrella scheme is to be regarded as an authorised unit trust, and
- (b) the umbrella scheme as a whole is not to be regarded as an authorised unit trust.

(4) In relation to a part of an umbrella scheme, references to investments subject to the trusts of an authorised unit trust are references to such of the investments as under the pooling arrangements form part of the separate pool to which the part relates.

(5) In relation to a part of an umbrella scheme, references to a unit holder are references to a person for the time being having rights in that separate pool.

Court investment funds

620 Court investment funds

(1) In this section "court investment fund" means a fund established under section 42 of the Administration of Justice Act 1982 (investment funds for money paid into court).

(2) The Tax Acts apply in relation to a court investment fund as if—
- (a) the fund were an authorised unit trust,
- (b) the person who is for the time being the investment manager of the fund were the trustee of the trust, and
- (c) the persons with qualifying interests (see the table in subsection (3)) were the unit holders in the trust.

(3) This is the table referred to in subsection (2)(c)—

Description of shares in the fund	***Persons with qualifying interests in relation to the shares***

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Shares held by the Accountant General	The persons whose interests entitle them, as against the Accountant General, to share in the fund's investments
Shares held by any other person authorised by the Lord Chancellor to hold such shares on behalf of others (an "authorised person")	The persons whose interests entitle them, as against the authorised person, to share in the fund's investment (or, if there are no such persons, the authorised person)
Shares held by persons authorised by the Lord Chancellor to hold such shares on their own behalf	The persons so authorised

(4) In subsection (3) "the Accountant General" means—

(a) the Accountant General of the Senior Courts of England and Wales, or

(b) the Accountant General of the Court of Judicature of Northern Ireland.

[[F429](5) In the application of this section to Northern Ireland, any reference to the Lord Chancellor is to be read as a reference to the Department of Justice in Northern Ireland.**]**

Textual Amendments

F429 S. 620(5) inserted (18.10.2012) by The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2012 (S.I. 2012/2595), arts. 1(2), **21** (with arts. 24-28)

CHAPTER 3

UNAUTHORISED UNIT TRUSTS

621 Treatment of income

(1) This section applies in relation to an unauthorised unit trust if the trustees are UK resident.

(2) If income arises to the trustees, the income is treated for the purposes of the Corporation Tax Acts as the income of the trustees and not of the unit holders.

622 Treatment of capital expenditure

(1) This section applies in relation to an unauthorised unit trust if the trustees are UK resident.

(2) The trustees (and not the unit holders) are treated as the persons to or on whom an allowance or charge is to be made under any provision of the Corporation Tax Acts relating to relief for capital expenditure.

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[F430 CHAPTER 3A

INVESTMENT TRUSTS

Textual Amendments

F430 Pt. 13 Ch. 3A inserted (19.7.2011) by Finance Act 2011 (c. 11), **s. 50**

622A Power to make provision about treatment of transactions

(1) The Treasury may by regulations provide that a transaction of a specified kind entered into by an investment trust is to be treated for the purposes of the Corporation Tax Acts as entered into by it otherwise than in the course of a trade.

(2) Regulations under this section—
  (a) may make different provision for different cases or purposes, and
  (b) may make incidental, consequential, supplementary or transitional provision.

(3) A statutory instrument containing the first regulations under this section may not be made unless a draft of the instrument has been laid before and approved by a resolution of the House of Commons.

(4) Any other statutory instrument containing regulations under this section is subject to annulment in pursuance of a resolution of the House of Commons.

(5) In this section " specified " means specified in regulations under this section. **]**

CHAPTER 4

SECURITISATION COMPANIES

623 Meaning of "securitisation company"

(1) In this Chapter "securitisation company" means a company to which subsection (2) or (6) applies.

(2) This subsection applies to a company if—
  (a) conditions A, B and C are met in relation to it, and
  (b) it meets such other conditions as the Treasury may specify by regulations.

(3) Condition A is that the company is party as debtor to a capital market investment.

(4) Condition B is that securities representing that capital market investment are issued.

(5) Condition C is that the capital market investment is part of a capital market arrangement.

(6) This subsection applies to a company if there is between it and a company to which subsection (2) applies a relationship (direct or indirect) of a description specified by the Treasury by regulations.

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(7) In this section "capital market investment" and "capital market arrangement" have the same meaning as in section 72B(1) of the Insolvency Act 1986 (see paragraphs 1, 2 and 3 of Schedule 2A to that Act).

624 Power to make regulations about the taxation of securitisation companies

(1) The Treasury may by regulations make provision about the application of the Corporation Tax Acts in relation to a securitisation company.

(2) The regulations may, in particular, provide for the application, modification or non-application of any of the provisions of the Corporation Tax Acts.

(3) The regulations may, in particular, provide—
- (a) that the amount of profits of any specified description (before any such adjustments as are mentioned in subsection (4)) is to be taken to be such amount, or is to be calculated on such basis, as may be specified, and
- (b) that the amount determined in accordance with regulations under paragraph (a) is to be brought into account for corporation tax purposes instead of any specified amount that would otherwise fall to be brought into account.

(4) The regulations may, in particular, provide for specified adjustments to be made to the amount to be brought into account for corporation tax purposes.

(5) The regulations may, in particular, provide—
- (a) that the regulations apply to a company only if an election that they are to apply is made, or
- (b) that the regulations do not apply to a company if an election that they are not to apply is made.

(6) The regulations may, in particular, provide that once subject to the regulations a company is to continue to be subject to them for all subsequent periods of account.

(7) The regulations may, in particular, impose conditions that must be met if a company is to have, or continue to have, the benefit of the regulations.

(8) The regulations may, in particular, provide for the consequences of failing to meet any specified condition (which may include recalculating the company's profits for previous periods on the basis that the regulations did not apply).

(9) In this section "specified" means specified in the regulations.

625 Regulations: supplementary

(1) Regulations under this Chapter may—
- (a) make different provision for different descriptions of company,
- (b) contain incidental, supplemental, consequential and transitional provision and savings.

(2) The provision which may be made under subsection (1)(b) includes provision amending any provision of, or made under, the Taxes Acts (within the meaning of section 118(1) of TMA 1970).

(3) Regulations under this Chapter may include provision which—

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(a) in the case of provision relating to corporation tax, has effect from the beginning of periods of account current when the regulations are made, and
(b) in the case of provision relating to income tax or capital gains tax, has effect in relation to times before the regulations are made.

CHAPTER 5

COMPANIES IN LIQUIDATION OR ADMINISTRATION

Introduction

626 Meaning of "final year", "penultimate year" etc

(1) This section applies for the purposes of this Chapter.

(2) In relation to a company that is being wound up—

"the final year" means the financial year in which the winding up of the company is completed, and

"the penultimate year" means the last financial year before the company's final year.

(3) In relation to a company in administration—

"the final year" means the financial year in which the dissolution event in respect of the company occurs, and

"the penultimate year" means the last financial year before the company's final year.

(4) A reference in this Chapter to the "dissolution event" in respect of a company in administration is a reference—
(a) to the administrator sending a notice in respect of the company under paragraph 84(1) of Schedule B1 to the Insolvency Act 1986 (company moving from administration to dissolution), or
(b) if the company enters administration otherwise than under that Act, to the doing of any other act for a similar purpose.

(5) "Profits" means income and chargeable gains, except so far as the context otherwise requires.

627 Meaning of "rate of corporation tax" in case of companies with small profits

(1) This section applies if corporation tax chargeable on profits of a company for a financial year—
(a) is to be charged at the small profits rate (see section 18), or
(b) is to be reduced by reference to the standard fraction or the ring fence fraction within the meaning of Part 3 (see sections 19 and 20).

(2) References in this Chapter to the "rate of corporation tax", so far as relating to profits of the company for the financial year concerned, are to be taken—
(a) as references to the small profits rate, or

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(b) (as the case may be) as including references to the standard fraction or the ring fence fraction (and with references to a rate being "fixed" or "proposed" read accordingly as references to the fraction concerned being fixed or proposed).

Companies in liquidation

628 Company in liquidation: corporation tax rates

(1) This section applies, in the case of a company that is being wound up, in relation to profits of the company arising in its final year (see subsections (2) to (5)) or its penultimate year (see subsections (6) and (7)).

(2) The rate of corporation tax to be applied in assessing, before the winding up of the company is completed, the corporation tax chargeable on the profits of the company arising in the winding up in its final year is to be determined in accordance with subsections (3) to (5).

(3) If the rate of corporation tax has been fixed for the final year, that fixed rate is to be applied.

(4) If the rate of corporation tax has been proposed (but not yet fixed) for the final year, that proposed rate is to be applied.

(5) If the rate of corporation tax has been neither fixed nor proposed for the final year, the rate fixed or proposed for the penultimate year is to be applied.

(6) Subsection (7) applies if—
(a) the winding up of the company started before the company's final year, and
(b) an assessment to corporation tax is made at a time when the rate of corporation tax for the company's penultimate year is proposed (but not yet fixed).

(7) The rate of corporation tax proposed for the penultimate year is to be applied in relation to the profits of the company arising in the winding up at any time in that year.

629 Company in liquidation: making of assessment to tax

(1) This section applies if—
(a) an assessment to corporation tax is made on the profits of a company that is being wound up, and
(b) the assessment is made before the date when the winding up is completed ("the actual winding up date").

(2) An assessment for an accounting period falling after the start of the winding up is not invalid because it is made before the end of the period.

(3) In applying section 12 of CTA 2009 (accounting periods of companies being wound up) for the purpose of determining when an accounting period of the company ends, the liquidator may make an assumption as to what the actual winding up date will be ("the assumed winding up date").

(4) The company's final and penultimate years are not changed if the assumption made under subsection (3) as to the actual winding up date is wrong.

(5) If the actual winding up date is later than the assumed winding up date—

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(a) an accounting period of the company ends on the assumed winding up date ("period A"), and

(b) a new accounting period of the company ("period B") begins immediately after the end of period A.

(6) Section 12 of CTA 2009 then applies as if the winding up of the company started at the time when period B begins.

Companies in administration

630 Company in administration: corporation tax rates

(1) This section applies, in the case of a company in administration, in relation to profits of the company arising in its final year (see subsections (2) to (5)) or its penultimate year (see subsections (6) and (7)).

(2) The rate of corporation tax to be applied in assessing, before the dissolution event in respect of the company, the corporation tax chargeable on the profits of the company arising in the administration in its final year is to be determined in accordance with subsections (3) to (5).

(3) If the rate of corporation tax has been fixed for the final year, that fixed rate is to be applied.

(4) If the rate of corporation tax has been proposed (but not yet fixed) for the final year, that proposed rate is to be applied.

(5) If the rate of corporation has been neither fixed nor proposed for the final year, the rate fixed or proposed for the penultimate year is to be applied.

(6) Subsection (7) applies if—

(a) the company entered administration before its final year, and

(b) an assessment to corporation tax is made at a time when the rate of corporation tax for the company's penultimate year is proposed (but not yet fixed).

(7) The rate of corporation tax proposed for the penultimate year is to be applied in relation to the profits of the company arising in the administration at any time in that year.

631 Company in administration: making of assessment to tax

(1) This section applies if—

(a) an assessment to corporation tax is made on the profits of a company in administration, and

(b) the assessment is made before the date of the dissolution event in respect of the company ("the actual dissolution date").

(2) An assessment for an accounting period in which the company is in administration is not invalid because it is made before the end of the period.

(3) In applying section 10(1) of CTA 2009 (time when accounting periods come to an end) for the purpose of determining when an accounting period of the company ends, the administrator may make an assumption as to what the actual dissolution date will be ("the assumed dissolution date").

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(4) The company's final and penultimate years are not changed if the assumption made under subsection (3) as to the actual dissolution date is wrong.

(5) If the actual dissolution date is later than the assumed dissolution date—
  (a) an accounting period of the company ends on the assumed dissolution date ("period A"), and
  (b) a new accounting period of the company ("period B") begins immediately after the end of period A.

(6) Section 10(1) of CTA 2009 then applies as if the company had entered administration at the beginning of period B.

Supplementary

632 Meaning of rate being "fixed" or "proposed"

(1) This section applies for the purposes of sections 628 and 630.

(2) A rate of corporation tax is "fixed"—
  (a) in the case of a company that is being wound up, if the rate has been fixed by an Act passed before the completion of the winding up, and
  (b) in the case of a company that is in administration, if the rate has been fixed by an Act passed before the dissolution event in respect of the company,

but this is subject to subsection (4).

(3) A rate of corporation tax is "proposed" if the rate is proposed by a Budget resolution (whether or not subsequently fixed by an Act).

(4) If a Budget resolution proposes to alter a rate of corporation tax that has been fixed, references in sections 628 and 630 to a fixed rate are references to that rate as proposed to be altered by the resolution.

(5) In this section "Budget resolution" means a resolution of the House of Commons for fixing a rate of corporation tax.

633 Exemption for interest on overpaid tax in final accounting period

(1) This section applies if, in the final accounting period of a company that is being wound up or is in administration, interest within subsection (2) arises to the company.

(2) Interest within this subsection arises to a company if—
  (a) the interest is received or is receivable by the company under section 826 of ICTA (interest on tax overpaid), and
  (b) the interest does not exceed £2000.

(3) The interest is excluded in calculating the company's income for corporation tax purposes.

(4) In subsection (1) the "final accounting period" means—
  (a) in the case of a company being wound up, the accounting period which ends, in accordance with section 12 of CTA 2009 (accounting periods of companies being wound up), with the completion of the winding up, and

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(b) in the case of a company in administration, the last accounting period of the company before the dissolution event in respect of the company.

CHAPTER 6

BANKS ETC IN COMPULSORY LIQUIDATION

634 Overview of Chapter

(1) This Chapter provides for the receipts of certain types of company being wound up to be charged to corporation tax.

(2) For provision charging the receipts of such companies to income tax, see Chapter 3A of Part 14 of ITA 2007.

635 Application of Chapter

(1) This Chapter applies if—
  (a) a company is being or has been wound up by the court in the United Kingdom, and
  (b) conditions A, B and C are met.

(2) Condition A is that the company was, at any time within the period mentioned in subsection (5), lawfully carrying on a business of accepting deposits as—
  (a) a person of the kind mentioned in paragraph (b) of the definition of "bank" in section 1120(2) (persons with permission under **[**[F431]Part 4A**]** of FISMA 2000 to accept deposits), or
  (b) a permitted EEA credit institution.

(3) Condition B is that the company has permanently ceased to carry on the trade that included the business of accepting deposits (the "deposit-taking trade").

(4) Condition C is that the company is insolvent and—
  (a) was so when the winding up proceedings started, or
  (b) became so at any time in the period of 12 months following the day on which those proceedings started.

(5) The period referred to in subsection (2) is the period of 12 months ending with the earlier of—
  (a) the day on which the winding up proceedings started, and
  (b) the day on which the company permanently ceased to carry on the deposit-taking trade.

(6) In subsection (2)(b) a "permitted EEA credit institution" means an EEA firm of the kind mentioned in paragraph 5(b) of Schedule 3 to FISMA 2000 (credit institutions authorised by home state regulator) which has permission to accept deposits under paragraph 15 of that Schedule.

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Textual Amendments

F431 Words in s. 635(2)(a) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 18 para. 129(3)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

636 Charge to corporation tax on winding up receipts

(1) The charge to corporation tax on income applies to winding up receipts arising from the deposit-taking trade.

(2) Subsection (1) applies in relation to a winding up receipt only so far as its value was not brought into account in calculating the profits of the trade of any period before the permanent cessation of the trade.

(3) A "winding up receipt" means (subject to subsection (4)) a sum received by the company or its liquidator after—
- (a) the start of the winding up proceedings, or
- (b) if later, the permanent cessation of the deposit-taking trade.

(4) The following are not winding up receipts—
- (a) a sum received on behalf of a person entitled to the sum to the exclusion of the company and its liquidator, and
- (b) a sum realised by the transfer of an asset required to be valued under section 162 of CTA 2009 (valuation of trading stock on cessation).

637 Transfer of rights to payment

(1) This section applies if—
- (a) the company or its liquidator transfers for value to another person the right to receive a sum arising from the deposit-taking trade, and
- (b) the sum is one which, if received by the company or its liquidator, would be a winding up receipt.

(2) If the transfer is at arm's length, this Chapter has effect as if the amount or value of the consideration for the transfer were a winding up receipt arising from the deposit-taking trade.

(3) If the transfer is not at arm's length, this Chapter has effect as if the value of the right transferred as between parties at arm's length were a winding up receipt arising from the deposit-taking trade.

638 Allowable deductions

(1) In calculating the amount on which corporation tax is charged under this Chapter for an accounting period, deductions are allowed in accordance with this section from the amount which would otherwise be chargeable to corporation tax under this Chapter.

(2) A deduction is allowed for the total sum of all losses, expenses and debits within subsection (3) that are incurred during or before the accounting period (but subject to subsections (4) and (5)).

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(3) The losses, expenses and debits within this subsection are those which, if the company carrying on the deposit-taking trade had not permanently ceased to do so—
   (a) would have been deducted in calculating the profits of the trade for corporation tax purposes, or
   (b) would have been deducted from or set off against the profits of the trade for corporation tax purposes.

(4) No deduction is allowed if the loss, expense or debit arises directly or indirectly from the cessation itself.

(5) A loss, expense or debit is only within subsection (3) if incurred—
   (a) after the start of the winding up proceedings or, if later, the permanent cessation of the deposit-taking trade, or
   (b) in the case of a loss, at or before the permanent cessation of the deposit-taking trade.

(6) No deduction for an amount is allowed under this section if the amount has already been allowed (whether under this section or under any other provision of the Tax Acts).

639 Election to carry back

(1) This section applies if a winding up receipt arising from the deposit-taking trade is received in an accounting period beginning no later than 6 years after the company permanently ceased to carry on the trade.

(2) The company or its liquidator may elect that the corporation tax chargeable under this Chapter in respect of the receipt is to be charged as if the receipt has been received on the date of the cessation.

(3) The election must be made before the end of the period of two years beginning immediately after the end of the accounting period in which the receipt is received.

(4) If an election is made under this section an assessment to corporation tax must be made accordingly (regardless of anything in the Corporation Tax Acts).

640 Relationship of Chapter with other corporation tax provisions

(1) If a winding up receipt arising from the deposit-taking trade is chargeable to corporation tax under this Chapter it is not chargeable to corporation tax under any other provision.

(2) This Chapter has effect regardless of section 464(1) of CTA 2009 (priority of loan relationship provisions).

641 Interpretation of Chapter

(1) This section applies for the purposes of this Chapter.

(2) Winding up proceedings start against a company at the time when the petition for its winding up by the court is presented.

(3) There is the permanent cessation of a company's trade if—
   (a) the company ceases to carry on the trade, or

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(b) the company ceases to be within the charge to corporation tax in respect of the trade,

whether or not the trade is in fact ceased.

(4) A company is insolvent at any time if at that time—

(a) it is unable to pay its debts as they fall due, or

(b) the value of its assets is less than the amount of its liabilities (including its contingent and prospective liabilities).

(5) "Company" means—

(a) a company as defined in section 1(1) of the Companies Act 2006, or

(b) an unregistered company as defined in section 220 of the Insolvency Act 1986 or Article 184 of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I.19)).

(6) For the meaning of "deposit-taking trade" and "winding up receipt", see sections 635(3) and 636(3) respectively.

CHAPTER 7

CO-OPERATIVE HOUSING ASSOCIATIONS

642 Disregard of rent from members and of interest payable

(1) Subsections (2) and (3) apply if a housing association makes a claim under this section for an accounting period or part of an accounting period during which the association was approved for the purposes of this Chapter.

(2) Rent to which the association was entitled from its members for the accounting period or part of an accounting period is ignored for tax purposes.

(3) The association is treated for corporation tax purposes as if any interest payable by it for the accounting period or part of an accounting period were not payable.

(4) But subsection (3) does not apply so far as the interest is attributable to property that is not subject to a tenancy.

643 Exemption for gains on a sale of property

(1) This section applies if—

(a) chargeable gains accrue to a housing association on a disposal by way of sale of any property which has been occupied, or is occupied, by a tenant of the housing association,

(b) the gains accrue in an accounting period or part of an accounting period during which the association was approved for the purposes of this Chapter, and

(c) the association makes a claim under this section for that period or part of a period.

(2) No liability to corporation tax arises in respect of the gains.

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644 Approval of housing associations

(1) In the case of a housing association in Great Britain, the power to approve housing associations for the purposes of this Chapter—
  (a) is exercisable by the Scottish Ministers if the association has its registered office in Scotland,
  (b) is exercisable by the Welsh Ministers in relation to Wales, and
  (c) is otherwise exercisable by the Secretary of State.

(2) In the case of a housing association in Northern Ireland, the power to approve housing associations for the purposes of this Chapter is exercisable by the Department for Social Development.

(3) An approval given for the purposes of this Chapter—
  (a) has effect from the date specified by the approving authority (which may be earlier or later than the date on which the approval is given), and
  (b) may be revoked by the approving authority.

(4) See also paragraph 80 of Schedule 2 (concurrent exercise by the Secretary of State of certain functions exercisable by the Welsh Ministers).

645 Tests to be satisfied by the association

(1) The authority mentioned in section 644(1) or (2) must not approve a housing association unless it is satisfied that the association satisfies each of tests A to E.

(2) Test A is that the association is—
  (a) a housing association within the meaning of the Housing Associations Act 1985 (see section 1(1) of that Act), or
  (b) a housing association within the meaning of Part 2 of the Housing (Northern Ireland) Order 1992 (S.I. 1725 (N.I. 15)) (see Article 3 of that Order).

(3) Test B is that the association is a society registered or treated as registered under the Industrial and Provident Societies Act 1965 or the Industrial and Provident Societies Act (Northern Ireland) 1969 (c. 24 (N.I.)).

(4) Test C is that the rules of the association—
  (a) restrict membership to persons who are tenants or prospective tenants of the association, and
  (b) preclude the granting or assignment of tenancies to persons other than members.

(5) Test D is that the association satisfies any other requirements prescribed by—
  (a) the Secretary of State as regards England and Scotland,
  (b) the Welsh Ministers as regards Wales, or
  (c) the Department for Social Development as regards Northern Ireland.

(6) Test E is that the association will comply with any conditions that may be prescribed by—
  (a) the Secretary of State as regards England and Scotland,
  (b) the Welsh Ministers as regards Wales, or
  (c) the Department for Social Development as regards Northern Ireland.

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646 Delegation of powers to the Regulator of Social Housing

(1) In relation to a housing association which is a registered provider of social housing (see section 80(2) of the Housing and Regeneration Act 2008) the Secretary of State may delegate to the Regulator of Social Housing any of the Secretary of State's functions under section 644 or 645.

(2) The functions may be delegated—
- (a) to any extent that the Secretary of State specifies, and
- (b) subject to any conditions that the Secretary of State specifies.

647 Claims under section 642 or 643

(1) A claim under section 642 or 643 must be made—
- (a) within two years after the end of the accounting period to which it relates, or
- (b) if it relates to part of an accounting period, within two years after the end of that accounting period.

(2) A housing association must not make a claim under section 642 or 643 for an accounting period or part of an accounting period unless—
- (a) the requirements in subsection (3) were complied with during that period or part, or
- (b) the association reasonably considers that those requirements were substantially complied with during that period or part.

(3) The requirements are that—
- (a) no property belonging to the association was let otherwise than to a member of the association,
- (b) only persons who were then members of the association occupied (whether solely or jointly with another person) any property, or any part of any property, let by the association,
- (c) the association satisfied each of tests A to C in section 645 and complied with any conditions that were in force by virtue of section 645(6), and
- (d) any covenants required to be included in grants of tenancies by those conditions were observed.

(4) If a member of a housing association dies and another person occupies a property, or part of a property, in accordance with the member's will or the provisions applicable on the member's intestacy, that person's occupation during the first 6 months after the death does not infringe the requirement in subsection (3)(b).

648 Adjustments of liability

(1) If an adjustment of a housing association's liability to corporation tax is necessary as a result of a claim under section 642, the adjustment may be made by an assessment, by repayment of tax or otherwise.

(2) A housing association's liability to corporation tax may be adjusted by means of assessments or otherwise if—
- (a) a claim by the housing association under section 642 or 643 is included in a company tax return,
- (b) an enquiry is made into the tax return, and

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(c) an amendment is made to the tax return as a result of the enquiry.

(3) A housing association's liability to corporation tax may be adjusted by means of assessments or otherwise if—

(a) an enquiry is made under paragraph 5 of Schedule 1A to TMA 1970 into a claim made by the association under section 642 or 643, or into an amendment of such a claim, and

(b) an amendment is made to the claim as a result of the enquiry.

(4) Adjustments under subsection (2) or (3) may be made for all relevant accounting periods.

649 Power to make further provision

(1) The Secretary of State may by statutory instrument make regulations with respect to England and Scotland for the purpose of carrying out the provisions of this Chapter.

(2) The Welsh Ministers may by statutory instrument make regulations with respect to Wales for the purpose of carrying out the provisions of this Chapter.

(3) The Department for Social Development may make regulations with respect to Northern Ireland for the purpose of carrying out the provisions of this Chapter.

(4) Regulations made under subsection (3) are a statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I. 12)).

(5) If any regulations under this section prescribe requirements for the purposes of section 645(5) or conditions for the purposes of section 645(6)—

(a) any requirements or conditions previously prescribed under section 645(5) or (6) are to cease to have effect when the regulations come into force, and

(b) no further exercise may be made of the power under section 645(5) or (6) to prescribe requirements or conditions otherwise than by regulations.

(6) The reference in section 647(3)(c) to conditions that were in force by virtue of section 645(6) includes conditions prescribed for the purposes of section 645(6) under subsection (5) above.

CHAPTER 8

SELF-BUILD SOCIETIES

650 Meaning of "self-build society"

(1) Subsections (2) and (3) give the meaning of "self-build society" in this Chapter.

(2) In England, Scotland and Wales "self-build society" has the same meaning as in the Housing Associations Act 1985 (see section 1(3) of that Act).

(3) In Northern Ireland "self-build society" has the same meaning as in Part 2 of the Housing (Northern Ireland) Order 1992 (S.I. 1725 (N.I. 15)) (see Article 3 of that Order).

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651 Disregard of rent from members

(1) If a self-build society makes a claim under this section for an accounting period or part of an accounting period during which the society was approved for the purposes of this Chapter, rent to which the society was entitled from its members for the accounting period or part of an accounting period is ignored for tax purposes.

(2) In this section "rent" includes any amounts to which a self-build society is entitled in respect of the occupation of any of its land.

(3) The reference in subsection (2) to occupation includes occupation under a licence.

652 Exemption for gains on disposals of land to members

(1) This section applies if—
- (a) chargeable gains accrue to a self-build society on a disposal of land to a member of the society,
- (b) the gains accrue in an accounting period or part of an accounting period during which the society was approved for the purposes of this Chapter, and
- (c) the society makes a claim under this section for that period or part of a period.

(2) No liability to corporation tax arises in respect of the gains.

653 Approval of self-build societies

(1) The power to approve self-build societies for the purposes of this Chapter is exercisable—
- (a) in relation to England and Scotland, by the Secretary of State,
- (b) in relation to Wales, by the Welsh Ministers, and
- (c) in relation to Northern Ireland, by the Department for Social Development.

(2) The authority mentioned in subsection (1) must not approve a self-build society unless it is satisfied that the society—
- (a) is registered, or treated as being registered, as mentioned in subsection (3),
- (b) satisfies any other requirements prescribed by or under regulations under section 657, and
- (c) will comply with any conditions that may be prescribed by or under regulations under that section.

(3) The reference in subsection (2)(a) is to registration—
- (a) under the Industrial and Provident Societies Act 1965 (if the power is exercisable by the Secretary of State or the Welsh Ministers), or
- (b) under the Industrial and Provident Societies Act (Northern Ireland) 1969 (c. 24 (N.I.)) (if the power is exercisable by the Department for Social Development).

(4) An approval given for the purposes of this Chapter—
- (a) has effect from the date specified by the approving authority (which may be earlier or later than the date on which the approval is given), and
- (b) may be revoked by the approving authority.

(5) See also paragraph 81 of Schedule 2 (concurrent exercise by the Secretary of State of certain functions exercisable by the Welsh Ministers).

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654 Delegation of powers to the Regulator of Social Housing

(1) The Secretary of State may delegate to the Regulator of Social Housing any function of the Secretary of State under section 653 in a case where the function is exercisable in relation to a society whose registered office for the purposes of the Industrial and Provident Societies Act 1965 is in England.

(2) The function may be delegated—
- (a) to any extent that the Secretary of State specifies, and
- (b) subject to any conditions that the Secretary of State specifies.

655 Claims under section 651 or 652

(1) A claim under section 651 or 652 must be made—
- (a) within two years after the end of the accounting period to which it relates, or
- (b) if it relates to part of an accounting period, within two years after the end of that accounting period.

(2) A self-build society must not make a claim under section 651 or 652 for an accounting period or part of an accounting period unless—
- (a) the requirements in subsection (3) were complied with during that period or part, or
- (b) the society reasonably considers that those requirements were substantially complied with during that period or part.

(3) The requirements are that—
- (a) only persons who were then members of the society occupied (whether solely or jointly with another person) any land, or any part of any land, owned by the society,
- (b) the society complied with the requirement in section 653(2)(a), and
- (c) the society complied with any conditions that were in force by virtue of section 653(2)(c).

(4) If a member of a self-build society dies and another person occupies a property, or part of a property, in accordance with the member's will or the provisions applicable on the member's intestacy, that person's occupation during the first 6 months after the death does not infringe the requirement in subsection (3)(a).

(5) A claim under section 651 or 652 must be in the form (if any) prescribed by the Commissioners for Her Majesty's Revenue and Customs and contain any details which they prescribe.

656 Adjustments of liability

(1) If an adjustment of a self-build society's liability to corporation tax is necessary as a result of a claim under section 651, the adjustment may be made by an assessment, by repayment of tax or otherwise.

(2) A self-build society's liability to corporation tax may be adjusted by means of assessments or otherwise if—
- (a) a claim by the society under section 651 or 652 is included in a company tax return,
- (b) an enquiry is made into the tax return, and

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(c) an amendment is made to the tax return as a result of the enquiry.

(3) A self-build society's liability to corporation tax may be adjusted by means of assessments or otherwise if—

(a) an enquiry is made under paragraph 5 of Schedule 1A to TMA 1970 into a claim made by the society under section 651 or 652, or into an amendment of such a claim, and

(b) an amendment is made to the claim as a result of the enquiry.

(4) Adjustments under subsection (2) or (3) may be made for all relevant accounting periods.

657 Power to make further provision

(1) The Secretary of State may by statutory instrument make regulations with respect to England and Scotland for the purpose of carrying out the provisions of this Chapter.

(2) A statutory instrument containing regulations made under subsection (1) is subject to annulment in pursuance of a resolution of the House of Commons.

(3) The Welsh Ministers may by statutory instrument make regulations with respect to Wales for the purpose of carrying out the provisions of this Chapter.

(4) A statutory instrument containing regulations made under subsection (3) is subject to annulment in pursuance of a resolution of the National Assembly for Wales.

(5) The Department for Social Development may make regulations with respect to Northern Ireland for the purpose of carrying out the provisions of this Chapter.

(6) Regulations made under subsection (5) are a statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I. 12)).

(7) A statutory rule containing regulations made under subsection (5) is subject to negative resolution within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954 (c. 33 (N.I.)).

CHAPTER 9

COMMUNITY AMATEUR SPORTS CLUBS

Basic concepts

658 Meaning of "community amateur sports club" and "registered club"

[[F432](1) A club is entitled to be registered as a community amateur sports club if conditions A and B are met.

(1A) Condition A is that the club is, and is required by its constitution to be, a club which—

(a) is open to the whole community (see section 659),

(b) is organised on an amateur basis (see section 660), and

(c) has as its main purpose the provision of facilities for, and the promotion of participation in, one or more eligible sports (see **[**[F433]sections 660A and 661**]**).

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(1B) Condition B is that the club meets—

(a) the location condition (see section 661A), and

(b) the management condition (see section 661B).**]**

(2) A club may apply to an officer of Revenue and Customs to be registered as a community amateur sports club.

(3) The officer must register the club as a community amateur sports club if satisfied that the club is entitled to be registered.

(4) The officer—

(a) may register the club with effect from such date as the officer may specify (which may be before the date of the application), and

(b) may cancel the club's registration with effect from such date as the officer may specify (which may be before the date of the decision to cancel it) if no longer satisfied that the club is entitled to be registered.

(5) Her Majesty's Revenue and Customs may publish the names and addresses of registered clubs.

(6) In this Chapter a "registered club" means a club which is for the time being registered as a community amateur sports club under this section.

Textual Amendments

F432 S. 658(1)-(1B) substituted for s. 658(1) (retrospective to 6.4.2010) by Finance Act 2012 (c. 14), **s. 52(1)**(3)

F433 Words in s. 658(1A)(c) substituted (retrospectively) by Finance Act 2013 (c. 29), Sch. 21 paras. 4, **9(2)** (with Sch. 21 para. 10); S.I. 2015/674, **art. 2**

659 Meaning of "open to the whole community"

(1) A club is "open to the whole community" for the purposes of section 658 if—

(a) its membership is open to all without discrimination,

(b) its facilities are available to members without discrimination, and

[[F434](c) the costs associated with membership of the club for any year do not represent a significant obstacle to membership of the club, use of its facilities or full participation in its activities (see subsection (2A)).**]**

(2) For the purposes of this section "discrimination" includes indirect discrimination and (in particular) includes discrimination on the grounds of—

(a) ethnicity or nationality,

(b) religion or beliefs,

(c) sexual orientation, or

(d) sex, age or disability (except as a necessary consequence of the requirements of a particular sport).

[[F435](2A) For the purposes of subsection (1)(c) the costs associated with membership of a club for any year represent a significant obstacle to membership of the club, use of its facilities or full participation in its activities if—

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(a) those costs exceed the amount specified for the year for the purposes of this subsection in regulations made by the Treasury, and

(b) the club has not made such arrangements as are necessary to secure that those costs do not represent such an obstacle.

(2B) The Treasury may by regulations make provision supplementing subsection (2A), including—

(a) provision as to what constitutes full participation in a club's activities;

(b) provision as to costs that are, or are not, to be regarded as the costs associated with membership of a club;

(c) provision about calculating the amount of the costs associated with membership of a club for any year.

(2C) The provision that may be made by regulations under this section includes—

(a) different provision for different purposes, and

(b) provision having effect in relation to times before the regulations are made.

(2D) Section 1171(4) (orders and regulations subject to negative resolution procedure) does not apply to any regulations made under this section if a draft of the statutory instrument containing them has been laid before, and approved by a resolution of, the House of Commons.**]**

[[F436](3) A club is not prevented from being " open to the whole community " for the purposes of section 658 merely because it charges different fees for different descriptions of person. **]**

Textual Amendments

F434 S. 659(1)(c) substituted (1.4.2010) by Finance Act 2013 (c. 29), **Sch. 21 paras. 2(2)**, 9(2) (with Sch. 21 para. 10); S.I. 2015/674, art. 2

F435 S. 659(2A)-(2D) inserted (1.4.2010) by Finance Act 2013 (c. 29), **Sch. 21 paras. 2(3)**, 9 (with Sch. 21 para. 10); S.I. 2015/674, art. 2

F436 S. 659(3) substituted (1.4.2010) by Finance Act 2013 (c. 29), **Sch. 21 paras. 2(4)**, 9(2) (with Sch. 21 para. 10); S.I. 2015/674, art. 2

660 Meaning of "organised on an amateur basis"

(1) A club is "organised on an amateur basis" for the purposes of section 658 if—

(a) it is non-profit making (see subsections (2) and (3)),

(b) it provides for members and their guests only the ordinary benefits of an amateur sports club (see subsections (4) and (5)), [F437]...

[[F438](ba) it does not exceed the limit on paid players (see subsection (5A)), and**]**

(c) its constitution provides for any net assets on its dissolution to be applied for approved sporting or charitable purposes (see subsections (6) and (7)).

(2) A club is "non-profit making" for the purposes of subsection (1) if its constitution —

(a) requires any surplus income or surplus gains to be reinvested in the club, and

(b) does not allow the distribution of any of its assets (in cash or in kind) to members or third parties.

(3) A club is not prevented from being "non-profit making" for those purposes merely because it makes donations to charities or registered clubs.

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(4) The following are "ordinary benefits of an amateur sports club" for the purposes of subsection (1)—

(a) the provision of sporting facilities,

(b) the reasonable provision and maintenance of club-owned sports equipment,

(c) the provision of suitably qualified coaches,

(d) the provision, or reimbursement of the costs, of coaching courses,

(e) the provision of insurance cover,

(f) the provision of medical treatment,

(g) the reimbursement of reasonable travel **[**[F439]or subsistence**]** expenses incurred by players and officials **[**[F440]in connection with away matches**]**,

(h) the reasonable provision of post-match refreshments for players and match officials, and

(i) the sale or supply of food or drink as a social benefit which arises incidentally from the sporting purposes of the club.

[[F441](4A) In subsection (4)(g) " subsistence expenses " means expenses on food, drink and temporary living accommodation. **]**

(5) A club is not prevented from providing for members and their guests only the ordinary benefits of an amateur sports club for the purposes of subsection (1) merely because—

(a) a member supplies goods or services to the club on an arm's length basis, or

(b) the club employs members of the club on an arm's length basis.

[[F442](5A) A club does not exceed the limit on paid players for the purposes of subsection (1) if—

(a) the number of persons paid to play for the club does not at any time exceed the specified maximum,

(b) the number of such persons in any year does not exceed the specified maximum for that year,

(c) the amount paid to any such person in any year in respect of activities undertaken for the club does not exceed the specified maximum for that year, and

(d) the total amount paid to such persons in any year in respect of activities undertaken for the club does not exceed the specified maximum for that year.

" Specified " means specified in regulations made by the Treasury.

(5B) The Treasury may by regulations make provision supplementing subsection (5A), including—

(a) provision as when a person is, or is not, to be regarded as a person paid to play for a club, and

(b) provision about calculating for the purposes of subsection (5A) the amount paid to such a person.**]**

(6) In relation to any club, the following are "sporting or charitable purposes" for the purposes of subsection (1)—

(a) the purposes of the governing body of an eligible sport for the purposes of which the club existed, for use in related community sport,

(b) the purposes of another registered club, and

(c) the purposes of a charity.

(7) Purposes of a club are "approved" sporting or charitable purposes for the purposes of subsection (1) if they are approved by—

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(a) the members of the club in general meeting, or
(b) the members of the club's governing body.

[[F443](8) The Treasury may by regulations make further provision as to when a club is " organised on an amateur basis " for the purposes of section 658.

(9) The provision that may be made by regulations under subsection (8) includes—
(a) provision as to the conditions which a club must meet in order to be " organised on an amateur basis " for the purposes of section 658;
(b) provision as to what are, or are not, to be regarded as " ordinary benefits of an amateur sports club " for the purposes of subsection (1);
(c) provision about persons who are, or are not, to be regarded as guests of a member of a club for the purposes of subsection (1).

(10) Regulations made under subsection (8) may amend this section or make other amendments to this Chapter.

(11) A statutory instrument that contains (whether alone or with other provisions) regulations under subsection (8) that amend this section or make other amendments to this Chapter may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the House of Commons.**]**

[[F444](12) The provision that may be made by regulations under this section includes—
(a) different provision for different purposes, and
(b) provision having effect in relation to times before the regulations are made.

(13) Section 1171(4) (orders and regulations subject to negative resolution procedure) does not apply to any regulations made under this section if a draft of the statutory instrument containing them has been laid before, and approved by a resolution of, the House of Commons.**]**

Textual Amendments

F437 Word in s. 660(1)(b) omitted (1.4.2010) by virtue of Finance Act 2013 (c. 29), **Sch. 21 paras. 3(2)**, 9(2) (with Sch. 21 para. 10); S.I. 2015/674, art. 2

F438 S. 660(1)(ba) inserted (1.4.2010) by Finance Act 2013 (c. 29), **Sch. 21 paras. 3(2)**, 9(2) (with Sch. 21 para. 10); S.I. 2015/674, art. 2

F439 Words in s. 660(4)(g) inserted (1.4.2010) by Finance Act 2013 (c. 29), **Sch. 21 paras. 3(3)(a)**, 9(2) (with Sch. 21 para. 10); S.I. 2015/674, art. 2

F440 Words in s. 660(4)(g) substituted (1.4.2010) by Finance Act 2013 (c. 29), **Sch. 21 paras. 3(3)(b)**, 9(2) (with Sch. 21 para. 10); S.I. 2015/674, art. 2

F441 S. 660(4A) inserted (1.4.2010) by Finance Act 2013 (c. 29), **Sch. 21 paras. 3(4)**, 9(2) (with Sch. 21 para. 10); S.I. 2015/674, art. 2

F442 S. 660(5A)(5B) inserted (1.4.2010) by Finance Act 2013 (c. 29), **Sch. 21 paras. 3(5)**, 9 (with Sch. 21 para. 10); S.I. 2015/674, art. 2

F443 S. 660(8)-(11) inserted (1.4.2010) by Finance Act 2013 (c. 29), **Sch. 21 paras. 3(6)**, 9 (with Sch. 21 para. 10); S.I. 2015/674, art. 2

F444 S. 660(12)(13) inserted (1.4.2010) by Finance Act 2013 (c. 29), **Sch. 21 paras. 3(7)**, 9 (with Sch. 21 para. 10); S.I. 2015/674, art. 2

Status: *Point in time view as at 01/04/2014.*
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[F445 660A Clubs consisting mainly of social members

(1) A club is not to be regarded as a club that has as its main purpose the provision of facilities for, and the promotion of participation in, one or more eligible sports if the percentage of its members who are social members exceeds the percentage specified for the purposes of this section in regulations made by the Treasury.

(2) A member is a " social member " for the purposes of this section if the member does not participate, or participates only occasionally, in the sporting activities of the club.

(3) The Treasury may by regulations make provision—
- (a) as to activities that are, or are not, to be regarded as "sporting activities" of a club;
- (b) as to the circumstances in which a member of a club is, or is not, to be regarded as participating in the sporting activities of the club;
- (c) as to the circumstances in which a member of a club is, or is not, to be regarded as participating only occasionally in those activities.

(4) The provision that may be made by regulations under this section includes—
- (a) different provision for different purposes, and
- (b) provision having effect in relation to times before the regulations are made.

(5) Section 1171(4) (orders and regulations subject to negative resolution procedure) does not apply to any regulations made under this section if a draft of the statutory instrument containing them has been laid before, and approved by a resolution of, the House of Commons.**]**

Textual Amendments

F445 S. 660A inserted (1.4.2010) by Finance Act 2013 (c. 29), **Sch. 21 paras. 5**, 9 (with Sch. 21 para. 10); S.I. 2015/674, art. 2

661 Meaning of "eligible sport", "qualifying purposes" etc

(1) For the purposes of this Chapter "eligible sport" means a sport which is designated for those purposes by an order made by the Treasury.

(2) An order under this section may designate a sport by reference to its inclusion in a list maintained by a body specified in the order.

(3) For the purposes of this Chapter "qualifying purposes" means—
- (a) the purpose of providing facilities for one or more eligible sports, and
- (b) the purpose of promoting participation in one or more eligible sports.

(4) For the purposes of this Chapter "non-qualifying purposes" means purposes which are not qualifying purposes.

(5) For the purposes of this Chapter "non-qualifying expenditure" means expenditure which is incurred for non-qualifying purposes.

[F446 661A The location condition

(1) A club meets the location condition for the purposes of section 658 if—

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(a) it is established in a member State or a relevant territory, and

(b) the facilities that it provides for eligible sports are all located in a single member State or relevant territory.

(2) In this section " relevant territory " means a territory specified in regulations under paragraph 2(3)(b) of Schedule 6 to FA 2010 (definition of "charity" etc).

Textual Amendments

F446 Ss. 661A-661C inserted (retrospective to 6.4.2010) by Finance Act 2010 (c. 13), **Sch. 6 paras. 32**, 35

661B The management condition

(1) A club meets the management condition for the purposes of section 658 if its managers are fit and proper persons to be managers of the club.

(2) In this paragraph " managers ", in relation to a club, means the persons having the general control and management of the administration of the club.

Textual Amendments

F446 Ss. 661A-661C inserted (retrospective to 6.4.2010) by Finance Act 2010 (c. 13), **Sch. 6 paras. 32**, 35

661C Periods over which management condition treated as met

(1) This paragraph applies in relation to any period throughout which the management condition is not met.

(2) The management condition is treated as met throughout the period if the Commissioners for Her Majesty's Revenue and Customs consider that—

(a) the failure to meet the management condition has not prejudiced the purposes of the club, or

(b) it is just and reasonable in all the circumstances for the condition to be treated as met throughout the period.**]**

Textual Amendments

F446 Ss. 661A-661C inserted (retrospective to 6.4.2010) by Finance Act 2010 (c. 13), **Sch. 6 paras. 32**, 35

[F447 Gifts qualifying for gift aid relief

Textual Amendments

F447 S. 661D and cross-heading inserted (with effect in accordance with Sch. 15 para. 17(2) of the amending Act) by Finance Act 2012 (c. 14), **Sch. 15 para. 6**

Status: *Point in time view as at 01/04/2014.*
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661D Tax treatment of gifts qualifying for gift aid relief

(1) This section applies if a gift is made to a registered club by an individual and the gift is a qualifying donation for the purposes of Chapter 2 of Part 8 of ITA 2007 (gift aid).

(2) The club is treated as receiving, under deduction of income tax at the basic rate for the tax year in which the gift is made, a gift of an amount equal to the grossed up amount of the gift.

(3) The income tax treated as deducted is treated as income tax paid by the club.

(4) The grossed up amount of the gift is treated as an amount in respect of which the club is chargeable to corporation tax, under the charge to corporation tax on income.

But this is subject to section 664 (exemption for interest and gift aid income).

(5) References in this section to the grossed up amount of the gift are to the amount of the gift grossed up by reference to the basic rate for the tax year in which the gift is made.**]**

Exemptions

662 Exemption for UK trading income

(1) A club which is a registered club throughout an accounting period may make a claim for its UK trading income for that period to be exempt from corporation tax if conditions A and B are met.

(2) Condition A is that the receipts which would (but for this section) be brought into account in calculating the club's UK trading income for that period do not exceed the relevant threshold.

(3) Condition B is that the whole of its UK trading income for that period is applied for qualifying purposes.

(4) If a club is a registered club for only part of an accounting period, this section has effect as if—
   (a) that part were a separate accounting period, and
   (b) the club's UK trading income and receipts for that separate accounting period were proportionately reduced.

(5) In this section "the relevant threshold" means—
   (a) £30,000 in the case of an accounting period which is 12 months, and
   (b) a proportionately reduced figure in the case of a shorter accounting period.

[[F448](5A) The Treasury may by order amend the figure for the time being specified as the relevant threshold in subsection (5)(a).

(5B) A statutory instrument containing an order under subsection (5A) that amends that figure so as to substitute a lower figure may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the House of Commons.**]**

(6) In this section "UK trading income" means profits that (apart from this section) are chargeable under Chapter 2 of Part 3 of CTA 2009 and are—
   (a) profits of a trade carried on wholly or partly in the United Kingdom, or
   (b) profits of an activity other than a trade.

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Textual Amendments

F448 S. 662(5A)(5B) inserted (1.4.2010) by Finance Act 2013 (c. 29), **Sch. 21 paras. 6**, 9 (with Sch. 21 para. 10); S.I. 2015/674, art. 2

663 Exemption for UK property income

(1) A club which is a registered club throughout an accounting period may make a claim for its UK property income for that period to be exempt from corporation tax if conditions A and B are met.

(2) Condition A is that the receipts which would (but for this section) be brought into account in calculating the club's UK property income for that period do not exceed the relevant threshold.

(3) Condition B is that the whole of its UK property income for that period is applied for qualifying purposes.

(4) If a club is a registered club for only part of an accounting period, this section has effect as if—

(a) that part were a separate accounting period, and

(b) the club's UK property income and receipts for that separate accounting period were proportionately reduced.

(5) In this section "the relevant threshold" means—

(a) £20,000 in the case of an accounting period which is 12 months, and

(b) a proportionately reduced figure in the case of a shorter accounting period.

[[F449](5A) The Treasury may by order amend the figure for the time being specified as the relevant threshold in subsection (5)(a).

(5B) A statutory instrument containing an order under subsection (5A) that amends that figure so as to substitute a lower figure may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the House of Commons.**]**

(6) In this section "UK property income" means income of a UK property business which would (but for this section) be chargeable under Chapter 3 of Part 4 of CTA 2009.

Textual Amendments

F449 S. 663(5A)(5B) inserted (1.4.2010) by Finance Act 2013 (c. 29), **Sch. 21 paras. 7**, 9 (with Sch. 21 para. 10); S.I. 2015/674, art. 2

664 Exemption for interest and gift aid income

(1) A club which is a registered club throughout an accounting period may make a claim for—

(a) its interest income for that period, and

(b) its gift aid income for that period,

to be exempt from corporation tax if the whole of that interest income and gift aid income is applied for qualifying purposes.

Status: *Point in time view as at 01/04/2014.*
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(2) If a club is a registered club for only part of an accounting period, this section has effect as if—
  (a) that part were a separate accounting period, and
  (b) the club's interest income for that separate accounting period were proportionately reduced.

(3) In this section—

"interest income", in relation to a club, means interest arising to the club that is not brought into account under section 297 of CTA 2009 (trading credits and debits brought into account under Part 3 of that Act as trading income), and

"gift aid income", in relation to a club, means gifts made by individuals to the club which are qualifying donations for the purposes of Chapter 2 of Part 8 of ITA 2007 (gift aid).

665 Exemption for chargeable gains

A registered club to which a gain accrues may make a claim for the gain not to be a chargeable gain for the purposes of TCGA 1992 if the whole of it is applied for qualifying purposes.

[F450 Claims

Textual Amendments

F450 S. 665A and cross-heading inserted (retrospective to 8.4.2010) by Finance Act 2012 (c. 14), **Sch. 15 paras. 7**, 17(1)

665A Claims in relation to interest and gift aid income

(1) This section applies to—
  (a) claims for repayment of income tax treated as having been paid by virtue of section 661D (tax treatment of gifts qualifying for gift aid relief),
  (b) claims for amounts to be exempt from tax by virtue of section 664 (exemption for interest and gift aid income), and
  (c) claims for repayment of income tax deducted at source from interest income (within the meaning of that section) which is exempt from tax by virtue of that section.

(2) A claim to which this section applies may be made—
  (a) to an officer of Revenue and Customs, or
  (b) by being included in the claimant's company tax return.

(3) In this section—

" free-standing claim " means a claim made as mentioned in subsection (2)(a), and

" tax return claim " means a claim made as mentioned in subsection (2)(b).

(4) The Commissioners for Her Majesty's Revenue and Customs may by regulations make provision—

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(a) limiting the number of free-standing claims that may be made by a person in a tax year, or

(b) requiring a claim for an amount below an amount specified in the regulations to be made as a tax return claim.

(5) The regulations may make different provision for different cases or purposes.**]**

Restrictions on exemptions

666 Exemptions reduced if non-qualifying expenditure incurred

(1) This section applies if—

(a) a registered club has relevant income or relevant gains for an accounting period ("the accounting period in question"), and

(b) the club incurs non-qualifying expenditure in that period.

(2) For the purposes of this section—

"relevant income", in relation to an accounting period, means income which is exempt under this Chapter for that period (ignoring the effect of the following provisions of this section),

"relevant gains", in relation to an accounting period, means gains which are not chargeable gains under this Chapter for the purposes of TCGA 1992 for that period (ignoring the effect of the following provisions of this section), and

"income receipts and chargeable gains", in relation to an accounting period, means the sum of the club's income receipts for that period (whether or not chargeable to tax) and its chargeable gains for the purposes of TCGA 1992 for that period (ignoring the effect of section 665).

(3) If the amount of the non-qualifying expenditure in the accounting period in question is less than the amount of the income receipts and chargeable gains for that period, there is a reduction in the amount of relief given under this Chapter.

(4) The total amount of the relevant income and relevant gains for that period exempted under this Chapter is reduced by the amount found by the appropriate fraction.

(5) This is the appropriate fraction—

$$\text{RIRG} \times \frac{\text{NQE}}{\text{IRCG}}$$

where—

"RIRG" means the total amount of the relevant income and relevant gains for that period,

"NQE" means the amount of the non-qualifying expenditure in that period, and

"IRCG" means the income receipts and chargeable gains for that period.

(6) If the amount of the non-qualifying expenditure in the accounting period in question is at least equal to the amount of the income receipts and chargeable gains for that period, the exemptions under this Chapter—

(a) do not apply, and

(b) are treated as never having applied,

to any of the relevant income or relevant gains for that period.

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(7) If the amount of the non-qualifying expenditure in the accounting period in question is greater than the amount of the income receipts and chargeable gains for that period, there is a reduction in the amount of relief given under this Chapter for previous accounting periods.

(8) The total amount of the relevant income and relevant gains for previous accounting periods exempted under this Chapter is reduced (but not below nil) by the surplus amount.

(9) The surplus amount is the amount by which the amount found by the appropriate fraction exceeds the total amount of the relevant income and relevant gains for the accounting period in question.

667 Rules for attributing surplus amount to earlier periods etc

(1) This section supplements section 666.

(2) An amount exempted under this Chapter for an earlier accounting period is reduced by the surplus amount only if that earlier accounting period ends not more than 6 years before the end of the accounting period in question.

(3) If the condition in subsection (2) is met in the case of more than one earlier accounting period, amounts exempted under this Chapter for later accounting periods are reduced in priority to earlier ones.

(4) If an amount exempted under this Chapter has been reduced under section 666 in respect of non-qualifying expenditure incurred in an accounting period, it may not be reduced again under that section in respect of non-qualifying expenditure incurred in a later accounting period.

(5) Such adjustments must be made (whether by way of the making of assessments or otherwise) as may be required in consequence of section 666(7).

668 How income and gains are attributed

(1) A registered club may specify the income and gains to be reduced (in whole or in part) as a result of section 666.

(2) A specification under subsection (1) is made by notice to an officer of Revenue and Customs.

(3) Subsection (5) applies if—
   (a) an officer of Revenue and Customs requires the club to make a specification under this section, and
   (b) the club has not given notice under subsection (2) of the specification before the end of the required period.

(4) The required period is 30 days beginning with the day on which the officer made the requirement.

(5) An officer of Revenue and Customs may determine the income and gains to be reduced (in whole or in part).

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Deemed disposal and acquisition of asset

669 Asset ceasing to be held for qualifying purposes etc

(1) This section applies if a club holds any asset (within the meaning of TCGA 1992) and, without disposing of it (within the meaning of that Act)—
  (a) the club ceases to be a registered club, or
  (b) the club ceases to hold the asset for qualifying purposes.

(2) The club is treated for the purposes of TCGA 1992 as disposing of, and immediately reacquiring, the asset at the time of the cessation for a consideration equal to its market value at that time.

(3) The exemption under section 665 does not apply to any gain accruing on that deemed disposal.

(4) So far as any of the asset represents (directly or indirectly) the consideration for a disposal of any other asset by the club, the exemption under that section does not apply, and is treated as never having applied, to any gain accruing on that disposal of that other asset.

(5) Such adjustments must be made (whether by way of the making of assessments or otherwise) as may be required in consequence of this section.

(6) But an assessment in respect of a chargeable gain accruing as a result of this section may not be made more than 3 years after the end of the accounting period in which the cessation in question occurred.

Decisions and appeals

670 Notification of HMRC decision

An officer of Revenue and Customs must notify the club of any decision—
  (a) to register it as a registered club,
  (b) to refuse to register it as a registered club, or
  (c) to cancel its registration.

671 Appeals

(1) A club may appeal against a decision of any officer of Revenue and Customs in relation to its application, or registration, as a registered club.

(2) Notice of the appeal must be given in writing to an officer of Revenue and Customs within 30 days of the date of the notification under section 670.

(3) The notice must specify the grounds of the appeal.

(4) If the appeal is against a refusal to register the club, or a decision to register it with effect from a particular date, the tribunal may (if not dismissing the appeal)—
  (a) direct that the club is to be registered with effect from a specified date, or
  (b) send the matter back to any officer of Revenue and Customs for reconsideration.

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(5) If the appeal is against a decision to cancel the registration of the club, or to do so with effect from a particular date, the tribunal may (if not dismissing the appeal)—
  (a) revoke the cancellation,
  (b) direct that the cancellation is to have effect from a specified date, or
  (c) send the matter back to any officer of Revenue and Customs for reconsideration.

(6) The provisions of TMA 1970 relating to appeals under the Taxes Acts (within the meaning of TMA 1970) apply to an appeal under this section as they apply to those appeals.

PART 14

CHANGE IN COMPANY OWNERSHIP

CHAPTER 1

INTRODUCTION

672 Overview of Part

(1) Chapter 2 restricts relief for trading losses in some cases where there is a change in the ownership of a company.

(2) Chapters 3 and 4 restrict relief in some cases where there is a change in the ownership of a company with investment business.

(3) Chapter 5 restricts relief for property losses in some cases where there is a change in the ownership of a company without investment business.

[[F451](3A) Chapter 5A restricts relief for certain non-trading deficits and losses where there is a change of ownership of a shell company.**]**

(4) Chapter 6 enables unpaid corporation tax to be recovered from a linked person in some cases where there is a change in the ownership of a company.

(5) Chapter 8 contains supplementary provision.

(6) See also Chapter 7 of Part 22 (recovery of unpaid corporation tax due from non-UK resident company).

(7) For the meaning of—
  (a) "change in the ownership of a company", see Chapter 7,
  (b) "company with investment business", see section 729, [F452]...
  [[F453](ba) shell company", see section 705A, and**]**
  (c) "linked" person, see section 706.

Textual Amendments

F451 S. 672(3A) inserted (with effect in accordance with Sch. 13 para. 3 of the amending Act) by Finance Act 2013 (c. 29), **Sch. 13 para. 1(2)(a)**

Status: *Point in time view as at 01/04/2014.*
Changes to legislation: *Corporation Tax Act 2010 is up to date with all changes known to be in force on or before 12 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

F452 Word in s. 672(7)(b) omitted (with effect in accordance with Sch. 13 para. 3 of the amending Act) by virtue of Finance Act 2013 (c. 29), **Sch. 13 para. 1(2)(b)**

F453 S. 672(7)(ba) inserted (with effect in accordance with Sch. 13 para. 3 of the amending Act) by Finance Act 2013 (c. 29), **Sch. 13 para. 1(2)(b)**

CHAPTER 2

DISALLOWANCE OF TRADING LOSSES

673 Introduction to Chapter

(1) This Chapter applies if—

(a) there is a change in the ownership of a company ("the company"), and

(b) condition A or B is met.

(2) Condition A is that within any period of 3 years in which the change in ownership occurs there is a major change in the nature or conduct of a trade carried on by the company.

(3) Condition B is that the change in ownership occurs at any time after the scale of the activities in a trade carried on by the company has become small or negligible and before any significant revival of the trade.

(4) In this section "major change in the nature or conduct of a trade" includes—

(a) a major change in the type of property dealt in, or services or facilities provided in, the trade, or

(b) a major change in customers, outlets or markets of the trade.

This Chapter applies even if the change is the result of a gradual process which began before the period of 3 years mentioned in subsection (2).

(5) In this Chapter—

"the change in ownership" means the change in ownership mentioned in subsection (1),

"the company" has the same meaning as in this section, and

"trade" includes an office.

674 Disallowance of trading losses

(1) In calculating the company's taxable total profits of an accounting period beginning before the change in ownership, no relief may be given under section 37 or 42 (relief for trade losses) for a loss made by the company in an accounting period ending after the change in ownership.

(2) No relief may be given under section 45 for a loss made by the company in an accounting period beginning before the change in ownership by carrying forward the loss to reduce the profits of a trade of an accounting period ending after the change in ownership.

(3) For the purposes of this section and section 675—

Status: *Point in time view as at 01/04/2014.*
Changes to legislation: *Corporation Tax Act 2010 is up to date with all changes known to be in force on or before 12 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(a) the accounting period in which the change in ownership occurs is treated as two separate accounting periods, the first ending with the change and the second consisting of the remainder of the period, and

(b) the profits or losses of the accounting period are apportioned to the two periods.

(4) The apportionment under subsection (3)(b) is to be made on a time basis according to the respective lengths of the two periods.

(5) But if that method of apportionment would work unjustly or unreasonably in any case, such other method is to be used as is just and reasonable.

(6) In subsection (2), "profits of a trade" includes interest or dividends treated as profits of a trade under section 46.

675 Disallowance of trading losses: calculation of balancing charges

(1) The following provisions apply if relief in respect of the company's losses is restricted because of section 674(2).

(2) In applying the provisions of CAA 2001 about balancing charges to the company by reference to any event after the change in ownership, there is to be disregarded any allowance falling to be made in taxing the company's trade for any accounting period beginning before the change in ownership.

This subsection applies despite section 577(3) of CAA 2001.

(3) But subsection (2) does not apply if the allowance has been given effect to by means of relief against any profits of that accounting period or any subsequent accounting period beginning before the change in ownership.

(4) For the purposes of subsection (3), it is to be assumed that any loss attributable to any such allowance as is mentioned in subsection (2) is relieved before any loss which is not attributable to such an allowance.

[F454 676 Company reconstructions

(1) Subsection (2) applies if, before the change in ownership—

(a) a trade carried on by another company ("the predecessor company") is transferred to the company, and

(b) the transfer is a transfer to which Chapter 1 of Part 22 applies (transfers of trade without a change of ownership).

(2) In determining any relief available to the company by virtue of section 944(3) (carry forward of trading losses in successor company), this Chapter applies as if—

(a) references to a trade carried on by the company included the trade as carried on by the predecessor company or by any predecessor of that company, and

(b) any loss sustained by the predecessor company or any predecessor of that company had been sustained by the company.

(3) Subsection (4) applies if, after the change in ownership—

(a) a trade carried on by the company is transferred to another company ("the successor company"), and

(b) the transfer is a transfer to which Chapter 1 of Part 22 applies.

Status: *Point in time view as at 01/04/2014.*
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(4) In determining—

(a) any relief available to the company under section 45 (carry forward of trading losses), or

(b) any relief available to the successor company or any successor of that company by virtue of section 944(3),

this Chapter applies as if references to a trade carried on by the company included the trade as carried on by the successor company or by any successor of that company.

(5) For the purposes of this section a company ("company A") is a predecessor of another company ("company B"), and company B is a successor of company A, if the first or second condition is met.

(6) The first condition is that Chapter 1 of Part 22 applies in relation to company A and company B as respectively the predecessor and the successor within the meaning of that Chapter.

(7) The second condition is that—

(a) Chapter 1 of Part 22 applies in relation to company A and a third company ("company C") as respectively the predecessor and the successor within the meaning of that Chapter, and

(b) company C is (whether by virtue of the first condition or this condition) a predecessor of company B.**]**

Textual Amendments

F454 S. 676 substituted (with effect in accordance with s. 32(2) of the amending Act) by Finance Act 2013 (c. 29), **s. 32(1)**

CHAPTER 3

COMPANY WITH INVESTMENT BUSINESS: RESTRICTIONS ON RELIEF: GENERAL PROVISION

Introduction

677 Introduction to Chapter

(1) This Chapter applies if—

(a) there is a change in the ownership of a company with investment business ("the company"), and

(b) condition A, B or C is met.

(2) Condition A is that after the change in ownership there is a significant increase in the amount of the company's capital (see sections 688 to 691).

(3) Condition B is that within the period of 6 years beginning 3 years before the change in ownership there is a major change in the nature or conduct of the business carried on by the company.

Status: *Point in time view as at 01/04/2014.*
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(4) Condition C is that the change in ownership occurs at any time after the scale of the activities in the business carried on by the company has become small or negligible and before any significant revival of the business.

(5) In subsection (3) "major change in the nature or conduct of a business" includes a major change in the nature of the investments held by the company, even if the change is the result of a gradual process which began before the period of 6 years mentioned in that subsection.

(6) In this Chapter—

"the change in ownership" means the change in ownership mentioned in subsection (1), and

"the company" has the same meaning as in this section.

Notional split of accounting period in which change in ownership occurs

678 Notional split of accounting period in which change in ownership occurs

(1) This section applies for the purposes of this Chapter.

(2) The accounting period in which the change in ownership occurs ("the actual accounting period") is treated as two separate accounting periods ("notional accounting periods"), the first ending with the change and the second consisting of the remainder of the period.

(3) The amounts for the actual accounting period in column 1 of the table in section 685(2) are apportioned to the two notional accounting periods in accordance with section 685.

(4) In this Chapter "the actual accounting period" and "notional accounting periods" have the same meaning as in this section.

Restrictions on relief

679 Restriction on debits to be brought into account

(1) This section has effect for the purpose of restricting the debits to be brought into account for the purposes of Part 5 of CTA 2009 (loan relationships) in respect of the company's loan relationships.

(2) The debits to be brought into account for the purposes of Part 5 of CTA 2009 for—

(a) the accounting period beginning immediately after the change in ownership, or

(b) any subsequent accounting period,

do not include relevant non-trading debits so far as amount A exceeds amount B.

(3) Amount A is the sum of—

(a) the amount of those relevant non-trading debits, and

(b) the amount of any relevant non-trading debits which have been brought into account for the purposes of that Part for any previous accounting period ending after the change in ownership.

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(4) Amount B is the amount of the taxable total profits of the accounting period ending with the change in ownership.

(5) For the meaning of "relevant non-trading debit", see section 730.

680 Restriction on the carry forward of non-trading deficit from loan relationships

(1) This section has effect for the purpose of restricting the carry forward of a non-trading deficit from the company's loan relationships under Part 5 of CTA 2009 (loan relationships).

(2) Subsection (3) applies if the non-trading deficit in column 1 of row 4 of the table in section 685(2) is apportioned in accordance with section 685(2) to the first notional accounting period.

(3) None of that non-trading deficit may be carried forward to—
   (a) the accounting period beginning immediately after the change in ownership, or
   (b) any subsequent accounting period.

681 Restriction on relief for non-trading loss on intangible fixed assets

(1) This section has effect for the purpose of restricting relief under section 753 of CTA 2009 (treatment of non-trading losses) in respect of a non-trading loss on intangible fixed assets.

(2) Relief under section 753 of CTA 2009 against the total profits of the same accounting period is available only in relation to each of the notional accounting periods considered separately.

(3) A non-trading loss on intangible fixed assets for an accounting period beginning before the change in ownership may not be—
   (a) carried forward under section 753(3) of that Act to an accounting period ending after the change in ownership, or
   (b) treated under that section as if it were a non-trading debit of that period.

682 Restriction on the deduction of expenses of management

(1) This section has effect for the purpose of restricting deductions for expenses of management.

(2) Any amounts which—
   (a) are, or are treated as, expenses of management referable to the actual accounting period, and
   (b) are apportioned to either of the two notional accounting periods in accordance with section 685,

   are treated for the purposes of Chapter 2 of Part 16 of CTA 2009 (companies with investment business) as expenses of management referable to that notional accounting period.

(3) Any allowances which are apportioned to either of the notional accounting periods in accordance with section 685 are treated for the purposes of section 253 of CAA 2001

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and section 1233 of CTA 2009 (companies with investment business: excess capital allowances) as falling to be made in that notional accounting period.

(4) In calculating the taxable total profits of an accounting period of the company ending after the change in ownership, no deduction may be made under section 1219 of CTA 2009 (expenses of management of a company's investment business) by reference to—
   (a) expenses of management deductible for an accounting period beginning before the change, or
   (b) allowances falling to be made for such an accounting period.

683 Disallowance of UK property business losses

(1) This section has effect for the purpose of restricting relief under sections 62 and 63 for a loss made by the company in a UK property business before the change in ownership.

(2) Relief under section 62(3) is available only in relation to each of the notional accounting periods considered separately.

(3) A loss made in an accounting period beginning before the change in ownership may not be—
   (a) carried forward under section 62(5)(a) or 63(3)(a) to an accounting period ending after the change in ownership, or
   (b) treated in relation to that accounting period as mentioned in section 62(5)(b) or 63(3)(b).

684 Disallowance of overseas property business losses

(1) This section has effect for the purpose of restricting relief under section 66 for a loss made by the company in an overseas property business before the change in ownership.

(2) A loss in the business made in an accounting period beginning before the change in ownership may not be used under section 66(3) to reduce the profits of the business of an accounting period ending after the change in ownership.

Apportionment of amounts

685 Apportionment of amounts

(1) This section applies for the purposes of this Chapter, but subsection (2) is subject to subsection (3).

(2) Any amount for the actual accounting period in column 1 of the following table is to be apportioned to the two notional accounting periods in accordance with the corresponding method of apportionment in column 2 of the table.

Row	*1. Amount to be apportioned*	*2. Method of apportionment*
1	The amount for the actual accounting period of any adjusted non-trading profits from the company's loan relationships (see section 686(2)).	Apportion the amount in column 1 on a time basis according to the respective lengths of the two notional accounting periods.

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2	The amount for the actual accounting period of any adjusted non-trading deficit from the company's loan relationships (see section 686(3)).	Apportion the amount in column 1 on a time basis according to the respective lengths of the two notional accounting periods.
3	The amount of any non-trading debit that falls to be brought into account for the actual accounting period for the purposes of Part 5 of CTA 2009 (loan relationships) in respect of any debtor relationship of the company.	(1) If condition A in section 686(4) is met, apportion the amount in column 1 by reference to the time of accrual of the amount to which the debit relates. (2) If condition B in section 686(5) is met, apportion the amount in column 1 to the first notional accounting period.
4	The amount of any non-trading deficit carried forward to the actual accounting period under section 457(1) of CTA 2009 (basic rule for deficits: carry forward to accounting periods after deficit period).	Apportion the whole of the amount in column 1 to the first notional accounting period.
5	The amount of any non-trading credits or debits in respect of intangible fixed assets that fall to be brought into account for the actual accounting period under section 751 of CTA 2009 (non-trading gains and losses), but excluding any amount within column 1 of row 6.	Apportion to each notional accounting period the credits or debits that would fall to be brought into account in that period if it were a period of account for which accounts were drawn up in accordance with generally accepted accounting practice.
6	The amount of any non-trading loss on intangible fixed assets carried forward to the actual accounting period under section 753(3) of CTA 2009 and treated under that section as if it were a non-trading debit of that period.	Apportion the whole of the amount in column 1 to the first notional accounting period.
7	The amount of any expenses of management referable to the actual accounting period within the meaning of Chapter 2 of Part 16 of CTA 2009 (companies with investment business) (but see section 686(6)).	Apportion to each notional accounting period the amounts that would fall to be brought into account in that period as an amount in column 1 if it were a period of account for which accounts were drawn up in accordance with generally accepted accounting practice.
8	The amount of any excess carried forward under section 1223 of CTA 2009 (expenses of management carried forward) to the actual accounting period.	Apportion the whole of the amount in column 1 to the first notional accounting period.
9	The amount of any allowances falling to be made for the actual accounting	Apportion the amount in column 1 on a time basis according to the

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	period as a result of section 253 of CAA 2001 which would (but for this Chapter) be added to the expenses of management for the period because of section 1233 of CTA 2009 (excess capital allowances).	respective lengths of the two notional accounting periods.
10	Any other amounts by reference to which the profits or losses of the actual accounting period would (but for this Chapter) be calculated.	Apportion the amount in column 1 on a time basis according to the respective lengths of the two notional accounting periods.

(3) If any method of apportionment in column 2 of the table in subsection (2) would work unjustly or unreasonably in any case, such other method is to be used as is just and reasonable.

(4) For the meaning of certain expressions used in this section, see section 686.

686 Meaning of certain expressions in section 685

(1) This section applies for the purposes of the table in section 685(2).

(2) For the purposes of column 1 of row 1 of the table, the amount for the actual accounting period of any adjusted non-trading profits from the company's loan relationships is the amount which would be the amount of the profits from those relationships chargeable under section 299 of CTA 2009 (charge to tax on non-trading profits) if, in calculating that amount, amounts for that period within column 1 of row 3 or 4 of the table were disregarded.

(3) For the purposes of column 1 of row 2 of the table, the amount for the actual accounting period of any adjusted non-trading deficit from the company's loan relationships is the amount which would be the amount of the non-trading deficit from those relationships if, in calculating that amount, amounts for that period within column 1 of row 3 or 4 of the table were disregarded.

(4) Condition A is that —
- (a) the amount in column 1 of row 3 of the table is determined on an amortised cost basis of accounting, and
- (b) none of the following provisions applies—
  - (i) section 373 of CTA 2009 (late interest treated as not accruing until paid in some cases),
  - (ii) section 407 of that Act (postponement until redemption of debits for connected companies' deeply discounted securities), or
  - (iii) section 409 of that Act (postponement until redemption of debits for close companies' deeply discounted securities).

(5) Condition B is that —
- (a) the amount in column 1 of row 3 of the table is determined on an amortised cost basis of accounting, and
- (b) any of the provisions mentioned in subsection (4)(b) applies.

(6) The expenses of management mentioned in column 1 of row 7 of the table do not include any expenses for which a deduction under section 1219 of CTA 2009

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(expenses of management of a company's investment business) would be disallowed because of subsection (3)(b) of that section.

Adjustment to balancing charges if relief is restricted

687 Adjustment to balancing charges if relief is restricted

(1) This section applies if condition A or B is met.

(2) Condition A is that the debits to be brought into account for the purposes of Part 5 of CTA 2009 (loan relationships) in the case of the company in respect of its loan relationships are restricted because of section 679.

(3) Condition B is that deductions from the company's total profits are restricted because of section 680 or 682.

(4) In applying the provisions of CAA 2001 about balancing charges to the company by reference to any event after the change in ownership, there is to be disregarded any allowance falling to be made in taxing the company's trade for any accounting period beginning before the change in ownership.

This subsection applies despite section 577(3) of CAA 2001.

(5) But subsection (4) does not apply if the allowance has been given effect to by means of relief against any profits of that accounting period or any subsequent accounting period beginning before the change in ownership.

(6) For the purposes of subsection (5), it is to be assumed that any loss attributable to any such allowance as is mentioned in subsection (4) is relieved before any loss which is not attributable to such an allowance.

Meaning of "significant increase in the amount of a company's capital"

688 Meaning of "significant increase in the amount of a company's capital"

(1) This section and sections 689 to 691 have effect for determining whether, for the purposes of section 677(2), there is a significant increase in the amount of a company's capital after a change in the ownership of the company.

(2) There is a significant increase in the amount of a company's capital if amount B—
- (a) exceeds amount A by at least £1 million, or
- (b) is at least twice amount A.

(3) For the meaning of—
- (a) "amount A" and "amount B", see sections 689 and 690 respectively, and
- (b) "amount of capital", see section 691.

689 Amount A

(1) In section 688, amount A is the lower of—
- (a) the amount of the company's capital immediately before the change in ownership, and
- (b) the highest 60 day minimum amount for the pre-change year.

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(2) The highest 60 day minimum amount for the pre-change year is found as follows.

Step 1 Find the daily amounts of the company's capital over the pre-change year.

Step 2 Take the highest of the daily amounts.

Step 3 Find out whether there was in the pre-change year a period of at least 60 days in which there was no daily amount lower than the amount taken.

Step 4 If there was, the amount taken is the highest 60 day minimum amount for the pre-change year. If there was not, take the next highest of the daily amounts and repeat step 3; and so on, until the highest 60 day minimum amount for the pre-change year is found.

(3) In this section "the pre-change year" means the period of one year ending immediately before the change in ownership.

690 Amount B

(1) In section 688, amount B is the highest 60 day minimum amount for the post-change period.

(2) The highest 60 day minimum amount for the post-change period is found as follows.

Step 1 Find the daily amounts of the company's capital over the post-change period.

Step 2 Take the highest of the daily amounts.

Step 3 Find out whether there was in the post-change period a period of at least 60 days in which there was no daily amount lower than the amount taken.

Step 4 If there was, the amount taken is the highest 60 day minimum amount for the post-change period. If there was not, take the next highest of the daily amounts and repeat step 3; and so on, until the highest 60 day minimum amount for the post-change period is found.

(3) In this section "the post-change period" means the period of 3 years beginning with the change in ownership.

691 Meaning of "amount of capital"

(1) This section applies for the purposes of sections 688 to 690.

(2) The amount of the capital of a company is the sum of—

(a) the amount of the paid up share capital of the company,

(b) the amount outstanding of any debts incurred by the company which are within section 453(2), and

(c) the amount outstanding of any redeemable loan capital issued by the company.

(3) For the purposes of subsection (2)—

(a) the amount of the paid up share capital includes any amount in the share premium account of the company, and

(b) the amount outstanding of any debts includes the amount of any interest due on the debts.

(4) Amounts of capital are to be expressed in sterling.

(5) In this section "share premium account" has the same meaning as in section 610 of the Companies Act 2006.

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CHAPTER 4

COMPANY WITH INVESTMENT BUSINESS: RESTRICTIONS ON RELIEF: ASSET TRANSFERRED WITHIN GROUP

Introduction

692 Introduction to Chapter

(1) This Chapter applies if—
- (a) there is a change in the ownership of a company with investment business ("the company"), and
- (b) conditions 1 to 3 are met.

(2) Condition 1 is that none of conditions A to C in section 677 is met.

(3) Condition 2 is that after the change in ownership the company acquires an asset from another company in circumstances such that—
- (a) section 171(1) of TCGA 1992 (no gain/no loss on transfer within group), or
- (b) section 775 of CTA 2009 (tax-neutral transfer within group),

applies to the acquisition.

(4) Condition 3 is that—
- (a) in a case within subsection (3)(a), a chargeable gain accrues to the company on a disposal of the asset within the period of 3 years beginning with the change in ownership, or
- (b) in a case within subsection (3)(b), there is a non-trading chargeable realisation gain on the realisation of the asset within that period.

(5) For the purposes of subsection (4), an asset (P) acquired by the company as mentioned in subsection (3) is treated as the same as an asset (Q) owned at a later time by the company if the value of Q is derived in whole or in part from P.

(6) In particular, P is treated as the same as Q for those purposes if—
- (a) Q is a freehold,
- (b) P was a leasehold, and
- (c) the lessee has acquired the reversion.

(7) In this Chapter—

"the change in ownership" means the change in ownership mentioned in subsection (1),

"the company" has the same meaning as in this section,

"non-trading chargeable realisation gain" means a chargeable realisation gain (within the meaning of Part 8 of CTA 2009 (intangible fixed assets)) which is a non-trading credit for the purposes of that Part (see section 746 of that Act),

"realisation" has the meaning given by section 734 of CTA 2009, and

"the relevant gain" means the gain within subsection (4)(a) or (b).

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693 Meaning of "amount of profits which represents a relevant gain"

(1) In this Chapter, the amount of any profits which represents a relevant gain is found by comparing—

(a) the amount ("Y") of the relevant gain, with

(b) the amount ("Z") which is included in respect of chargeable gains or, as the case may be, non-trading chargeable realisation gains for the accounting period concerned.

(2) If Y does not exceed Z, the amount of the profits which represents the relevant gain equals Y.

(3) If Y exceeds Z, the amount of those profits equals Z.

694 Meaning of "the relevant provisions"

In this Chapter "the relevant provisions" means—

(a) section 8(1) of, and Schedule 7A to, TCGA 1992 (amounts included in respect of chargeable gains in total profits), or

(b) Chapter 6 of Part 8 of CTA 2009 (intangible fixed assets: how credits and debits are given effect).

Notional split of accounting period in which change in ownership occurs

695 Notional split of accounting period in which change in ownership occurs

(1) This section applies for the purposes of this Chapter.

(2) The accounting period in which the change in ownership occurs ("the actual accounting period") is treated as two separate accounting periods ("notional accounting periods"), the first ending with the change and the second consisting of the remainder of the period.

(3) The amounts for the actual accounting period in column 1 of the table in section 702(2) are apportioned to the two notional accounting periods in accordance with section 702.

(4) In this Chapter "the actual accounting period" and "notional accounting periods" have the same meaning as in this section.

Restrictions on relief

696 Restriction on debits to be brought into account

(1) This section has effect for the purpose of restricting the debits to be brought into account for the purposes of Part 5 of CTA 2009 (loan relationships) in respect of the company's loan relationships.

(2) But this section applies only if, in accordance with the relevant provisions and section 702, an amount is included in respect of chargeable gains or, as the case may be, non-trading chargeable realisation gains in the total profits of the accounting period of the company in which the relevant gain accrues or arises.

(3) The debits to be brought into account for the purposes of Part 5 of CTA 2009 for—

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(a) the accounting period beginning immediately after the change in ownership, or

(b) any subsequent accounting period,

do not include relevant non-trading debits so far as the amount of those debits exceeds the modified total profits of the accounting period.

(4) In subsection (3) "the modified total profits of the accounting period" means the total profits of that period—

(a) less, if that period is the period in which the relevant gain accrues or arises, an amount equal to so much of those profits as represents the relevant gain, and

(b) after deducting any amounts which can be relieved against the profits, other than an amount falling to be deducted under section 461 of CTA 2009 (claim to set off deficit against other profits for the deficit period).

(5) If, as a result of subsection (3), a debit is to any extent not brought into account for an accounting period, that debit may (to that extent) be brought into account for the next accounting period, but this is subject to the application of subsections (3) and (4) to that next accounting period.

(6) For the meaning of "relevant non-trading debit", see section 730.

697 Restriction on the carry forward of non-trading deficit from loan relationships

(1) This section has effect for the purpose of restricting the carry forward of a non-trading deficit from the company's loan relationships under Part 5 of CTA 2009 (loan relationships).

(2) But this section applies only if, in accordance with the relevant provisions and section 702, an amount is included in respect of chargeable gains or, as the case may be, non-trading chargeable realisation gains in the total profits of the accounting period of the company in which the relevant gain accrues or arises.

(3) Subsection (4) applies if the non-trading deficit in column 1 of row 5 of the table in section 702(2) is apportioned in accordance with section 702(2) to the first notional accounting period.

(4) None of that non-trading deficit may be carried forward to—

(a) the accounting period beginning immediately after the change in ownership, or

(b) any subsequent accounting period.

698 Restriction on relief for non-trading loss on intangible fixed assets

(1) This section has effect for the purpose of restricting relief under section 753 of CTA 2009 (treatment of non-trading losses) in respect of a non-trading loss on intangible fixed assets.

(2) But this section applies only if, in accordance with the relevant provisions and section 702, an amount is included in respect of chargeable gains or, as the case may be, non-trading chargeable realisation gains in the total profits of the accounting period of the company ("the relevant period") in which the relevant gain accrues or arises.

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(3) Relief under section 753 of CTA 2009 against the total profits of the same accounting period is available only in relation to each of the notional accounting periods considered separately.

(4) Subsection (5) applies if a non-trading loss on intangible fixed assets for an accounting period beginning before the change in ownership is carried forward under section 753(3) of that Act to an accounting period ending after the change in ownership.

(5) The non-trading loss may not be used to give relief under section 753 of that Act in respect of so much of the total profits of the relevant period as represents the relevant gain.

699 Restrictions on the deduction of expenses of management

(1) This section has effect for the purpose of restricting deductions for expenses of management.

(2) Any amounts which—
   (a) are, or are treated as, expenses of management referable to the actual accounting period, and
   (b) are apportioned to either of the two notional accounting periods in accordance with section 702,

   are treated for the purposes of Chapter 2 of Part 16 of CTA 2009 (companies with investment business) as expenses of management referable to that notional accounting period.

(3) Any allowances which are apportioned to either of the notional accounting periods in accordance with section 702 are treated for the purposes of section 253 of CAA 2001 and section 1233 of CTA 2009 (companies with investment business: excess capital allowances) as falling to be made in that notional accounting period.

(4) Subsection (5) applies if, in accordance with the relevant provisions and section 702, an amount is included in respect of chargeable gains or, as the case may be, non-trading chargeable realisation gains in the total profits of the accounting period of the company in which the relevant gain accrues or arises.

(5) In calculating the taxable total profits of the accounting period of the company in which the relevant gain accrues or arises, no deduction may be made under section 1219 of CTA 2009 (expenses of management of a company's investment business) by reference to—
   (a) expenses of management deductible for an accounting period beginning before the change in ownership, or
   (b) allowances falling to be made for such an accounting period,

   from so much of the total profits of the accounting period as represents the relevant gain.

700 Disallowance of UK property business losses

(1) This section has effect for the purpose of restricting relief under sections 62 and 63 for a loss made by the company in a UK property business before the change in ownership.

Status: *Point in time view as at 01/04/2014.*
Changes to legislation: *Corporation Tax Act 2010 is up to date with all changes known to be in force on or before 12 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(2) But this section applies only if, in accordance with the relevant provisions and section 702, an amount is included in respect of chargeable gains or, as the case may be, non-trading chargeable realisation gains in the total profits of the accounting period of the company in which the relevant gain accrues or arises.

(3) Relief under section 62(3) is available only in relation to each of the notional accounting periods considered separately.

(4) A loss made in an accounting period beginning before the change in ownership may not be deducted, as a result of section 62(5) or 63(3), from so much of the profits of an accounting period ending after the change in ownership as represents the relevant gain.

701 Disallowance of overseas property business losses

(1) This section has effect for the purpose of restricting relief under section 66 for a loss made by the company in an overseas property business before the change in ownership.

(2) But this section applies only if, in accordance with the relevant provisions and section 702, an amount is included in respect of chargeable gains or, as the case may be, non-trading chargeable realisation gains in the total profits of the accounting period of the company in which the relevant gain accrues or arises.

(3) A loss in the business made in an accounting period beginning before the change in ownership may not be used under section 66(3) to reduce so much of the profits of the business of an accounting period ending after the change in ownership as represents the relevant gain.

Apportionment of amounts

702 Apportionment of amounts

(1) This section applies for the purposes of this Chapter, but subsection (2) is subject to subsection (3).

(2) Any amount for the actual accounting period in column 1 of the following table is to be apportioned to the two notional accounting periods in accordance with the corresponding method of apportionment in column 2 of the table.

Row	*1. Amount to be apportioned*	*2. Method of apportionment*
1	The amount which would in accordance with the relevant provisions (and but for this Chapter) be included in respect of chargeable gains or, as the case may be, non-trading chargeable realisation gains in the total profits of the actual accounting period.	(1) If the amount in column 1 does not exceed the amount of the relevant gain, apportion the whole of it to the second notional accounting period. (2) If the amount in column 1 exceeds the amount of the relevant gain, apportion the excess to the first notional accounting period and an amount equal to the relevant gain to the second notional accounting period.

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2	The amount for the actual accounting period of any adjusted non-trading profits from the company's loan relationships (see section 703(2)).	Apportion the amount in column 1 on a time basis according to the respective lengths of the two notional accounting periods.
3	The amount for the actual accounting period of any adjusted non-trading deficit from the company's loan relationships (see section 703(3)).	Apportion the amount in column 1 on a time basis according to the respective lengths of the two notional accounting periods.
4	The amount of any non-trading debit that falls to be brought into account for the actual accounting period for the purposes of Part 5 of CTA 2009 (loan relationships) in respect of any debtor relationship of the company.	(1) If condition A in section 703(4) is met, apportion the amount in column 1 by reference to the time of accrual of the amount to which the debit relates. (2) If condition B in section 703(5) is met, apportion the amount in column 1 to the first notional accounting period.
5	The amount of any non-trading deficit carried forward to the actual accounting period under section 457(1) of CTA 2009 (basic rule for deficits: carry forward to accounting periods after deficit period).	Apportion the whole of the amount in column 1 to the first notional accounting period.
6	The amount of any non-trading credits or debits in respect of intangible fixed assets that fall to be brought into account for the actual accounting period under section 751 of CTA 2009 (non-trading gains and losses), but excluding any amount within column 1 of row 7.	Apportion to each notional accounting period the credits or debits that would fall to be brought into account in that period if it were a period of account for which accounts were drawn up in accordance with generally accepted accounting practice.
7	The amount of any non-trading loss on intangible fixed assets carried forward to the actual accounting period under section 753(3) of CTA 2009 and treated under that section as if it were a non-trading debit of that period.	Apportion the whole of the amount in column 1 to the first notional accounting period.
8	The amount of any expenses of management referable to the actual accounting period within the meaning of Chapter 2 of Part 16 of CTA 2009 (companies with investment business) (but see section 703(6)).	Apportion to each notional accounting period the amounts that would fall to be brought into account in that period as an amount in column 1 if it were a period of account for which accounts were drawn up in accordance with generally accepted accounting practice.
9	The amount of any excess carried forward under section 1223 of CTA 2009 (expenses of management	Apportion the whole of the amount in column 1 to the first notional accounting period.

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	carried forward) to the actual accounting period.	
10	The amount of any allowances falling to be made for the actual accounting period as a result of section 253 of CAA 2001 which would (but for this Chapter) be added to the expenses of management for the period because of section 1233 of CTA 2009 (excess capital allowances).	Apportion the amount in column 1 on a time basis according to the respective lengths of the two notional accounting periods.
11	Any other amounts by reference to which the profits or losses of the actual accounting period would (but for this Chapter) be calculated.	Apportion the amount in column 1 on a time basis according to the respective lengths of the two notional accounting periods.

(3) If any method of apportionment in column 2 of rows 2 to 11 of the table in subsection (2) would work unjustly or unreasonably in any case, such other method is to be used as is just and reasonable.

(4) For the meaning of certain expressions used in this section, see section 703.

703 Meaning of certain expressions in section 702

(1) This section applies for the purposes of the table in section 702(2).

(2) For the purposes of column 1 of row 2 of the table, the amount for the actual accounting period of any adjusted non-trading profits from the company's loan relationships is the amount which would be the amount of the profits from those relationships chargeable under section 299 of CTA 2009 (charge to tax on non-trading profits) if, in calculating that amount, amounts for that period within column 1 of row 4 or 5 of the table were disregarded.

(3) For the purposes of column 1 of row 3 of the table, the amount for the actual accounting period of any adjusted non-trading deficit from the company's loan relationships is the amount which would be the amount of the non-trading deficit from those relationships if, in calculating that amount, amounts for that period within column 1 of row 4 or 5 of the table were disregarded.

(4) Condition A is that—
- (a) the amount in column 1 of row 4 of the table is determined on an amortised cost basis of accounting, and
- (b) none of the following provisions applies—
  - (i) section 373 of CTA 2009 (late interest treated as not accruing until paid in some cases),
  - (ii) section 407 of that Act (postponement until redemption of debits for connected companies' deeply discounted securities), or
  - (iii) section 409 of that Act (postponement until redemption of debits for close companies' deeply discounted securities).

(5) Condition B is that—
- (a) the amount in column 1 of row 4 of the table is determined on an amortised cost basis of accounting, and

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(b) any of the provisions mentioned in subsection (4)(b) applies.

(6) The expenses of management mentioned in column 1 of row 8 of the table do not include any expenses for which a deduction under section 1219 of CTA 2009 (expenses of management of a company's investment business) would be disallowed because of subsection (3)(b) of that section.

CHAPTER 5

COMPANY WITHOUT INVESTMENT BUSINESS: DISALLOWANCE OF PROPERTY LOSSES

704 Company carrying on UK property business

(1) This section applies if—
- (a) there is a change in the ownership of a company carrying on a UK property business,
- (b) the company is not a company with investment business, and
- (c) condition A or B is met.

(2) Condition A is that within any period of 3 years in which the change in ownership occurs there is a major change in the nature or conduct of a trade or UK property business carried on by the company.

(3) Condition B is that the change in ownership occurs at any time after the scale of the activities in a trade or UK property business carried on by the company has become small or negligible and before any significant revival of the trade or business.

(4) The following provisions have effect for the purpose of restricting relief under section 62 for a loss made by the company in a UK property business before the change in ownership.

(5) The accounting period in which the change in ownership occurs ("the actual accounting period") is treated for that purpose as two separate accounting periods ("notional accounting periods"), the first ending with the change and the second consisting of the remainder of the period.

(6) The profits or losses of the actual accounting period are apportioned to the two notional accounting periods on a time basis according to the respective lengths of the two periods.

(7) But if that method of apportionment would work unjustly or unreasonably in any case, such other method is to be used as is just and reasonable.

(8) Relief under section 62(3) is available only in relation to each of the notional accounting periods considered separately.

(9) A loss made in an accounting period beginning before the change in ownership may not be—
- (a) carried forward under section 62(5)(a) to an accounting period ending after the change in ownership, or
- (b) treated in relation to such an accounting period as mentioned in section 62(5)(b).

Status: *Point in time view as at 01/04/2014.*
Changes to legislation: *Corporation Tax Act 2010 is up to date with all changes known to be in force on or before 12 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(10) In this section "major change in the nature or conduct of a trade or UK property business" includes—
  (a) a major change in the type of property dealt in, or services or facilities provided in, the trade or business, or
  (b) a major change in customers, outlets or markets of the trade or business.

This section applies even if the change is the result of a gradual process which began before the period of 3 years mentioned in subsection (2).

705 Company carrying on overseas property business

(1) This section applies if—
  (a) there is a change in the ownership of a company carrying on an overseas property business,
  (b) the company is not a company with investment business, and
  (c) condition A or B is met.

(2) Condition A is that within any period of 3 years in which the change in ownership occurs there is a major change in the nature or conduct of a trade or overseas property business carried on by the company.

(3) Condition B is that the change in ownership occurs at any time after the scale of the activities in a trade or overseas property business carried on by the company has become small or negligible and before any significant revival of the trade or business.

(4) The following provisions have effect for the purpose of restricting relief under section 66 for a loss made by the company in an overseas property business before the change in ownership.

(5) The accounting period in which the change in ownership occurs ("the actual accounting period") is treated for that purpose as two separate accounting periods ("notional accounting periods"), the first ending with the change and the second consisting of the remainder of the period.

(6) The profits or losses of the actual accounting period are apportioned to the two notional accounting periods on a time basis according to the respective lengths of the two periods.

(7) But if that method of apportionment would work unjustly or unreasonably in any case, such other method is to be used as is just and reasonable.

(8) A loss in the business made in an accounting period beginning before the change in ownership may not be used under section 66(3) to reduce the profits of the business of an accounting period ending after the change in ownership.

(9) In this section "major change in the nature or conduct of a trade or overseas property business" includes—
  (a) a major change in the type of property dealt in, or services or facilities provided in, the trade or business, or
  (b) a major change in customers, outlets or markets of the trade or business.

This section applies even if the change is the result of a gradual process which began before the period of 3 years mentioned in subsection (2).

Status: *Point in time view as at 01/04/2014.*
Changes to legislation: *Corporation Tax Act 2010 is up to date with all changes known to be in force on or before 12 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

[F455CHAPTER 5A

SHELL COMPANIES: RESTRICTIONS ON RELIEF

Textual Amendments

F455 Pt. 14 Ch. 5A inserted (with effect in accordance with Sch. 13 para. 3 of the amending Act) by Finance Act 2013 (c. 29), **Sch. 13 para. 1(3)**

Introduction

705A Introduction to Chapter

(1) This Chapter applies where there is a change in the ownership of a shell company.

(2) In this Chapter—

"the change in ownership" means the change in ownership mentioned in subsection (1);

"the company" means the company mentioned in subsection (1);

"shell company" means a company that—

(a) is not carrying on a trade,

(b) is not a company with investment business, and

(c) is not carrying on a UK property business.

705B Notional split of accounting period in which change in ownership occurs

(1) This section applies for the purposes of this Chapter.

(2) The accounting period in which the change in ownership occurs ("the actual accounting period") is treated as two separate accounting periods ("notional accounting periods"), the first ending with the change and the second consisting of the remainder of the period.

(3) The amounts for the actual accounting period in column 1 of the table in section 705F(2) are apportioned to the two notional accounting periods in accordance with section 705F.

(4) In this Chapter "the actual accounting period" and "notional accounting periods" have the same meaning as in this section.

Restrictions on relief

705C Restriction on debits to be brought into account

(1) This section has effect for the purpose of restricting the debits to be brought into account for the purposes of Part 5 of CTA 2009 (loan relationships) in respect of the company's loan relationships.

(2) The debits to be brought into account for the purposes of Part 5 of CTA 2009 for—

(a) the accounting period beginning immediately after the change in ownership, or

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(b) any subsequent accounting period,

do not include relevant non-trading debits so far as amount A exceeds amount B.

(3) Amount A is the sum of—

(a) the amount of those relevant non-trading debits, and

(b) the amount of any relevant non-trading debits which have been brought into account for the purposes of that Part for any previous accounting period ending after the change in ownership.

(4) Amount B is the amount of the taxable total profits of the accounting period ending with the change in ownership.

(5) For the meaning of "relevant non-trading debit", see section 730.

705D Restriction on carry forward of non-trading deficit from loan relationships

(1) This section has effect for the purpose of restricting the carry forward of a non-trading deficit from the company's loan relationships under Part 5 of CTA 2009 (loan relationships).

(2) Subsection (3) applies if the non-trading deficit in column 1 of row 4 of the table in section 705F(2) is apportioned in accordance with section 705F to the first notional accounting period.

(3) None of that non-trading deficit may be carried forward to—

(a) the accounting period beginning immediately after the change in ownership, or

(b) any subsequent accounting period.

705E Restriction on relief for non-trading loss on intangible fixed assets

(1) This section has effect for the purpose of restricting relief under section 753 of CTA 2009 (treatment of non-trading losses) in respect of a non-trading loss on intangible fixed assets.

(2) Relief under section 753 of CTA 2009 against the total profits of the same accounting period is available only in relation to each of the notional accounting periods considered separately.

(3) A non-trading loss on intangible fixed assets for an accounting period beginning before the change in ownership may not be—

(a) carried forward under section 753(3) of that Act to an accounting period ending after the change in ownership, or

(b) treated under that section as if it were a non-trading debit of that period.

Apportionment of amounts

705F Apportionment of amounts

(1) This section applies for the purposes of this Chapter.

Status: *Point in time view as at 01/04/2014.*
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(2) Any amount for the actual accounting period in column 1 of the following table is to be apportioned to the two notional accounting periods in accordance with the corresponding method of apportionment in column 2 of the table.

Row	*1. Amount to be apportioned*	*2. Method of apportionment*
1	The amount for the actual accounting period of any adjusted non-trading profits from the company's loan relationships (see section 705G(2))).	Apportion the amount in column 1 on a time basis according to the respective lengths of the two notional accounting periods.
2	The amount for the actual accounting period of any adjusted non-trading deficit from the company's loan relationships (see section 705G(3)).	Apportion the amount in column 1 on a time basis according to the respective lengths of the two notional accounting periods.
3	The amount of any non-trading debit that falls to be brought into account for the actual accounting period for the purposes of Part 5 of CTA 2009 (loan relationships) in respect of any debtor relationship of the company.	(1) If condition A in section 705G(4) is met, apportion the amount in column 1 by reference to the time of accrual of the amount to which the debit relates. (2) If condition B in section 705G(5) is met, apportion the amount in column 1 to the first notional accounting period.
4	The amount of any non-trading deficit carried forward to the actual accounting period under section 457(1) of CTA 2009 (basic rule for deficits: carry forward to accounting periods after deficit period).	Apportion the whole of the amount in column 1 to the first notional accounting period.
5	The amount of any non-trading credits or debits in respect of intangible fixed assets that fall to be brought into account for the actual accounting period under section 751 of CTA 2009 (non-trading gains and losses), but excluding any amount within column 1 of row 6.	Apportion to each notional accounting period the credits or debits that would fall to be brought into account in that period if it were a period of account for which accounts were drawn up in accordance with generally accepted accounting practice.
6	The amount of any non-trading loss on intangible fixed assets carried forward to the actual accounting period under section 753(3) of CTA 2009 and treated under that section as if it were a non-trading debit of that period.	Apportion the whole of the amount in column 1 to the first notional accounting period.
7	Any other amounts by reference to which the profits or losses of the	Apportion the amount in column 1 on a time basis according to the

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	actual accounting period would (but for this Chapter) be calculated.	respective lengths of the two notional accounting periods.

(3) If any method of apportionment in column 2 of the table in subsection (2) would work unjustly or unreasonably in any case, such other method is to be used as is just and reasonable.

(4) For the meaning of certain expressions used in this section, see section 705G.

705G Meaning of certain expressions in section 705F

(1) This section applies for the purposes of the table in section 705F(2).

(2) For the purposes of column 1 of row 1 of the table, the amount for the actual accounting period of any adjusted non-trading profits from the company's loan relationships is the amount which would be the amount of the profits from those relationships chargeable under section 299 of CTA 2009 (charge to tax on non-trading profits) if, in calculating that amount, amounts for that period within column 1 of row 3 or 4 of the table were disregarded.

(3) For the purposes of column 1 of row 2 of the table, the amount for the actual accounting period of any adjusted non-trading deficit from the company's loan relationships is the amount which would be the amount of the non-trading deficit from those relationships if, in calculating that amount, amounts for that period within column 1 of row 3 or 4 of the table were disregarded.

(4) Condition A is that—
- (a) the amount in column 1 of row 3 of the table is determined on an amortised cost basis of accounting, and
- (b) none of the following provisions applies—
  - (i) section 373 of CTA 2009 (late interest treated as not accruing until paid in some cases),
  - (ii) section 407 of that Act (postponement until redemption of debits for connected companies' deeply discounted securities), or
  - (iii) section 409 of that Act (postponement until redemption of debits for close companies' deeply discounted securities).

(5) Condition B is that—
- (a) the amount in column 1 of row 3 of the table is determined on an amortised cost basis of accounting, and
- (b) any of the provisions mentioned in subsection (4)(b) applies.**]**

CHAPTER 6

RECOVERY OF UNPAID CORPORATION TAX

General definitions

706 Meaning of "linked" person

(1) If there is a change in the ownership of a company, a person is "linked" to the company, for the purposes of this Chapter, if condition A or B is met.

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(2) Condition A is that the person had control of the company at any time in the relevant period before the change.

(3) Condition B is that the person is a company of which a person mentioned in subsection (2) had control at any time in the period of 3 years before the change.

(4) For the meaning of—
  (a) "control", see section 707, and
  (b) "the relevant period", see section 709.

707 Meaning of "control"

(1) This section applies for the purposes of this Chapter.

(2) A person ("P") is treated as having control of a company ("C") if P—
  (a) exercises,
  (b) is able to exercise, or
  (c) is entitled to acquire,

  direct or indirect control over C's affairs.

(3) In particular, P is treated as having control of C if P possesses or is entitled to acquire—
  (a) 50% of the share capital or issued share capital of C,
  (b) 50% of the voting power in C,
  (c) so much of the issued share capital of C as would, on the assumption that the whole of the income of C were distributed among the participators, entitle P to receive the greater part of the amount so distributed, or
  (d) such rights as would entitle P, in the event of the winding up of C or in any other circumstances, to receive the greater part of the assets of C which would then be available for distribution among the participators.

(4) Any rights that P or any other person has as a loan creditor are to be disregarded for the purposes of the assumption in subsection (3)(c).

(5) If two or more persons together satisfy any of the conditions in subsections (2) and (3) and do so because they acted together to put themselves in a position where they will in fact satisfy the condition, each of them is treated as having control of C.

(6) In this section—

  "loan creditor" has the meaning given by section 453, and

  "participator" has the meaning given by section 454.

(7) See also section 708 (rights to be attributed for the purposes of this section).

708 Rights to be attributed for the purposes of section 707

(1) This section applies for the purposes of section 707.

(2) A person is treated as entitled to acquire anything which the person—
  (a) is entitled to acquire at a future date, or
  (b) will at a future date be entitled to acquire.

(3) If a person—
  (a) possesses any rights or powers on behalf of another person (A), or

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(b) may be required to exercise any rights or powers on A's direction or behalf,

those rights or powers are to be attributed to A.

(4) There may also be attributed to a person all the rights and powers—

(a) of any company of which the person has, or the person and associates of the person have, control,

(b) of any two or more companies within paragraph (a),

(c) of any associate of the person, or

(d) of any two or more associates of the person.

(5) The rights and power which may be attributed under subsection (4)—

(a) include those attributed to a company or associate under subsection (3) but

(b) do not include those attributed to an associate under subsection (4).

(6) Such attributions are to be made under subsection (4) as will result in C being treated as under the control of 5 or fewer participators if it can be so treated.

(7) In this section—

"associate" has the meaning given by section 448, and

"participator" has the meaning given by section 454.

709 Meaning of "the relevant period"

(1) This section applies for the purposes of this Chapter.

(2) "The relevant period", in relation to a change in the ownership of a company, means the period of 3 years before the change.

(3) But if in the period of 3 years before the change ("the later change") there was another change in the ownership of the company ("the earlier change"), "the relevant period", in relation to the later change, means the period between the earlier change and the later change.

Recovery of unpaid corporation tax for accounting period beginning before change

710 Recovery of unpaid corporation tax for accounting period beginning before change

(1) This section applies if an officer of Revenue and Customs considers that—

(a) there has been a change in the ownership of a company ("X"),

(b) any corporation tax assessed on X for an accounting period beginning before the change remains unpaid at any time more than 6 months after it was assessed, and

(c) any of conditions A to C in section 711 (conditions relating to company's trade or business) is met.

(2) A person who is linked to X may be assessed by the officer and charged to an amount of corporation tax which does not exceed the amount remaining unpaid.

(3) A person assessed and charged under this section is to be assessed and charged in the name of X.

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(4) An assessment under this section is not out of time if it is made within 3 years from the date of the final determination of the liability of X to corporation tax for the accounting period mentioned in subsection (1)(b).

711 Conditions relating to company's trade or business

(1) The following are the conditions mentioned in section 710(1)(c).

(2) Condition A is that—

(a) in the period of 3 years before the change in the ownership of X, the activities of a trade or business of X cease or the scale of those activities becomes small or negligible, and

(b) there is no significant revival of those activities before the change occurs.

(3) Condition B is that after the change in the ownership of X, but under arrangements made before it, the activities of a trade or business of X cease or the scale of those activities becomes small or negligible.

(4) Condition C is that—

(a) there is a major change in the nature or conduct of a trade or business of X in the relevant 6 year period,

(b) a relevant transfer of assets of X occurs—

(i) in the period of 3 years before the change in the ownership of X, or

(ii) after the change but under arrangements made before it, and

(c) the major change mentioned in paragraph (a) is attributable to that transfer.

(5) In this section—

"the relevant 6 year period" means the period of 6 years beginning 3 years before the change in the ownership of X,

"relevant transfer", in relation to assets of X, means a transfer of those assets—

(a) to a person who had control of X at any time in the relevant period before the change in the ownership of X,

(b) to a person connected with a person mentioned in paragraph (a), or

(c) to a person under arrangements which enable any of those assets, or any assets representing those assets, to be transferred to a person mentioned in paragraph (a) or (b), and

"transfer", in relation to an asset, includes—

(a) any disposal, letting or hiring of it,

(b) any grant or transfer of any right, interest or licence in or over it, and

(c) the giving of any business facilities with respect to it.

(6) For the meaning of "a major change in the nature or conduct of a trade or business", see section 712.

712 Meaning of "a major change in the nature or conduct of a trade or business"

(1) This section applies for the purposes of section 711(4).

(2) "A major change in the nature or conduct of a trade or business" includes—

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(a) a major change in the type of property dealt in, or services or facilities provided, in the trade or business,
(b) a major change in customers, outlets or markets of the trade or business,
(c) a change by which the company ceases to be a trading company and becomes an investment company,
(d) a change by which the company ceases to be an investment company and becomes a trading company, and
(e) if the company is an investment company, a major change in the nature of the investments held by the company.

(3) Any reference in subsection (2) to a change includes a change which is achieved gradually as a result of a series of transfers.

(4) In this section "trading company" means a company whose business consists wholly or mainly in the carrying on of a trade or trades.

(5) For the purposes of this section, a company is an investment company if—
(a) its business consists wholly or mainly in the making of investments, and
(b) the principal part of its income is derived from investments.

(6) But a company is not an investment company if its business consists wholly or mainly in the holding of shares or securities of companies—
(a) which are its 90% subsidiaries, and
(b) which are trading companies.

Recovery of unpaid corporation tax for accounting period ending on or after change

713 Recovery of unpaid corporation tax for accounting period ending on or after change

(1) This section applies if an officer of Revenue and Customs considers that—
(a) there has been a change in the ownership of a company ("Y"),
(b) any corporation tax has been assessed on Y or an associated company for an accounting period ending on or after the change,
(c) that tax remains unpaid at any time more than 6 months after it was assessed, and
(d) the condition in section 714 (the expectation condition) is met.

(2) A person who is linked to Y may be assessed by the officer and charged to an amount of corporation tax which does not exceed the amount remaining unpaid.

(3) A person assessed and charged under this section is to be assessed and charged in the name of the company ("T") by which the tax remains unpaid.

(4) An assessment under this section is not out of time if it is made within 3 years from the date of the final determination of the liability of T to corporation tax for the accounting period mentioned in subsection (1)(b).

(5) For the meaning of "associated company", see section 718.

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714 The expectation condition

(1) The condition mentioned in section 713(1)(d) is that it would be reasonable (apart from section 713) to make the inference specified in subsection (3) from any of the matters specified in subsection (2).

(2) Those matters are—
- (a) the terms of any transactions entered into in connection with the change in the ownership of Y, and
- (b) the other circumstances of the change and of any such transactions.

(3) The inference is that at least one of the transactions mentioned in subsection (2) was entered into by one or more of its parties on the assumption that, if a potential tax liability were to arise, it would be unlikely to be met or to be met in full.

(4) A "potential tax liability" is a liability to pay corporation tax which would or might arise—
- (a) from an assessment, made after the change in ownership, on Y or an associated company (whether or not a particular associated company), and
- (b) in foreseeable circumstances.

(5) Circumstances are "foreseeable circumstances" if—
- (a) the circumstances were reasonably foreseeable at the time of the change in ownership, or
- (b) there was a reasonably foreseeable risk at that time that the circumstances might occur.

(6) For the meaning of "transaction entered into in connection with change in ownership", see section 715.

715 Meaning of "transaction entered into in connection with change in ownership"

(1) This section has effect for the purposes of section 714.

(2) A transaction is entered into in connection with a change in the ownership of Y if—
- (a) it is the transaction, or one of the transactions, by which the change is effected, or
- (b) it is entered into as part of a series of transactions, or scheme, of which transactions effecting the change have formed or will form part.

(3) Any reference in this section to a scheme is to a scheme, arrangements or understanding of any kind.

(4) It does not matter for the purposes of subsection (3)—
- (a) whether the scheme, arrangements or understanding is legally enforceable, or
- (b) how many transactions are involved.

(5) It does not matter, for the purpose of determining whether any transactions have formed or will form part of a series of transactions or scheme, that the parties to each of the transactions are not the same.

(6) The cases in which any two or more transactions are to be taken as forming part of a series of transactions or scheme include a case in which it would be reasonable to assume that one or more of them—

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(a) would not have been entered into independently of the other or others, or
(b) if entered into independently of the other or others, would not have taken the same form or been on the same terms.

Miscellaneous

716 Interest

(1) Section 87A of TMA 1970 (interest on overdue corporation tax etc) has effect in relation to corporation tax assessed under section 710 or 713 (recovery of unpaid corporation tax) with the following modification.

(2) That modification is that any reference to the date when the tax becomes due and payable is to be read as a reference to the date when the tax became due and payable—
(a) in the case of an assessment under section 710 (recovery of tax for accounting period beginning before change), by X,
(b) in the case of an assessment under section 713 (recovery of tax for accounting period ending on or after change), by Y or the associated company, depending on which is the company whose unpaid tax gave rise to the assessment.

717 Effect of payment in pursuance of assessment under section 710 or 713

(1) A payment—
(a) in pursuance of an assessment under section 710 or 713 (recovery of unpaid corporation tax), or
(b) of interest under section 87A of TMA 1970 (as that section has effect in accordance with section 716),

is not allowed as a deduction in calculating income, profits or losses for any tax purposes.

(2) A person who makes such a payment may recover an amount equal to the payment—
(a) in the case of an assessment under section 710 (recovery of tax for accounting period beginning before change), from X, or
(b) in the case of an assessment under section 713 (recovery of tax for accounting period ending on or after change), from Y or the associated company, depending on which is the company whose unpaid tax gave rise to the assessment.

718 Meaning of "associated company"

(1) This section has effect for the purposes of sections 713 and 714.

(2) "Associated company", in relation to Y and an assessment to tax, means a company (whenever formed) which, at the time of the assessment or at an earlier time after the change in the ownership of Y—
(a) has control of Y,
(b) is a company of which Y has control, or
(c) is a company under the control of the same person or persons as Y.

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CHAPTER 7

MEANING OF "CHANGE IN THE OWNERSHIP OF A COMPANY"

Meaning of "change in the ownership of a company"

719 Meaning of "change in the ownership of a company"

(1) For the purposes of this Part there is a change in the ownership of a company if condition A, B or C is met.

(2) Condition A is that a single person acquires a holding of more than half the ordinary share capital of the company.

(3) Condition B is that—
- (a) two or more persons each acquire a holding of at least 5% of the ordinary share capital of the company, and
- (b) those holdings together amount to more than half the ordinary share capital of the company.

(4) Condition C is that—
- (a) two or more persons each acquire a holding of the ordinary share capital of the company, and
- (b) those holdings together amount to more than half the ordinary share capital of the company,

but there is disregarded a holding of less than 5% unless—
- (i) it is an addition to an existing holding, and
- (ii) the two holdings together amount to at least 5% of the ordinary share capital of the company.

(5) See also sections 721 and 722 which provide for things other than ordinary share capital to be taken into account in determining whether there has been a change in the ownership of a company.

720 Section 719: supplementary

(1) The following provisions apply for the purposes of section 719.

(2) The circumstances at any two points in time with not more than 3 years between may be compared, and a holder ("H") at the later time may be regarded as having acquired whatever H did not hold at the earlier time.

It does not matter what H has acquired or disposed of in between.

(3) To allow for any issue of shares or other reorganisation of capital, the comparison may be made in terms of percentage holdings of the total ordinary share capital at the respective times, so that a person whose percentage holding is greater at the later time may be regarded as having acquired a percentage holding equal to the increase.

(4) To decide if a person has acquired—
- (a) a holding of at least 5%, or
- (b) a holding which makes at least 5% when added to an existing holding,

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acquisitions by, and holdings of, two or more persons who are connected persons are to be added together as if they were acquisitions by, and holdings of, one and the same person.

(5) Any acquisition of shares under a will or on intestacy is left out of account.

(6) Any gift of shares which is unsolicited and made without regard to the provisions of this Part is left out of account.

721 When things other than ordinary share capital may be taken into account: Chapters 2 to [F456 5A]

(1) This section applies for the purposes of Chapters 2 to **[**F457 5A **]** if conditions A and B are met.

(2) Condition A is that persons (whether company members or not) possess extraordinary rights or powers under any document regulating a company.

(3) Condition B is that because of that fact ownership of the ordinary share capital may not be an appropriate test of whether there has been a major change in the persons for whose benefit the relief may ultimately enure.

(4) In determining whether there has been a change in the ownership of the company for the purposes of Chapter 2, 3, 4 **[**F458, 5 or 5A **]** , any of the following may be taken into account instead of ordinary share capital—

(a) holdings of all kinds of share capital,

(b) holdings of any particular kind of share capital,

(c) voting power, and

(d) any other kind of special power.

Textual Amendments

F456 Word in s. 721 heading substituted (with effect in accordance with Sch. 13 para. 3 of the amending Act) by Finance Act 2013 (c. 29), **Sch. 13 para. 1(4)(a)**

F457 Word in s. 721(1) substituted (with effect in accordance with Sch. 13 para. 3 of the amending Act) by Finance Act 2013 (c. 29), **Sch. 13 para. 1(4)(b)**

F458 Words in s. 721(4) substituted (with effect in accordance with Sch. 13 para. 3 of the amending Act) by Finance Act 2013 (c. 29), **Sch. 13 para. 1(4)(c)**

722 When things other than ordinary share capital may be taken into account: Chapter 6

(1) This section applies for the purposes of Chapter 6 if conditions A and B are met.

(2) Condition A is that persons (whether company members or not) possess extraordinary rights or powers under any document regulating a company.

(3) Condition B is that because of that fact ownership of the ordinary share capital may not be an appropriate test of whether there has been a change in the ownership of the company.

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(4) In determining whether there has been a change in the ownership of the company for the purposes of Chapter 6, any of the following may be taken into account instead of ordinary share capital—
   (a) holdings of all kinds of share capital,
   (b) holdings of any particular kind of share capital,
   (c) voting power, and
   (d) any other kind of special power.

Changes in indirect ownership

723 Changes in indirect ownership

(1) This section applies if there is a change in the ownership of a company, other than a change in ownership which is disregarded because of section 724.

(2) The reference in subsection (1) to a change in the ownership of a company includes a change in ownership occurring as a result of the application of this section.

(3) If condition A in section 719 is met, the person mentioned in that condition is treated for the purposes of this Chapter as having acquired at the time of the change in ownership any relevant assets owned by the company.

(4) If condition B in section 719 is met but condition A is not, each of the persons mentioned in condition B is treated for the purposes of this Chapter as having acquired at the time of the change in ownership the appropriate fraction of any relevant assets owned by the company.

(5) In a case not falling within subsection (3) or (4), each of the persons mentioned in condition C in section 719 (other than any person whose holding is disregarded for the purposes of that condition) is treated for the purposes of this Chapter as having acquired at the time of the change in ownership the appropriate fraction of any relevant assets owned by the company.

(6) In this section—

"the appropriate fraction", in relation to one of two or more persons mentioned in subsection (4) or (5), means—

$$\frac{X}{Y}$$

where—

a X is the percentage of the ordinary share capital acquired by that person, and

b Y is the percentage of that capital acquired by all those persons taken together, and

"relevant assets", in relation to a company, means—

(a) any ordinary share capital of another company, and

(b) any property or rights which under section 721 or 722 may be taken into account instead of ordinary share capital of another company.

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Disregard of change in ownership

724 Disregard of change in company ownership

(1) A change in the ownership of a company ("the subsidiary company") is disregarded for the purposes of Chapters 2 to 6 if —
  (a) immediately before the change in ownership, the subsidiary company is a qualifying 75% subsidiary of another company ("the parent company"), and
  (b) although there is a change in the direct ownership of the subsidiary company, the subsidiary company continues after the change to be a qualifying 75% subsidiary of the parent company.

(2) For the purposes of this section, the subsidiary company is a qualifying 75% subsidiary of the parent company if conditions A, B and C are met.

(3) Condition A is that the subsidiary company is a 75% subsidiary of the parent company.

(4) Condition B is that the parent company would be beneficially entitled to at least 75% of any profits available for distribution to equity holders of the subsidiary company.

(5) Condition C is that the parent company would be beneficially entitled to at least 75% of any assets of the subsidiary company available for distribution to its equity holders on a winding up.

(6) Chapter 6 of Part 5 (equity holders and profits or assets available for distribution) applies for the purposes of subsections (4) and (5) as it applies for the purposes of section 151(4)(a) and (b).

Supplementary provision

725 Provision applying for the purposes of Chapters 2 to [F459 5A]

(1) This section applies for the purposes of Chapters 2 to [F460 5A] .

(2) If any of those Chapters has operated to restrict relief by reference to a change in the ownership of a company taking place at any time, no transaction or circumstances before that time may be taken into account in determining whether there is any subsequent change in the ownership of the company.

(3) The following provisions apply if—
  (a) any relevant assets are taken into account in determining that there has been a change in the ownership of a company, and
  (b) the relevant assets were acquired—
    (i) in pursuance of a contract of sale or option or other contract, or
    (ii) by a person holding such a contract.

(4) The time when the change in the ownership of the company took place is to be determined as if the acquisition had been made—
  (a) when the contract was made with the holder, or
  (b) when the benefit of it was assigned to the holder.

(5) Accordingly, a person exercising an option to purchase shares is treated as having purchased the shares when that person acquired the option.

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(6) In this section "relevant assets" means—

(a) ordinary share capital, or

(b) any property or rights which under section 721 or 722 may be taken into account instead of ordinary share capital.

Textual Amendments

F459 Word in s. 725 heading substituted (with effect in accordance with Sch. 13 para. 3 of the amending Act) by Finance Act 2013 (c. 29), **Sch. 13 para. 1(5)(a)**

F460 Word in s. 725(1) substituted (with effect in accordance with Sch. 13 para. 3 of the amending Act) by Finance Act 2013 (c. 29), **Sch. 13 para. 1(5)(b)**

726 Interpretation of Chapter

In this Chapter—

"ownership" means beneficial ownership (and references to acquisition are construed accordingly), and

"shares" includes stock.

CHAPTER 8

SUPPLEMENTARY PROVISION

727 Extended time limit for assessment

If the operation of any provision in Chapters 2 to 6 depends on circumstances or events at a time or times after (but not more than 3 years after) a change in the ownership of a company, an assessment to give effect to that provision is not out of time if made within 6 years from that time, or the latest of those times.

[F461]728 Provision of information about ownership of shares etc

. . . . . .

Textual Amendments

F461 S. 728 omitted (with effect in accordance with Sch. 23 para. 65 of the amending Act) by virtue of Finance Act 2011 (c. 11), **Sch. 23 paras. 64(2)(c)**, 65(1)(a) (with Sch. 23 paras. 50, 65(1)(b))

729 Meaning of "company with investment business"

In this Part "company with investment business" has the meaning given by section 1218 of CTA 2009.

730 Meaning of "relevant non-trading debit"

(1) This section applies for the purposes of sections 679 **[**[F462], 696 and 705C**]** .

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(2) "Relevant non-trading debit" means a non-trading debit within subsection (3), (4) or (5).

(3) A non-trading debit is within this subsection if—

(a) it is determined on an amortised cost basis of accounting,

(b) section 407 or 409 of CTA 2009 (postponement until redemption of debits for connected or close companies' deeply discounted securities) applies, and

(c) were it not for those sections, the debit would have fallen to be brought into account for the purposes of Part 5 of that Act (loan relationships) for an accounting period ending before or with the change in ownership mentioned in section 679 **[**[F463] , 696 or 705C**]** .

(4) A non-trading debit is within this subsection if—

(a) it is determined on an amortised cost basis of accounting,

(b) section 373 of CTA 2009 (late interest treated as not accruing until paid in some cases) applies, and

(c) were it not for that section, the debit would have fallen to be brought into account for the purposes of Part 5 of that Act for an accounting period ending before or with the change in ownership mentioned in section 679 **[**[F464] , 696 or 705C**]** .

(5) A non-trading debit is within this subsection if—

(a) it is not within subsection (3) or (4),

(b) it is a debit in respect of a debtor relationship of the company mentioned in section 679 **[**[F465] , 696 or 705C**]** ,

(c) it is determined on an amortised cost basis of accounting, and

(d) it relates to an amount that accrued before the change in ownership so mentioned.

(6) Expressions used both in this section and in Part 5 of CTA 2009 (loan relationships) have the same meaning as in that Part.

Textual Amendments

F462 Words in s. 730(1) substituted (with effect in accordance with Sch. 13 para. 3 of the amending Act) by Finance Act 2013 (c. 29), **Sch. 13 para. 1(6)(a)**

F463 Words in s. 730(3)(c) substituted (with effect in accordance with Sch. 13 para. 3 of the amending Act) by Finance Act 2013 (c. 29), **Sch. 13 para. 1(6)(b)**

F464 Words in s. 730(4)(c) substituted (with effect in accordance with Sch. 13 para. 3 of the amending Act) by Finance Act 2013 (c. 29), **Sch. 13 para. 1(6)(b)**

F465 Words in s. 730(5)(b) substituted (with effect in accordance with Sch. 13 para. 3 of the amending Act) by Finance Act 2013 (c. 29), **Sch. 13 para. 1(6)(b)**

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[[F466]PART 14A

TRANSFER OF DEDUCTIONS

Textual Amendments

F466 Pt. 14A inserted (with effect in accordance with Sch. 14 para. 3 of the amending Act) by Finance Act 2013 (c. 29), **Sch. 14 para. 1**

730A Overview

(1) This Part makes provision restricting the circumstances in which deductible amounts may be brought into account where there has been a qualifying change in relation to a company.

(2) For the meaning of "deductible amount" and "qualifying change" see section 730B.

730B Interpretation of Part

(1) In this Part—

"arrangements" includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable),

"C" means the company mentioned in section 730A(1),

"deductible amount" means—

(a) an expense of a trade,

(b) an expense of a UK property business or an overseas property business,

(c) an expense of management of a company's investment business within the meaning of section 1219 of CTA 2009,

(d) a non-trading debit within the meaning of Parts 5 and 6 of CTA 2009 (loan relationships and derivative contracts) (see section 301(2) of that Act), or

(e) a non-trading debit within the meaning of Part 8 of CTA 2009 (intangible fixed assets) (see section 746 of that Act),

but does not include any amount that has been taken into account in determining RTWDV within the meaning of Chapter 16A of Part 2 of CAA 2001 (restrictions on allowance buying) (see section 212K of that Act),

"qualifying change", in relation to a company, has the same meaning as in that Chapter, and

"the relevant day" means the day on which the qualifying change in relation to C occurred.

(2) In this Part, references to bringing an amount into account "as a deduction" in any period are to bringing it into account as a deduction in that period—

(a) in calculating profits, losses or other amounts for corporation tax purposes, or

(b) from profits or other amounts chargeable to corporation tax.

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730C Disallowance of deductible amounts: relevant claims

(1) This section applies where a relevant claim is made for an accounting period ending on or after the relevant day.

(2) "Relevant claim" means a claim by C, or a company connected with C, under—
  (a) section 37 (relief for trade losses against total profits), or
  (b) Chapter 4 of Part 5 (group relief).

(3) A deductible amount that meets conditions A and B may not be the subject of, or brought into account as a deduction in, the claim.

(4) But subsection (3) does not exclude any amount which could have been the subject of, or brought into account as a deduction in, the claim in the absence of the qualifying change.

(5) Condition A is that, on the relevant day, it is highly likely that the amount, or any part of it, would (disregarding this Part) be the subject of, or brought into account as a deduction in, a relevant claim for an accounting period ending on or after the relevant day.

(6) Any question as to what is "highly likely" on the relevant day for the purposes of subsection (5) is to be determined having regard to—
  (a) any arrangements made on or before that day, and
  (b) any events that take place on or before that day.

(7) Condition B is that the main purpose, or one of the main purposes, of change arrangements is for the amount (whether or not together with other deductible amounts) to be the subject of, or brought into account as a deduction in, a relevant claim for an accounting period ending on or after the relevant day.

(8) "Change arrangements" means any arrangements made to bring about, or otherwise connected with, the qualifying change.

(9) This section does not apply to a deductible amount if, and to the extent that—
  (a) section 730D(2) applies to it, or
  (b) for the purposes of section 432, a loss, or any part of a loss, to which section 433(2) applies derives from it.

730D Disallowance of deductible amounts: profit transfers

(1) This section applies where arrangements ("the profit transfer arrangements") are made which result in—
  (a) an increase in the total profits of C, or of a company connected with C, or
  (b) a reduction of any loss or other amount for which relief from corporation tax could (disregarding this section) have been given to C or a company connected with C,

  in any accounting period ending on or after the relevant day.

(2) A deductible amount that meets conditions D and E may not be brought into account by C, nor any company connected with C, as a deduction in any accounting period ending on or after the relevant day.

(3) Condition D is that, on the relevant day, it is highly likely that the amount, or any part of it, would (disregarding this Part) be brought into account by C, or any company

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connected with C, as a deduction in any accounting period ending on or after the relevant day.

(4) Any question as to what is "highly likely" on the relevant day for the purposes of subsection (3) is to be determined having regard to—
  (a) any arrangements made on or before that day, and
  (b) any events that take place on or before that day.

(5) Condition E is that the main purpose, or one of the main purposes, of the profit transfer arrangements is to bring the amount (whether or not together with other deductible amounts) into account as a deduction in any accounting period ending on or after the relevant day.

(6) Subsection (7) applies if—
  (a) (disregarding subsection (7)) subsection (2) would prevent a deductible amount being brought into account by a company as a deduction in any accounting period ending on or after the relevant day, and
  (b) in the absence of the profit transfer arrangements and disregarding any deductible amounts, the company would have an amount of total profits for that accounting period.

(7) Subsection (2) applies only in relation to such proportion of the deductible amount mentioned in subsection (6)(a) as is just and reasonable.**]**

PART 15

TRANSACTIONS IN SECURITIES

Introduction

731 Overview of Part

(1) This Part makes provision for counteracting corporation tax advantages obtained or obtainable by companies to which section 733 applies in respect of a transaction or transactions in securities.

(2) See section 746 (counteraction notices) for the way in which the corporation tax advantages may be counteracted.

732 Meaning of "corporation tax advantage"

(1) In this Part "corporation tax advantage" means—
  (a) a relief from corporation tax or increased relief from corporation tax,
  (b) a repayment of corporation tax or increased repayment of corporation tax,
  (c) the avoidance or reduction of a charge to corporation tax or an assessment to corporation tax, or
  (d) the avoidance of a possible assessment to corporation tax.

(2) For the purposes of subsection (1)(c) and (d) it does not matter whether the avoidance or reduction is effected—

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(a) by receipts accruing in such a way that the recipient does not pay or bear corporation tax on them, or

(b) by a deduction in calculating profits or gains.

Company liable to counteraction of corporation tax advantage

733 Company liable to counteraction of corporation tax advantage

(1) This section applies to a company in respect of a transaction in securities or two or more such transactions if the company is in a position to obtain or has obtained a corporation tax advantage—

(a) in circumstances where any of the provisions specified in subsection (2) applies in relation to the company, and

(b) in consequence of—

(i) the transaction, or

(ii) the combined effect of the transactions.

(2) The provisions are—

F467 ...

section 736 (receipt of consideration representing company's assets, future receipts or trading stock (circumstance C)),

section 737 (receipt of consideration in connection with relevant company distribution (circumstance D)), and

section 738 (receipt of assets of relevant company (circumstance E)).

(3) For the purposes of this Part a corporation tax advantage is treated as obtained or obtainable by a company in consequence of—

(a) a transaction in securities, or

(b) the combined effect of two or more such transactions,

if it is obtained or obtainable by the company in consequence of the combined effect of the transaction or transactions and the liquidation of a company.

(4) This section is subject to—

section 734 (exception where no tax avoidance object shown),

section 744(3) (disapplication of this section where company receiving preliminary notification that this section may apply makes a statutory declaration and the relevant officer of Revenue and Customs sees no reason to take further action), and

section 745(5) (determination by tribunal that there is no prima facie case that this section applies).

Textual Amendments

F467 Words in s. 733(2) omitted (with effect in accordance with Sch. 12 para. 15(3) of the amending Act) by virtue of Finance Act 2010 (c. 13), **Sch. 12 para. 9**

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734 Exception where no tax avoidance object shown

(1) Section 733 does not apply to a company in respect of a transaction in securities or two or more such transactions if the company shows that the transaction or transactions meet conditions A and B.

(2) Condition A is that the transaction or transactions are effected—
  (a) for genuine commercial reasons, or
  (b) in the ordinary course of making or managing investments.

(3) Condition B is that enabling corporation tax advantages to be obtained is not the main object or one of the main objects of the transaction or, as the case may be, any of the transactions.

Circumstances in which corporation tax advantages obtained or obtainable

[F468]735 Abnormal dividends used for exemptions or reliefs (circumstance A)

. . . . . .

Textual Amendments

F468 S. 735 omitted (with effect in accordance with Sch. 12 para. 15(3) of the amending Act) by virtue of Finance Act 2010 (c. 13), **Sch. 12 para. 10**

736 Receipt of consideration representing company's assets, future receipts or trading stock (circumstance C)

(1) This section applies in relation to a company ("A") if subsections (2) to (4) apply.

(2) A receives consideration which—
  (a) is or represents the value of—
    (i) assets which are available for distribution by a company by way of dividend, or
    (ii) assets which would have been so available apart from anything done by the company,
  (b) is received in respect of future receipts of a company, or
  (c) is or represents the value of trading stock of a company.

(3) The receipt is in consequence of a transaction whereby another person subsequently receives, or has received, an abnormal amount by way of dividend (see section 740).

(4) The receipt of the consideration is such that A does not pay or bear corporation tax on income in respect of it (apart from this Part).

(5) The assets mentioned in subsection (2) do not include assets which are shown to represent a return of sums paid by subscribers on the issue of securities, despite the fact that under the law of the country in which the company is incorporated assets of that description are available for distribution by way of dividend.

(6) In this section references to the receipt of consideration include references to the receipt of any money or money's worth.

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737 Receipt of consideration in connection with relevant company distribution (circumstance D)

(1) This section applies in relation to a company ("the section 733 company") if subsections (2) to (4) apply.

(2) The section 733 company receives consideration in connection with—
- (a) the distribution, transfer or realisation of assets of a relevant company (see section 739), or
- (b) the application of such assets in discharge of liabilities.

(3) The consideration—
- (a) is or represents the value of—
  - (i) assets which are available for distribution by way of dividend by the relevant company, or
  - (ii) assets which would have been so available apart from anything done by the relevant company,
- (b) is received in respect of future receipts of the relevant company, or
- (c) is or represents the value of trading stock of the relevant company.

(4) The section 733 company so receives the consideration that it does not pay or bear corporation tax on income in respect of it (apart from this Part).

(5) The assets mentioned in subsection (3) do not include assets which are shown to represent a return of sums paid by subscribers on the issue of securities, despite the fact that under the law of the country in which the relevant company is incorporated assets of that description are available for distribution by way of dividend.

(6) In this section references to the receipt of consideration include references to the receipt of any money or money's worth.

738 Receipt of assets of relevant company (circumstance E)

(1) This section applies in relation to a company ("the section 733 company") if subsections (2) to (4) and (7) apply.

(2) The section 733 company receives consideration in connection with—
- (a) the direct or indirect transfer of assets of a relevant company (see section 739) to another such company, or
- (b) any transaction in securities in which two or more relevant companies are concerned.

(3) The consideration is or represents the value of assets which—
- (a) are available for distribution by way of dividend by a relevant company,
- (b) would have been so available apart from anything done by the relevant company, or
- (c) are trading stock of a relevant company.

(4) The consideration consists of any share capital or any security issued by a relevant company.

(5) So far as subsection (4) relates to share capital other than redeemable share capital, it applies only so far as the share capital is repaid (in a winding up or otherwise).

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(6) The reference in subsection (5) to the repayment of share capital includes a reference to any distribution made in respect of any shares in a winding up or dissolution of the relevant company.

(7) The section 733 company does not pay or bear corporation tax on income in respect of the consideration (apart from this Part).

(8) In this section—
- (a) references to the receipt of consideration include references to the receipt of any money or money's worth,
- (b) "security" includes securities not creating or evidencing a charge on assets, and
- (c) "share" includes stock and any other interest of a member in a company.

739 Meaning of "relevant company" in sections 737 and 738

(1) A company is a relevant company for the purposes of sections 737 and 738 if it is—
- (a) a company under the control of not more than 5 persons (but see subsection (2)), or
- (b) any other company none of whose shares or stocks is—
  - (i) included in the official UK list, and
  - (ii) dealt in on a recognised stock exchange in the United Kingdom regularly or from time to time.

(2) A company is not a relevant company for those purposes if it is under the control of one or more companies which are not relevant companies for those purposes.

(3) The reference in subsection (1)(b) to shares or stocks does not include debenture stock, preferred shares or preferred stock.

(4) Section 450 (meaning of "control" for the purposes of Part 10 (close companies)) applies for the purposes of this section.

740 Abnormal dividends: general

(1) An amount received by way of dividend is treated as abnormal for the purposes of this Part if the appropriate authority is satisfied—
- (a) in any case that the excessive return condition is met (see section 741), or
- (b) in the case of a dividend at a fixed rate, that the excessive accrual condition is met (see section 742).

(2) In subsection (1) "the appropriate authority" means whichever of the following is determining the question whether the amount is abnormal for the purposes of this Part—
- (a) an officer of Revenue and Customs,
- (b) the Commissioners for Her Majesty's Revenue and Customs, or
- (c) the tribunal.

741 Abnormal dividends: the excessive return condition

(1) The excessive return condition is that the dividend substantially exceeds a normal return on the consideration provided by the recipient for the relevant securities.

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(2) In this section "the relevant securities" means-

(a) the securities in respect of which the dividend was received, and

(b) if those securities are derived from securities previously acquired by the recipient, the securities that were previously acquired.

(3) In determining whether an amount received by way of dividend exceeds a normal return, regard must be had—

(a) to the length of time before its receipt that the recipient first acquired any of the relevant securities, and

(b) to any dividends paid and other distributions made in respect of them during that time.

(4) If—

(a) the consideration provided by the recipient for any of the relevant securities exceeded their market value at the time the recipient acquired them, or

(b) no consideration was so provided,

for the purposes of subsection (1) consideration equal to that market value is taken to have been so provided.

742 Abnormal dividends: the excessive accrual condition

(1) The excessive accrual condition is that the dividend substantially exceeds the amount which the recipient would have received if—

(a) the dividend had accrued from day to day, and

(b) the recipient had been entitled to only so much of the dividend as accrued while the recipient held the securities.

(2) But the excessive accrual condition is treated as not being met if during the period of 6 months beginning with the purchase of the securities the recipient does not—

(a) sell or otherwise dispose of any of the securities or any securities similar to them, or

(b) acquire an option to sell any of the securities or any securities similar to them.

(3) For the purposes of subsection (2) securities are taken to be similar if they entitle their holders—

(a) to the same rights against the same persons as to capital and interest, and

(b) to the same remedies for the enforcement of those rights.

(4) For the purposes of subsection (3) rights guaranteed by the Treasury are treated as rights against the Treasury.

(5) Subsection (3) applies despite any differences—

(a) in the total nominal amounts of the respective securities,

(b) in the form in which they are held, or

(c) in the way in which they can be transferred.

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Procedure for counteraction of corporation tax advantages

743 Preliminary notification that section 733 may apply

(1) An officer of Revenue and Customs must notify a company if the officer has reason to believe that—
  (a) section 733 (company liable to counteraction of corporation tax advantage) may apply to the company in respect of a transaction or transactions, and
  (b) a counteraction notice ought to be served on the company under section 746 about the transaction or transactions.

(2) The notification must specify the transaction or transactions.

(3) See section 746 for the serving of counteraction notices, and sections 744 and 745 for cases where the company on which the notice under this section is served disagrees that section 733 applies.

744 Opposed notifications: statutory declarations

(1) If a company on which a notification is served under section 743 is of the opinion that section 733 (company liable to counteraction of corporation tax advantage) does not apply to the company in respect of the transaction or transactions specified in the notification, the company may—
  (a) make a statutory declaration to that effect, stating the facts and circumstances on which the opinion is based, and
  (b) send it to the officer of Revenue and Customs.

(2) Such a declaration must be sent within 30 days of the issue of the notification.

(3) If the company sends that declaration to the officer and the officer sees no reason to take further action—
  (a) section 733 does not so apply, and
  (b) accordingly no counteraction notice may be served on the company under section 746 about the transaction or transactions.

745 Opposed notifications: determinations by tribunal

(1) This section applies if the officer of Revenue and Customs receiving a statutory declaration under section 744(1) sees reason to take further action about the transaction or transactions in question.

(2) The officer must send the tribunal a certificate to that effect, together with the statutory declaration.

(3) The officer may also send the tribunal a counter-statement with the certificate.

(4) The tribunal must—
  (a) consider the declaration and certificate and any counter-statement, and
  (b) determine whether there is a prima facie case for the officer to take further action on the basis that section 733 (company liable to counteraction of corporation tax advantage) applies to the company by which the declaration was made in respect of the transaction or transactions in question.

(5) If the tribunal determines that there is no such case—

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(a) section 733 does not so apply, and
(b) accordingly no counteraction notice may be served on the company under section 746 about the transaction or transactions.

(6) But such a determination does not affect the application of sections 733 and 746 in respect of transactions including not only the ones to which the determination relates but also others.

746 Counteraction notices

(1) If—
(a) a company on which a notification is served under section 743 does not send a statutory declaration to an officer of Revenue and Customs under section 744 within 30 days of the issue of the notification, or
(b) the tribunal to which such a declaration is sent under section 745 determines that there is a prima facie case for serving a notice on a company under this section,

the corporation tax advantage in question is to be counteracted by adjustments.

(2) The adjustments required to be made to counteract the corporation tax advantage and the basis on which they are to be made are to be specified in a notice served on the company by an officer of Revenue and Customs.

(3) In this Part such a notice is referred to as a "counteraction notice".

(4) Any of the following adjustments may be specified—
(a) an assessment,
(b) the nullifying of a right to repayment,
(c) the requiring of the return of a repayment already made, or
(d) the calculation or recalculation of profits or gains or liability to corporation tax.

(5) Nothing in this section authorises the making of an assessment later than 6 years after the accounting period to which the corporation tax advantage relates.

(6) This section is subject to—
section 747 (timing of assessments in section 738 cases), and
section 749(2) (effect of clearance notification under section 748).

(7) But no other provision in the Corporation Tax Acts is to be read as limiting the powers conferred by this section.

747 Timing of assessments in section 738 cases

(1) This section applies if section 733 (company liable to counteraction of corporation tax advantage) applies to a company because it is in a position to obtain or has obtained a corporation tax advantage by falling within the circumstances mentioned in section 738 (receipt of relevant company assets (circumstance E)) when share capital is repaid.

(2) An assessment to corporation tax made in accordance with a counteraction notice must be an assessment for the accounting period in which the repayment occurs.

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(3) The references in this section to the repayment of share capital include references to any distribution made in respect of any shares in a winding up or dissolution of the company.

(4) In subsection (3) "shares" includes stock and any other interest of a member in a company.

Clearance procedure

748 Application for clearance of transactions

(1) A company may provide the Commissioners for Her Majesty's Revenue and Customs with particulars of a transaction or transactions effected or to be effected by it in order to obtain a notification about them under this section.

(2) If the Commissioners consider that the particulars, or any further information provided under this subsection, are insufficient for the purposes of this section, they must notify the company what further information they require for those purposes within 30 days of receiving the particulars or further information.

(3) If any such further information is not provided within 30 days from the notification, or such further time as the Commissioners allow, they need not proceed further under this section.

(4) The Commissioners must notify the company whether they are satisfied that the transaction or transactions, as described in the particulars, were or will be such that no counteraction notice ought to be served about the transaction or transactions.

(5) The notification must be given within 30 days of receipt of the particulars, or, if subsection (2) applies, of all further information required.

749 Effect of clearance notification under section 748

(1) This section applies if the Commissioners for Her Majesty's Revenue and Customs notify a company under section 748 that they are satisfied that a transaction or transactions, as described in the particulars provided under that section, were or will be such that no counteraction notice ought to be served about the transaction or transactions.

(2) No such notice may be served on the company in respect of the transaction or transactions.

(3) But the notification does not prevent such a notice being served on the company in respect of transactions including not only the ones to which the notification relates but also others.

(4) The notification is void if the particulars and any further information given under section 748 about the transaction or transactions do not fully and accurately disclose all facts and considerations which are material for the purposes of that section.

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Appeals

750 Appeals against counteraction notices

(1) A company on which a counteraction notice has been served may appeal on the grounds that—

(a) section 733 (company liable to counteraction of corporation tax advantage) does not apply to the company in respect of the transaction or transactions in question, or

(b) the adjustments directed to be made are inappropriate.

(2) Such an appeal may be made only by giving notice to the Commissioners for Her Majesty's Revenue and Customs within 30 days of the service of the counteraction notice.

(3) On an appeal under this section the tribunal may—

(a) affirm, vary or cancel the counteraction notice, or

(b) affirm, vary or quash an assessment made in accordance with the notice.

(4) But the bringing of an appeal under this section does not affect—

(a) the validity of the counteraction notice, or

(b) the validity of any other thing done under or in accordance with section 746 (counteraction notices),

pending the determination of the proceedings.

Interpretation

751 Interpretation of Part

In this Part—

"company" includes any body corporate,

"dividends" includes references to other qualifying distributions and to interest,

"securities"—

(a) includes shares and stock, and

(b) in relation to a company not limited by shares (whether or not it has a share capital) also includes a reference to the interest of a member of the company as such, whatever the form of that interest,

"trading stock" has the meaning given by section 163 of CTA 2009, and

"transaction in securities" means transactions, of whatever description, relating to securities, and in particular—

(a) the purchase, sale or exchange of securities,

(b) issuing or securing the issue of new securities,

(c) applying or subscribing for new securities, and

(d) altering or securing the alteration of the rights attached to securities.

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PART 16

FACTORING OF INCOME ETC

CHAPTER 1

TRANSFERS OF INCOME STREAMS

752 Application of Chapter

(1) This Chapter applies if—

(a) a company within the charge to corporation tax ("the transferor") makes a transfer to another person ("the transferee") of a right to relevant receipts (see subsection (2)), and

(b) (subject to subsection (3)) the transfer of the right is not a consequence of the transfer to the transferee of an asset from which the right to relevant receipts arises.

(2) "Relevant receipts" means any income—

(a) which (but for the transfer) would be charged to corporation tax as income of the transferor, or

(b) which (but for the transfer) would be brought into account in calculating profits of the transferor for the purposes of corporation tax.

(3) Despite subsection (1)(b), this Chapter applies if the transfer of the right is a consequence of the transfer to the transferee of all rights under an agreement for annual payments; and for the purposes of subsection (1)(b) the transfer of an asset under a sale and repurchase agreement is not to be regarded as a transfer of the asset.

(4) Section 753 makes provision as to the consequences of this Chapter applying.

(5) For exclusions from this Chapter, see—

(a) section 754 (amount otherwise taxed), and

(b) section 755 (transfer by way of security).

(6) Section 756 makes special provision about transfers of partnership shares.

(7) Section 757 contains supplementary provisions.

753 Value of transferred income stream treated as income

(1) The relevant amount (see subsection (2)) is to be treated as income of the transferor chargeable to corporation tax in the same way and to the same extent as that in which the relevant receipts—

(a) would have been chargeable to corporation tax, or

(b) would have been brought into account in calculating any profits for the purposes of corporation tax,

but for the transfer of the right to relevant receipts.

(2) The relevant amount is—

(a) (except where paragraph (b) applies) the amount of the consideration for the transfer of the right, or

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(b) where the amount of any such consideration is substantially less than the market value of the right at the time when the transfer takes place (or where there is no consideration for the transfer of the right), the market value of the right at that time.

(3) The income under subsection (1) is to be treated as arising—

(a) to the extent that it does not exceed the amount of the consideration for the transfer of the right, in the period or periods for which, in accordance with generally accepted accounting practice, the consideration for the transfer is recognised for accounting purposes in a profit and loss account or income statement of the transferor, and

(b) otherwise, in the period or periods for which, in accordance with generally accepted accounting practice, the consideration for the transfer would be so recognised if it were of an amount equal to the market value of the right at the time when the transfer takes place.

(4) But if at any time it becomes reasonable to assume that the income (to any extent) is not, or would not be, treated by subsection (3) as arising in an accounting period of the transferor, the income is to that extent to be treated as arising immediately before that time.

754 Exception: amount otherwise taxed

This Chapter does not apply if and to the extent that the income under section 753(1) is (apart from this Chapter)—

(a) charged to tax as income of the transferor,

(b) brought into account as income in calculating the profits of the transferor, or

(c) brought into account under CAA 2001.

755 Exception: transfer by way of security

(1) This Chapter does not apply if—

(a) the consideration for the transfer is the advance under a type 1 finance arrangement, and

(b) the transferor is, or is a member of a partnership which is, the borrower in relation to the arrangement.

(2) This Chapter does not apply if—

(a) the consideration for the transfer is the advance under a type 2 finance arrangement or a type 3 finance arrangement, and

(b) the transferor is a member of the partnership which receives that advance under the arrangement.

(3) In this section—

"type 1 finance arrangement" has the meaning given for the purposes of Chapter 2 by section 758,

"type 2 finance arrangement" has the meaning given for the purposes of Chapter 2 by section 763, and

"type 3 finance arrangement" has the meaning given for the purposes of Chapter 2 by section 767.

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756 Partnership shares

(1) For the purposes of this Chapter a transfer of a right to relevant receipts consisting of the reduction in the transferor's share in the profits or losses of a partnership is to be regarded as a consequence of a transfer of an asset from which the right arose (that is, the partnership property) if condition A or B is met.

(2) Condition A is that there is a reduction of the transferor's share in the partnership property and the reduction in the transferor's share in the profits or losses is proportionate to that reduction.

(3) Condition B is that it is not the main purpose, or one of the main purposes, of the transfer to secure that the relevant receipts are not charged to corporation tax or income tax as income of any partner or brought into account as income of any partner for the purpose of either of those taxes.

757 Interpretation of Chapter

(1) For the purposes of this Chapter—

(a) the grant or surrender of a lease of land is to be regarded as a transfer of the land,

(b) the disposal of an interest in an oil licence (within the meaning of section 809 of CTA 2009) is to be regarded as a transfer of the oil licence, and

(c) the grant or disposal of an interest in intellectual property (within the meaning of section 712(3) of CTA 2009) which constitutes a pre-FA 2002 asset (within the meaning of section 881 of that Act) is to be regarded as a transfer of that intellectual property.

(2) The Treasury may by order make other provision for securing that other transactions are to be regarded as transfers of assets for those purposes.

(3) In this Chapter—

(a) references to a transfer include sale, exchange, gift and assignment and any other arrangement which equates in substance to a transfer, and

(b) references to a transfer taking place are, in the case of an arrangement other than a sale, exchange, gift or assignment, to the making of the arrangement.

(4) A transfer to or by any partnership of which the transferor or transferee is a member, and a transfer to the trustees of any trust of which the transferor is a beneficiary, counts as a transfer in relation to which this Chapter applies.

CHAPTER 2

FINANCE ARRANGEMENTS

Modifications etc. (not altering text)

C33 Pt. 16 Ch. 2 restricted by Finance Act 2004 (c. 12), s. 196I(5)(6) (as inserted (with effect in accordance with Sch. 13 para. 17 of the amending Act) by Finance Act 2012 (c. 14), **Sch. 13 para. 15** (with Sch. 13 Pt. 4))

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C34 Pt. 16 Ch. 2 restricted by Finance Act 2004 (c. 12), s. 196G(2)(3) (as inserted (with effect in accordance with Sch. 13 para. 3 of the amending Act) by Finance Act 2012 (c. 14), **Sch. 13 para. 1** (with Sch. 13 Pt. 2))

Type 1 arrangements

758 Type 1 finance arrangement defined

(1) For the purposes of this Chapter an arrangement is a type 1 finance arrangement if conditions A and B are met.

(2) Condition A is that under the arrangement—

(a) a person ("the borrower") receives money or another asset ("the advance") from another person ("the lender"),

(b) the borrower or a person connected with the borrower makes a disposal of an asset ("the security") to or for the benefit of the lender or a person connected with the lender, and

(c) the lender or a person connected with the lender is entitled to payments in respect of the security.

[[F469](2A) For the purposes of subsection (2)(c) it does not matter if an entitlement of the lender or a person connected with the lender is subject to any condition.**]**

(3) Condition B is that in accordance with generally accepted accounting practice—

(a) the borrower's accounts for the period in which the advance is received record a financial liability in respect of it, and

(b) the payments reduce the amount of the financial liability.

(4) If the borrower is a partnership the reference to the borrower's accounts includes a reference to the accounts of any member of the partnership.

(5) For the purposes of this section the borrower and the lender are not connected with one another.

Textual Amendments

F469 S. 758(2A) inserted (with effect in accordance with Sch. 13 para. 42 of the amending Act) by Finance Act 2012 (c. 14), **Sch. 13 para. 38**

759 Certain tax consequences not to have effect

(1) This section applies if a type 1 finance arrangement would have the relevant effect (ignoring this section).

(2) The arrangement is not to have that effect.

(3) The relevant effect is that—

(a) an amount of income on which the borrower or a person connected with the borrower would otherwise have been charged to corporation tax is not so charged,

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(b) an amount which would otherwise have been brought into account in calculating for corporation tax purposes any income of the borrower or of a person connected with the borrower is not so brought into account, or

(c) the borrower or a person connected with the borrower becomes entitled to an income deduction.

(4) But if the borrower is a partnership the relevant effect is that—

(a) an amount of income on which a member of the partnership would otherwise have been charged to corporation tax is not so charged,

(b) an amount which would otherwise have been brought into account in calculating for corporation tax purposes any income of a member of the partnership is not so brought into account, or

(c) a member of the partnership becomes entitled to an income deduction.

(5) For the purposes of this section the borrower and the lender are not connected with one another.

(6) An income deduction is—

(a) a deduction in calculating income for corporation tax purposes, or

(b) a deduction from total profits.

760 Payments treated as borrower's income

(1) This section applies if—

(a) a type 1 finance arrangement would not have the relevant effect (ignoring section 759(2)),

(b) that arrangement would not have the corresponding income-tax effect (ignoring section 809BZB(2) of ITA 2007), and

(c) the borrower is—

(i) a company within the charge to corporation tax, or

(ii) a partnership at least one member of which is a company within the charge to corporation tax.

(2) The payments mentioned in section 758(2)(c) must be treated for corporation tax purposes as income of the borrower payable in respect of the security.

(3) Subsection (2) applies whether or not the payments are also the income of another person for tax purposes.

(4) Subsections (3) to (6) of section 759 (meaning of relevant effect) apply for the purposes of this section as for those of that.

(5) In subsection (1)(b) “the corresponding income-tax effect” means the relevant effect as defined by section 809BZB(3) to (6) of ITA 2007 (provision for income tax corresponding to section 759(3) to (6)).

761 Deemed loan relationship if borrower is a company

(1) This section applies if—

(a) there is a type 1 finance arrangement,

(b) the borrower is a company, and

(c) either—

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(i) the arrangement is prevented by section 759 from having the relevant effect in relation to the company, or

(ii) section 760 applies to the company.

(2) For the purposes of Part 5 of CTA 2009 (loan relationships)—

(a) the advance is treated in relation to the company as a money debt owed by it, and

(b) the arrangement is treated in relation to the company as a loan relationship of the company (as a debtor relationship).

(3) Any amount which in accordance with generally accepted accounting practice is recorded in the company's accounts as a finance charge in respect of the advance is treated as interest payable under the loan relationship.

(4) If an amount is treated as interest ("deemed interest") under subsection (3), to find out when it is paid—

(a) treat the payments mentioned in section 758(2)(c) as consisting of amounts for repaying the advance and amounts ("the interest elements") in respect of interest on the advance,

(b) treat the interest elements of the payments as paid when the payments are paid, and

(c) treat the deemed interest as paid at the times when the interest elements are treated as paid.

762 Deemed loan relationship if borrower is partnership with corporate member

(1) This section applies if—

(a) there is a type 1 finance arrangement,

(b) the borrower is a partnership, and

(c) either—

(i) the arrangement is prevented by section 759 from having the relevant effect in relation to a company that is a member of the partnership, or

(ii) section 760 applies to the partnership (in which event "the company" in subsections (2) and (3) means the company within the charge to corporation tax that is a member of the partnership).

(2) For the purposes of Part 5 of CTA 2009 (loan relationships)—

(a) the advance is treated in relation to the company as a money debt owed by the partnership, and

(b) the arrangement is treated in relation to the company as a loan relationship of the partnership (as a debtor relationship).

(3) Any amount which in accordance with generally accepted accounting practice is recorded in the company's accounts, or the partnership's accounts, as a finance charge in respect of the advance is treated as interest payable under the loan relationship by the partnership.

(4) If an amount is treated as interest ("deemed interest") under subsection (3), to find out when it is paid—

(a) treat the payments mentioned in section 758(2)(c) as consisting of amounts for repaying the advance and amounts ("the interest elements") in respect of interest on the advance,

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(b) treat the interest elements of the payments as paid when the payments are paid, and

(c) treat the deemed interest as paid at the times when the interest elements are treated as paid.

Type 2 arrangements

763 Type 2 finance arrangement defined

(1) For the purposes of this Chapter an arrangement is a type 2 finance arrangement if conditions A and B are met.

(2) Condition A is that—

(a) under the arrangement a person ("the transferor") makes a disposal of an asset ("the security") to a partnership,

(b) the transferor **[**[F470]or a person connected with the transferor**]** is a member of the partnership immediately after the disposal (whether or not a member immediately before it),

(c) under the arrangement the partnership receives money or another asset ("the advance") from another person ("the lender"),

(d) there is a relevant change in relation to the partnership (see section 764), and

(e) under the arrangement the share in the partnership's profits of the person involved in the change is determined by reference (wholly or partly) to payments in respect of the security.

[[F471](2A) For the purposes of subsection (2)(e) it does not matter if any determination of the share in the partnership's profits of the person involved in the relevant change as mentioned is subject to any condition.**]**

(3) Condition B is that in accordance with generally accepted accounting practice—

(a) the partnership's accounts for the period in which the advance is received record a financial liability in respect of it, and

(b) the payments reduce the amount of the financial liability.

(4) The reference to the partnership's accounts includes a reference to the transferor's accounts.

Textual Amendments

F470 Words in s. 763(2)(b) inserted (with effect in accordance with Sch. 13 para. 42 of the amending Act) by Finance Act 2012 (c. 14), **Sch. 13 para. 39(2)**

F471 S. 763(2A) inserted (with effect in accordance with Sch. 13 para. 42 of the amending Act) by Finance Act 2012 (c. 14), **Sch. 13 para. 39(3)**

764 Relevant change in relation to partnership

(1) For the purposes of this Chapter there is a relevant change in relation to a partnership if condition A or condition B is met.

(2) Condition A is that in connection with the arrangement the lender or a person connected with the lender becomes a member of the partnership at any time.

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(3) Condition B is that—

(a) in connection with the arrangement there is at any time a change in a member's share in the partnership's profits, and

(b) the member is the lender or a person connected with the lender or a person who in connection with the arrangement becomes at any time connected with the lender.

(4) An event occurs in connection with the arrangement if it occurs directly or indirectly in consequence of it or otherwise in connection with it.

(5) If there is a relevant change in relation to a partnership, a reference in this Chapter to the person involved in the change is—

(a) if it is condition A that is met, to the person who becomes a member of the partnership, and

(b) if it is condition B that is met, to the member of the partnership in whose share in the partnership's profits there is a change.

765 Certain tax consequences not to have effect

(1) This section applies if—

(a) there is a type 2 finance arrangement, and

(b) any relevant change in relation to the partnership would have the relevant effect (ignoring this section).

(2) In such a case—

(a) sections 1259 to 1265 of CTA 2009 (partnerships involving companies) are to have effect in relation to the transferor **[**[F472]or the person connected with the transferor**]** as if the relevant change in relation to the partnership had not occurred, and

(b) accordingly the finance arrangement is not to have the relevant effect.

(3) The relevant effect is that—

(a) an amount of income on which the transferor **[**[F472]or the person connected with the transferor**]** would otherwise have been charged to corporation tax is not so charged,

(b) an amount which would otherwise have been brought into account in calculating for corporation tax purposes any income of the transferor **[**[F472]or the person connected with the transferor**]** is not so brought into account, or

(c) the transferor **[**[F472]or the person connected with the transferor**]** becomes entitled to an income deduction.

(4) In deciding whether subsection (1)(b) is met assume that amounts of income equal to the payments mentioned in section 763(2)(e) were payable to the partnership before the relevant change in relation to it occurred.

(5) An income deduction is—

(a) a deduction in calculating income for corporation tax purposes, or

(b) a deduction from total profits.

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Textual Amendments

F472 Words in s. 765 inserted (with effect in accordance with Sch. 13 para. 42 of the amending Act) by Finance Act 2012 (c. 14), **Sch. 13 para. 40**

766 Deemed loan relationship

(1) This section applies if—

(a) there is a type 2 finance arrangement, and

(b) the transferor is a company within the charge to corporation tax.

(2) In relation to the company—

(a) the advance is treated for the purposes of Chapter 9 of Part 5 of CTA 2009 (and the other provisions of that Part (loan relationships)) as a money debt owed by the partnership, and

(b) the arrangement is treated as a transaction for the lending of money from which the debt is treated as arising for those purposes.

(3) Any amount which in accordance with generally accepted accounting practice is recorded in the partnership's accounts as a finance charge in respect of the advance is treated as interest payable by the company under the transaction.

(4) The reference in subsection (3) to the partnership's accounts includes a reference to the transferor's accounts.

(5) If an amount is treated as interest ("deemed interest") under subsection (3), to find out when it is paid—

(a) treat the payments mentioned in section 763(2)(e) as consisting of amounts for repaying the advance and amounts ("the interest elements") in respect of interest on the advance,

(b) treat the interest elements of the payments as paid when the payments are paid, and

(c) treat the deemed interest as paid at the times when the interest elements are treated as paid.

Type 3 arrangements

767 Type 3 finance arrangement defined

(1) For the purposes of this Chapter an arrangement is a type 3 finance arrangement if conditions A and B are met.

(2) Condition A is that—

(a) a partnership holds an asset ("the security") as a partnership asset at any time before the arrangement is made,

(b) under the arrangement the partnership receives money or another asset ("the advance") from another person ("the lender"),

(c) there is a relevant change in relation to the partnership (see section 764), and

(d) under the arrangement the share in the partnership's profits of the person involved in the change is determined by reference (wholly or partly) to payments in respect of the security.

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[[F473](2A) For the purposes of subsection (2)(d) it does not matter if any determination of the share in the partnership's profits of the person involved in the relevant change as mentioned is subject to any condition.**]**

(3) Condition B is that in accordance with generally accepted accounting practice—

(a) the partnership's accounts for the period in which the advance is received record a financial liability in respect of it, and

(b) the payments reduce the amount of the financial liability.

(4) The reference to the partnership's accounts includes a reference to the accounts of any person who is a member of the partnership immediately before the arrangement is made.

Textual Amendments

F473 S. 767(2A) inserted (with effect in accordance with Sch. 13 para. 42 of the amending Act) by Finance Act 2012 (c. 14), **Sch. 13 para. 41**

768 Certain tax consequences not to have effect

(1) This section applies if—

(a) there is a type 3 finance arrangement, and

(b) any relevant change in relation to the partnership would have the relevant effect (ignoring this section).

(2) The relevant effect is that—

(a) an amount of income on which a relevant member would otherwise have been charged to corporation tax is not so charged,

(b) an amount which would otherwise have been brought into account in calculating for corporation tax purposes any income of a relevant member is not so brought into account, or

(c) a relevant member becomes entitled to an income deduction.

(3) A relevant member is a person who—

(a) was a member of the partnership immediately before the relevant change in relation to it occurred, and

(b) is not the lender.

(4) If this section applies—

(a) sections 1259 to 1265 of CTA 2009 (partnerships involving companies) are to have effect in relation to any relevant member as if the relevant change in relation to the partnership had not occurred, and

(b) accordingly the finance arrangement is not to have the relevant effect.

(5) In deciding whether subsection (1)(b) is met assume that amounts of income equal to the payments mentioned in section 767(2)(d) were payable to the partnership before the relevant change in relation to it occurred.

(6) An income deduction is—

(a) a deduction in calculating income for corporation tax purposes, or

(b) a deduction from total profits.

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769 Deemed loan relationship

(1) This section applies if—
- (a) there is a type 3 finance arrangement, and
- (b) a relevant member is a company within the charge to corporation tax.

(2) In relation to the company—
- (a) the advance is treated for the purposes of Chapter 9 of Part 5 of CTA 2009 (and the other provisions of that Part (loan relationships)) as a money debt owed by the partnership, and
- (b) the arrangement is treated as a transaction for the lending of money from which the debt is treated as arising for those purposes.

(3) Any amount which in accordance with generally accepted accounting practice is recorded in the partnership's accounts as a finance charge in respect of the advance is treated as interest payable by the partnership under the transaction.

(4) The reference in subsection (3) to the partnership's accounts includes a reference to the accounts of any relevant member.

(5) If an amount is treated as interest ("deemed interest") under subsection (3), to find out when it is paid—
- (a) treat the payments mentioned in section 767(2)(d) as consisting of amounts for repaying the advance and amounts ("the interest elements") in respect of interest on the advance,
- (b) treat the interest elements of the payments as paid when the payments are paid, and
- (c) treat the deemed interest as paid at the times when the interest elements are treated as paid.

(6) A relevant member is a person who—
- (a) was a member of the partnership immediately before the relevant change in relation to it occurred, and
- (b) is not the lender.

Exceptions

770 Exceptions: preliminary

(1) Sections 771 to 773 make provision for finance arrangement codes not to apply in certain circumstances.

(2) For the purposes of those sections each of the following groups of provisions is a finance arrangement code—
- (a) sections 758 to 762 (type 1 arrangements),
- (b) sections 763 to 766 (type 2 arrangements), and
- (c) sections 767 to 769 (type 3 arrangements).

771 Exceptions

(1) A finance arrangement code does not apply if the whole of the advance under the arrangement—

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(a) is charged to tax on a relevant person as an amount of income,

(b) is brought into account in calculating for tax purposes any income of a relevant person, or

(c) is brought into account for the purposes of any provision of CAA 2001 as a disposal receipt, or proceeds from a balancing event or disposal event, of a relevant person.

(2) Treat subsection (1)(c) as not met if—

(a) the receipt gives rise, or proceeds give rise, to a balancing charge, and

(b) the amount of the balancing charge is limited by any provision of CAA 2001.

(3) A finance arrangement code does not apply if at all times the whole of the advance under the arrangement—

(a) is a debtor relationship of a relevant person for the purposes of Part 5 of CTA 2009 (loan relationships), or

(b) would be a debtor relationship of a relevant person for those purposes if that person were a company within the charge to corporation tax.

(4) In subsection (3) references to a debtor relationship do not include references to a relationship to which Chapter 2 of Part 6 of CTA 2009 applies (relevant non-lending relationships).

(5) A finance arrangement code does not apply so far as—

(a) section 263A of TCGA 1992 applies in relation to the arrangement (agreements for sale and repurchase of securities), or

(b) Schedule 13 to FA 2007 or Chapter 10 of Part 6 of CTA 2009 applies in relation to the arrangement (sale and repurchase of securities, and repos).

(6) A finance arrangement code does not apply so far as Chapter 6 of Part 6 of CTA 2009, Part 10A of ITA 2007 or Chapter 4 of Part 4 of TCGA 1992 has effect in relation to the arrangement (alternative finance arrangements).

(7) A finance arrangement code does not apply so far as the security is plant or machinery which is the subject of a sale and finance leaseback.

(8) For the purposes of subsection (7) apply section 221 of CAA 2001 to determine whether plant or machinery is the subject of a sale and finance leaseback.

(9) A finance arrangement code does not apply so far as sections 228B and 228C of CAA 2001 (finance leaseback) apply in relation to the arrangement.

(10) Section 772 defines a relevant person for the purposes of this section.

772 Exceptions: relevant person

(1) This section defines a relevant person for the purposes of section 771.

(2) If (apart from sections 771 and 773) sections 758 to 762 would apply, each of the following is a relevant person—

(a) the borrower, and

(b) a person connected with the borrower or (if the borrower is a partnership) a member of the partnership.

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(3) If (apart from sections 771 and 773) sections 763 to 766 would apply, the transferor is a relevant person.

(4) If (apart from sections 771 and 773) sections 767 to 769 would apply, a relevant member as there defined is a relevant person.

(5) For the purposes of subsection (2)(b) the persons connected with the borrower include any persons who under section 1122 (meaning of "connected") are connected with the borrower.

773 Power to make further exceptions

(1) The Treasury may make regulations prescribing other circumstances in which a finance arrangement code is not to apply.

(2) The regulations may amend sections 771 and 772.

(3) The power to make regulations includes—
- (a) power to make provision that has effect in relation to times before the making of the regulations (but not times before 6 June 2006),
- (b) power to make different provision for different cases or different purposes, and
- (c) power to make incidental, supplemental, consequential and transitional provision and savings.

Supplementary

774 Accounts

(1) This section applies for the purposes of this Chapter.

(2) A reference to the accounts of a person includes (if the person is a company) a reference to the consolidated group accounts of a group of companies of which it is a member.

(3) In determining whether accounts record an amount as a financial liability in respect of an advance, assume that the period in which the advance is received ended immediately after the receipt of the advance.

(4) If a person does not draw up accounts in accordance with generally accepted accounting practice, assume that the person drew up the accounts in accordance with that practice.

Modifications etc. (not altering text)

C35 Ss. 774-776 applied by Finance Act 2004 (c. 12), s. 196J(5) (as inserted (with effect in accordance with Sch. 13 para. 3 of the amending Act) by Finance Act 2012 (c. 14), **Sch. 13 para. 1** (with Sch. 13 Pt. 2))

C36 S. 774 applied by Finance Act 2004 (c. 12), s. 196L(4) (as inserted (with effect in accordance with Sch. 13 para. 17 of the amending Act) by Finance Act 2012 (c. 14), **Sch. 13 para. 15** (with Sch. 13 Pt. 4))

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775 Arrangements

A reference in this Chapter to an arrangement includes a reference to an agreement or understanding (whether or not legally enforceable).

Modifications etc. (not altering text)

C35 Ss. 774-776 applied by Finance Act 2004 (c. 12), s. 196J(5) (as inserted (with effect in accordance with Sch. 13 para. 3 of the amending Act) by Finance Act 2012 (c. 14), **Sch. 13 para. 1** (with Sch. 13 Pt. 2))

C37 S. 775 applied by Finance Act 2004 (c. 12), s. 196L(4) (as inserted (with effect in accordance with Sch. 13 para. 17 of the amending Act) by Finance Act 2012 (c. 14), **Sch. 13 para. 15** (with Sch. 13 Pt. 4))

776 Assets

(1) This section applies for the purposes of this Chapter.

(2) A reference to a person receiving an asset includes—

(a) a reference to the person obtaining (directly or indirectly) the value of an asset or otherwise deriving (directly or indirectly) a benefit from it, and

(b) a reference to the discharge (in whole or part) of a liability of the person.

(3) A reference to a disposal of an asset includes a reference to anything constituting a disposal of it for the purposes of TCGA 1992.

(4) A reference to payments in respect of an asset includes—

(a) a reference to payments in respect of another asset substituted for it under the arrangement, and

(b) a reference to obtaining (directly or indirectly) the value of an asset or otherwise deriving (directly or indirectly) a benefit from it.

Modifications etc. (not altering text)

C35 Ss. 774-776 applied by Finance Act 2004 (c. 12), s. 196J(5) (as inserted (with effect in accordance with Sch. 13 para. 3 of the amending Act) by Finance Act 2012 (c. 14), **Sch. 13 para. 1** (with Sch. 13 Pt. 2))

C38 S. 776(2)(4) applied by Finance Act 2004 (c. 12), s. 196L(4)(6) (as inserted (with effect in accordance with Sch. 13 para. 17 of the amending Act) by Finance Act 2012 (c. 14), **Sch. 13 para. 15** (with Sch. 13 Pt. 4))

CHAPTER 3

LOAN OR CREDIT TRANSACTIONS

777 Loan or credit transaction defined

(1) This section defines a loan or credit transaction for the purposes of sections 778 and 779.

(2) A transaction is a loan or credit transaction if it is—

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(a) effected with reference to the lending of money or the varying of the terms on which money is lent, or
(b) effected with a view to enabling or facilitating an arrangement concerning the lending of money or the varying of the terms on which money is lent.

(3) A transaction is a loan or credit transaction if it is—
(a) effected with reference to the giving of credit or the varying of the terms on which credit is given, or
(b) effected with a view to enabling or facilitating an arrangement concerning the giving of credit or the varying of the terms on which credit is given.

(4) Subsection (2) has effect whether the transaction is effected—
(a) between the lender and the borrower,
(b) between either of them and a person connected with the other, or
(c) between a person connected with one and a person connected with the other.

(5) Subsection (3) has effect whether the transaction is effected—
(a) between the creditor and the debtor,
(b) between either of them and a person connected with the other, or
(c) between a person connected with one and a person connected with the other.

778 Certain payments treated as interest

(1) This section applies if a loan or credit transaction provides for a payment which is not interest but is—
(a) an annuity or other annual payment falling within Part 5 of ITTOIA 2005 and chargeable to income tax otherwise than as relevant foreign income, or
(b) an annuity or other annual payment which is from a source in the United Kingdom and chargeable to corporation tax under Chapter 5 of Part 10 of CTA 2009 (distributions from unauthorised unit trusts) or Chapter 7 of that Part (annual payments not otherwise charged).

(2) The payment must be treated for the purposes of the Corporation Tax Acts as if it were a payment of interest.

779 Tax charged on income transferred

(1) This section applies if—
(a) under a loan or credit transaction a company transfers income arising from property,
(b) the company is not, as a result of Chapter 2 (finance arrangements), chargeable to corporation tax on the income transferred, and
(c) the company is within the charge to corporation tax.

(2) In such a case, the company which transfers the income is charged to corporation tax, under the charge to corporation tax on income, on an amount equal to the income transferred.

(3) This section does not prejudice the liability of any other person to tax.

(4) For the purposes of this section a company transfers income if it surrenders, waives or forgoes it.

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(5) Subsection (6) applies for the purposes of this section if—

(a) credit is given for the purchase price of property, and

(b) the rights attaching to the property are such that the buyer's rights to income from the property are suspended or restricted during the life of the debt.

(6) The buyer must be treated as surrendering income of an amount equal to the income the buyer in effect forgoes by obtaining the credit.

(7) For the purposes of this section an amount of income payable subject to deduction of income tax must be taken as the amount before deduction of tax.

[F474]PART 17

MANUFACTURED PAYMENTS AND REPOS

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Textual Amendments

F474 Pt. 17 omitted (1.1.2014) by virtue of Finance Act 2013 (c. 29), **Sch. 29 paras. 43**, 52

[[F475]PART 17A

MANUFACTURED DIVIDENDS

Textual Amendments

F475 Pt. 17A inserted (with effect in accordance with Sch. 29 para. 51 of the amending Act) by Finance Act 2013 (c. 29), **Sch. 29 para. 2**

814A Overview of Part

This Part deals with the application of the Corporation Tax Acts to manufactured dividend relationships and payments representative of dividends.

814B Key definitions

(1) For the purposes of the Corporation Tax Acts a company has a manufactured dividend relationship if conditions A to C are met.

(2) Condition A is that under any arrangements—

(a) an amount is payable by or to the company, or

(b) any other benefit is given by or to the company (including the release of the whole or part of any liability to pay an amount).

(3) Condition B is that the arrangements relate to the transfer of shares in a company.

(4) Condition C is that the amount or value of the other benefit—

(a) is representative of a dividend on the shares, or

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(b) will fall to be treated as representative of such a dividend when it is paid or given.

(5) In subsection (2) the reference to an amount being payable, or other benefit being given, by the company includes a reference to an amount being payable, or other benefit being given, by another person on behalf of the company.

(6) In this Part—

"manufactured dividend", in relation to a manufactured dividend relationship, means an amount, or the value of a benefit, within subsection (2), and

"the real dividend" means the dividend mentioned in subsection (4)(a).

814C Treatment of payer of manufactured dividend

(1) This section applies where a company has a manufactured dividend relationship under which a manufactured dividend is paid by or on behalf of the company.

(2) No deduction in calculating income for corporation tax purposes is allowed in respect of the manufactured dividend (subject to subsections (3) to (7)).

(3) Subsection (2) does not apply in relation to the company so far as the manufactured dividend is brought into account under Part 3 of CTA 2009 in calculating the profits of a trade carried on by the company.

(4) Subsection (5) applies if—

(a) the manufactured dividend relates to investment business which the company has,

(b) the company received the real dividend in the accounting period, and

(c) the real dividend is taxed by virtue of section 548(5) (recipients of distributions from REITs).

(5) The manufactured dividend is to be treated as expenses of management of the company's investment business for the accounting period for the purposes of Chapter 2 of Part 16 of CTA 2009.

(6) Subsection (7) applies if—

(a) the manufactured dividend is referable to basic life assurance and general annuity business which the company has,

(b) the company received the real dividend in the accounting period, and

(c) the real dividend is taxed by virtue of section 548(5) (recipients of distributions from REITs).

(7) So far as the manufactured dividend is referable as mentioned in subsection (6)(a), the manufactured dividend is to be treated for the purposes of section 76 of FA 2012 as a deemed BLAGAB management expense for the accounting period.

(8) Nothing in subsection (3) affects the question whether (apart from that provision) a deduction in calculating the profits of a trade carried on by the company is allowed.

(9) The references in subsections (4) and (6) to the real dividend include references to a manufactured dividend which is treated as a real dividend by virtue of section 814D(2).

(10) For the purposes of subsections (6) and (7), the manufactured dividend is treated as referable to basic life assurance and general annuity business so far as the real dividend

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is received by the company and is so referable in accordance with Chapter 4 of Part 2 of FA 2012 (apportionment rules for I-E charge).

814D Treatment of recipient of manufactured dividend

(1) Subsection (2) applies if a company has a manufactured dividend relationship under which a manufactured dividend is payable to it.

(2) For the purposes of the charge to corporation tax on the income of the company, the Corporation Tax Acts apply to the company, and any company claiming title through or under the company, as if the manufactured dividend were a dividend on the shares.

(3) Subsection (2) is subject to subsections (4) to (8).

(4) Subsection (2) does not apply in relation to a company so far as the manufactured dividend is brought into account under Part 3 of CTA 2009 in calculating the profits of a trade carried on by the company.

(5) Subsection (2) does not apply in relation to a company for the purposes of determining entitlement to double taxation relief in respect of any dividend.

(6) Part 9A of CTA 2009 (company distributions), in its application in relation to a manufactured dividend as a result of subsection (2), has effect with the modification in subsection (7).

(7) The modification is that—
   (a) references in that Part to the payer are to be treated as references to the company that pays the real dividend, and
   (b) the definition of "the payer" in section 931T is to be treated as omitted.

(8) The company to which the manufactured dividend is payable is not entitled to a tax credit under section 1109 (tax credits for certain recipients of exempt qualifying distributions) in respect of the dividend.

(9) For the purposes of subsection (5) "double taxation relief" means any relief given under or as a result of Part 2 of TIOPA 2010.

(10) This section has effect regardless of section 358 of CTA 2009 (exclusion of credits on release of connected companies debts) or any other provision of Part 5 of that Act (loan relationships) which prevents a credit from being brought into account.**]**

PART 18

TRANSACTIONS IN LAND

Introduction

815 Introduction to Part

(1) This Part has effect for the purpose of preventing the avoidance of corporation tax by companies concerned with land or the development of land.

(2) This Part—

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(a) applies the charge to corporation tax on income in some circumstances to gains of a capital nature obtained from disposing of land (see section 818), and
(b) provides for the calculation of the amount charged (see section 822).

816 Meaning of disposing of land

(1) For the purposes of this Part land is disposed of if the property in the land or control over the land is effectively disposed of—
(a) by one or more transactions, or
(b) by any arrangement or scheme.

(2) It does not matter for the purposes of subsection (1) if the transactions, arrangement or scheme concern—
(a) the land, or
(b) property deriving its value from the land (see section 833(2)).

(3) See also—
section 823 (transactions, arrangements, sales and realisations relevant for this Part), and
section 824 (tracing value).

817 Priority of other tax provisions

This Part has effect subject to—
(a) Chapter 5 of Part 5 of ITTOIA 2005 (settlements: amounts treated as income of settlor), and
(b) any other provision of the Tax Acts treating income as belonging to a particular person.

Charge to tax on gains from transactions in land

818 Charge to tax on gains from transactions in land

(1) The charge to corporation tax on income applies to a gain to which section 819 (gains obtained from land disposals in some circumstances) applies.

(2) The charge applies for the accounting period of the company chargeable in which the gain is realised.

(3) As to which company that is, see section 821.

(4) For exemptions from the charge, see—
section 827 (gain attributable to period before intention to develop formed), and
section 828 (disposals of shares in companies holding land as trading stock).

819 Gains obtained from land disposals in some circumstances

(1) This section applies to a gain if—
(a) any of the conditions specified in subsection (2) is met as respects land,
(b) the gain is a gain of a capital nature obtained from the disposal of all or part of the land,

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(c) all or part of the land is situated in the United Kingdom, and
(d) a person within section 820(1)(a), (b) or (c) obtains the gain.

(2) The conditions are that—
(a) the land is acquired with the sole or main object of realising a gain from disposing of all or part of the land,
(b) any property deriving its value from the land is acquired with the sole or main object of realising a gain from disposing of all or part of the land,
(c) the land is held as trading stock, and
(d) the land is developed with the sole or main object of realising a gain from disposing of all or part of the land when developed.

(3) It does not matter for the purposes of this section whether the person within section 820(1)(a), (b) or (c) obtains the gain for that person or another person.

(4) For the purposes of this section, if, for example by a premature sale, a person ("A") directly or indirectly transmits the opportunity of realising a gain to another person ("B"), A obtains B's gain for B.

(5) For the meaning of "another person", see section 825.

820 Person obtaining gain

(1) The persons referred to in section 819(1)(d) are—
(a) the person acquiring, holding or developing the land,
(b) a person connected with a person within paragraph (a), and
(c) a person who is a party to, or concerned in, an arrangement or scheme within subsection (2).

(2) An arrangement or scheme is within this subsection if—
(a) it is effected as respects all or part of the land, and
(b) it enables a gain to be realised—
(i) by any indirect method, or
(ii) by any series of transactions.

(3) For the purposes of this section any number of transactions may be regarded as constituting a single arrangement or scheme if—
(a) a common purpose can be discerned in them, or
(b) there is other sufficient evidence of a common purpose.

821 Company chargeable

(1) The general rule is that the company chargeable to tax as a result of this Part is the company that realises the gain.

(2) But that rule is subject to subsections (3) and (5).

(3) If all or any part of the gain accruing to a person ("A") is derived from value provided directly or indirectly by another person ("B") which is a company, B is chargeable.

(4) Subsection (3) applies whether or not the value is put at the disposal of A.

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(5) If all or any part of the gain accruing to a person ("C") is derived from an opportunity of realising a gain provided directly or indirectly by another person ("D") which is a company, D is chargeable.

(6) For the meaning of "another person", see section 825.

822 Method of calculating gain

(1) Subsections (3) to (5) apply for calculating a gain for the purposes of this Part.

(2) But, except so far as those subsections make provision, such method is to be used for those purposes as is just and reasonable in the circumstances.

(3) The method must—
- (a) take into account the value of what is obtained for disposing of the land, and
- (b) allow only such expenses as are attributable to the land disposed of.

(4) If a freehold is acquired and on disposal the reversion is retained, account may be taken of the way in which trading profits are calculated in such a case.

(5) Account may be taken of the adjustments to be made in calculating trading profits under section 136 of CTA 2009 (lease premiums etc: reduction of receipts).

(6) In this section "trading profits" means the profits under Part 3 of CTA 2009 (trading income) of a company dealing in land.

(7) In the application of this section in Scotland—

"freehold" means the interest of the owner, and

"reversion" means the interest of the landlord in property subject to a lease.

(8) See also section 826 (valuations and apportionments).

Further provisions relevant to the charge

823 Transactions, arrangements, sales and realisations relevant for Part

(1) For the purposes of this Part, account is to be taken of any method, however indirect, by which—
- (a) any property or right is transferred or transmitted, or
- (b) the value of any property or right is enhanced or diminished.

(2) Accordingly—
- (a) the occasion of the transfer or transmission of any property or right however indirect, and
- (b) the occasion when the value of any property or right is enhanced,

may be an occasion when tax is charged as a result of this Part.

(3) Subsections (1) and (2) apply in particular—
- (a) to sales, contracts and other transactions made otherwise than for full consideration or for more than full consideration,
- (b) to any method by which any property or right, or the control of any property or right, is transferred or transmitted by assigning—
  - (i) share capital or other rights in a company,

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(ii) rights in a partnership, or

(iii) an interest in settled property,

(c) to the creation of an option affecting the disposition of any property or right and the giving of consideration for granting it,

(d) to the creation of a requirement for consent affecting such a disposition and the giving of consideration for granting it,

(e) to the creation of an embargo affecting such a disposition and the giving of consideration for releasing it, and

(f) to the disposal of any property or right on the winding up, dissolution or termination of a company, partnership or trust.

824 Tracing value

(1) This section applies if it is necessary to determine the extent to which the value of any property or right is derived from any other property or right for the purposes of this Part.

(2) Value may be traced through any number of companies, partnerships and trusts.

(3) The property held by a company, partnership or trust must be attributed to the shareholders, partners or beneficiaries at each stage in such manner as is appropriate in the circumstances.

825 Meaning of "another person"

(1) For the purposes of this Part references to other persons are to be read in accordance with subsections (2) to (4).

(2) A partnership or partners in a partnership may be regarded as a person or persons distinct from the individuals or other persons who are for the time being partners.

(3) The trustees of settled property may be regarded as persons distinct from the individuals or other persons who are for the time being the trustees.

(4) Personal representatives may be regarded as persons distinct from the individuals or other persons who are for the time being personal representatives.

826 Valuations and apportionments

(1) All such valuations are to be made as are appropriate to give effect to this Part.

(2) For the purposes of this Part, any expenditure, receipt, consideration or other amount may be apportioned by such method as is just and reasonable in the circumstances.

Exemptions

827 Gain attributable to period before intention to develop formed

(1) This section applies if—

(a) income is treated as arising because the condition mentioned in section 819(2)(d) is met (land developed with sole or main object of realising a gain from its disposal when developed), and

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(b) part of the income is fairly attributable to a period before the intention to develop was formed.

(2) No liability to corporation tax arises as a result of this Part in respect of that part of the income.

(3) In applying this section account must be taken of the treatment under Part 3 of CTA 2009 (trading income) of a company which appropriates land as trading stock.

828 Disposals of shares in companies holding land as trading stock

(1) No liability to corporation tax arises as a result of this Part in respect of a gain on property deriving value from land if—
- (a) the gain is obtained by the holder of shares,
- (b) the gain arises as a result of the holder of shares falling within section 820(1)(a) or (b) (persons acquiring, holding or developing land and connected persons), and
- (c) the circumstances are such as are mentioned in subsections (2) and (3).

(2) The gain arises on a disposal of shares in—
- (a) a company which holds that land as trading stock, or
- (b) a company which directly or indirectly owns at least 90% of the ordinary share capital of another company which itself holds that land as trading stock.

(3) All the land so held is disposed of—
- (a) in the normal course of its trade by the company which holds it, and
- (b) so as to procure that all opportunity of profit in respect of the land arises to that company.

(4) This section does not affect any liability as a result of any person falling within section 820(1)(c) (parties to arrangements and schemes, etc).

Recovery of tax

829 Cases where consideration receivable by person not assessed

(1) This section applies if a company ("A") is assessed to tax under this Part in respect of consideration receivable by another person ("B").

(2) Consideration is not regarded as having become receivable by B for this purpose until B can effectively enjoy or dispose of it.

(3) A is entitled to recover from B any part of the tax which A has paid.

(4) If any part of the tax remains unpaid at the end of the period of 6 months beginning with the date when it became due and payable, it is recoverable from B as if B were the company assessed.

(5) Subsection (4) does not affect the right to recover the tax from A.

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830 Certificates of tax paid etc

(1) For the purposes of section 829(3), an officer of Revenue and Customs must, if required to do so, produce a certificate specifying—
  (a) the amount of income in respect of which tax has been paid, and
  (b) the amount of tax paid.

(2) The certificate is conclusive evidence of any facts stated in it.

Clearances and power to obtain information

831 Clearance procedure

(1) This section applies if a company considers that the condition mentioned in section 819(2)(a), (b) or (d) may be met as respects a gain of a capital nature which it—
  (a) has obtained from the disposal of land, or
  (b) would obtain from a proposed disposal of land.

(2) The company may provide the Commissioners for Her Majesty's Revenue and Customs with written particulars showing how the gain has arisen or would arise.

(3) The Commissioners must notify the company whether or not they are satisfied that, in the circumstances described in the particulars, it will not, or would not, be liable to tax on the gain as a result of this Part.

(4) The notification must be given before the end of the period of 30 days beginning with the day after that on which the particulars are received.

(5) A company notified by the Commissioners under this section that they are so satisfied is not liable to corporation tax on the gain as a result of this Part.

(6) A notification under this section about the Commissioners' decision concerning a gain is void if the particulars given under this section about the gain do not make a full and accurate disclosure of all facts and considerations relating to it which are material to the decision.

832 Power to obtain information

(1) An officer of Revenue and Customs may by notice require any person to provide the officer within such period as the officer may direct with such particulars as the officer may reasonably require for the purposes of this Part.

(2) That period must be at least 30 days.

(3) The particulars which a person must provide under this section, if required to do so by such a notice, include particulars about—
  (a) transactions or arrangements with respect to which the person is or was acting on behalf of others,
  (b) transactions or arrangements which in the opinion of the officer should properly be investigated for the purposes of this Part, although in the person's opinion no liability to corporation tax arises as a result of this Part, and
  (c) whether the person has taken or is taking any part and, if so, what part in transactions or arrangements of a description specified in the notice.

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(4) Subsection (3) is subject to subsections (5) and (6).

(5) In relation to anything done by a relevant lawyer on behalf of a client who does not consent to the provision of information required to be provided by a notice under subsection (1), the relevant lawyer may not be compelled under this section to do more than—

(a) state that the relevant lawyer was acting on behalf of a client, and

(b) give the name and address of the client.

(6) A relevant lawyer is not treated as having taken part in a transaction or arrangement for the purposes of subsection (3)(c) just because of giving professional advice to a client about it.

(7) In this section "relevant lawyer" means a barrister, advocate, solicitor or other legal representative communications with whom may be the subject of a claim to professional privilege or, in Scotland, protected from disclosure in legal proceedings on the grounds of confidentiality of communication.

Interpretation

833 Interpretation of Part

(1) In this Part "capital", in relation to a gain, means that the gain does not fall to be included in any calculation of income for purposes of the Tax Acts otherwise than as a result of this Part or Chapter 3 of Part 13 of ITA 2007 (transactions in land).

(2) In this Part references to property deriving its value from land include—

(a) any shareholding in a company deriving its value directly or indirectly from land,

(b) any partnership interest deriving its value directly or indirectly from land,

(c) any interest in settled property deriving its value directly or indirectly from land, and

(d) any option, consent or embargo affecting the disposition of land.

(3) In this Part—

"company" includes any body corporate, and

"share" includes stock.

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PART 19

SALE AND LEASE-BACK ETC

CHAPTER 1

PAYMENTS CONNECTED WITH TRANSFERRED LAND

Introduction

834 Overview of Chapter

This Chapter provides that in certain circumstances where a transfer is made regarding land, and the transferor or an associate becomes liable to make a payment connected with the land, corporation tax relief for the payment is restricted.

Application of the Chapter

835 Transferor or associate becomes liable for payment of rent

(1) Section 838 has effect if—

(a) land, or an estate or interest in land, is transferred,

(b) the transferor, or a company associated with the transferor, becomes liable to make a payment of rent under a lease of the land or part of it, and

(c) a deduction by way of relevant corporation tax relief (see section 837) is allowed for the payment.

(2) Section 839 has effect if—

(a) land, or an estate or interest in land, is transferred,

(b) the transferor, or a company associated with the transferor, becomes liable to make a payment of rent under a lease of the land or part of it, and

[[F476](c) a deduction is allowed for the payment by taking it into account in the calculation at step 1 of section 76 of FA 2012 (management expenses of insurance companies carrying on basic life assurance and general annuity business).**]**

(3) The reference in subsection (1)(a) or (2)(a) to a transfer of an estate or interest in land includes a reference to any of the following—

(a) the granting of a lease or another transaction involving the creation of a new estate or interest in the land,

(b) the transfer of the lessee's interest under a lease by surrender or forfeiture of the lease, and

(c) a transaction or series of transactions affecting land or an estate or interest in land, such that some person is the owner or one of the owners before and after the transaction or transactions but another person becomes or ceases to be one of the owners.

(4) In relation to a transaction or series of transactions mentioned in subsection (3)(c), a person is to be regarded as a transferor for the purposes of this Chapter if the person—

(a) is an owner before the transaction or transactions, and

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(b) is not the sole owner afterwards.

(5) The liability mentioned in subsection (1)(b) or (2)(b) is one resulting from—

(a) a lease, of the land or part of it, granted (at the time of the transfer or later) by the transferee to the transferor, or

(b) another transaction or series of transactions affecting the land or an estate or interest in it.

(6) The liability mentioned in subsection (1)(b) or (2)(b) is one arising at the time of the transfer or later.

(7) The reference in subsection (1)(a) or (2)(a) to a transfer does not include a transfer on or before 14 April 1964.

Textual Amendments

F476 S. 835(2)(c) substituted (17.7.2012) by Finance Act 2012 (c. 14), **Sch. 16 para. 224**

836 Transferor or associate becomes liable for payment other than rent

(1) Section 838 has effect if—

(a) land, or an estate or interest in land, is transferred,

(b) the transferor, or a company associated with the transferor, becomes liable to make a payment which is not rent under a lease but is otherwise connected with the land or part of it (whether it is a payment under a rentcharge or under some other transaction), and

(c) a deduction by way of relevant corporation tax relief (see section 837) is allowed for the payment.

(2) Section 839 has effect if—

(a) land, or an estate or interest in land, is transferred,

(b) the transferor, or a company associated with the transferor, becomes liable to make a payment which is not rent under a lease but is otherwise connected with the land or part of it (whether it is a payment under a rentcharge or under some other transaction), and

[[F477](c) a deduction is allowed for the payment by taking it into account in the calculation at step 1 of section 76 of FA 2012 (management expenses of insurance companies carrying on basic life assurance and general annuity business).**]**

(3) The reference in subsection (1)(a) or (2)(a) to a transfer of an estate or interest in land includes a reference to any of the following—

(a) the granting of a lease or another transaction involving the creation of a new estate or interest in the land,

(b) the transfer of the lessee's interest under a lease by surrender or forfeiture of the lease, and

(c) a transaction or series of transactions affecting land or an estate or interest in land, such that some person is the owner or one of the owners before and after the transaction or transactions but another person becomes or ceases to be one of the owners.

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(4) In relation to a transaction or series of transactions mentioned in subsection (3)(c), a person is to be regarded as a transferor for the purposes of this Chapter if the person—
  (a) is an owner before the transaction or transactions, and
  (b) is not the sole owner afterwards.

(5) The liability mentioned in subsection (1)(b) or (2)(b) is one resulting from a transaction or series of transactions affecting the land or an estate or interest in it.

(6) The liability mentioned in subsection (1)(b) or (2)(b) is one arising at the time of the transfer or later.

(7) The reference in subsection (1)(a) or (2)(a) to a transfer does not include a transfer on or before 14 April 1964.

Textual Amendments
F477 S. 836(2)(c) substituted (17.7.2012) by Finance Act 2012 (c. 14), **Sch. 16 para. 225**

837 Relevant corporation tax relief

For the purposes of this Chapter each of the following is a deduction by way of relevant corporation tax relief—
  (a) a deduction in calculating profits or losses of a trade for corporation tax purposes,
  (b) a deduction in calculating the profits of a UK property business for corporation tax purposes,
  (c) a deduction in calculating any loss for which relief is given under section 91 (losses from miscellaneous transactions), or in calculating profits or gains chargeable to corporation tax under or by virtue of any provision to which section 1173 (miscellaneous charges) applies, and
  (d) a deduction under section 1219 of CTA 2009 (expenses of management of a company's investment business).

Relief (other than for certain insurance company expenses): restriction and carrying forward

838 Relevant corporation tax relief: deduction not to exceed commercial rent

(1) The rules in subsection (3) apply to the calculation of the deduction by way of relevant corporation tax relief allowed in an accounting period—
  (a) for the non-excluded element of the payment within section 835(1) or 836(1), or
  (b) if there are two or more such payments, for the non-excluded elements of those payments.

(2) For the purposes of this section the non-excluded element of a payment is the element of the payment not excluded under section 843 (service charges etc).

(3) The rules are—

Rule 1 —meaning of amount E For any accounting period, amount E (which may be nil) is the expense or total expenses to be brought, in accordance with generally accepted accounting practice, into account in the period in respect of—

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(a) the non-excluded element of the payment, or
(b) the non-excluded elements of the payments.

Rule 2 — calculations For every accounting period—

(a) calculate the total of amount E for the period and amount E for every previous accounting period ending on or after the date of the transfer mentioned in section 835(1)(a) or 836(1)(a),
(b) calculate the total of the deductions by way of relevant corporation tax relief for every previous accounting period ending on or after the date of that transfer, and
(c) subtract the total at (b) from the total at (a) to give the cumulative unrelieved expenses for the period.

Rule 3 — meaning of post-spread period An accounting period is a post-spread period if for that accounting period, and every later accounting period, there are no payments within section 835(1) or 836(1).

Rule 4 — the deduction allowed in an accounting period If an accounting period is not a post-spread period, the deduction allowed for the period is equal to the cumulative unrelieved expenses for the period, but is equal to the commercial rent for the period if that is less (see section 844 or 845).

Rule 5 — accounting periods in which no deduction allowed If an accounting period is a post-spread period, no deduction is allowed for the period.

Insurance company expenses: restriction and carrying forward of relief

839 Deduction [F478]... not to exceed commercial rent

(1) Subsection (3) applies to the calculation of **[**[F479]the amount to be taken into account as mentioned in section 835(2)(c) or 836(2)(c) in respect of**]** the non-excluded element of the payment within section 835(2) or 836(2).

(2) For the purposes of this section the non-excluded element of a payment is the element of the payment not excluded under section 843 (service charges etc).

(3) **[**[F480]The amount of the payment to be taken into account**]** must not exceed the commercial rent for the period for which the payment is made (see section 844 or 845).

Textual Amendments

F478 Words in s. 839 heading omitted (17.7.2012) by virtue of Finance Act 2012 (c. 14), **Sch. 16 para. 226(4)**

F479 Words in s. 839(1) substituted (17.7.2012) by Finance Act 2012 (c. 14), **Sch. 16 para. 226(2)**

F480 Words in s. 839(3) substituted (17.7.2012) by Finance Act 2012 (c. 14), **Sch. 16 para. 226(3)**

840 Carrying forward parts of payments

(1) This section applies if—

(a) section 839 has effect, and
(b) conditions A and B are met.

Status: *Point in time view as at 01/04/2014.*
Changes to legislation: *Corporation Tax Act 2010 is up to date with all changes known to be in force on or before 12 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(2) Condition A is that under section 839 part of a payment which would otherwise be **[**[F481]taken into account as mentioned in section 835(2)(c) or 836(2)(c) is not taken into account**]**.

(3) Condition B is that one or more later payments are made, by the transferor or a person associated with the transferor, under—

(a) the lease (if section 839 has effect because of section 835(2)), or

(b) the rentcharge or other transaction mentioned in section 836(2)(b) (if section 839 has effect because of section 836(2)).

(4) The part of the payment mentioned in subsection (2) may be carried forward and treated for the purposes of **[**[F482]the calculation at step 1 of section 76 of FA 2012**]** as if it were made—

(a) when the next of the later payments is made, and

(b) for the period for which that later payment is made.

(5) So far as a part of a payment carried forward under this section is not **[**[F483]taken into account in the calculation at step 1 of section 76 of FA 2012**]**, it may be carried forward again under this section.

Textual Amendments

F481 Words in s. 840(2) substituted (17.7.2012) by Finance Act 2012 (c. 14), **Sch. 16 para. 227(2)**

F482 Words in s. 840(4) substituted (17.7.2012) by Finance Act 2012 (c. 14), **Sch. 16 para. 227(3)**

F483 Words in s. 840(5) substituted (17.7.2012) by Finance Act 2012 (c. 14), **Sch. 16 para. 227(4)**

841 Aggregation and apportionment of payments

(1) This section applies for the purposes of section 839.

(2) If more than one payment is made for the same period the payments must be taken together.

(3) If payments are made for periods which overlap—

(a) the payments must be apportioned, and

(b) the apportioned payments which belong to the common part of the overlapping periods must be taken together.

(4) References in subsections (2) and (3) to payments include references to parts of payments which under section 840 are treated as if made later than they were made.

842 Payments made for later periods

(1) This section applies for the purposes of sections 839 to 841.

(2) For the purposes of this section the relevant year, in relation to a payment, is the year which begins with the date it is made.

(3) If a payment is made for a period all of which is after the relevant year, it must be treated as made for the relevant year.

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(4) If a payment is made for a period part of which is after the relevant year, it must be treated as if a corresponding part of it was made for the relevant year (and no part for a later period).

Interpretation etc

843 Exclusion of service charges etc

(1) This section applies for the purposes of sections 838 and 839.

(2) A payment must be excluded so far as it is in respect of any of the following—
- (a) services,
- (b) the use of relevant assets, and
- (c) rates usually borne by the tenant.

(3) The amount excluded must be just and reasonable.

(4) If a lease or agreement contains provisions fixing the payments or parts of payments which are in respect of services or the use of assets, those provisions are not conclusive.

(5) A relevant asset is any description of property or rights other than land or an interest in land.

844 Commercial rent: comparison with rent under a lease

(1) Subsection (3) applies—
- (a) for the purpose of making a comparison under rule 4 of section 838(3) if section 838 has effect because of section 835(1), and
- (b) for the purpose of making a comparison under section 839(3) if section 839 has effect because of section 835(2).

(2) In this section "the actual lease" means the lease mentioned in section 835(1)(b) or (2)(b).

(3) The commercial rent is the rent which might be expected to be paid under a lease, of the land in respect of which the payment mentioned in section 835(1)(b) or (2)(b) is made, which—
- (a) was negotiated in the open market when the actual lease was created,
- (b) is of the same duration as the actual lease,
- (c) is subject to the terms and conditions of the actual lease as respects liability for maintenance and repairs, and
- (d) provides for rent payable at uniform intervals and at an appropriate rate.

(4) Rent is payable at an appropriate rate if—
- (a) it is payable at a uniform rate, or
- (b) in a case where the rent payable under the actual lease is rent at a progressive rate (and such that the amount of rent payable for a year is never less than the amount payable for a previous year), it progresses by gradations proportionate to those provided by the actual lease.

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845 Commercial rent: comparison with payments other than rent

(1) Subsection (2) applies—
- (a) for the purpose of making a comparison under rule 4 of section 838(3) if section 838 has effect because of section 836(1), and
- (b) for the purpose of making a comparison under section 839(3) if section 839 has effect because of section 836(2).

(2) The commercial rent is the rent which might be expected to be paid under a lease, of the land in respect of which the payment mentioned in section 836(1)(b) or (2)(b) is made, which—
- (a) was negotiated in the open market when the rentcharge or other transaction mentioned in section 836(1)(b) or (2)(b) was effected,
- (b) is a tenant's repairing lease, and
- (c) is of an appropriate duration.

(3) A tenant's repairing lease is a lease where the lessee is under an obligation to maintain and repair the whole (or substantially the whole) of the premises comprised in the lease.

(4) To see whether a lease is of an appropriate duration, take the period over which payments are to be made under the rentcharge or other transaction, and—
- (a) if that period is 200 years or more (or the obligation to make the payments is perpetual) an appropriate duration is 200 years, or
- (b) if that period is less than 200 years, an appropriate duration is the same duration as that period.

846 Lease and rent

(1) This section applies for the purposes of this Chapter.

(2) A reference to a lease includes a reference to any of the following—
- (a) an underlease, sublease, tenancy or licence, and
- (b) an agreement for a lease, underlease, sublease, tenancy or licence, and
- (c) in the case of land outside the United Kingdom, an interest corresponding to a lease (as defined here).

(3) A reference to rent includes a reference to any payment under a lease.

(4) A reference to rent under a lease includes a reference to expenses which the tenant under the lease is treated as incurring in respect of the land subject to the lease under any of—
- (a) sections 63 to 67 of CTA 2009 (land occupied for trade purposes), and
- (b) sections 232 to 234 of that Act (taxed leases).

(5) Expenses within subsection (4) must be treated as having been paid as soon as they were incurred.

847 Associated persons

(1) This section applies for the purposes of this Chapter.

(2) The following persons are associated with one another—

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(a) the transferor in an affected transaction and the transferor in another affected transaction, if the two persons are acting in concert or if the two transactions are in any way reciprocal, and

(b) any person who is an associate of either of those associated transferors.

(3) Two or more bodies corporate are associated with one another if they participate in, or are incorporated for the purposes of, a scheme—

(a) for the reconstruction of any body or bodies corporate, or

(b) for the amalgamation of any two or more bodies corporate.

(4) Persons are associated with one another if they are associates as defined in section 882 (relatives, settlements, persons controlling bodies, joint owners etc).

(5) In subsection (2) "affected transaction" means a transaction within—

(a) section 835(1) or (2) or 836(1) or (2), or

(b) section 681AA(1) or (2) or 681AB(1) or (2) of ITA 2007.

848 Land outside the UK

In the case of land outside the United Kingdom, expressions in this Chapter relating to interests in land and their disposition must be taken to relate to corresponding interests and dispositions.

CHAPTER 2

NEW LEASE OF LAND AFTER ASSIGNMENT OR SURRENDER

Modifications etc. (not altering text)

C39 Pt. 19 Ch. 2 applied by 2007 c. 3, s. 681BD(4) (as inserted (with effect in accordance with s. 381(1) of the amending Act) by Taxation (International and Other Provisions) Act 2010 (c. 8), s. 381(1), **Sch. 4 para. 3** (with Sch. 9 paras. 1-9, 22))

Introduction

849 Overview of Chapter

(1) This Chapter provides that in certain circumstances where a lease of land is assigned or surrendered and another lease is granted or assigned—

(a) consideration received for the assignment or surrender of the first lease is taxed as a trade receipt or charged to corporation tax on income, and

(b) tax relief is allowed for rent under the other lease.

(2) The Chapter provides that in certain circumstances where a lease is varied it is treated as surrendered and another lease is treated as granted.

Status: *Point in time view as at 01/04/2014.*
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Application of the Chapter

850 New lease after assignment or surrender

(1) This Chapter has effect if each of conditions A to E is met.

(2) Condition A is that—
- (a) a company ("L") is a lessee of land under a lease which has 50 years or less to run ("the original lease"), and
- (b) L is entitled in respect of the rent under the original lease to a deduction by way of relevant corporation tax relief.

(3) Condition B is that—
- (a) L assigns the original lease to another person or surrenders it to L's landlord, and
- (b) the consideration for the assignment or surrender would not (apart from this Chapter) be taxable except as capital in L's hands.

(4) Condition C is that—
- (a) another lease ("the new lease") is granted, or assigned, to L or a person linked to L, and
- (b) the new lease is for a term of 15 years or less.

(5) Condition D is that the new lease—
- (a) is of all or part of the land which was the subject of the original lease, or
- (b) includes all or part of the land which was the subject of the original lease.

(6) Condition E is that neither L nor a person linked to L had, before 22 June 1971, a right enforceable at law or in equity to the grant of the new lease.

(7) If each of conditions A to D is met but condition E is not met, see the relevant provisions in Schedule 2 to this Act and Schedule 9 to TIOPA 2010.

Taxation of consideration

851 Taxation of consideration

(1) An appropriate amount must be found under subsection (3) or (4) of—
- (a) the consideration received by L for the assignment or surrender, or
- (b) each instalment of the consideration (if it is paid in instalments).

(2) For the purposes of the Corporation Tax Acts the appropriate amount must be treated in accordance with subsections (6) to (8) and not as a capital receipt.

(3) If the term of the new lease is one year or less, the appropriate amount of the consideration or instalment is the whole of it.

(4) If the term of the new lease is more than one year, the appropriate amount of the consideration or instalment is the proportion of it found by the formula—

$$\frac{16 - N}{15}$$

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(5) In subsection (4) N is the term of the new lease expressed in years (taking part of a year as an appropriate proportion of a year).

(6) The way the appropriate amount must be treated depends on whether the following conditions are met—
  (a) the consideration is received by L in the course of a trade, and
  (b) the rent payable by L, or a person linked to L, under the new lease is allowable as a deduction in calculating profits or losses of a trade, profession or vocation for tax purposes.

(7) If the conditions are met the appropriate amount must be treated as a receipt of the trade mentioned in subsection (6)(a).

(8) If the conditions are not met the appropriate amount must be treated as an amount chargeable to corporation tax under the charge to corporation tax on income.

852 Position where new lease does not include all original property

(1) This section applies for the purposes of section 851 if the property which is the subject of the new lease does not include all the property which was the subject of the original lease.

(2) The consideration received by L must be treated as reduced to the portion of it found under subsection (3).

(3) The portion is that which is reasonably attributable to such part of the original property as—
  (a) consists of the property which is the subject of the new lease, or
  (b) is included in the property which is the subject of the new lease.

(4) The original property is the property which was the subject of the original lease.

Relief for rent under new lease

853 Relief for rent under new lease

(1) This section applies if the rent under the new lease is payable by a company within the charge to corporation tax.

(2) This section also applies if—
  (a) Chapter 2 of Part 12A of ITA 2007 (provision for income tax corresponding to this Chapter) has effect, and
  (b) the rent under the new lease is payable by a company within the charge to corporation tax.

(3) Any provision of CTA 2009 or ICTA providing for deductions or allowances by way of corporation tax relief in respect of payments of rent applies in relation to the rent under the new lease.

(4) In subsection (2), and in subsection (3) as applied by subsection (2), references to the new lease and rent are to be read as in Chapter 2 of Part 12A of ITA 2007.

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New lease treated as ending

854 New lease treated as ending

(1) Sections 855 to 857 treat the new lease as ending in certain circumstances for the purposes of this Chapter.

(2) If any of those provisions apply in a given case, and the new lease is treated as ending on different dates, it must be treated as ending on the earlier or earliest of them.

855 Position where rent reduces

(1) If the rent for a relevant period exceeds the rent for the following comparable period, the term of the new lease must be treated as ending on the date when the relevant period ends.

(2) For the purposes of this section—
- (a) a relevant period is a rental period of the new lease ending before its fifteenth anniversary,
- (b) the following comparable period (in relation to a relevant period) is the rental period which is of the same duration as the relevant period and which begins on the day following the end of the relevant period,
- (c) the rent for a period is the total rent payable under the new lease in respect of the period,
- (d) a rental period is a period in respect of which a payment of rent is to be made, and
- (e) the fifteenth anniversary of the new lease is the fifteenth anniversary of the date on which its term begins.

(3) For the purposes of this section—
- (a) all rental periods of a quarter must be treated as being of the same duration, and
- (b) all rental periods of a month must be treated as being of the same duration.

856 Position where lease may be ended

(1) This section applies if under the new lease the lessor, or L or a person linked to L, has power to end the lease before the end of the term for which it was granted.

(2) The term of the lease must be treated as ending on the earliest date with effect from which the lessor, or L or a person linked to L, could end the lease by exercising the power.

857 Position where lease may be varied

(1) This section applies if under the new lease L, or a person linked to L, has power to vary, in a manner beneficial to L or a person linked to L, obligations under the lease that are obligations of L or a person linked to L.

(2) The term of the lease must be treated as ending on the earliest date with effect from which L, or a person linked to L, could vary the obligations by exercising the power.

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858 Lease treated as ending: rentcharge

(1) Subsection (2) applies if a rentcharge payable by L, or a person linked to L, is secured on all or part of the property subject to the new lease.

(2) For the purposes of sections 855 to 857 the rent payable under the new lease must be treated as equal to the sum of the rentcharge and the rent payable under the lease.

Lease varied to provide for increased rent

859 Lease varied to provide for increased rent

(1) This section applies if each of conditions A to D is met.

(2) Condition A is that—
- (a) a company ("the lessee") is a lessee of land under a lease which has 50 years or less to run ("the original lease"), and
- (b) the lessee is entitled in respect of the rent under the original lease to a deduction by way of relevant corporation tax relief.

(3) Condition B is that (by agreement with the landlord) the lessee varies the original lease.

(4) Condition C is that under the variation—
- (a) the lessee agrees to pay a rent greater than that payable under the original lease, and
- (b) the lessee agrees to pay the greater rent in return for a consideration which would not (apart from this Chapter) be taxable except as capital in the lessee's hands.

(5) Condition D is that under the variation the period during which the greater rent is to be paid ends 15 years or less after the date on which—
- (a) the consideration is paid to the lessee, or
- (b) the last instalment of the consideration is paid to the lessee (if it is paid in instalments).

(6) If this section applies the lessee must be treated for the purposes of this Chapter—
- (a) as having surrendered the original lease for the consideration mentioned in subsection (4)(b), and
- (b) as having been granted a new lease for a term of 15 years or less but otherwise on the terms of the original lease varied as mentioned in subsection (3).

Interpretation

860 Relevant corporation tax relief

For the purposes of this Chapter each of the following is a deduction by way of relevant corporation tax relief—
- (a) a deduction in calculating profits or losses of a trade for corporation tax purposes,
- (b) a deduction in calculating the profits of a UK property business for corporation tax purposes,

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(c) a deduction in calculating any loss for which relief is given under section 91 (losses from miscellaneous transactions), or in calculating profits or gains chargeable to corporation tax under or by virtue of any provision to which section 1173 (miscellaneous charges) applies,

(d) **[**[F484]a deduction of an amount which for the purposes of section 73 of FA 2012 is an amount of adjusted BLAGAB management expenses of an insurance company for an accounting period,**]** and

(e) a deduction under section 1219 of CTA 2009 (expenses of management of a company's investment business).

Textual Amendments

F484 S. 860(d) substituted (17.7.2012) by Finance Act 2012 (c. 14), **Sch. 16 para. 228**

861 Linked persons

(1) In this Chapter references to a person linked to L are to a person who is—

(a) a partner of L,

(b) an associate of L, or

(c) an associate of a partner of L.

(2) "Associate" must be read in accordance with section 882 (relatives, settlements, persons controlling bodies, joint owners etc).

862 Lease, lessee, lessor and rent

(1) This section applies for the purposes of this Chapter.

(2) "Lease" includes—

(a) an agreement for a lease, and

(b) any tenancy.

(3) "Lease" does not include a mortgage.

(4) A reference to a lessee or lessor—

(a) is to be read in accordance with subsections (2) and (3), and

(b) includes a reference to the successors in title of a lessee or lessor.

(5) "Rent" includes a payment by a tenant for work to maintain or repair leased premises which the lease does not require the tenant to carry out; and "premises" here includes land.

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CHAPTER 3

LEASED TRADING ASSETS

Introduction

863 Overview of Chapter

This Chapter provides that, in certain circumstances where a payment is made under a lease of a trading asset, corporation tax relief for the payment is restricted.

Application of the Chapter

864 Leased trading assets

(1) Section 865 has effect if—
- (a) condition A is met, and
- (b) condition B or C is met.

(2) Condition A is that—
- (a) a payment is made by a company under a lease of a relevant asset, and
- (b) a deduction is allowed for the payment in calculating the profits of a trade for corporation tax purposes.

(3) Condition B is that—
- (a) at a time before the lease's creation the asset was used for the purposes of the trade, and
- (b) when it was so used it was owned by the person then carrying on the trade.

(4) Condition C is that—
- (a) at a time before the lease's creation the asset was used for the purposes of another trade, or for the purposes of a profession or vocation,
- (b) when it was so used it was owned by the person then carrying on the other trade, or the profession or vocation, and
- (c) when it was so used, or later, that person was carrying on the trade mentioned in subsection (2).

(5) The reference in subsection (2)(a) to a lease does not include a lease created on or before 14 April 1964.

(6) In this section references to a person carrying on a trade, profession or vocation are to the person carrying on the trade, profession or vocation for the time being.

Relief: restriction and carrying forward

865 Tax deduction not to exceed commercial rent

(1) The rules in subsection (3) apply to the calculation of the deduction by way of relevant corporation tax relief allowed in an accounting period—
- (a) for the non-excluded element of the payment within section 864(2), or

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(b) if there are two or more such payments, for the non-excluded elements of those payments.

(2) For the purposes of this section the non-excluded element of a payment is the element not excluded under section 866 (long funding finance leases).

(3) The rules are—

Rule 1 — meaning of amount E For any accounting period, amount E (which may be nil) is the expense or total expenses to be brought, in accordance with generally accepted accounting practice, into account in the period in respect of—

(a) the non-excluded element of the payment, or

(b) the non-excluded elements of the payments.

Rule 2 — calculation of amount E For every accounting period—

(a) calculate the total of amount E for the period and amount E for every preceding accounting period ending on or after the date of the creation of the lease mentioned in section 864(2)(a),

(b) calculate the total of the deductions by way of relevant corporation tax relief for every previous accounting period ending on or after that date, and

(c) subtract the total at (b) from the total at (a) to give the cumulative unrelieved expenses for the period.

Rule 3 — meaning of post-spread period An accounting period is a post-spread period if for that accounting period, and every later accounting period, there are no payments within section 864(2).

Rule 4 — the deduction allowed in an accounting period If an accounting period is not a post-spread period, the deduction allowed for the period is equal to the cumulative unrelieved expenses for the period, but is the commercial rent for the period if that is less (see section 867).

Rule 5 — accounting periods in which no deduction allowed If an accounting period is a post-spread period, no deduction is allowed for the period.

866 Long funding finance leases

(1) This section applies for the purposes of section 865.

(2) A payment must be excluded so far as, in the case of the lessee, it is to be regarded in accordance with Chapter 6A of Part 2 of CAA 2001 as a payment under a lease which is a long funding finance lease for the purposes of that Part.

867 Commercial rent

(1) Subsection (3) applies for the purpose of making a comparison under rule 4 of section 865(3).

(2) In this section “the actual lease” means the lease mentioned in section 864(2)(a).

(3) The commercial rent is the rent which might at the relevant time be expected to be paid under a lease of the asset if—

(a) the lease were for the rest of the asset's expected normal working life,

(b) the rent were payable at uniform intervals and at a uniform rate, and

(c) the rent gave a reasonable return for the asset's market value at the relevant time, taking account of the actual lease's terms and conditions.

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(4) The relevant time is the time when the actual lease was created.

(5) An asset's expected normal working life is the period which might be expected, when it is first put into use, to pass before it is finally put out of use as being unfit for further use.

(6) In applying subsection (5) it must be assumed that the asset will be used in the normal way, and to the normal extent, throughout the period.

(7) If the asset is used at the same time partly for the purposes of the trade mentioned in section 864(2)(b) and partly for other purposes, the commercial rent as defined in subsection (3) is to be determined by reference to what would be paid for such partial use.

Interpretation

868 Lease

(1) This section applies for the purposes of this Chapter.

(2) A lease is (in relation to an asset) an agreement or arrangement under which payments are made for the use of or otherwise in respect of the asset.

(3) In particular it includes an agreement or arrangement under which the payments (or any of them) represent instalments of a purchase price or payments towards it.

869 Relevant asset

For the purposes of this Chapter a relevant asset is any description of property or rights other than land or an interest in land.

CHAPTER 4

LEASED ASSETS: CAPITAL SUMS

Introduction

870 Overview of Chapter

This Chapter provides that in certain circumstances where a payment is made under a lease of an asset, and a capital sum is obtained in respect of an interest in the asset, corporation tax is charged on an amount not greater than the capital sum.

Application of the Chapter

871 Application of the Chapter

This Chapter applies if—

(a) condition A is met (see section 872), and

(b) condition B, C, D or E is met (see section 873).

Status: *Point in time view as at 01/04/2014.*
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872 Payment under lease

(1) Condition A is that—
- (a) a payment is made under a lease of a relevant asset, and
- (b) the payment is one for which a deduction by way of relevant tax relief is allowed.

(2) Condition A is not met if section 865 (leased trading assets: tax deductions)—
- (a) applies to the payment, or
- (b) would apply to it but for its being excluded under section 866 (long funding finance leases).

(3) Condition A is not met if section 681CC of ITA 2007 (provision for income tax corresponding to section 865)—
- (a) applies to the payment, or
- (b) would apply to it but for its being excluded under section 681CD of that Act (long funding finance leases).

(4) The reference in subsection (1)(a) to a lease does not include a lease created on or before 14 April 1964.

873 Sum obtained

(1) Condition B is that the person making the payment—
- (a) obtains a capital sum in respect of the lessee's interest in the lease, and
- (b) is a company within the charge to corporation tax.

(2) Condition C is that an associate of the person making the payment—
- (a) obtains a capital sum by way of consideration in respect of the lessee's interest in the lease, and
- (b) is a company within the charge to corporation tax.

(3) Condition D is that—
- (a) the lessor's interest in the lease, or any other interest in the asset, belongs to an associate of the person making the payment,
- (b) the associate obtains a capital sum in respect of the interest, and
- (c) the associate is a company within the charge to corporation tax.

(4) Condition E is that—
- (a) the lessor's interest in the lease, or any other interest in the asset, belongs to an associate of the person making the payment,
- (b) an associate of that associate obtains a capital sum by way of consideration in respect of the interest, and
- (c) the associate obtaining the sum is a company within the charge to corporation tax.

(5) Condition B, C, D or E may be met before, at or after the time when the payment is made.

(6) Condition B or C is not met if—
- (a) the lease is a hire-purchase agreement for plant or machinery, and
- (b) the capital sum is required to be brought into account as the whole or part of the disposal value of the plant or machinery under section 68 of CAA 2001.

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(7) Condition D or E is not met if—
- (a) the capital sum is obtained in respect of the lessee's interest in the lease,
- (b) the lease is a hire-purchase agreement for plant or machinery, and
- (c) the capital sum is required to be brought into account as the whole or part of the disposal value of the plant or machinery under section 68 of CAA 2001.

Charge to corporation tax

874 Charge to corporation tax

(1) The company obtaining the capital sum is to be treated as receiving, at the time the sum is obtained, an amount—
- (a) which is equal to the chargeable amount, and
- (b) to which the charge to corporation tax on income applies.

(2) The chargeable amount is—
- (a) the amount of the payment for which a deduction by way of relevant tax relief is allowed, or
- (b) the total amount of such payments (if more than one).

(3) But subsections (1) and (2) have effect subject to—
- (a) subsections (4) to (7), and
- (b) section 875(3) (hire-purchase agreements).

(4) The chargeable amount is not to exceed the capital sum (but see section 875(4)).

(5) Subsection (6) applies if—
- (a) the charge to corporation tax on income is applied by this section in respect of a capital sum, and
- (b) a payment or part of a payment is taken into account in deciding the chargeable amount in respect of the sum.

(6) The payment or part must be left out of account in deciding—
- (a) whether the charge to corporation tax on income is to be applied by this section in respect of another capital sum, and
- (b) the chargeable amount in respect of the other sum (if the charge is to be applied in respect of the other sum).

(7) The order in which subsections (5) and (6) are applied is the order in which capital sums are obtained.

875 Hire-purchase agreements

(1) This section applies if—
- (a) the lease is a hire-purchase agreement (as defined in section 1129), and
- (b) the capital sum is obtained in respect of the lessee's interest in the lease (whether it is obtained by the person making the payment or by an associate).

(2) Find the total of the following amounts—

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(a) so much of any payment made under the lease by the company obtaining the capital sum as is not a payment for which a deduction by way of relevant tax relief is allowed, and

(b) if the lessee's interest was assigned to the company obtaining the capital sum, any capital payment made by that company as consideration for the assignment.

(3) If the total of the amounts found under subsection (2) is equal to or greater than the capital sum, the charge to corporation tax on income is not applied by section 874 in respect of the capital sum.

(4) If the total of those amounts is less than the capital sum, in applying section 874(4) that total must be deducted from the capital sum.

(5) If the capital sum is the consideration for part only of the lessee's interest in the lease—

(a) any amount found under subsection (2) (and still unallowed) must be reduced to a just and reasonable proportion of it, and

(b) in calculating that proportion account must be taken of the degree to which the payments mentioned in subsection (2) have contributed to the value of what is disposed of in return for the capital sum.

(6) Subsection (7) applies if—

(a) more than one capital sum is (or is treated as) obtained by the same company in respect of the lessee's interest in the lease, and

(b) in arriving at a total under subsection (2) a payment is taken into account in respect of one of the capital sums.

(7) So far as the payment is so taken into account it must not be taken into account in applying subsection (2) to another of the capital sums.

(8) The order in which subsections (6) and (7) are applied is the order in which capital sums are obtained.

876 Adjustments where sum obtained before payment made

(1) This section applies if a capital sum is obtained as mentioned in section 873 and later a payment is made as mentioned in section 872.

(2) Adjustments must be made if they are needed to give effect to the application by section 874 of the charge to corporation tax on income in respect of the capital sum.

(3) An adjustment may be made within the period of 6 years which starts at the end of the accounting period in which the payment is made.

(4) Subsection (3) applies despite any time limit specified in the Corporation Tax Acts.

Obtaining of sum

877 Sum obtained in respect of interest

A reference in this Chapter to a sum obtained in respect of an interest in an asset (whether the lessee's interest in a lease of the asset or the lessor's interest or any other interest) includes a reference to—

(a) insurance money obtained in respect of the interest, and

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(b) sums representing money or money's worth obtained in respect of the interest by a transaction or series of transactions disposing of it.

878 Sum obtained in respect of lessee's interest

(1) This section applies to a reference in this Chapter to a sum obtained in respect of the lessee's interest in a lease of an asset.

(2) The reference includes a reference to sums representing the consideration in money or money's worth obtained on any of the following occasions—
- (a) a surrender of the interest to the lessor,
- (b) an assignment of the lease, and
- (c) the creation of a sublease or another interest out of the lease.

(3) The reference also includes a reference to sums representing money or money's worth obtained in respect of the interest by a transaction or series of transactions under which the lessee's rights are merged in any way with the lessor's rights or with any other rights as respects the asset.

(4) Subsection (3) applies so far as the money or money's worth is attributable to the lessee's rights under the lease.

879 Disposal of interest to associate

(1) This section applies for the purposes of this Chapter if a company disposes of an interest in an asset to a person who is the company's associate (and the interest may be the lessee's interest in a lease of the asset or the lessor's interest or any other interest).

(2) The company disposing of the interest must be treated as obtaining in respect of it the greatest of—
- (a) the sum in fact obtained by the company,
- (b) the value of the interest in the open market, and
- (c) the value of the interest to the person to whom it is in effect transferred.

(3) The disposal—
- (a) may be direct or indirect, and
- (b) may be effected by a transaction or series of transactions described in section 877(b) or 878(3).

Apportionment

880 Apportionment of payments made and of sums obtained

(1) This section applies for the purposes of this Chapter.

(2) Subsection (3) applies if—
- (a) a payment is made,
- (b) it is one for which a deduction by way of relevant tax relief is allowed, and
- (c) it is made by persons carrying on a trade, profession or vocation in partnership.

(3) The payment must be apportioned in a manner which is just and reasonable.

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(4) Subsection (5) applies if—
- (a) a sum is obtained in respect of an interest in an asset,
- (b) the sum is obtained by persons carrying on a trade in partnership, and
- (c) the asset is and continues to be used for the purposes of the trade.

(5) The sum must be apportioned between the partners in the shares in which they are entitled to the profits of the trade at the time the sum is obtained.

(6) Subsection (7) applies if—
- (a) a sum is obtained in respect of an interest in an asset, and
- (b) the sum is obtained by persons jointly entitled to the interest.

(7) The sum must be apportioned according to their respective rights in the interest.

(8) Subsections (6) and (7) are subject to subsections (4) and (5).

881 Manner of apportionment

(1) Subsections (2) and (3) apply if—
- (a) a payment or sum is to be apportioned under section 880 or under section 681DJ of ITA 2007,
- (b) at the time of the apportionment it appears that it is material to the liability to tax (whether corporation tax or income tax, and for whatever period) of two or more persons (in this section referred to collectively as "the set"),
- (c) a question arises as to the manner in which the payment or sum is to be apportioned, and
- (d) at the time of the apportionment, it appears that the apportionment is material to the corporation tax liability (for whatever period) of—
  - (i) a person, or some two or more persons, in the set, or
  - (ii) all the persons in the set.

(2) For the purposes of corporation tax of the person or persons mentioned in subsection (1)(d), the question is to be determined in the same way as an appeal.

(3) All the persons in the set are entitled to be a party to the proceedings.

Interpretation

882 Associates

(1) This section applies for the purposes of this Chapter.

(2) Persons are associates if they are associated with each other.

(3) The following are associated with each other—
- (a) an individual and the individual's spouse or civil partner or relative,
- (b) an individual and a spouse or civil partner of a relative of the individual,
- (c) an individual and a relative of the individual's spouse or civil partner,
- (d) an individual and a spouse or civil partner of a relative of the individual's spouse or civil partner.

(4) The following are associated with each other—

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(a) a person as trustee of a settlement and an individual who (in relation to the settlement) is a settlor,
(b) a person as trustee of a settlement and a person associated with an individual who (in relation to the settlement) is a settlor.

(5) The following are associated with each other—
(a) a person and a body of persons of which the person has control,
(b) a person and a body of persons of which persons associated with the person have control,
(c) a person and a body of persons of which the person and persons associated with the person have control,
(d) two or more bodies of persons associated with the same person under paragraphs (a) to (c).

(6) In relation to a disposal by joint owners, the joint owners and any person associated with any of them are associated with each other.

(7) For the purposes of this section—
(a) a relative is a brother, sister, ancestor or lineal descendant,
(b) a body of persons includes a partnership, and
(c) "settlement" and "settlor" have the meanings given by section 620 of ITTOIA 2005.

883 Capital sum

For the purposes of this Chapter a capital sum is any sum of money, or any money's worth, except so far as it or any part of it—
(a) is to be treated for corporation tax purposes as a receipt to be taken into account in calculating the profits or losses of a trade, or
(b) is (apart from this Chapter) chargeable to corporation tax under or by virtue of any provision to which section 1173 applies (miscellaneous charges).

884 Lease

(1) This section applies for the purposes of this Chapter.

(2) A lease is (in relation to an asset) an agreement or arrangement under which payments are made for the use of or otherwise in respect of the asset.

(3) In particular it includes an agreement or arrangement under which the payments (or any of them) represent instalments of a purchase price or payments towards it.

885 Relevant asset

For the purposes of this Chapter a relevant asset is any description of property or rights other than land or an interest in land.

886 Relevant tax relief

For the purposes of this Chapter each of the following is a deduction by way of relevant tax relief—

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(a) a deduction in calculating profits or losses of a trade for corporation tax purposes,

(b) a deduction in calculating any loss for which relief is given under section 91 (losses from miscellaneous transactions), or in calculating profits or gains chargeable to corporation tax under or by virtue of any provision to which section 1173 applies (miscellaneous charges),

[[F485](c) a deduction of an amount which for the purposes of section 73 of FA 2012 is an amount of adjusted BLAGAB management expenses of an insurance company for an accounting period,**]**

(d) a deduction under section 1219 of CTA 2009 (expenses of management of a company's investment business),

(e) a deduction in calculating profits or losses of a trade, profession or vocation for income tax purposes,

(f) a deduction in calculating any loss for which relief is allowed under section 152 of ITA 2007 (losses from miscellaneous transactions), or in calculating profits or other income or gains chargeable to income tax under or by virtue of any provision to which section 1016 of that Act applies, and

(g) a deduction from earnings allowed under section 336 of ITEPA 2003 (expenses) or allowed in calculating losses in an employment for income tax purposes.

Textual Amendments

F485 S. 886(c) substituted (17.7.2012) by Finance Act 2012 (c. 14), **Sch. 16 para. 229**

PART 20

TAX AVOIDANCE INVOLVING LEASING PLANT OR MACHINERY

CHAPTER 1

RESTRICTIONS ON USE OF LOSSES IN LEASING PARTNERSHIPS

887 When restrictions on leasing partnership losses under this Chapter apply

(1) The restrictions in section 888 (restrictions on leasing partnership losses) apply if—

(a) a company carries on a business in respect of which the company is within the charge to corporation tax,

(b) the company carries on the business in partnership with other persons in an accounting period of the partnership,

(c) the business ("the leasing business") is, on any day in that period, a business of leasing plant or machinery,

(d) the company incurs a loss in its notional business in any accounting period of the company comprised (wholly or partly) in the accounting period of the partnership, and

(e) the interest of the company in the leasing business during the accounting period of the partnership is not determined on an allowable basis (see subsections (2) to (4)).

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(2) The interest of the company in the leasing business during the accounting period of the partnership is determined on an allowable basis if (and only if) the condition in subsection (3) is met.

(3) The condition is that for the purposes of sections 1262 to 1264 of CTA 2009 (allocation of firm's profits between partners)—
   (a) the company's share in the profits or loss of the leasing business for that period is determined wholly by reference to a single percentage, and
   (b) the company's share in any relevant capital allowances for that period is determined wholly by reference to the same percentage.

(4) For the purposes of subsection (3) "profits" does not include chargeable gains.

(5) In this section "business of leasing plant or machinery" has the same meaning as in Chapter 4 of Part 9 (sales of lessors: leasing business carried on by a company in partnership) (see sections 410 to 414).

(6) For the meaning of other expressions used in this section or section 888, see section 889.

888 Restrictions on leasing partnership losses

(1) The restrictions in subsections (2) to (4) apply in respect of so much of the loss incurred by the company in its notional business as derives from any relevant capital allowances ("the restricted part of the loss").

(2) Relief is not to be given to the company under any relevant loss relief provision in respect of the restricted part of the loss, except by way of set off against any relevant leasing income.

(3) If the leasing business is a trade, relief is not to be given to the company under section 37 (relief for trade losses against total profits) in respect of the restricted part of the loss.

(4) The restricted part of the loss is not available for set off by way of group relief in accordance with Chapter 2 of Part 5 (surrender of company's losses etc for an accounting period).

(5) For the purpose of determining how much of a loss derives from any relevant capital allowances, the loss is to be calculated on the basis that any relevant capital allowances are the final amounts to be deducted.

(6) In this section—

"the leasing business" has the same meaning as in section 887,

"relevant leasing income" means any income of the company's notional business deriving from any lease which—
   (a) is a lease of plant or machinery, and
   (b) was entered into before the end of the accounting period of the company in which the loss in the notional business was incurred, and

"relevant loss relief provision" means—
   (a) section 45 (carry forward of trade loss against subsequent trade profits),
   (b) section 62 (relief for losses made in UK property business),

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(c) section 63 (company with investment business ceasing to carry on UK property business),
(d) section 66 (relief for losses made in overseas property business), and
(e) section 91 (relief for losses from miscellaneous transactions).

889 Interpretation of Chapter

(1) In this Chapter—

"lease" includes an underlease, sublease, tenancy or licence and an agreement for any of those things,

"notional business", in relation to a company, means the business the profits or losses of which are determined, in relation to the company, under section 1259 of CTA 2009 (calculation of firm's profits and losses),

"plant or machinery" has the same meaning as in Part 2 of CAA 2001, and

"relevant capital allowance" means an allowance under that Part in respect of expenditure incurred on the provision of plant or machinery wholly or partly for the purposes of the leasing business.

(2) In this section "the leasing business" has the same meaning as in section 887.

CHAPTER 2

CAPITAL PAYMENTS IN RESPECT OF LEASES TREATED AS INCOME

890 Capital payments in respect of leases treated as income

(1) This section applies if—
(a) there is an unconditional obligation, under a lease of plant or machinery or a relevant arrangement, to make a relevant capital payment at any time, or
(b) a relevant capital payment is made under such a lease or arrangement otherwise than in pursuance of such an obligation.

(2) The lessor is treated for corporation tax purposes as receiving income attributable to the lease of an amount equal to the amount of the capital payment.

(3) If subsection (1)(a) applies, the income is treated as income for the period of account in which there is first an obligation of the kind mentioned there.

(4) If subsection (1)(b) applies, the income is treated as income for the period of account in which the capital payment is made.

(5) For the meaning of "capital payment" and "relevant capital payment", see section 893.

(6) For the meaning of other expressions used in this Chapter, see section 894.

891 Apportionments for leases of plant or machinery and other property

(1) This section applies if section 890 applies in relation to a lease of plant or machinery and other property (see section 894(3)).

(2) The relevant capital payment is to be apportioned, on a just and reasonable basis, between—

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(a) the plant or machinery, and
(b) the other property.

(3) If any income attributable to any of the plant or machinery and received by the lessor would be chargeable to tax under Chapter 3 of Part 4 of CTA 2009 as profits of a UK property business, that plant or machinery is treated as falling within subsection (2)(b) (and not subsection (2)(a)).

(4) Section 890(2) has effect as if the reference to the amount of the capital payment were to such amount as is apportioned under subsection (2) in respect of the plant or machinery within subsection (2)(a).

892 Deduction where failure to make relevant capital payment expected

(1) This section applies for corporation tax purposes if—
(a) section 890 applies as a result of subsection (1)(a) of that section, and
(b) at any time the lessor reasonably expects that the relevant capital payment will not be paid or will not be paid in full.

(2) For the purposes of calculating the profits of the lessor, a deduction is allowed for the period of account which includes that time.

(3) The amount of the deduction is equal to the amount reasonably expected not to be paid.

(4) No other deduction is allowed in respect of the matters mentioned in subsection (1)(b).

893 Meaning of "capital payment", "relevant capital payment" etc

(1) This section gives the meaning of "capital payment", "relevant capital payment" and references to payment for the purposes of this Chapter.

(2) "Capital payment" means any payment except one which, if made to the lessor—
(a) would fall to be included in a calculation of the lessor's income for corporation tax purposes, or
(b) would so fall but for section 360 (lessor under long funding finance lease: rental earnings).

(3) A capital payment, in relation to a lease or relevant arrangement, is "relevant" if condition A or B is met (but this is subject to subsections (6) and (7)).

(4) Condition A is that the capital payment is payable (or paid), directly or indirectly, by or on behalf of the lessee to the lessor or another person on the lessor's behalf in connection with—
(a) the grant, assignment, novation or termination of the lease, or
(b) any provision of the lease or relevant arrangement (including the variation or waiver of any such provision).

(5) Condition B is that rentals payable under the lease are less than, or payable later than, they might reasonably be expected to be if there were no obligation to make the capital payment and it were not made.

(6) A capital payment is not "relevant" so far as it—
(a) reduces the amount of expenditure incurred by the lessor for the purposes of CAA 2001 in respect of the plant or machinery in question or would reduce

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it but for section 536 of CAA 2001 (contributions not made by public bodies and not eligible for tax relief), or

(b) is compensation for loss resulting from damage to, or damage caused by, the plant or machinery in question.

(7) If—

(a) a capital payment is an initial payment under a long funding lease for the purposes of Part 2 of CAA 2001 (see section 70YI of that Act), and

(b) under section 61 of that Act (disposal events and disposal values) the commencement of the term of the lease (as defined in section 70YI of that Act) is an event that requires the lessor to bring a disposal value into account,

the capital payment is only "relevant" so far as it exceeds the amount that is the disposal value for the purposes of Part 2 of that Act.

(8) References to payment include the provision of value by any means other than the making of a payment.

(9) Accordingly—

(a) references to the making of a payment include the passing of value by any other means, and

(b) references to the amount of the payment include the value passed.

894 Other interpretation of Chapter

(1) This section applies for the purposes of this Chapter.

(2) "Lease" includes—

(a) a licence, and

(b) the letting of a ship or aircraft on charter or the letting of any other asset on hire,

and "lessor" and "lessee" must be read accordingly.

(3) "Lease of plant or machinery" includes a lease of plant or machinery and other property, but does not include a lease to which subsection (4) or (5) applies.

(4) This subsection applies to a lease if any income attributable to it and received by the lessor would be chargeable to tax under Chapter 3 of Part 4 of CTA 2009 as profits of a UK property business.

(5) This subsection applies to a lease of plant or machinery if the lessor has incurred on the plant or machinery what would be qualifying expenditure within the meaning of Part 2 of CAA 2001 but for section 34A of that Act (expenditure on plant or machinery for long funding leasing not qualifying expenditure).

(6) "Relevant arrangement" means any agreement or arrangement relating to a lease of plant or machinery, including one made before the lease is entered into or after it has ended.

(7) Accordingly, "lessor" and "lessee" include prospective and former lessors and lessees.

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PART 21

LEASING ARRANGEMENTS: FINANCE LEASES AND LOANS

CHAPTER 1

INTRODUCTION

Introduction

895 Overview of Part

(1) This Part makes provision for corporation tax purposes about the taxation of leasing arrangements.

(2) Chapter 2 makes provision in relation to certain arrangements involving the lease of assets where the conditions in section 902 are or have been met, so far as the lease is not regarded as a long funding lease for the purposes of Part 2 of CAA 2001 in accordance with Chapter 6A of that Part (see sections 901 to 904).

(3) Chapter 3 makes provision in relation to arrangements involving the lease of assets that are not within Chapter 2, so far as the lease is not so regarded (see sections 925 and 927).

(4) The remaining provisions of this Chapter explain some expressions about rent for the purposes of this Part.

(5) Chapter 4 contains further provisions supplementing this Part, including more about its interpretation.

Meaning of expressions about rent

896 Normal rent

(1) For the purposes of this Part, the "normal rent" in respect of a lease for a period of account of the lessor ("L") is the amount specified in subsection (2).

(2) That amount is the amount that L would, apart from this Part, bring into account as rent from the lease that arises to L in that period of account for the purpose of determining L's liability to corporation tax for the related accounting period or periods.

(3) For the meaning of "related accounting period", see section 932(4).

897 Accountancy rental earnings

(1) For the purposes of this Part, the "accountancy rental earnings" in respect of a lease for a period of account of the lessor ("L") is the greatest of the amounts specified in subsection (2).

(2) Those amounts are—

(a) the rental earnings for that period in respect of the lease in L's case,

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(b) the rental earnings for that period in respect of the lease in the case of a person connected with L, and

(c) the rental earnings for that period in respect of the lease for the purposes of consolidated group accounts of a group of companies of which L is a member.

(3) For the meaning of "the rental earnings", see section 898.

898 Rental earnings

(1) In this Part "the rental earnings" for any period in respect of a lease of an asset in the case of any person or any consolidated group accounts is the amount specified in subsection (2).

(2) That amount is the amount that falls for accounting purposes to be treated, in accordance with generally accepted accounting practice, as the gross return for that period on investment in respect of a finance lease or loan in respect of the leasing arrangements.

(3) For the meaning of "for accounting purposes", see section 937.

CHAPTER 2

FINANCE LEASES WITH RETURN IN CAPITAL FORM

Introduction

899 Arrangements to which this Chapter applies

(1) This Chapter applies to arrangements involving the lease of an asset that meet conditions A and B.

(2) Condition A is that in accordance with generally accepted accounting practice the arrangements fall to be treated as a finance lease or loan.

(3) Condition B is that the effect of the arrangements is that some or all of the return on investment in respect of the finance lease or loan—

(a) is or may be in the form of a sum that is not rent, and

(b) would not, apart from this Part and Part 11A of ITA 2007, be wholly brought into account for tax purposes as rent from the lease of the asset.

(4) It does not matter—

(a) when the arrangements are or have been entered into, or

(b) whether they are or have been entered into by companies or other persons.

900 Purposes of this Chapter

(1) This section sets out the main purposes of this Chapter where there are any arrangements to which this Chapter applies.

(2) The first main purpose is, in relation to a company entitled to the lessor's interest under the lease of the asset, to apply the charge to corporation tax on income to amounts determined as mentioned in subsections (3) and (4).

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(3) The amounts referred to in subsection (2) are determined by reference to the amounts that fall for accounting purposes to be treated, in accordance with generally accepted accounting practice, as the income return on and after 26 November 1996 on investment in respect of the finance lease or loan.

(4) The amounts referred to in subsection (2) are also determined taking into account the substance of the matter as a whole, including, in particular, the state of affairs—

(a) as between connected persons, or

(b) within a group of companies,

as reflected or falling to be reflected in accounts of any of those persons or in consolidated group accounts.

(5) The second main purpose of this Chapter is, if the sum mentioned in section 899(3)(a) that is not rent falls due, to recover by reference to that sum the whole or any part of the capital expenditure reliefs.

(6) In subsection (5) "the capital expenditure reliefs" means any reliefs, allowances or deductions that are or have been allowed or made in respect of capital expenditure incurred in respect of the leased asset.

Leases to which this Chapter applies

901 Application of this Chapter

(1) This Chapter applies if—

(a) a lease of an asset is or has been granted, and

(b) the conditions in section 902 are or have been met in relation to the lease at some time in a period of account of the current lessor.

(2) But this Chapter does not apply so far as, in relation to the current lessor, the lease falls to be regarded as a long funding lease for the purposes of Part 2 of CAA 2001 (plant and machinery allowances) in accordance with Chapter 6A of that Part (interpretation of provisions about long funding leases) (see section 70G of that Act).

(3) If the conditions in section 902 have been met at some time in a period of account of the person who was at that time the lessor, they are taken to continue to be met for the purposes of this Chapter unless and until one of the conditions in subsection (4) is met.

(4) The conditions are that—

(a) the asset ceases to be leased under the lease, or

(b) the lessor's interest under the lease is assigned to a person who is not connected with any of the persons specified in subsection (5).

(5) Those persons are—

(a) the assignor,

(b) any person who was the lessor at some time before the assignment, and

(c) any person who at some time after the assignment becomes the lessor pursuant to arrangements made by a person who was the lessor, or was connected with the lessor, at some time before the assignment.

(6) If at any time the person who was the lessor at that time was a person within the charge to income tax, the reference in subsection (3) to the conditions in section 902 having

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been met at that time includes a reference to the conditions in section 614BC of ITA 2007 having been so met.

(7) Nothing in subsection (3) prevents this Chapter from applying again in relation to the lease where the lessor's interest is assigned if the conditions for its application are met after the assignment.

902 The conditions referred to in section 901(1)

(1) This section sets out the conditions required by section 901(1) to be met for this Chapter to apply (conditions A to E).

(2) Condition A is that at the relevant time—
  (a) the leasing arrangements fall for accounting purposes to be treated, in accordance with generally accepted accounting practice, as a finance lease or a loan, and
  (b) subsection (3) or (4) applies.

(3) This subsection applies if the lessor ("L"), or a person connected with L, falls for accounting purposes to be treated, in accordance with generally accepted accounting practice, as the finance lessor in relation to the finance lease or loan.

(4) This subsection applies if the finance lease or loan falls for accounting purposes to be treated, in accordance with generally accepted accounting practice, as subsisting for the purposes of consolidated group accounts of a group of companies of which L is a member.

(5) Condition B is that, under the leasing arrangements, there is or may be payable to L, or to a person connected with L, a sum (a "major lump sum") that is not rent but falls for accounting purposes to be treated, in accordance with generally accepted accounting practice—
  (a) as to part, as repayment of some or all of the investment in respect of a finance lease or loan, and
  (b) as to part, as a return on investment in respect of a finance lease or loan.

(6) Condition C is that not all of that part of the sum that falls within subsection (5)(b) would, apart from this Chapter, fall to be brought into account for corporation tax purposes in accounting periods of L ending with the relevant accounting period as the normal rent from the lease for periods of account of L.

(7) Condition D is that, in relation to L at the relevant time—
  (a) the period of account of L in which the relevant time falls, or
  (b) an earlier period of account of L during which L was the lessor,

  is a period of account for which the accountancy rental earnings in respect of the lease exceed the normal rent for the period.

(8) Condition E is that at the relevant time—
  (a) arrangements within section 904(1) exist, or
  (b) paragraph (a) does not apply and circumstances within section 904(3) exist.

(9) Section 903 supplements this section.

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903 Provisions supplementing section 902

(1) In section 902—

"the relevant accounting period", in relation to a major lump sum, means—

(a) the accounting period of the lessor ("L") which is related to L's period of account in which the major lump sum is or may be payable in accordance with the leasing arrangements, or

(b) if there are two or more such accounting periods, the latest of them, and

"the relevant time" means the time as at which it must be determined for the purposes of section 901(1) or (3) whether the conditions in section 902 are or, as the case may be, were met.

(2) For the meaning of an accounting period being related to a period of account, see section 932(4).

(3) Subsection (4) applies for determining the normal rent for a period of account for the purpose of determining whether condition D in section 902 is met as respects L unless subsection (5) applies.

(4) Rent that falls to be brought into account for corporation tax purposes as it falls due is treated—

(a) as accruing evenly throughout the period to which, in accordance with the terms of the lease, each payment falling due relates, and

(b) as falling due as it so accrues.

(5) This subsection applies if any such payment as is mentioned in subsection (4)(a) falls due more than 12 months after the time at which any of the rent to which that payment relates is treated as accruing under subsection (4)(a).

904 The arrangements and circumstances referred to in section 902(8)

(1) The arrangements referred to in section 902(8)(a) are arrangements under which—

(a) the lessee or a person connected with the lessee may acquire, whether directly or indirectly, the leased asset or an asset representing the leased asset from the lessor or a person connected with the lessor, and

(b) in connection with that acquisition, the lessor or a person connected with the lessor may receive, whether directly or indirectly, a qualifying lump sum from the lessee or a person connected with the lessee.

(2) In this section "qualifying lump sum" means any sum that is not rent but at least part of which would fall for accounting purposes to be treated, in accordance with generally accepted accounting practice, as a return on investment in respect of a finance lease or loan.

(3) The circumstances referred to in section 902(8)(b) are circumstances which make it more likely—

(a) that the events described in subsection (4) will occur, than

(b) that the event described in subsection (5) will occur.

(4) The events mentioned in subsection (3)(a) are—

(a) that the lessee or a person connected with the lessee will acquire, whether directly or indirectly, the leased asset or an asset representing the leased asset from the lessor or a person connected with the lessor, and

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(b) that, in connection with that acquisition, the lessor or a person connected with the lessor will receive, whether directly or indirectly, a qualifying lump sum from the lessee or a person connected with the lessee.

(5) The event mentioned in subsection (3)(b) is that, before any such acquisition as is mentioned in subsection (4) takes place, the leased asset or, as the case may be, the asset representing the leased asset, will have been acquired, in a sale on the open market, by an independent third party.

(6) In subsection (5) "independent third party" means a person who—
(a) is not the lessor or the lessee, and
(b) is not connected with either of them.

(7) For the meaning of an asset representing the leased asset, see section 934.

Current lessor taxed by reference to accountancy rental earnings

905 Current lessor taxed by reference to accountancy rental earnings

(1) This section applies if, in the case of any period of account of the current lessor ("L")—
(a) this Chapter applies in relation to the lease, and
(b) the accountancy rental earnings in respect of the lease for that period of account exceed the normal rent for that period.

(2) For corporation tax purposes, L is treated as if in that period of account L had been entitled to, and there had arisen to L, rent from the lease of an amount equal to those accountancy rental earnings (instead of the normal rent referred to in subsection (1)(b)).

(3) Such rent from the lease of an asset is treated for corporation tax purposes—
(a) as if it had accrued at an even rate throughout so much of the period of account as falls within the period for which the asset is leased, and
(b) as if L had become entitled to it as it accrued.

Reduction of taxable rent by cumulative rental excesses

906 Reduction of taxable rent by cumulative rental excesses: introduction

(1) This section and sections 907 to 910 provide for reductions of the taxable rent of a current lessor ("L") under a lease to which this Chapter applies.

(2) In this section and sections 907 to 910 "taxable rent", in relation to a period of account of L, means the amount that would, apart from those sections, be treated for corporation tax purposes as rent from the lease that arises to L in that period of account for the purpose of determining L's liability to tax for the related accounting period or periods.

(3) The reductions of taxable rent under sections 907 to 910 depend on there being—
(a) a cumulative accountancy rental excess for the period of account of L in question, or
(b) a cumulative normal rental excess for the period of account of L in question.

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(4) For the meaning of "cumulative accountancy rental excess" and "cumulative normal rental excess", see sections 907 and 909 respectively.

907 Meaning of "accountancy rental excess" and "cumulative accountancy rental excess"

(1) For the purposes of this Chapter, there is an "accountancy rental excess" in relation to the lease for a period of account of the current lessor ("L") if the taxable rent in relation to the lease for the period is as a result of section 905 (current lessor taxed by reference to accountancy rental earnings) an amount equal to the accountancy rental earnings.

(2) The amount of the accountancy rental excess for the period is equal to the difference between the accountancy rental earnings for the period and the normal rent for the period.

(3) But if the taxable rent for the period is reduced under section 910 (reduction of taxable rent by the cumulative normal rental excess), there is only an accountancy rental excess for the period if—
   (a) the accountancy rental earnings, reduced by an amount equal to the reduction under that section, exceed
   (b) the normal rent.

(4) And in that case the amount of the accountancy rental excess for the period is equal to that excess.

(5) In this Chapter the "cumulative accountancy rental excess", in relation to the lease and a period of account of L, means so much of the total of the accountancy rental excesses for previous periods of account of L (as increased under section 912: recovery of bad debts following reduction under section 911) as has not been—
   (a) set off under section 908 (reduction of taxable rent by the cumulative accountancy rental excess) against the taxable rent for any such previous period,
   (b) reduced under section 911 (relief for bad debts: reduction of cumulative accountancy rental excess), or
   (c) set off under section 37A of TCGA 1992 (consideration on disposal of certain leases) against the consideration for a disposal.

908 Reduction of taxable rent by the cumulative accountancy rental excess

(1) This section applies if a period of account of the current lessor ("L") is one for which—
   (a) the normal rent in relation to the lease exceeds the accountancy rental earnings, and
   (b) there is a cumulative accountancy rental excess.

(2) The taxable rent for the period of account is reduced by setting against it the cumulative accountancy rental excess (but not so as to reduce that rent below the amount of the accountancy rental earnings).

(3) But see section 911(3) and (4) (under which the amount of the cumulative accountancy rental excess which may be set against the taxable rent is limited in some circumstances).

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909 Meaning of "normal rental excess" and "cumulative normal rental excess"

(1) For the purposes of this Chapter, there is a "normal rental excess" in relation to a lease for any period of account of the current lessor ("L") throughout which the leasing arrangements fall for accounting purposes to be treated, in accordance with generally accepted accounting practice, as a finance lease or loan if—
  (a) the normal rent for the period, exceeds
  (b) the accountancy rental earnings for the period.

(2) The amount of the normal rental excess for that period is equal to that excess.

(3) But if the taxable rent for the period is reduced under section 908 (reduction of taxable rent by the cumulative accountancy rental excess), there is only a normal rental excess for the period if—
  (a) the normal rent, reduced by an amount equal to the reduction under that section, exceeds
  (b) the accountancy rental earnings.

(4) And in that case the amount of the normal rental excess for the period is equal to that excess.

(5) In this Chapter "cumulative normal rental excess", in relation to the lease and a period of account of L, means so much of the total of the normal rental excesses for previous periods of account of L (as increased under section 914: recovery of bad debts following reduction under section 913) as has not been—
  (a) set off under section 910 (reduction of taxable rent by the cumulative normal rental excess) against the taxable rent for any such previous period, or
  (b) reduced under section 913 (relief for bad debts: reduction of cumulative normal rental excess).

910 Reduction of taxable rent by the cumulative normal rental excess

(1) This section applies if a period of account of the current lessor ("L") is one for which—
  (a) the taxable rent in relation to the lease is as a result of section 905 (current lessor taxed by reference to accountancy rental earnings) an amount equal to the accountancy rental earnings, and
  (b) there is a cumulative normal rental excess.

(2) The taxable rent for the period of account is reduced by setting against it the cumulative normal rental excess (but not so as to reduce that rent below the amount of the normal rent).

(3) But see section 913(3) and (4) (under which the amount of the cumulative normal rental excess which may be set against the taxable rent is limited in some circumstances).

Relief for bad debts by reduction of cumulative rental excesses

911 Relief for bad debts: reduction of cumulative accountancy rental excess

(1) This section applies if in relation to the lease for any period of account of the current lessor—
  (a) there is a cumulative accountancy rental excess, and

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(b) a bad debt deduction falls to be made in respect of rent from the lease.

(2) If for that period—

(a) the accountancy rental earnings in relation to the lease exceed the normal rent, and

(b) the amount of the bad debt deduction exceeds the amount of the accountancy rental earnings,

the cumulative accountancy rental excess for that period is reduced by the amount of the excess of that deduction over those earnings (but not so as to reduce the amount of that rental excess below nil).

(3) Subsections (4) and (5) apply if for that period the accountancy rental earnings in relation to the lease do not exceed the normal rent.

(4) The amount of the cumulative accountancy rental excess that may be set against the taxable rent for that period under section 908(2) (reduction of taxable rent by the cumulative accountancy rental excess) is limited to the amount (if any) by which the normal rent exceeds the bad debt deduction.

(5) If for that period the bad debt deduction exceeds the normal rent, the cumulative accountancy rental excess for that period is reduced by the amount of that excess (but not so as to reduce the amount of that rental excess below nil).

(6) In this section—

"bad debt deduction", in relation to a period of account of the lessor, means the total of the deductions falling to be made for accounting purposes for that period by way of impairment loss in respect of rents from the lease of the asset, and

"taxable rent" has the meaning given in section 906(2).

912 Recovery of bad debts following reduction under section 911

(1) This section applies if in relation to the lease—

(a) the cumulative accountancy rental excess for any period of account of the current lessor ("L") has been reduced under section 911(2) or (5) because of a bad debt deduction,

(b) in a subsequent period of account of L, an amount ("the relevant credit") is recovered or credited in respect of the amount which constituted the bad debt deduction, and

(c) there is a cumulative accountancy rental excess for that subsequent period.

(2) The cumulative accountancy rental excess for the subsequent period is increased.

(3) If the relevant credit does not exceed the total of the reductions under section 911(2) or (5), the increase is by the relevant credit.

(4) Otherwise, the increase is limited to that total.

(5) In this section "bad debt deduction" has the meaning given in section 911(6).

913 Relief for bad debts: reduction of cumulative normal rental excess

(1) This section applies if in relation to the lease for any period of account of the current lessor—

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(a) there is a cumulative normal rental excess, and
(b) a bad debt deduction falls to be made in respect of rent from the lease.

(2) If for that period—
(a) the accountancy rental earnings in the case of the lease do not exceed the normal rent, and
(b) the amount of the bad debt deduction exceeds the amount of that rent,

the cumulative normal rental excess for that period is reduced by the amount of the excess of that deduction over that rent (but not so as to reduce the amount of that rental excess below nil).

(3) Subsections (4) and (5) apply if for that period the accountancy rental earnings in relation to the lease exceed the normal rent.

(4) The amount of the cumulative normal rental excess that may be set against the taxable rent for that period under section 910 (reduction of taxable rent by the cumulative normal rental excess) is limited to the amount (if any) by which the accountancy rental earnings exceed the bad debt deduction.

(5) If for that period the bad debt deduction exceeds the accountancy rental earnings, the cumulative normal rental excess for that period is reduced by the amount of the excess (but not so as to reduce the amount of that rental excess below nil).

(6) In this section, in relation to a period of account of the lessor—
"bad debt deduction" has the meaning given in section 911(6), and
"taxable rent" has the meaning given in section 906(2).

914 Recovery of bad debts following reduction under section 913

(1) This section applies if in relation to the lease—
(a) the cumulative normal rental excess for any period of account of the current lessor ("L") has been reduced under section 913(2) or (5) as a result of a bad debt deduction,
(b) in a subsequent period of account of L, an amount ("the relevant credit") is recovered or credited in respect of the amount which constituted the bad debt deduction, and
(c) there is a cumulative normal rental excess for that subsequent period.

(2) The cumulative normal rental excess for the subsequent period is increased.

(3) If the relevant credit does not exceed the total of the reductions under section 913(2) or (5), the increase is by the relevant credit.

(4) Otherwise, the increase is limited to that total.

(5) In this section "bad debt deduction" has the meaning given in section 911(6).

Effect of disposals

915 Effect of disposals of leases: general

(1) This section applies if the current lessor ("L") or a person connected with L disposes of—

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(a) the lessor's interest under the lease,
(b) the leased asset, or
(c) an asset representing the leased asset (see section 934).

(2) This Part has effect as if immediately before the disposal a period of account of L ended and another began.

(3) If—
(a) two or more disposals within subsection (1) are made at the same time, and
(b) there is any cumulative accountancy rental excess for any period of account of L in which the disposal occurs,

subsection (2) has effect in relation to those disposals as if they together constituted a single disposal.

(4) In this section "dispose" and "disposal" are to be read in accordance with TCGA 1992.

(5) In cases where there is any cumulative accountancy rental excess for L's period of account in which the disposal occurs, section 37A of that Act (consideration on disposal of certain leases) makes provision for the purposes of that Act about the reduction of the consideration for the disposal by that excess in determining if a gain has accrued.

916 Assignments on which neither a gain nor a loss accrues

(1) This section applies if—
(a) the current lessor ("L") assigns the lessor's interest under the lease, and
(b) the assignment is a disposal on which, as a result of any of the no gain/no loss provisions, neither a gain nor a loss accrues.

(2) This Part has effect as if—
(a) a period of account of L ("L's period") ended with the assignment, and
(b) a period of account of the assignee ("A's period") began with the assignment.

(3) Any cumulative accountancy rental excess for L's period becomes the cumulative accountancy rental excess for A's period.

(4) Any cumulative normal rental excess for L's period becomes the cumulative normal rental excess for A's period.

(5) If the assignee is a person subject to income tax, so far as this section relates to the assignee, it applies for the purposes of Part 11A of ITA 2007 as it would otherwise apply for the purposes of this Part.

(6) In this section "the no gain/no loss provisions" has the same meaning as in TCGA 1992 (see section 288(3A) of that Act).

Capital allowances: clawback of major lump sum

917 Effect of capital allowances: introduction

(1) This section and sections 918 to 922 apply if an occasion occurs on which a major lump sum falls to be paid in relation to the lease of the asset.

(2) In those sections the occasion is called "the relevant occasion".

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918 Cases where expenditure taken into account under Part 2, 5 or 8 of CAA 2001

(1) This section applies if capital expenditure incurred by the current lessor ("L") in respect of the leased asset is or has been taken into account for the purposes of any allowance or charge under—
  (a) Part 2 of CAA 2001 (plant and machinery allowances),
  (b) Part 5 of that Act (mineral extraction allowances), or
  (c) Part 8 of that Act (patent allowances).

(2) The Part of that Act in question ("the relevant Part") has effect as if the relevant occasion were an event ("the relevant event") as a result of which a disposal value is to be brought into account of an amount equal to the amount or value of the major lump sum (but subject to any applicable limiting provision).

(3) In this section "limiting provision" means a provision to the effect that the disposal value of the asset in question is not to exceed an amount ("the limit") described by reference to capital expenditure incurred in respect of the asset.

(4) Subsection (5) applies if—
  (a) as a result of subsection (2), a disposal value ("the relevant disposal value") falls or has fallen to be brought into account by a person in respect of the leased asset for the purposes of the relevant Part, and
  (b) a limiting provision has effect in the case of that Part.

(5) The limiting provision has effect (so far as it would not otherwise do so), in relation to the relevant disposal value and any simultaneous or later disposal value, as if—
  (a) it did not limit any particular disposal value, but
  (b) it limited the total amount of all the disposal values brought into account for the purposes of the relevant Part by L in respect of the leased asset.

(6) In subsection (5) "simultaneous or later disposal value" means any disposal value which falls to be brought into account by L in respect of the leased asset as a result of any event occurring at the same time as, or later than, the relevant event.

919 Cases where expenditure taken into account under other provisions of CAA 2001

(1) This section applies if any allowance is or has been given in respect of capital expenditure incurred by the current lessor ("L") in respect of the leased asset under any provision of CAA 2001 other than—
  (a) Part 2 of CAA 2001 (plant and machinery allowances),
  (b) Part 5 of that Act (mineral extraction allowances), or
  (c) Part 8 of that Act (patent allowances).

(2) The amount specified in subsection (3) is treated, in relation to L, as if it were a balancing charge to be made on L for the chargeable period in which the relevant occasion falls.

(3) That amount is an amount equal to—
  (a) the total of the allowances given as mentioned in subsection (1) (so far as not previously recovered or withdrawn), or
  (b) if it is less, the amount or value of the major lump sum.

(4) In this section "chargeable period" has the meaning given by section 6 of CAA 2001.

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920 Capital allowances deductions: waste disposal and cemeteries

(1) This section applies if any deduction is or has been allowed to the current lessor ("L") in respect of capital expenditure incurred in connection with the leased asset as a result of—

(a) section 142 or 145 of CTA 2009 (preparation and restoration expenditure in relation to waste disposal site), or

(b) section 147 of that Act (cemeteries and memorial gardens: deduction for capital expenditure).

(2) L is treated as if trading receipts arose to L from the trade in question on the relevant occasion.

(3) The amount of those receipts is equal to the lesser of—

(a) the amount or value of the major lump sum, and

(b) the deductions previously allowed.

921 Capital allowances deductions: films

(1) This section applies if—

(a) any relevant film deduction has been allowed to the current lessor ("L") in respect of expenditure incurred in connection with the leased asset, and

(b) the amount or value of the major lump sum exceeds so much of that sum as was treated as receipts of a revenue nature under section 40A(2) of F(No.2)A 1992 (disposal proceeds of original master version of film treated as receipt of a revenue nature).

(2) In subsection (1) "relevant film deduction" means any deduction as a result of—

(a) section 40B(1) of F(No.2)A 1992 (allocation of expenditure on master versions of films to periods), or

(b) section 42 of that Act (relief for production or acquisition expenditure in respect of films).

(3) L is treated as if receipts of a revenue nature arose to L from the trade or business in question on the relevant occasion.

(4) The amount of those receipts is equal to the excess mentioned in subsection (1)(b).

922 Contributors to capital expenditure

(1) This section applies if—

(a) section 918 or 919 applies in relation to a leased asset,

(b) allowances are or have been made to a person ("the contributor") as a result of sections 537 to 542 of CAA 2001 (allowances in respect of contributions to capital expenditure), and

(c) those allowances are or were in respect of the contributor's contribution of a capital sum to expenditure on the provision of the leased asset.

(2) Section 918 or, as the case may be, section 919 has effect in relation to the contributor and those allowances as it has effect in relation to the current lessor and allowances in respect of capital expenditure incurred by the current lessor in respect of the leased asset.

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Schemes to which this Chapter does not at first apply

923 Pre-26 November 1996 schemes where this Chapter does not at first apply

(1) This section applies if—
- (a) the lease of an asset forms part of a pre-26 November 1996 scheme, but
- (b) the conditions in section 902 become met after 26 November 1996.

(2) For the meaning of "forms part of a pre-26 November 1996 scheme", see section 930.

(3) This Part has effect as if—
- (a) a period of account ("period 1") of the current lessor ("L") ended immediately before the time at which those conditions become met,
- (b) another period of account of L ("period 2") began immediately before that time and ended immediately after that time, and
- (c) another period of account of L began immediately after that time.

(4) If, on the continuous application assumption (see subsection (9)), there would be an amount of cumulative accountancy rental excess for period 2, that amount is the cumulative accountancy rental excess for period 2.

(5) If subsection (4) applies, L is treated for corporation tax purposes as if in period 1 L had been entitled to, and there had arisen to L, rent from the lease of an amount equal to that cumulative accountancy rental excess.

(6) The amount of rent mentioned in subsection (5)—
- (a) is in addition to any other rent from the lease for period 1, and
- (b) is left out of account for the purposes of section 905 (current lessor taxed by reference to accountancy rental earnings).

(7) Rent within subsection (5) is treated for corporation tax purposes as if it had accrued and L had become entitled to it immediately before the end of period 1.

(8) If, on the continuous application assumption, there would be an amount of cumulative normal rental excess for period 2, that amount is the cumulative normal rental excess for period 2.

(9) In this section "the continuous application assumption" means the assumption that this Chapter (other than this section) had applied in the case of the lease at all times on or after 26 November 1996.

(10) If at any time the person who was the lessor at that time was a person within the charge to income tax, the reference in subsection (9) to this Chapter (other than this section) includes a reference to Chapter 2 of Part 11A of ITA 2007 (other than section 614BX of that Act).

924 Post-25 November 1996 schemes to which Chapter 3 applied first

(1) This section applies if—
- (a) the conditions in section 902 become met in the case of the lease of the asset, and
- (b) immediately before those conditions become met, Chapter 3 applied.

(2) Subsection (3) applies for the purpose of determining—

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(a) the cumulative accountancy rental excess for any period of account ending after those conditions become met, or

(b) the cumulative normal rental excess for any such period.

(3) This Part has effect as if this Chapter had applied in relation to the lease at any time when Chapter 3 applied in relation to it.

(4) If at any time the person who was the lessor at that time was a person within the charge to income tax—

(a) the reference in subsection (1)(a) to the conditions in section 902 becoming met at that time includes a reference to the conditions in section 614BC of ITA 2007 becoming so met,

(b) the reference in subsection (1)(b) to Chapter 3 applying immediately before that time includes a reference to Chapter 3 of Part 11A of that Act so applying, and

(c) the reference in subsection (3) to Chapter 3 applying at that time includes a reference to Chapter 3 of that Part so applying.

CHAPTER 3

OTHER FINANCE LEASES

Introduction

925 Introduction to Chapter

(1) This Chapter applies to arrangements involving the lease of an asset that—

(a) fall to be treated, in accordance with generally accepted accounting practice, as a finance lease or loan, but

(b) are not arrangements to which Chapter 2 applies.

(2) It does not matter whether the arrangements are or have been entered into by companies or other persons.

926 Purpose of this Chapter

(1) The main purpose of this Chapter where there are arrangements to which this Chapter applies is, in relation to a company entitled to the lessor's interest under the lease of the asset, to apply the charge to corporation tax on income to amounts determined as mentioned in subsection (2).

(2) The amounts referred to in subsection (1) are determined by reference to the amounts that fall for accounting purposes to be treated, in accordance with generally accepted accounting practice, as the income return on and after 26 November 1996 on investment in respect of the finance lease or loan.

(3) The amounts referred to in subsection (1) are also determined taking into account the substance of the matter as a whole, including, in particular, the state of affairs—

(a) as between connected persons, or

(b) within a group of companies,

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as reflected or falling to be reflected in accounts of any of those persons or in consolidated group accounts.

Current lessor taxed by reference to accountancy rental earnings

927 Leases to which this Chapter applies

(1) This Chapter applies if—
- (a) a lease of an asset is or has been granted on or after 26 November 1996,
- (b) the lease forms part of a post-25 November 1996 scheme,
- (c) condition A in section 902 is or has been met at some time on or after 26 November 1996 in relation to the lease in a period of account of the current lessor ("L"), and
- (d) Chapter 2 does not apply in relation to the lease because of the other conditions in that section not all being, or having been, met as mentioned in section 901.

(2) For the meaning of "forms part of a post-25 November 1996 scheme", see section 930.

(3) This Chapter does not apply so far as, in relation to L, the lease falls to be regarded as a long funding lease for the purposes of Part 2 of CAA 2001 (plant and machinery allowances) in accordance with Chapter 6A of that Part (interpretation of provisions about long funding leases) (see section 70G of that Act).

(4) If condition A in section 902 has been met at any time on or after 26 November 1996 in a period of account of the person who was at that time the lessor, it is taken to continue to be met unless and until one of the conditions in subsection (5) is met.

(5) The conditions are that—
- (a) the asset ceases to be leased under the lease, or
- (b) the lessor's interest under the lease is assigned to a person who is not connected with any of the persons specified in subsection (6).

(6) Those persons are—
- (a) the assignor,
- (b) any person who was the lessor at some time before the assignment, and
- (c) any person who at some time after the assignment becomes the lessor pursuant to arrangements made by a person who was the lessor, or was connected with the lessor, at some time before the assignment.

(7) If at any time the person who was the lessor at that time was a person within the charge to income tax—
- (a) the reference in subsection (4) to condition A in section 902 having been met at that time includes a reference to condition A in section 614BC of ITA 2007 having been so met, and
- (b) the reference in subsection (1)(d) to the other conditions in section 902 not having been met as mentioned in section 901 includes a reference to the other conditions in section 614BC of that Act not having been met as mentioned in section 614BB of that Act.

(8) Nothing in subsection (4) prevents this Chapter from applying again in relation to the lease where the lessor's interest is assigned if the conditions for its application are met after the assignment.

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928 Current lessor taxed by reference to accountancy rental earnings

(1) This section applies if, in the case of any period of account of the current lessor ("L")—
- (a) this Chapter applies in relation to the lease, and
- (b) the accountancy rental earnings in respect of the lease for that period of account exceed the normal rent for that period.

(2) For corporation tax purposes, L is treated as if in that period of account L had been entitled to, and there had arisen to L, rent from the lease of an amount equal to those accountancy rental earnings (instead of the normal rent referred to in subsection (1)(b)).

(3) Such rent from the lease of an asset is treated for corporation tax purposes—
- (a) as if it had accrued at an even rate throughout so much of the period of account as falls within the period for which the asset is leased, and
- (b) as if L had become entitled to it as it accrued.

Application of provisions of Chapter 2 for purposes of this Chapter

929 Application of provisions of Chapter 2 for purposes of this Chapter

Sections 906 to 916 apply for the purposes of this Chapter as they apply for the purposes of Chapter 2, but taking the references in sections 907(1) and 910(1)(a) to section 905 as references to section 928.

CHAPTER 4

SUPPLEMENTARY PROVISIONS

930 Pre-26 November 1996 schemes and post-25 November 1996 schemes

(1) For the purposes of this Part, a lease of an asset—
- (a) forms part of a pre-26 November 1996 scheme if (and only if) the conditions in subsection (2) or (3) are met, and
- (b) in any other case, forms part of a post-25 November 1996 scheme.

(2) The conditions in this subsection are that—
- (a) a contract in writing for the lease of the asset was made before 26 November 1996,
- (b) either—
  - (i) the contract was unconditional, or
  - (ii) if the contract was conditional, the conditions were met before that date, and
- (c) no terms remain to be agreed on or after that date.

(3) The conditions in this subsection are that—
- (a) a contract in writing for the lease of the asset was made before 26 November 1996,
- (b) the condition in subsection (2)(b) or (c) was not met in the case of the contract,
- (c) either—

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(i) the contract was unconditional, or

(ii) if the contract was conditional, the conditions were met before the end of the finalisation period or within such further period as the Commissioners for Her Majesty's Revenue and Customs may allow in the particular case,

(d) no terms remain to be agreed after the end of the finalisation period or such further period as those Commissioners may so allow, and

(e) the contract in its final form was not materially different from the contract as it stood when it was made before 26 November 1996.

(4) In subsection (3), "the finalisation period" means the period which ended with the later of—

(a) 31 January 1997, and

(b) the end of the period of six months beginning with the day after that on which the contract was made as mentioned in subsection (3)(a).

931 Time apportionment where periods of account do not coincide

(1) Subsection (2) applies if a period of account of the lessor ("L") does not coincide with a period of account of a person connected with L.

(2) Any amount which falls for the purposes of this Part to be found for L's period of account but by reference to the connected person is found by making such apportionments as may be necessary between two or more periods of account of the connected person.

(3) Subsection (4) applies if a period of account of L does not coincide with a period for which consolidated group accounts of a group of companies of which L is a member fall to be prepared.

(4) Any amount which falls for the purposes of this Part to be found for L's period of account but by reference to the consolidated group accounts is found by making such apportionments as may be necessary between two or more periods for which consolidated group accounts of the group fall to be prepared.

(5) Any apportionment under subsection (2) or (4) must be made in proportion to the number of days in the respective periods that fall within L's period of account.

932 Periods of account and related periods of account and accounting periods

(1) In this Part "period of account" means a period for which accounts are made up.

(2) Except for the purposes of sections 901 to 904 and subsection (3), in this Part "period of account" does not include a period that begins before 26 November 1996.

(3) But this Part applies in relation to a period of account that begins before 26 November 1996 and ends on or after that date as if—

(a) so much of the period as falls before that date, and

(b) so much of the period as falls on or after that date,

were separate periods of account.

(4) For the purposes of this Part, an accounting period is related to a period of account if the accounting period consists of or includes the whole or any part of the period of account.

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(5) For the purposes of this Part a period of account is related to an accounting period if the accounting period is related to the period of account.

933 Connected persons

(1) For the purposes of this Part in its application as a result of any leasing arrangements, if a person ("A") is connected with another ("B") at some time during the relevant period A is treated as being connected with B throughout that period.

(2) The relevant period is the period that—
- (a) begins at the earliest time at which any of the arrangements were made, and
- (b) ends when the current lessor finally ceases to have an interest in the asset or any arrangements relating to it.

934 Assets which represent the leased asset

(1) For the purposes of this Part, the assets described in subsection (2) are treated as representing the leased asset.

(2) Those assets are—
- (a) any asset derived from the leased asset or created out of it,
- (b) any asset from which the leased asset was derived or out of which the leased asset was created,
- (c) any asset derived from or created out of an asset within paragraph (b), and
- (d) any asset that derives the whole or a substantial part of its value from the leased asset or an asset that itself represents the leased asset.

935 Parent undertakings and consolidated group accounts

(1) This Part has effect in relation to a body corporate that—
- (a) is a parent undertaking, but
- (b) for accounting purposes is not required to prepare consolidated group accounts in accordance with generally accepted accounting practice,

as if it were so required.

(2) For the purposes of subsection (1) it does not matter where the body corporate is incorporated.

(3) In subsection (1) "parent undertaking" is to be read in accordance with section 1162 of the Companies Act 2006.

936 Assessments and adjustments

All such assessments and adjustments must be made as are necessary to give effect to this Part.

937 Interpretation of Part

In this Part, unless the context otherwise requires—

"accountancy rental earnings" has the meaning given by section 897(1),

"accountancy rental excess" is to be read—

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(a) for the purposes of Chapter 2, in accordance with section 907(1) to (4), and
(b) for the purposes of Chapter 3, in accordance with section 907(1) to (4), as it has effect as a result of section 929,

"asset" means any form of property or rights,

"asset representing the leased asset" is to be read in accordance with section 934,

"cumulative accountancy rental excess" is to be read—
(a) for the purposes of Chapter 2, in accordance with section 907(5), and
(b) for the purposes of Chapter 3, in accordance with section 907(5) as it has effect as a result of section 929,

"cumulative normal rental excess" is to be read—
(a) for the purposes of Chapter 2, in accordance with section 909(5), and
(b) for the purposes of Chapter 3, in accordance with section 909(5) as it has effect as a result of section 929,

"the current lessor", in relation to a lease of an asset, means the person who is for the time being entitled to the lessor's interest under the lease,

"finance lessor" means a person who for accounting purposes is treated, in accordance with generally accepted accounting practice, as the person with—
(a) the grantor's interest in relation to a finance lease, or
(b) the lender's interest in relation to a loan,

"for accounting purposes" means for the purposes of—
(a) accounts of companies incorporated in any part of the United Kingdom, or
(b) consolidated group accounts for groups all the members of which are companies so incorporated,

"lease"—
(a) in relation to land, includes an underlease, sublease, tenancy or licence, and any agreement for a lease, underlease, sublease, tenancy or licence and, in the case of land outside the United Kingdom, any interest corresponding to a lease as so defined, and
(b) in relation to any form of property or right other than land, means any kind of agreement or arrangement under which payments are made for the use of, or otherwise in respect of, an asset,

and "rent" is to be read accordingly,

"the leasing arrangements", in relation to a lease of an asset, means—
(a) the lease,
(b) any arrangements relating to or connected with the lease, and
(c) any other arrangements of which the lease forms part,

and includes a reference to any of the leasing arrangements,

"the lessee", in relation to a lease of an asset, means (except in the expression "the lessee's interest under the lease") the person entitled to the lessee's interest under the lease,

"the lessor", in relation to a lease of an asset, means (except in the expression "the lessor's interest under the lease") the person entitled to the lessor's interest under the lease,

"major lump sum" is to be read in accordance with section 902(5),

"normal rent" is to be read in accordance with section 896,

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"normal rental excess" is to be read—

(a) for the purposes of Chapter 2, in accordance with section 909(1) to (4), and

(b) for the purposes of Chapter 3, in accordance with section 909(1) to (4) as it has effect as a result of section 929,

"period of account" is to be read in accordance with section 932(1) to (3),

"post-25 November 1996 scheme" is to be read in accordance with section 930(1)(b),

"pre-26 November 1996 scheme" is to be read in accordance with section 930(1)(a),

"related accounting period" is to be read in accordance with section 932(4),

"related period of account" is to be read in accordance with section 932(5),

"the rental earnings", in relation to the lease of the asset and any period, has the meaning given by section 898, and

"sum" includes any money or money's worth (and "pay" and related expressions are to be read accordingly).

[[F486]PART 21A

RISK TRANSFER SCHEMES

Textual Amendments

F486 Pt. 21A inserted (with effect in accordance with Sch. 16 para. 5 of the amending Act) by Finance Act 2010 (c. 13), **Sch. 16 para. 3**

Introduction

937A Overview

This Part contains rules about the treatment of certain losses made by companies as a result of risk transfer schemes.

937B Group schemes and single company schemes

(1) A risk transfer scheme may be—

(a) a group scheme, or

(b) a risk transfer scheme other than a group scheme (a "single-company scheme").

(2) A risk transfer scheme to which a company ("company A") is a party is a "group scheme" if at least one company other than company A is at any time both—

(a) associated with company A, and

(b) a party to the scheme.

(3) In this Part " the relevant group " means—

(a) company A, and

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(b) each company other than company A in relation to which the condition in subsection (2) is met.

(4) In its application in relation to single company schemes, this Part applies subject to the following modifications.

(5) The modifications are that—

(a) references to the relevant group, a member of the relevant group, or the members of the relevant group, are treated as references to company A, and

(b) sections 937E(2) and 937L(2) are treated as omitted.

Basic definitions

937C Meaning of "risk transfer scheme"

(1) A scheme to which a company ("company A") is a party is a "risk transfer scheme" if conditions 1 to 3 are met.

(2) Condition 1 is that the purpose, or one of the main purposes, of any member of the relevant group on entering into the scheme is to obtain a financial advantage for the relevant group that it is reasonable to assume could not otherwise have been obtained without the relevant group becoming subject to (or incurring the cost of avoiding) a relevant risk.

(3) In subsection (2) " a relevant risk " means a risk that the relevant group would make economic losses in one or more accounting periods of company A as a result of fluctuations in—

(a) the rate of exchange between any two currencies,

(b) the retail prices index (or any similar general index of prices) or any other index, or

(c) any price or other value.

(4) Condition 2 is that, as a result of the scheme, and disregarding the effect of this Part, the relevant group—

(a) is not subject to the relevant risk, or

(b) is subject only to a negligible proportion of that risk.

(5) Condition 3 is that, disregarding the effect of the provisions of the Corporation Tax Acts, condition 2 would not be met.

(6) For the purposes of this section the relevant group obtains a "financial advantage" from a scheme if, taking into account the effect of the scheme on each member of the group, the scheme—

(a) increases the return on any investment,

(b) reduces the costs of any borrowing, or

(c) has an effect economically equivalent to that mentioned in paragraph (a) or (b).

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937D Meaning of "the scheme rate, index or value"

In this Part " the scheme rate, index or value ", in relation to a risk transfer scheme, means the rate, index or value mentioned in section 937C(3)(a), (b) or (c) in relation to the relevant risk for the scheme.

937E Scheme losses and scheme profits

(1) A loss or profit made by a company in an accounting period is a "scheme loss" or " scheme profit " in relation to a risk transfer scheme to which the company is a party at any time in the period if the loss or profit—

(a) is from a loan relationship, or derivative contract, that is part of the scheme,

(b) would, apart from this Part, be brought into account in determining a debit or credit for the purposes of Part 5 of CTA 2009 (loan relationships) or Part 7 of that Act (derivative contracts), and

(c) arises as a result of fluctuations in the scheme rate, index or value.

(2) References in this Part to a scheme loss or scheme profit made by a company in a period that is not an accounting period of that company are to the scheme loss or scheme profit that the company would have made in the period from the loan relationship or derivative contract in question if the period had been an accounting period of the company.

(3) References in this section to a loss or profit from a loan relationship or a derivative contract include—

(a) a loss or profit from a related transaction, and

(b) a loss or profit of a capital nature.

(4) In subsection (3)(a) " related transaction " has the meaning given by—

(a) section 304 of CTA 2009 (in relation to a loan relationship), or

(b) section 596 of that Act (in relation to a derivative contract).

937F Ring-fenced scheme losses and relevant scheme profits

(1) Subsection (2) applies if—

(a) a company makes one or more scheme losses in an accounting period in relation to a risk transfer scheme, and

(b) disregarding any profits or losses made otherwise than as a result of the scheme, the relevant group makes a pre-tax economic loss in the period as a result of fluctuations in the scheme rate, index or value.

(2) The relevant proportion of each scheme loss made by the company in the accounting period is a "ring-fenced scheme loss".

(3) For this purpose " the relevant proportion " means—

A–B–CA

where—

A is the total of the scheme losses made in the period in relation to the scheme by the members of the relevant group,

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B is the total of the scheme profits made in the period in relation to the scheme by the members of the relevant group, and

C is the pre-tax economic loss referred to in subsection (1)(b).

(4) Subsection (5) applies if—

(a) a company makes one or more scheme profits in an accounting period in relation to a risk transfer scheme, and

(b) disregarding any profits or losses made otherwise than as a result of the scheme, the relevant group makes a pre-tax economic profit in the period as a result of fluctuations in the scheme rate, index or value.

(5) The relevant proportion of each scheme profit made by the company in the accounting period is a "relevant scheme profit".

(6) For this purpose " the relevant proportion " means—

A–B–CA

where—

A is the total of the scheme profits made in the period in relation to the scheme by the members of the relevant group,

B is the total of the scheme losses made in the period in relation to the scheme by the members of the relevant group, and

C is the pre-tax economic profit referred to in subsection (4)(b).

Treatment of ring-fenced scheme losses

937G Ring-fenced scheme loss: treatment in period in which made

(1) This section applies for the purpose of determining the amount (if any) of a ring-fenced scheme loss that may be brought into account by a company in the accounting period in which it is made.

(2) If the amount of the company's profits pool for the scheme as at the beginning of the period is nil, the ring-fenced scheme loss may not be brought into account.

(3) If the amount of the company's profits pool for the scheme as at the beginning of the period is—

(a) greater than nil, and

(b) less than the total of the ring-fenced scheme losses made in the period in relation to the scheme by the company,

only the relevant proportion of the ring-fenced scheme loss may be brought into account.

(4) For this purpose " the relevant proportion " means—

AB

where—

A is the amount of the company's profits pool as at the beginning of the period, and

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B is the total of the ring-fenced scheme losses made in the period in relation to the scheme by the company.

(5) If the amount of the company's profits pool for the scheme as at the beginning of the period is equal to or greater than the total of the ring-fenced scheme losses made in the period in relation to the scheme by the company, the ring-fenced scheme loss may be brought into account in full.

(6) A reference in this paragraph to bringing a ring-fenced scheme loss into account is to bringing it into account in determining a debit or credit for the purposes of Part 5 of CTA 2009 (loan relationships) or Part 7 of that Act (derivative contracts).

937H Ring-fenced scheme loss: treatment in subsequent periods

(1) This section applies where—

(a) a company makes one or more scheme profits in an accounting period in relation to a risk transfer scheme,

(b) disregarding any profits or losses made otherwise than as a result of the scheme, the relevant group makes a pre-tax economic profit in the period as a result of fluctuations in the scheme rate, index or value, and

(c) the amount of the company's losses pool for the scheme as at the beginning of the period is greater than nil.

(2) The company may bring into account, as if it were a loss made in the period from a loan relationship—

$$A \times B$$

where—

A is so much of the amount of the company's losses pool as at the beginning of the period as does not exceed the total of the relevant scheme profits made in the period in relation to the scheme by the company, and

B is the proportion of the total of the relevant scheme profits made in the period in relation to the scheme by the company that consists of profits made from its loan relationships.

(3) The company may bring into account, as if it were a loss made in the period from a derivative contract—

$$A \times C$$

where—

A has the same meaning as in subsection (2), and

C is the proportion of the total of the relevant scheme profits made in the period in relation to the scheme by the company that consists of profits made from its derivative contracts.

(4) A reference in this section to bringing an amount into account is to bringing it into account in determining a debit or credit for the purposes of Part 5 of CTA 2009 (loan relationships) or Part 7 of that Act (derivative contracts).

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A company's losses pool and profits pool

937I A company's losses pool and profits pool

(1) The amount of a company's losses pool for a risk transfer scheme as at the beginning of an accounting period ("the current accounting period") is—

A+B–C

where—

A is—

(a) the amount of the pool as at the beginning of the previous accounting period, or
(b) if the risk transfer scheme began in the current accounting period, nil,

B is the total amount, if any, of ring-fenced scheme losses made in the previous accounting period in relation to the scheme by the company that, as a result of the application of section 937G(2) or (3), are not brought into account in that period, and

C is the total amount (if any) that, as a result of the application of section 937H(2) or (3), is brought into account in the previous accounting period in relation to the scheme by the company.

(2) The amount of a company's profits pool for a risk transfer scheme as at the beginning of an accounting period ("the current accounting period") is—

A+B–C

where—

A is—

(a) the amount of the pool as at the beginning of the previous accounting period, or
(b) if the risk transfer scheme began in the current accounting period, nil,

B is—

(a) the total of any relevant scheme profits made in the previous accounting period in relation to the scheme by the company, less
(b) the total amount (if any) that, as a result of the application of section 937H(2) or (3), is brought into account in that accounting period in relation to the scheme by the company, and

C is the total amount (if any) of ring-fenced scheme losses made in the previous accounting period in relation to the scheme by the company that, as a result of the application of section 937G(3) or (5), are brought into account in that period.

General

937J Tax capacity assumption

(1) This section applies for the purpose of determining whether condition 2 in section 937C is met.

(2) Where a member of the relevant group (" the company ") makes a scheme loss in an accounting period, the economic profits and losses made by the relevant group in the

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period must be calculated on the assumption that the company obtained the full tax benefit of the loss.

(3) The "full tax benefit" of the loss is the reduction in the corporation tax liability of the company that would result if—
   (a) the loss were brought into account, and
   (b) the company's profits chargeable to corporation tax, before doing so, were equal to the debit (or the reduction in any credit) determined by reference to the loss.

(4) A reference in this section to bringing a loss into account is to bringing it into account in determining a debit or credit for the purposes of Part 5 of CTA 2009 (loan relationships) or Part 7 of that Act (derivative contracts).

937K Meaning of "associated with"

(1) For the purposes of this Part a company ("company B") is associated with another company ("company A") at a time (" the relevant time ") if any of the following five conditions is met.

(2) The first condition is that the financial results of company A and company B, for a period that includes the relevant time, meet the consolidation condition.

(3) The second condition is that there is a connection between company A and company B for the accounting period of company A in which the relevant time falls.

(4) The third condition is that, at the relevant time, company A has a major interest in company B or company B has a major interest in company A.

(5) The fourth condition is that—
   (a) the financial results of company A and a third company, for a period that includes the relevant time, meet the consolidation condition, and
   (b) at the relevant time the third company has a major interest in company B.

(6) The fifth condition is that—
   (a) there is a connection between company A and a third company for the accounting period of company A in which the relevant time falls, and
   (b) at the relevant time the third company has a major interest in company B.

(7) In this section the financial results of any two companies for any period meet "the consolidation condition" if—
   (a) they are required to be comprised in group accounts prepared under section 399 of the Companies Act 2006 (duty of certain parent companies to prepare group accounts), or
   (b) they would be required to be comprised in such accounts but for the application of an exemption mentioned in subsection (3) of that section.

(8) The following provisions apply for the purposes of this section—

   sections 466 to 471 of CTA 2009 (companies connected for accounting period), and

   sections 473 and 474 of CTA 2009 (meaning of "major interest").

Status: *Point in time view as at 01/04/2014.*
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937L Interpretation of references to economic losses and profits

(1) A reference in this Part to an "economic" loss or profit made by any person in a period is to a loss or profit made by that person in that period, computed taking into account unrealised (as well as realised) losses and profits.

(2) For the purposes of this Part an economic loss or profit is made "by the relevant group" if it is made by the members of the relevant group considered together.

(3) Where—

(a) any member of the relevant group makes a scheme loss or profit in an accounting period, and

(b) that scheme loss or profit is, under generally accepted accounting practice, calculated by reference to fluctuations in the scheme rate, index or value over a longer period,

the economic loss or profit made by the group in the accounting period as a result of those fluctuations is, so far as it relates to that scheme loss or profit, to be computed over that longer period.

(4) In determining for the purposes of this Part the amount of an economic loss or profit made by the relevant group in any period, the economic losses and profits of each member of the relevant group—

(a) are (subject to subsection (3)) to be computed over that period (whether or not that period is an accounting period of the member), but

(b) are only to be taken into account to the extent that they are attributable to times at which the member is a party to the risk transfer scheme in question.

(5) A reference in this Part to a "pre-tax" economic loss or profit is a reference to an economic loss or profit determined disregarding any loss or gain made as a result of the operation of any provision of the Corporation Tax Acts.

937M Foreign currency accounting

(1) In determining under this Part amounts that a company may or may not bring into account in an accounting period, economic losses and profits are to be computed in the tax calculation currency of that company in that accounting period.

(2) Section 17(5) of CTA 2010 (meaning of references to the tax calculation currency of a company) applies for the purposes of this section.

937N Meaning of "scheme"

In this Part " scheme " includes any scheme, arrangements or understanding of any kind whatever, whether or not legally enforceable, involving a single transaction or two or more transactions.

Power to amend this Part

937O Power to amend this Part in its application to dealers in securities

(1) The Treasury may by order amend any enactment contained in this Part so as to apply (with or without modifications) the rules in this Part about scheme losses and scheme profits to losses and profits made in a trade.

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(2) The power conferred by subsection (1) may only be exercised in relation to losses and profits made by a company that carries on a banking business, an insurance business or a business consisting wholly or partly of dealing in securities.

(3) In this section " securities " includes—

(a) shares,

(b) rights of unit holders in unit trust schemes to which TCGA 1992 applies as a result of section 99 of that Act, and

(c) in the case of a company with no share capital, interests in the company possessed by members of the company.

(4) An order under this section—

(a) may make different provision for different cases or purposes, and

(b) may include incidental, consequential, supplementary or transitional provision.**]**

[[F487]PART 21B

GROUP MISMATCH SCHEMES

Textual Amendments

F487 Pt. 21B inserted (with effect in accordance with Sch. 5 para. 6 of the amending Act) by Finance Act 2011 (c. 11), **Sch. 5 para. 2**

938A Losses and profits from group mismatch schemes to be disregarded

(1) This section applies to a company that—

(a) is (at any time) a party to a group mismatch scheme, and

(b) is a member of the scheme group.

(2) No scheme loss or profit made by the company in any accounting period in relation to the scheme is to be brought into account as a debit or credit for the purposes of Part 5 of CTA 2009 (loan relationships) or Part 7 of that Act (derivative contracts).

(3) An amount that would, apart from this section, be brought into account for the purposes of Part 5 or 7 of that Act as respects any matter—

(a) is treated, for the purposes of section 464(1) or (as the case may be) 699(1) of that Act (priority of Part 5 or 7 for corporation tax purposes) as if it were so brought into account, and

(b) accordingly, may not be brought into account for any other corporation tax purposes as respects that matter.

938B Meaning of "a group mismatch scheme" and "the scheme group"

(1) A scheme is "a group mismatch scheme" if—

(a) the parties to the scheme are, or include, members of the same group, and

(b) condition A or B is met.

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(2) Condition A is that, at the time the scheme is entered into, there is no practical likelihood that the scheme will fail to secure a relevant tax advantage of £2 million or more.

(3) The Treasury may by order substitute a higher amount for the amount for the time being specified in subsection (2).

(4) Any such substitution is to have effect in relation to schemes entered into on or after the day on which the order comes into force.

(5) Condition B is that—
- (a) the purpose, or one of the main purposes, of any member of the scheme group in entering into the scheme is to obtain the chance of securing a relevant tax advantage (of any amount), and
- (b) at the time the scheme is entered into—
  - (i) there is no chance that the scheme will secure a relevant tax disadvantage, or
  - (ii) there is such a chance, but the expected value of the scheme is nevertheless a positive amount.

(6) If, at the time the company enters into the scheme, there are chances that the scheme would, if carried out, secure different relevant tax advantages or disadvantages in different circumstances, the amounts and probabilities of each must be taken into account in determining the expected value of the scheme.

(7) In determining whether condition A or B is met, it is to be assumed that the parties to the scheme carry it out.

(8) Where, at the time the scheme is entered into, the length of the scheme period is uncertain, condition A or B is met if it would be met on any reasonable assumption as to the length of the scheme period.

(9) In determining whether condition A or B is met, section 938A (scheme profits and losses to be left out of account) is to be disregarded.

(10) In this Part " the scheme group " means the group mentioned in subsection (1)(a).

938C Meaning of "scheme loss" and "scheme profit"

(1) A loss or profit made by a company in an accounting period is a "scheme loss" or " scheme profit " in relation to a group mismatch scheme if the loss or profit—
- (a) arises from a transaction, or series of transactions, that forms part of the scheme,
- (b) is, or is comprised in, an amount that is brought into account as a debit or credit for the purposes of Part 5 or 7 of CTA 2009, and
- (c) meets the first or second asymmetry condition.

(2) The first asymmetry condition is that the loss or profit affects the amount of any relevant tax advantage secured by the scheme.

(3) Where, at the end of the accounting period—
- (a) it is not certain whether the scheme will secure a relevant tax advantage, or
- (b) it is not certain what the amount of the relevant tax advantage secured by the scheme will be,

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a loss or profit is to be treated as meeting the first asymmetry condition if, at that time, there is a chance that the scheme will secure a relevant tax advantage and that the loss or profit will affect its amount.

(4) Where—
- (a) a loss or profit meets the conditions in subsection (1)(a) and (b), and
- (b) a part, but not the whole, of the loss or profit meets the first asymmetry condition,

only that part of the loss or profit is a "scheme loss" or "scheme profit".

(5) The second asymmetry condition is that the loss or profit—
- (a) does not meet the first asymmetry condition, but
- (b) arises from a transaction, or series of transactions, that might (if events had turned out differently) have given rise to a loss or profit that would have done so.

(6) References in this section to a loss or profit include a loss or profit arising in respect of interest or expenses.

(7) In determining whether the condition in subsection (1)(b) or the first or second asymmetry condition is met, section 938A (scheme profits and losses to be left out of account) is to be disregarded.

938D Meaning of "relevant tax advantage" etc and "the scheme period"

(1) In this Part " relevant tax advantage ", in relation to a scheme, means an economic profit that—
- (a) is made by the scheme group over the scheme period,
- (b) meets the condition in subsection (3), and
- (c) is not negligible.

(2) In this Part " relevant tax disadvantage ", in relation to a scheme, means an economic loss that—
- (a) is made by the scheme group over the scheme period,
- (b) meets the condition in subsection (3), and
- (c) is not negligible.

(3) The condition is that the economic profit or loss arises as a result of asymmetries in the way different members of the scheme group bring, or do not bring, amounts into account as debits and credits for the purposes of Part 5 or 7 of CTA 2009.

(4) A reference in this section to asymmetries includes, in particular—
- (a) asymmetries relating to quantification, and
- (b) asymmetries relating to timing.

(5) In this section—
- (a) a reference to an economic profit includes an increase in an economic profit and a decrease in an economic loss, and
- (b) a reference to an economic loss includes an increase in an economic loss and a decrease in an economic profit.

(6) In this Part " the scheme period ", in relation to a scheme, means the period during which the scheme has effect.

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938E Meaning of "group"

(1) For the purposes of this Part a company ("company A") is a member of a group, in relation to a scheme, if any other company is at any time in the scheme period associated with company A.

(2) The group consists of company A and each company in relation to which the condition in subsection (1) is met.

(3) For the purposes of this section a company ("company B") is associated with company A at a time (" the relevant time ") if any of the following five conditions is met.

(4) The first condition is that the financial results of company A and company B, for a period that includes the relevant time, meet the consolidation condition.

(5) The second condition is that there is a connection between company A and company B for the accounting period of company A in which the relevant time falls.

(6) The third condition is that, at the relevant time, company A has a major interest in company B or company B has a major interest in company A.

(7) The fourth condition is that—
- (a) the financial results of company A and a third company, for a period that includes the relevant time, meet the consolidation condition, and
- (b) at the relevant time the third company has a major interest in company B.

(8) The fifth condition is that—
- (a) there is a connection between company A and a third company for the accounting period of company A in which the relevant time falls, and
- (b) at the relevant time the third company has a major interest in company B.

(9) In this section, the financial results of any two companies for any period meet "the consolidation condition" if—
- (a) they are required to be comprised in group accounts,
- (b) they would be required to be comprised in such accounts but for the application of an exemption, or
- (c) they are in fact comprised in such accounts.

(10) In subsection (9), " group accounts " means accounts prepared under—
- (a) section 399 of the Companies Act 2006, or
- (b) any corresponding provision of the law of a territory outside the United Kingdom.

(11) The following provisions apply for the purposes of this section—

sections 466 to 471 of CTA 2009 (companies connected for accounting period), and

sections 473 and 474 of CTA 2009 (meaning of "major interest").

938F Meaning of references to economic profits and losses

(1) An economic profit or loss is to be computed for the purposes of this Part taking into account, in particular—
- (a) profits and losses made as a result of the operation of the Corporation Tax Acts, and

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(b) any adjustments required to reflect the time value of money.

(2) A reference in this Part to an economic profit or loss made by the scheme group over the scheme period is to an economic profit or loss made in that period by the members of the group considered together.

(3) In determining for the purposes of this Part the amount of an economic profit or loss made by the scheme group over the scheme period, profits and losses made by a member of the group are to be taken into account only to the extent that they are attributable to times at which the member is a party to the scheme.

938G Tax capacity assumption

(1) This section applies for the purpose of determining whether a scheme will, or might, secure a relevant tax advantage.

(2) The economic profits and losses made by the scheme group over the scheme period must be calculated on the assumption that each company that is at any time a party to the scheme—

(a) obtains the full tax benefit of any loss made by that company in relation to a loan relationship or a derivative contract during the period, and

(b) incurs the full tax cost of any profit made by that company in relation to a loan relationship or a derivative contract during the period.

(3) The "full tax benefit" of a loss is the reduction in the liability of the company to corporation tax that would result if—

(a) the loss were brought into account as a debit or as a reduction in a credit for the purposes of Part 5 or 7 of CTA 2009, and

(b) the company's profits chargeable to corporation tax, disregarding the loss, were equal to the debit (or the reduction in the credit) determined by reference to the loss.

(4) The "full tax cost" of a profit is the increase in the liability of the company to corporation tax that would result if—

(a) the profit were brought into account as a credit or as a reduction in a debit for the purposes of Part 5 or 7 of CTA 2009, and

(b) the company's profits chargeable to corporation tax, disregarding the profit, were nil.

938H Meaning of "scheme"

In this Part " scheme " includes any scheme, arrangements or understanding of any kind whatever, whether or not legally enforceable, involving a single transaction or two or more transactions.

938I Schemes involving repos or quasi-repos

(1) This section applies where—

(a) a scheme includes an arrangement under which a member of the scheme group has a debtor repo or a debtor quasi-repo, and

(b) the advance under that arrangement is received, directly or indirectly, from a member of the scheme group.

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(2) References in this Part to amounts brought into account, or not brought into account, as debits or credits for the purposes of Part 5 of CTA 2009 include amounts brought into account, or not brought into account, for the purposes of any other provision so far as it applies the charge to corporation tax on income to the repayment of the advance.

(3) Sections 548 and 549 of CTA 2009 (meaning of debtor repo and debtor quasi-repo) apply for the purposes of this section.

(4) For the purposes of subsection (2) " the repayment of the advance " means the consideration given on the purchase of securities mentioned in condition D in section 548 or 549 of CTA 2009.

938J Schemes involving finance arrangements

(1) This section applies in relation to a scheme if—
  (a) it includes a type 1, 2 or 3 finance arrangement under which a member of the scheme group is the borrower, and
  (b) the advance under that arrangement is received, directly or indirectly, from a member of the scheme group.

(2) References in this Part to amounts brought into account, or not brought into account, as debits or credits for the purposes of Part 5 of CTA 2009 include amounts brought into account, or not brought into account, for the purposes of any other provision so far as it applies the charge to corporation tax on income to the repayment of the advance.

(3) Sections 758, 763 and 767 of this Act (meaning of type 1, 2 and 3 finance arrangements) apply for the purposes of this section.

(4) For the purposes of subsection (2) " the repayment of the advance " means the payments mentioned in condition A in section 758, 763 or 767 of this Act.

938K Trading income

References in this Part to amounts brought into account, or not brought into account, as debits or credits for the purposes of Part 5 or 7 of CTA 2009 include amounts brought into account, or not brought into account, as expenses or receipts of a trade by virtue of section 297 or 573 of that Act (trading credits and debits to be brought into account under Part 3).

938L Foreign companies and foreign permanent establishments

(1) References in this Part to a company not bringing amounts into account as debits or credits for the purposes of Part 5 or 7 of CTA 2009 do not include the company not bringing amounts into account by virtue of—
  (a) the company being non-UK resident, or
  (b) an election under section 18A of CTA 2009 (profits or losses of foreign permanent establishments).

(2) See section 938M for provision about controlled foreign companies.

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938M Controlled foreign companies

(1) **[**[F488]Section 371SL(1) of TIOPA 2010 (assumption that a CFC**]** is not a member of any group for the purposes of any provision of the Tax Acts) does not apply for the purposes of this Part.

(2) References in this Part to a company bringing amounts into account, or not bringing them into account, as debits or credits for the purposes of Part 5 or 7 of CTA 2009 include bringing amounts into account, or not bringing them into account, as debits or credits under that Part in determining the **[**[F489]assumed taxable total profits**]** of the company (or in determining that there were no such profits) for the purposes of **[**[F490] Part 9A of TIOPA 2010**]** (controlled foreign companies).

Textual Amendments

F488 Words in s. 938M(1) substituted (17.7.2012) by Finance Act 2012 (c. 14), **Sch. 20 para. 39(2)**

F489 Words in s. 938M(2) substituted (17.7.2012) by Finance Act 2012 (c. 14), **Sch. 20 para. 39(3)(a)**

F490 Words in s. 938M(2) substituted (17.7.2012) by Finance Act 2012 (c. 14), **Sch. 20 para. 39(3)(b)**

938N Priority

For the purposes of this Part the following provisions are to be treated as of no effect—

(a) section 441 of CTA 2009 (loan relationships for unallowable purposes);

(b) section 690 of that Act (derivative contracts for unallowable purposes);

(c) Part 4 of TIOPA 2010 (transfer pricing);

(d) Part 6 of that Act (tax arbitrage);

(e) Part 7 of that Act (tax treatment of financing costs and income).**]**

[[F491]PART 21BA

TAX MISMATCH SCHEMES

Textual Amendments

F491 Pt. 21BA inserted (with effect in accordance with Sch. 20 para. 6 of the amending Act) by Finance Act 2013 (c. 29), **Sch. 20 para. 3**

938O Losses and profits from tax mismatch scheme to be disregarded

(1) This section applies to a company that is (at any time) a party to a tax mismatch scheme.

(2) No scheme loss or profit made by the company in any accounting period in relation to the scheme is to be brought into account as a debit or credit for the purposes of Part 5 of CTA 2009 (loan relationships) or Part 7 of that Act (derivative contracts).

(3) An amount that would, apart from this section, be brought into account for the purposes of Part 5 or 7 of that Act as respects any matter—

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(a) is treated, for the purposes of section 464(1) or (as the case may be) 699(1) of that Act (priority of Part 5 or 7 for corporation tax purposes), as if it were so brought into account, and

(b) accordingly, may not be brought into account for any other corporation tax purposes as respects that matter.

938P Meaning of "tax mismatch scheme"

(1) A scheme is a tax mismatch scheme if condition A or B is met.

(2) Condition A is that, at the time the scheme is entered into, there is no practical likelihood that the scheme will fail to secure a relevant tax advantage of £2 million or more.

(3) The Treasury may by order substitute a higher amount for the amount for the time being specified in subsection (2).

(4) Any such substitution is to have effect in relation to schemes entered into on or after the day on which the order comes into force.

(5) Condition B is that—

(a) the purpose, or one of the main purposes, of the company in entering into the scheme is to obtain the chance of securing a relevant tax advantage (of any amount), and

(b) at the time the scheme is entered into—

(i) there is no chance that the scheme will secure a relevant tax disadvantage, or

(ii) there is such a chance, but the expected value of the scheme is nevertheless a positive amount.

(6) If, at the time the company enters into the scheme, there are chances that the scheme would, if carried out, secure different relevant tax advantages or disadvantages in different circumstances, the amounts and probabilities of each must be taken into account in determining the expected value of the scheme.

(7) In determining whether condition A or B is met, it is to be assumed that the parties to the scheme carry it out.

(8) Where, at the time the scheme is entered into, the length of the scheme period is uncertain, condition A or B is met if it would be met on any reasonable assumption as to the length of the scheme period.

(9) In determining whether condition A or B is met, section 938O (scheme profits and losses to be left out of account) is to be disregarded.

938Q Meaning of "scheme loss" and "scheme profit"

(1) A loss or profit made by a company in an accounting period is a "scheme loss" or "scheme profit" in relation to a tax mismatch scheme if the loss or profit—

(a) arises from a transaction, or series of transactions, that forms part of the scheme,

(b) is, or is comprised in, an amount that is brought into account as a debit or credit for the purposes of Part 5 or 7 of CTA 2009, and

(c) meets the first or second asymmetry condition.

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(2) The first asymmetry condition is that the loss or profit affects the amount of any relevant tax advantage secured by the scheme.

(3) Where, at the end of the accounting period—
  (a) it is not certain whether the scheme will secure a relevant tax advantage, or
  (b) it is not certain what the amount of the relevant tax advantage secured by the scheme will be,

  a loss or profit is to be treated as meeting the first asymmetry condition if, at that time, there is a chance that the scheme will secure a relevant tax advantage and that the loss or profit will affect its amount.

(4) Where—
  (a) a loss or profit meets the conditions in subsection (1)(a) and (b), and
  (b) a part, but not the whole, of the loss or profit meets the first asymmetry condition,

  only that part of the loss or profit is a "scheme loss" or "scheme profit".

(5) The second asymmetry condition is that the loss or profit—
  (a) does not meet the first asymmetry condition, but
  (b) arises from a transaction, or series of transactions, that might (if events had turned out differently) have given rise to a loss or profit that would have done so.

(6) References in this section to a loss or profit include a loss or profit arising in respect of interest or expenses.

(7) In determining whether the condition in subsection (1)(b) or the first or second asymmetry condition is met, section 938O (scheme profits and losses to be left out of account) is to be disregarded.

938R Meaning of "relevant tax advantage" etc and "the scheme period"

(1) In this Part "relevant tax advantage", in relation to a scheme, means an economic profit that—
  (a) is made by the company over the scheme period,
  (b) meets the condition in subsection (3), and
  (c) is not negligible.

(2) In this Part "relevant tax disadvantage", in relation to a scheme, means an economic loss that—
  (a) is made by the company over the scheme period,
  (b) meets the condition in subsection (3), and
  (c) is not negligible.

(3) The condition is that the economic profit or loss arises as a result of asymmetries in the way that the company brings, or does not bring, amounts into account as debits and credits for the purposes of Part 5 or 7 of CTA 2009.

(4) A reference in this section to asymmetries includes, in particular—
  (a) asymmetries relating to quantification, and
  (b) asymmetries relating to timing.

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(5) In this section—

(a) a reference to an economic profit includes an increase in an economic profit and a decrease in an economic loss, and

(b) a reference to an economic loss includes an increase in an economic loss and a decrease in an economic profit.

(6) In this Part "the scheme period", in relation to a scheme, means the period during which the scheme has effect.

938S Meaning of references to economic profits and losses

(1) An economic profit or loss is to be computed for the purposes of this Part taking into account, in particular—

(a) profits and losses made as a result of the operation of the Corporation Tax Acts, and

(b) any adjustments required to reflect the time value of money.

(2) In determining for the purposes of this Part the amount of an economic profit or loss made by the company over the scheme period, profits and losses made by the company are to be taken into account only to the extent that they are attributable to times at which the company is a party to the scheme.

938T Tax capacity assumption

(1) This section applies for the purpose of determining whether a scheme will, or might, secure a relevant tax advantage.

(2) The economic profits and losses made by the company over the scheme period must be calculated on the assumption that the company—

(a) obtains the full tax benefit of any loss made by the company in relation to a loan relationship or a derivative contract during the period, and

(b) incurs the full tax cost of any profit made by the company in relation to a loan relationship or a derivative contract during the period.

(3) The "full tax benefit" of a loss is the reduction in the liability of the company to corporation tax that would result if—

(a) the loss were brought into account as a debit or as a reduction in a credit for the purposes of Part 5 or 7 of CTA 2009, and

(b) the company's profits chargeable to corporation tax, disregarding the loss, were equal to the debit (or the reduction in the credit) determined by reference to the loss.

(4) The "full tax cost" of a profit is the increase in the liability of the company to corporation tax that would result if—

(a) the profit were brought into account as a credit or as a reduction in a debit for the purposes of Part 5 or 7 of CTA 2009, and

(b) the company's profits chargeable to corporation tax, disregarding the profit, were nil.

Status: *Point in time view as at 01/04/2014.*
Changes to legislation: *Corporation Tax Act 2010 is up to date with all changes known to be in force on or before 12 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

938U Meaning of "scheme"

In this Part "scheme" includes any scheme, arrangements or understanding of any kind whatever, whether or not legally enforceable, involving a single transaction or two or more transactions.

938V Priority

For the purposes of this Part the following provisions are to be treated as of no effect—

(a) section 441 of CTA 2009 (loan relationships for unallowable purposes);
(b) section 690 of that Act (derivative contracts for unallowable purposes);
(c) Part 6 of TIOPA 2010 (tax arbitrage);
(d) Part 7 of that Act (tax treatment of financing costs and income).**]**

[[F492]PART 21C

TAINTED CHARITY DONATIONS

Textual Amendments

F492 Pt. 21C inserted (with effect in accordance with Sch. 3 para. 27 28 of the amending Act) by Finance Act 2011 (c. 11), **Sch. 3 para. 2**

Introduction

939A Overview of Part

(1) This Part makes provision for removing entitlement to corporation tax reliefs where a person makes a relievable charity donation which is a tainted donation.

(2) See Chapter 8 of Part 13 of ITA 2007 and section 257A of TCGA 1992 for the removal of entitlement to other reliefs, and the ways in which other income tax advantages are counteracted, where a person makes a relievable charity donation which is a tainted donation.

939B Relievable charity donations

(1) In this Chapter " relievable charity donation " means a gift or other disposal which—
(a) is made by a person to a charity, and
(b) is eligible for tax relief.

(2) A gift or other disposal is eligible for tax relief if one or both of the following apply—
(a) (ignoring the tainted donation provisions) tax relief would be available in respect of it under a relevant relieving provision;
(b) the charity is entitled to claim a repayment of tax in respect of it.

(3) "The tainted donation provisions" are—
(a) this Part,
(b) section 257A of TCGA 1992 (tainted charity donations: disapplication of section 257), and

Status: *Point in time view as at 01/04/2014.*
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(c) Chapter 8 of Part 13 of ITA 2007 (tainted charity donations: removal of income tax relief etc).

(4) The following are "relevant relieving provisions"—
- (a) section 257 of TCGA 1992 (gifts of chargeable assets),
- (b) section 63(2)(a), (aa) and (ab) of CAA 2001 (gifts of plant and machinery),
- (c) Part 12 of ITEPA 2003 (payroll giving),
- (d) section 108 of ITTOIA 2005 (gifts of trading stock),
- (e) Chapters 2 and 3 of Part 8 of ITA 2007 (gift aid and gifts of shares),
- (f) section 105 of CTA 2009 (gifts of trading stock), and
- (g) Part 6 of this Act (charitable donations relief).

(5) For the purposes of this Part, an amount of income which arises under a UK settlement and to which a charity is entitled under the terms of the settlement is to be regarded as an amount gifted to the charity by the trustees of the settlement.

" UK settlement " has the same meaning as in section 628 of ITTOIA 2005.

Tainted donations

939C Tainted donations

(1) For the purposes of this Part, a relievable charity donation is a tainted donation if (and only if) Conditions A, B and C are met.

(2) Condition A is that—
- (a) a linked person enters into arrangements (whether before or after the donation is made), and
- (b) it is reasonable to assume from either or both of—
  - (i) the likely effects of the donation and the arrangements, and
  - (ii) the circumstances in which the donation is made and the circumstances in which the arrangements are entered into,

  that the donation would not have been made and the arrangements would not have been entered into independently of one another.

(3) " Linked person " means—
- (a) the person who made the donation (" the donor "), or
- (b) a person who is connected with the donor at a relevant time.

(4) In subsection (3) " relevant time " means a time during the period which begins with the earliest, and ends with the latest, of the following times—
- (a) the time when the arrangements are entered into as mentioned in subsection (2);
- (b) the time when the relievable charity donation is made;
- (c) the time when the arrangements are first materially implemented.

(5) Condition B is that the main purpose, or one of the main purposes, of the linked person in entering into the arrangements is to obtain a financial advantage—
- (a) directly or indirectly from the charity to which the donation is made or a connected charity,

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(b) for one or more linked persons who are not charities (each of whom is referred to in this Part as " a potentially advantaged person ").

(6) Condition C is that the donor is not—

(a) a qualifying charity-owned company, or

(b) a relevant housing provider linked with the charity to which the donation is made.

(7) For the purposes of subsection (6)(b) a relevant housing provider is linked with the charity if (and only if)—

(a) one is wholly owned, or subject to control, by the other, or

(b) both are wholly owned, or subject to control, by the same person.

(8) In this section—

" qualifying charity-owned company ", in relation to a relievable charity donation, means a company which—

(a) is wholly owned by one or more charities, at least one of which is the charity to which the donation is made or a connected charity, and

(b) has not previously been under the control of, and does not carry on a trade or business previously carried on by, one or more of the following—

(i) a potentially advantaged person;

(ii) a person (other than a charity) who, at any time within the period of 4 years ending with the day on which paragraph (a) was first satisfied, was connected with a person who is a potentially advantaged person;

" relevant housing provider " means a body which is—

(a) a non-profit registered provider of social housing, or

(b) entered on a register maintained under section 1 of the Housing Act 1996, section 20 of the Housing (Scotland) Act 2010 (asp 17) or Article 14 of the Housing (Northern Ireland) Order 1992 (S.I. 1992/1725 (N.I. 15)).

(9) Section 200 (company wholly owned by a charity) applies for the purposes of subsection (8), and for those purposes references in that section to "charity" include a registered club within the meaning of section 658(6).

(10) This section is subject to section 939E (certain financial advantages to be ignored).

Modifications etc. (not altering text)

C40 S. 939C(8) modified (temp.) (19.7.2011) by Finance Act 2011 (c. 11), **Sch. 3 para. 31(b)**

939D Circumstances in which financial advantage deemed to be obtained

(1) This section applies for the purposes of Condition B.

(2) Subsection (3) applies where the arrangements entered into by the linked person (as mentioned in Condition A) involve a transaction to which—

(a) that or another linked person ("X"), and

(b) another person ("Y"),

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are parties.

(3) X obtains a financial advantage from the charity to which the donation is made or a connected charity if—

(a) the terms of the transaction are less beneficial to Y or more beneficial to X (or both) than those which might reasonably be expected in a transaction concluded between parties dealing at arm's length, or

(b) the transaction is not of a kind which a person dealing at arm's length and in place of Y might reasonably be expected to make.

(4) Nothing in this section is intended to limit the circumstances in which a linked person may be regarded as obtaining a financial advantage for the purposes of section 939C.

(5) In this section—

" Condition A " and " Condition B " have the same meaning as in section 939C;

" linked person " has the meaning given by section 939C(3);

" transaction " includes (for example)—

(a) the sale or letting of property,

(b) the provision of services,

(c) the exchange of property,

(d) the provision of a loan or any other form of financial assistance, and

(e) investment in a business.

939E Certain financial advantages to be ignored

(1) When determining whether a relievable charity donation is a tainted donation, a financial advantage within subsection (2), (3), (4) or (5) is to be ignored.

(2) A financial advantage is within this subsection if the person for whom it is obtained applies the advantage for charitable purposes only.

(3) A financial advantage is within this subsection if (ignoring the tainted donation provisions) it is—

(a) a benefit associated with a gift which is a qualifying donation for the purposes of Chapter 2 of Part 8 of ITA 2007 (gift aid), or

(b) a benefit associated with a payment which is a qualifying payment for the purposes of Chapter 2 of Part 6 (charitable donations relief: payments to charity).

(4) A financial advantage is within this subsection if (ignoring the tainted donation provisions)—

(a) the relievable charity donation is a disposal in respect of which tax relief would be available under Chapter 3 of Part 8 of ITA 2007 (gifts of shares, securities and real property to charities etc) or Chapter 3 of Part 6 (charitable donations: certain disposals to charity), and

(b) the advantage is a benefit the value of which would be taken into account in determining the relievable amount in respect of the disposal for the purposes of the Chapter in question.

(5) A financial advantage is within this subsection if (ignoring the tainted donation provisions)—

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(a) the relievable charity donation is a gift in respect of which tax relief would be available under section 108 of ITTOIA 2005 or section 105 of CTA 2009 (gifts of trading stock to charities etc), and

(b) the advantage is a benefit attributable to the making of the gift in respect of which an amount would be brought into account under section 109 of ITTOIA 2005 or section 108 of CTA 2009 (receipt of benefits by donor or connected person).

(6) In this section—

" benefit associated with a gift " has the meaning given by section 417 of ITA 2007;

" benefit associated with a payment " has the meaning given by section 196;

" the tainted donation provisions " has the meaning given by section 939B(3).

Removal of reliefs

939F Removal of corporation tax relief in respect of tainted donations etc

(1) This section applies where a tainted donation is made by a company.

(2) Where (ignoring this Part) corporation tax relief would be available in respect of the tainted donation, that relief is not available.

(3) Where—

(a) (ignoring this Part) corporation tax relief would be available in respect of an associated donation, and

(b) entitlement to that relief is not withdrawn by subsection (2),

that relief is not available.

(4) In this section —

" associated donation ", in relation to a tainted donation, means a relievable charity donation made—

(a) in accordance with the relevant arrangements, and

(b) by a person, other than—

(i) a qualifying charity-owned company in relation to that relievable charity donation, or

(ii) a relevant housing provider linked (within the meaning of section 939C(7)) with the charity to which that donation is made;

" corporation tax relief " means relief under—

(a) section 63(2)(a), (aa) or (ab) of CAA 2001 (gifts of plant and machinery), so far as it applies in relation to corporation tax,

(b) section 105 of CTA 2009 (gifts of trading stock), or

(c) Part 6 of CTA 2010 (charitable donations relief);

" qualifying charity-owned company " has the meaning given by section 939C(8) (except that paragraph (b) of that definition does not apply);

" relevant housing provider " has the meaning given by section 939C(8);

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" the relevant arrangements ", in relation to a tainted donation, means the arrangements by reference to which Conditions A to C in section 939C are met.

Supplementary

939G Connected charities

For the purposes of this Part, a " connected charity " in relation to another charity means a charity which is connected with that other charity in a matter relating to the structure, administration or control of either charity.

939H Connected persons

(1) Section 1122 (meaning of "connected" persons) applies for the purposes of this Part (except section 939G), but subject to the following modification.

(2) Section 1122 has effect as if after subsection (8) there were inserted—

"(9) A person who is a beneficiary of a settlement is connected with—

(a) a person in the capacity as trustee of the settlement, and

(b) the settlor in relation to the settlement.

(10) For the purposes of this section—

(a) a man and woman living together as husband and wife are treated as if they were husband and wife,

(b) two people of the same sex living together as if they were civil partners of each other are treated as if they were civil partners of each other, and

(c) " close company " includes a company that would be a close company if it were resident in the United Kingdom. "

939I Minor definitions

(1) In this Part—

" arrangements " includes any scheme, arrangement or understanding of any kind, whether or not legally enforceable, involving a single transaction or two or more transactions;

" charity " includes a registered club within the meaning of section 658(6) (meaning of " community amateur sports club " and " registered club ").

(2) In this Part, in the case of a charitable trust, references to a charity being entitled to a repayment of tax are to be read as references to the trustees of the trust being so entitled.**]**

Status: *Point in time view as at 01/04/2014.*
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PART 22

MISCELLANEOUS PROVISIONS

CHAPTER 1

TRANSFERS OF TRADE WITHOUT A CHANGE OF OWNERSHIP

Introduction

[F493 940A Overview of Chapter

(1) This Chapter contains rules for cases where a trade is transferred between companies within the charge to tax and certain conditions as to common ownership of the trade are met.

(2) Section [F494 940B] explains when there is a transfer of a trade for the purposes of this Chapter.

(3) Sections [F495 940C] to 943 contain provision about when this Chapter applies to a transfer of a trade.

(4) Sections 944 to 950 set out the effects of this Chapter in relation to a transfer to which it applies.

(5) Sections 951 to 953 contain supplementary provision.

Textual Amendments

F493 S. 940A: s. 938 renumbered as s. 940A (19.7.2011) by Finance Act 2011 (c. 11), **Sch. 5 para. 3(1)(a)**

F494 Word in s. 940A(2) substituted (19.7.2011) by Finance Act 2011 (c. 11), **Sch. 5 para. 3(2)(a)**

F495 Word in s. 940A(3) substituted (19.7.2011) by Finance Act 2011 (c. 11), **Sch. 5 para. 3(2)(b)**

[F496 940B Meaning of "transfer of a trade" and related expressions

(1) This section applies for the purposes of this Chapter.

(2) If, on a company ceasing to carry on a trade, another company begins to carry it on, there is a transfer of a trade.

(3) The trade that is transferred is referred to in this Chapter as "the transferred trade".

(4) In relation to a transfer of a trade—

"the predecessor" means the company which ceases to carry on the trade, and

"the successor" means the company which begins to carry on the trade.

(5) In this Chapter, except in so far as the context otherwise requires—

(a) references to a trade include an office, and

(b) references to carrying on a trade include holding an office.

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Textual Amendments

F496 S. 940B: s. 939 renumbered as s. 940B (19.7.2011) by Finance Act 2011 (c. 11), **Sch. 5 para. 3(1)(b)**

Transfers to which Chapter applies

[F497 940C Transfers to which Chapter applies

This Chapter applies to a transfer of a trade if—

(a) the ownership condition is met (see sections 941 and 942), and

(b) the tax condition is met (see section 943).

Textual Amendments

F497 S. 940C: s. 940 renumbered as s. 940C (19.7.2011) by Finance Act 2011 (c. 11), **Sch. 5 para. 3(1)(c)**

941 The ownership condition

(1) The ownership condition is that—

(a) on the transfer of the transferred trade or at some time during the period of two years beginning immediately after the transfer, a 75% interest in the transferred trade belongs to certain persons, and

(b) at some time during the period of one year ending immediately before the transfer, a 75% interest in the transferred trade belonged to the same persons.

(2) In subsection (1) references to a 75% interest are to an interest amounting to a share of at least 75%.

(3) If at any time the activities of the transferred trade are actually included in the activities of another trade, for the purposes of subsection (1) interests in the transferred trade at that time are determined by reference to interests in the other trade.

(4) Accordingly, a person who has an interest in the other trade at that time is taken to have a corresponding interest in the transferred trade.

(5) For the purposes of this section—

(a) if two or more companies carry on a trade, the interests in the trade belonging to them are taken to correspond to the shares of the trade's profits to which they are entitled, and

(b) an interest in a trade belonging to trustees (otherwise than for charitable or public purposes) is treated as belonging to the persons for the time being entitled to the income under the trust.

(6) If a company is carrying on a trade, the interest in the trade belonging to the company may be treated in accordance with any of the options set out in section 942(1) if that results in the ownership condition being met.

(7) In determining for the purposes of this section the extent to which an interest in a trade belongs at different times to the same persons—

(a) the persons from time to time entitled to the income under a trust are treated as a single person, and

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(b) persons who are relatives of one another are treated as a single person.

(8) In subsection (7) "relative" means spouse, civil partner, ancestor, lineal descendant, brother or sister.

942 Options that may be applied for the purposes of the ownership condition

(1) The options referred to in section 941(6) are as follows (with references in the options to "the trading company" being to the company to which the interest in the trade belongs as mentioned in that subsection).

Option 1

The interest in the trade is taken to belong to the persons owning the ordinary share capital of the trading company in proportion to the amount of their holdings of that capital.

Option 2

This option can be applied if the trading company is the subsidiary of another company (see subsection (2)). The interest in the trade is taken to belong to—

(a) a company that is a parent company of the trading company (see subsection (3)), or

(b) the persons owning the ordinary share capital of such a parent company in proportion to the amount of their holdings of that capital.

Option 3

This option can be applied if—

(a) a person ("P") has management control over a company (see subsections (4) and (5)), and

(b) by applying Option 1 or 2 an interest in the trade can be taken to belong to that company.

That interest in the trade is instead taken to belong to P.

(2) For the purposes of this section a company ("company A") is a subsidiary of another company ("company B") if at least 75% of company A's ordinary share capital is owned by company B.

(3) If company A is a subsidiary of company B, company B is a parent company of company A unless both are subsidiaries of a third company.

(4) For the purposes of subsection (1) a person has management control over a company if the person has the power to secure that the affairs of the company are conducted in accordance with the wishes of the person.

(5) "Power" in subsection (4) means power resulting from—

(a) the holding of shares or the possession of voting rights in or in relation to any company, or

(b) a document regulating any company.

(6) In this section references to a person owning ordinary share capital are to be read, if the person is a company, as references to the company owning the capital—

(a) directly,

(b) through another company or companies, or

(c) partly directly and partly through another company or companies.

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(7) If a company owns ordinary share capital as mentioned in subsection (6)(b) or (c), the amount of the capital owned by the company is determined in accordance with sections 1155 to 1157.

(8) In this section references to ownership are references to beneficial ownership.

943 The tax condition

(1) The tax condition is that, in the period mentioned in subsection (2), the transferred trade is carried on only by companies within the charge to corporation tax or income tax in respect of the trade.

(2) That period is the period—
- (a) beginning with the latest time at which the requirement of section 941(1)(b) is met for the purposes of the ownership condition, and
- (b) ending with the earliest time at which the requirement of section 941(1)(a) is met for the purposes of that condition.

(3) If at any time the activities of the transferred trade are actually included in the activities of another trade, subsection (1) applies in relation to that time as if references to the transferred trade were references to the other trade.

Effect of Chapter in relation to transfers to which it applies

944 Modified application of Chapter 2 of Part 4

(1) If this Chapter applies to a transfer of a trade, Chapter 2 of Part 4 (relief for trade losses) has effect subject to subsections (2) and (3).

(2) Section 39 (terminal losses: extension of periods for which relief may be given) does not apply in relation to a loss made by the predecessor in the transferred trade.

(3) Relief under section 45 (carry forward of trade loss against subsequent trade profits) is given to the successor in relation to a loss—
- (a) which is made by the predecessor in the transferred trade, and
- (b) for which relief would have been given under that section to the predecessor had it continued to carry on that trade.

(4) Subsection (3) is subject to—
- (a) any claim made by the predecessor under section 37 (including a case where section 42 applies), and
- (b) section 945.

945 Cases in which predecessor retains more liabilities than assets

(1) This section applies if L exceeds A.

(2) “L” is the amount of the predecessor's liabilities so far as they—
- (a) are outstanding immediately before the transfer of the transferred trade, and
- (b) are not transferred to the successor on the transfer of the trade.

(3) “A” is the sum of the values of—

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(a) the predecessor's assets immediately before the transfer of the transferred trade so far as they are not transferred to the successor on that transfer, and

(b) the consideration given to the predecessor by the successor in relation to the transfer of the transferred trade.

(4) The relief to be given to the successor as a result of section 944(3) is limited to—

$$R - E$$

where—
R is the total amount of loss for which relief could be given to the successor as a result of section 944(3), ignoring this section, and
E is the amount by which L exceeds A.

(5) If R does not exceed E, no relief is to be given to the successor.

946 Rules for determining "L"

(1) This section applies for the purposes of section 945(2) (determination of "L").

(2) A liability is to be ignored if—

(a) the predecessor was the predecessor in relation to a transfer of a trade on a previous application of this Chapter, and

(b) on that previous application of this Chapter the liability was apportioned under section 952 to a trade carried on by the company that was the successor on that application.

(3) Subsection (4) applies if—

(a) the predecessor transfers a liability to the successor, and

(b) the creditor in question has agreed to accept settlement of part of the liability as settlement for the whole of it.

(4) The transfer of the liability is taken to cover only the part of the liability mentioned in subsection (3)(b).

(5) The predecessor's capital is to be treated as a liability of the predecessor so far as it is recently converted capital (but not otherwise).

(6) For the purposes of subsection (5) a part of the predecessor's capital is recently converted capital if—

(a) it was issued or otherwise originated on the conversion of a liability that was not part of the predecessor's capital or on the conversion of a part of that capital that was itself recently converted capital, and

(b) the conversion occurred during the period of 12 months ending with the day on which the transfer of the transferred trade occurs.

(7) In this section "the predecessor's capital" means the predecessor's share capital, share premium account, reserves and relevant loan stock.

(8) In subsection (7) "relevant loan stock" means any loan stock or similar security (whether secured or unsecured) other than any to which subsection (9) applies.

(9) This subsection applies to any stock or security if, when the liability giving rise to the stock or security was incurred, the person who was the creditor was carrying on a trade of lending money.

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947 Rules for determining "A"

(1) Subsections (2) to (4) apply for the purposes of section 945(3)(a) (determination of assets within "A").

(2) An asset is to be ignored if—
- (a) the predecessor was the predecessor on a previous application of this Chapter, and
- (b) on that previous application of this Chapter the asset was apportioned under section 952 to a trade carried on by the company that was the successor on that application.

(3) The value of an asset is to be taken to be the price which it might reasonably be expected to have fetched on a sale in the open market immediately before the transfer of the transferred trade.

(4) If immediately before the transfer of a trade—
- (a) the predecessor has relevant loan stock (as defined by section 946(8)) that is not included in L, and
- (b) the stock is secured on an asset of the predecessor that is not transferred to the successor on the transfer of the trade,

the value of the asset is reduced by the amount of the liability.

(5) Subsection (6) applies for the purposes of section 945(3)(b) (determination of consideration within "A").

(6) If the successor assumes a liability of the predecessor, that does not count as giving consideration.

948 Modified application of CAA 2001

(1) If this Chapter applies to a transfer of a trade, CAA 2001 has effect subject to subsections (2) to (4).

(2) Any allowances or charges are to be made to or on the successor if such allowances or charges would have been made to or on the predecessor had the predecessor continued to carry on the transferred trade.

(3) A transfer of assets from the predecessor to the successor does not of itself give rise to any allowances or charges if—
- (a) the transfer of the assets is made on the transfer of the transferred trade, and
- (b) the assets are in use for the purposes of that trade.

(4) For the purpose of determining the amount of the allowances or charges mentioned in subsection (2) to be made to the successor—
- (a) the successor is to be treated as if it has been carrying on the transferred trade since the predecessor began to do so, and
- (b) anything done to or by the predecessor is to be treated as having been done to or by the successor.

(5) This section is subject to sections 949 and 950.

(6) For other cases in which this section does not apply in relation to a transfer, see—

[[F498](za) section 398G of this Act (sale of lessors: transfers into and out of A after election under section 398A),**]**

Status: *Point in time view as at 01/04/2014.*
Changes to legislation: *Corporation Tax Act 2010 is up to date with all changes known to be in force on or before 12 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(a) section 561 of CAA 2001 (transfer to company in another member State), and
(b) section 561A of that Act (transfer during formation of SE by merger).

Textual Amendments

F498 S. 948(6)(za) inserted (with effect in accordance with Sch. 6 para. 27 of the amending Act) by Finance Act 2011 (c. 11), **Sch. 6 para. 24**

Modifications etc. (not altering text)

C41 S. 948 excluded by Capital Allowances 2001 (c. 2), s. 561A(2)(c) (as substituted (with effect in accordance with s. 1184(1) of the amending Act) by 2010 c. 4, s. 1184(1), **Sch. 1 para. 361** (with Sch. 2))

949 Dual resident investing companies

(1) Section 948(1) to (4) does not apply if the successor is a dual resident investing company in the transfer accounting period.

(2) A company is a "dual resident investing company" in the transfer accounting period if the company—
(a) is a dual resident company in that period (see subsection (3)), and
(b) meets condition A, B or C (see subsections (4) to (6)).

(3) A "dual resident company" is a company that is both UK resident and also within a charge to non-UK tax under the law of a territory because—
(a) it derives its status as a company from that law,
(b) its place of management is in that territory, or
(c) it is for some other reason treated under that law as resident in that territory for the purposes of that tax.

(4) Condition A is that the successor is not a trading company throughout the transfer accounting period.

(5) Condition B is that in the transfer accounting period the successor carries on a trade of such a description that the company's main function, or one of its main functions, consists of one or more of the following activities.

Activity 1

Acquiring and holding shares, securities or investments of any other kind (whether directly or indirectly).

Activity 2

Making, under loan relationships, payments in relation to which debits fall to be brought into account for the purposes of Part 5 of CTA 2009.

Activity 3

Making payments which are qualifying charitable donations.

Activity 4

Making payments similar to those within Activity 3 but which are deductible in calculating the profits of the successor for corporation tax purposes.

Activity 5

Status: *Point in time view as at 01/04/2014.*
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Obtaining funds for the purposes of, or otherwise in connection with, any of Activities 1 to 4.

(6) Condition C is that in the transfer accounting period the successor carries on one or more of Activities 1 to 5—

(a) to an extent that does not appear to be justified by any trade which it carries on, or

(b) for a purpose that does not appear to be appropriate to any such trade.

(7) In this section—

"non-UK tax" has the same meaning as in Part 5 (see section 187),

"trading company" means a company the business of which consists wholly or mainly in the carrying on of a trade or trades, and

"the transfer accounting period" means the accounting period of the successor in which the transfer of the transferred trade takes place.

950 Transfers of trades involving business of leasing plant or machinery

(1) This section applies if the transferred trade is or forms part of a business of leasing plant or machinery which the predecessor or the successor carries on on the day of the transfer of that trade ("the transfer day").

(2) If, on the transfer day, both the predecessor and the successor carry on the transferred trade otherwise than in partnership, section 948(1) to (4) does not apply unless—

(a) the principal company or companies of the predecessor immediately before the transfer are the same as the principal company or companies of the successor immediately afterwards, and

(b) if any such principal company is a consortium principal company, the following condition is met.

(3) The condition is that the ownership proportion in relation to the predecessor immediately before the transfer is the same as the ownership proportion in relation to the successor immediately afterwards (regardless of whether the members of each consortium are the same).

[[F499](3A) For the purposes of subsection (2)(a) the principal company or companies of the predecessor immediately before the transfer are not to be regarded as the same as the principal company or companies of the successor immediately afterwards (so far as they would otherwise have been so regarded) if—

(a) there is a relevant change in the relationship between the successor and a principal company of the successor within section 394ZA (company joining tonnage tax group), and

(b) that change occurs on or before the transfer day (whether the change occurs on or after 21 March 2012 or before that date).**]**

(4) If, on the transfer day, the predecessor or the successor carries on the transferred trade in partnership, section 948(1) to (4) does not apply unless—

(a) the predecessor ceases to carry on the whole of its trade, and

(b) that trade is a business of leasing plant or machinery which the predecessor carries on in partnership on the transfer day.

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(5) If section 948(1) to (4) does not apply as a result of this section, the plant or machinery of the transferred trade is treated for the purposes of the Corporation Tax Acts as sold by the predecessor to the successor on the transfer day for **[**[F500]the higher of—

(a) its ascribed value immediately before the transfer of the trade, and

(b) the disposal value that the predecessor would be required to bring into account under Part 2 of CAA 2001 in respect of it as a result of the transfer of the trade. **]**

(6) In this section—

[[F501] " ascribed value ", in relation to plant or machinery, is to be read in accordance with section 437A (but reading the reference to the relevant company or partnership as a reference to the predecessor); **]**

"business of leasing plant or machinery"—

(a) if the business is carried on otherwise than in partnership, has the same meaning as in section 387, and

(b) if the business is carried on in partnership, has the same meaning as in section 410,

"consortium principal company" means a company which is a principal company as a result of section 394,

[F502] …

"ownership proportion" has the same meaning as in section 394,

"plant or machinery" has the same meaning as in Part 2 of CAA 2001, and

"principal company" is to be read in accordance with section 393 or 394 (as the case may be).

Textual Amendments

F499 S. 950(3A) inserted (with effect in accordance with s. 24(11) of the amending Act) by Finance Act 2012 (c. 14), **s. 24(7)**

F500 Words in s. 950(5) substituted (with effect in accordance with Sch. 6 para. 27 of the amending Act) by Finance Act 2011 (c. 11), **Sch. 6 para. 25(2)**

F501 Definition "ascribed value" in s. 950(6) inserted (with effect in accordance with Sch. 6 para. 27 of the amending Act) by Finance Act 2011 (c. 11), **Sch. 6 para. 25(3)(a)**

F502 Definition "market value" in s. 950(6) omitted (with effect in accordance with Sch. 6 para. 27 of the amending Act) by virtue of Finance Act 2011 (c. 11), **Sch. 6 para. 25(3)(b)**

Supplementary

951 Part of trade treated as separate trade

(1) Subsection (2) applies (subject to subsection (5)) if—

(a) a company ("the transferor") ceases to carry on a trade ("trade X") and another company ("the transferee") begins to carry on the activities of trade X as part of its trade ("part X"), and

(b) there would have been a transfer of trade X from the transferor to the transferee had the transferee begun to carry on part X as a separate trade.

(2) This Chapter has effect as if the transferee carries on part X as a separate trade.

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(3) Subsection (4) applies (subject to subsection (5)) if—

(a) a company ("the transferor") ceases to carry on a part of a trade ("part Y") and another company ("the transferee") begins to carry on the activities of part Y as its trade or as part of its trade, and

(b) there would have been a transfer of a trade (including as a result of subsection (2)) from the transferor to the transferee had the transferor been carrying on part Y as a separate trade.

(4) This Chapter has effect as if the transferor had carried on part Y as a separate trade.

(5) Subsections (2) and (4) are to be ignored for the purposes of sections 941(3) and (4) and 943(3).

(6) If part of a trade is treated as a separate trade in accordance with subsection (4)—

(a) references in section 945(2) to liabilities are to be read as references to liabilities apportioned under section 952, and

(b) references in section 945(3) to assets are to be read as references to assets so apportioned.

952 Apportionment if part of trade treated as separate trade

(1) If part of a trade is treated as a separate trade in accordance with section 951(2) or (4), just and reasonable apportionments are to be made of receipts, expenses, assets and liabilities.

(2) Subsection (3) applies if—

(a) at the time of an apportionment under subsection (1) it appears that the apportionment is material to the liability to tax (for whatever period) of two or more companies, and

(b) a question arises as to how the apportionment is to be made for the purposes of the liability of those companies.

(3) The question is to be determined in the same way as an appeal, and all the companies concerned are entitled to be a party to the proceedings.

953 Application of Chapter to further transfers of a trade

(1) This section applies if—

(a) there is a transfer of a trade ("the original transfer") that meets the ownership condition and the tax condition (see sections 941 and 943),

(b) after the original transfer there was a further transfer of the trade from the successor in relation to the original transfer to a third company ("the further transfer"),

(c) the further transfer took place at any time before the end of the period specified in subsection (7),

(d) the ownership condition was met in relation to the original transfer only on or after the further transfer, and

(e) apart from this section, this Chapter would not apply to the further transfer.

(2) This Chapter applies to the further transfer as well as to the original transfer.

(3) In the application of this Chapter to the further transfer—

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(a) the successor in relation to the original transfer is taken to be the predecessor in relation to the further transfer, and
(b) the third company is taken to be the successor in relation to the further transfer.

(4) In the application of sections 944 to 950 in relation to the original transfer, references to the successor include references to the successor in relation to the further transfer.

(5) In the application of those sections in relation to the further transfer, references to the predecessor include references to the predecessor in relation to the original transfer.

(6) If, at a time before the end of the period specified in subsection (7), the transferred trade was transferred from the successor in relation to the further transfer to another company, subsections (2) to (5) and this subsection apply again in a like manner (and so on).

(7) The period referred to above is the period—
(a) beginning at the time when the original transfer takes place, and
(b) ending immediately after the earliest time when the ownership condition was met in respect of the original transfer (see section 941(1)).

CHAPTER 2

TRANSFERS OF TRADE TO OBTAIN BALANCING ALLOWANCES

954 Transfer of activities on complete cessation of trade

(1) This section applies (subject to section 957(1)) if—
(a) a company ("the predecessor") ceases to carry on a trade,
(b) another company ("the successor") begins to carry on the activities of that trade as its trade or as part of its trade,
(c) the successor is not a dual resident investing company,
(d) in the accounting period in which the predecessor ceases to carry on the trade the predecessor would (apart from this section) be entitled under Part 2 of CAA 2001 (plant and machinery allowances) to a balancing allowance in respect of the trade, and
(e) the predecessor'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 entitle the predecessor to that balancing allowance.

(2) CAA 2001 has effect subject to subsections (3) to (5).

(3) Any allowances or charges are to be made to or on the successor if such allowances or charges would have been made to or on the predecessor had the predecessor continued to carry on the trade.

(4) A transfer of assets from the predecessor to the successor does not of itself give rise to any allowances or charges if—
(a) the transfer of the assets is made on the transfer of the trade, and
(b) the assets are in use for the purposes of that trade.

(5) For the purpose of determining the amount of the allowances or charges mentioned in subsection (3) to be made to the successor—

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(a) the successor is to be treated as if it has been carrying on the trade since the predecessor began to do so, and
(b) anything done to or by the predecessor is to be treated as having been done to or by the successor.

(6) If the successor carries on the activities of the trade as part of its trade, that part is to be treated for the purposes of subsections (3) to (5) as a separate trade carried on by the successor.

(7) In subsection (1)(c) "dual resident investing company" has the same meaning as in section 949 (with references in that section to the "transfer accounting period" construed as references to the accounting period of the successor in which it begins to carry on the activities of the trade as mentioned in subsection (1)(b) above).

955 Transfer of activities on part cessation of trade

(1) This section applies (subject to section 957(1)) if—
(a) a company ("the predecessor") ceases to carry on part of a trade,
(b) another company ("the successor") begins to carry on the activities of that part of the trade as its trade or as part of its trade,
(c) the successor is not a dual resident investing company, and
(d) the predecessor's ceasing to carry on the part of the trade mentioned in paragraph (a) is part of a scheme or arrangement the main purpose, or one of the main purposes, of which is to entitle the predecessor, on cessation of that part of the trade, to a balancing allowance in respect of the trade under Part 2 of CAA 2001.

(2) CAA 2001 has effect subject to subsections (3) to (6).

(3) The part of the trade which the predecessor ceased to carry on is to be treated as a separate trade ("the deemed separate trade").

(4) Any allowances or charges are to be made to or on the successor if such allowances or charges would have been made to or on the predecessor had the predecessor continued to carry on the deemed separate trade.

(5) A transfer of assets from the predecessor to the successor does not of itself give rise to any allowances or charges if—
(a) the transfer of the assets is made on the transfer of the deemed separate trade, and
(b) the assets are in use for the purposes of that trade.

(6) For the purpose of determining the amount of the allowances or charges mentioned in subsection (4) to be made to the successor—
(a) the successor is to be treated as if it has been carrying on the deemed separate trade since the predecessor began to do so, and
(b) anything done to or by the predecessor is to be treated as having been done to or by the successor.

(7) If the successor carries on the activities of the part of the trade mentioned in subsection (1)(a) as part of its trade, that part of the successor's trade is to be treated for the purposes of subsections (4) to (6) as a separate trade carried on by the successor.

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(8) In subsection (1)(c) "dual resident investing company" has the same meaning as in section 949 (with references in that section to the "transfer accounting period" construed as references to the accounting period of the successor in which it begins to carry on the activities of the part of the trade as mentioned in subsection (1)(b) above).

956 Apportionment if part of trade treated as separate trade

(1) If part of a trade is to be treated as a separate trade in accordance with section 954(6) or 955(7), just and reasonable apportionments are to be made of receipts, expenses, assets and liabilities.

(2) Subsection (3) applies if—
- (a) at the time of an apportionment under subsection (1) it appears that the apportionment is material to the liability to tax (for whatever period) of two or more companies, and
- (b) a question arises as to how the apportionment is to be made for the purposes of the liability of those companies.

(3) The question is to be determined in the same way as an appeal, and all the companies concerned are entitled to be a party to the proceedings.

957 Chapter 2: supplementary

(1) This Chapter does not apply in cases where Chapter 1 applies.

(2) In this Chapter, except in so far as the context otherwise requires—
- (a) references to a trade include an office, and
- (b) references to carrying on a trade include holding an office.

CHAPTER 3

TRANSFER OF RELIEF WITHIN PARTNERSHIPS

958 Application

Section 960 (which provides for restrictions on the use of corporation tax relief) applies if—
- (a) a firm carries on a trade,
- (b) a company (referred to in this Chapter as "the partner company") is a partner in the firm, and
- (c) arrangements within section 959 are in place.

959 Arrangements for transfer of relief

(1) Arrangements are within this section if they have any of these effects.

Effect 1

The partner company receives a payment in respect of the cost of its share in the firm's losses of any accounting period of the firm.

Effect 2

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A person connected with the partner company receives a payment in respect of the cost of the partner company's share in the firm's losses of any accounting period of the firm.

Effect 3

Another partner in the firm receives a payment in respect of the value of the partner company's share in the firm's profits or losses of any accounting period of the firm.

Effect 4

A person connected with another partner in the firm receives a payment in respect of the value of the partner company's share in the firm's profits or losses of any accounting period of the firm.

(2) It does not matter for the purposes of subsection (1) whether the payment is received in respect of the whole of the partner company's share or in respect of only a part of it.

(3) For the purposes of subsection (1) receiving a payment includes receiving or enjoying (whether directly or indirectly) any other benefit in money or money's worth.

(4) For the purposes of Effect 1 arrangements, payments made in respect of group relief to the partner company by a group-related company are to be ignored.

(5) In subsection (4) a "group-related" company is a company that is a member of the same group of companies as the partner company for the purposes of Part 5 (group relief) (see section 152).

960 Restrictions on use of reliefs

(1) The partner company's share in the firm's loss of a relevant accounting period may be deducted for the purposes of corporation tax relief only from its share in the profits of the trade carried on by the firm.

(2) For this purpose, qualifying charitable donations made by the firm in a relevant accounting period are to be treated as a loss of that period.

(3) Unless allowed under subsection (1)—

(a) a loss made in a trade may not be deducted for the purposes of corporation tax relief from the partner company's share in the firm's profits of a relevant accounting period, and

(b) if (ignoring this paragraph) any other amount could be used for the purposes of corporation tax relief, that amount may not be deducted for those purposes from the partner company's share in the firm's profits of a relevant accounting period.

(4) In this section a "relevant accounting period" is any accounting period of the firm in which arrangements within section 959 are in existence or to which any such arrangements apply.

961 Non-trading profits and losses

(1) This section applies if—

(a) a company is a partner in a firm, and

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(b) any profits of the firm are charged to corporation tax under or by virtue of any provision to which section 1173 (miscellaneous charges) applies.

(2) The profits or losses of the firm to which the company's share is attributable are to be treated for the purposes of sections 958 to 960 as if they were profits or losses made by the firm in carrying on a trade.

(3) Any allowance to be given effect under Part 2 of CAA 2001 in respect of a special leasing of plant or machinery is to be treated for those purposes as if it were an allowance to be given effect in calculating the profits of that trade.

962 Interpretation of Chapter

(1) In this Chapter "arrangements" means arrangements of any kind (whether or not in writing).

(2) References in this Chapter to a firm, and to an accounting period of a firm, are to be read in the same way as references to a firm, and to an accounting period of a firm, in Part 17 of CTA 2009.

CHAPTER 4

SURRENDER OF TAX REFUND WITHIN GROUP

Modifications etc. (not altering text)

C42 Pt. 22 Ch. 4 applied (with modifications) by S.I. 1998/3175, reg. 9 (as substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by The Corporation Tax (Instalment Payments) (Amendment) Regulations 2011 (S.I. 2011/1785), regs. 1(1), **12**)

C43 Pt. 22 Ch. 4 modified (retrospective to 1.4.2014) by Finance Act 2014 (c. 26), Sch. 16 paras. 6, **8(3)**

963 Power to surrender tax refund

(1) This section enables a company—

(a) which is a member of a group, and

(b) to which a tax refund is due for an accounting period,

to surrender the refund (or any part of it) to another company which is a member of the same group.

(2) The surrender may be made only if—

(a) the company making the surrender ("the surrendering company") and the company to which the surrender is made ("the recipient company") give notice to an officer of Revenue and Customs,

(b) the surrendering company and the recipient company are members of the same group throughout the period beginning with the start of the accounting period for which the tax refund is due and ending on the date on which the notice is given, and

(c) the recipient company also has that accounting period as an accounting period.

(3) A notice under subsection (2) must—

(a) be given before the refund is made to the surrendering company,

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(b) be given jointly by the surrendering company and the recipient company,
(c) specify the amount to be surrendered, and
(d) be in such form as the Commissioners for Her Majesty's Revenue and Customs may require.

(4) For the purposes of this section "tax refund", in relation to an accounting period of a company, means—
(a) a repayment of corporation tax paid by the company for the period, or
(b) a repayment of income tax in respect of a payment received by the company in the period.

(5) For the purposes of this section two companies are members of the same group if (and only if) they would be for the purposes of Part 5 (group relief).

964 Effects of surrender of tax refund

(1) This section makes provision about the effect of the surrender under section 963 of a tax refund due for an accounting period.

(2) So far as the company to which the surrender is made ("the recipient company") is concerned, the effect of the surrender is that—
(a) the company is treated for all corporation tax purposes, except the one mentioned in subsection (3), as if it had paid an amount of corporation tax for the accounting period equal to the amount specified in the notice under section 963(2) ("the surrendered amount"), and
(b) the payment is treated for those purposes as if it had been made on the relevant date.

(3) For the purpose of working out the amount of any penalty to which the recipient company is liable under paragraph 18 of Schedule 18 to FA 1998 (failure to deliver return: tax-related penalty), the recipient company is treated as having paid the amount of corporation tax on the day on which the notice under section 963(2) is given (and not on the relevant date).

(4) So far as the company by which the surrender is made ("the surrendering company") is concerned, the effect of the surrender is that—
(a) the company is treated for corporation tax purposes as if it had received a repayment of tax equal to the surrendered amount, and
(b) the repayment is treated for those purposes as if it had been received on the relevant date.

(5) If the tax refund surrendered is a repayment of corporation tax, any interest relating to it which has been paid by the surrendering company is treated as if it had been paid by the recipient company.

(6) For the purposes of this section "the relevant date", in relation to a tax refund, means—
(a) so far as it consists of a repayment of corporation tax paid by the surrendering company after the date on which it became due and payable under section 59D or 59E of TMA 1970, the day on which it was paid by the surrendering company, and
(b) otherwise, the date on which corporation tax for the accounting period of the surrendering company became due and payable.

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965 Interest on tax overpaid or underpaid

(1) This section applies if—
- (a) a company has surrendered an amount under section 963, and
- (b) there is, as a result of any of subsections (7A) to (7C) of section 826 of ICTA, a period for which the whole or any part of the surrendered amount would not have carried interest under that section if the refund had been made to the surrendering company ("the interest-free period").

(2) The interest-free period is excluded from any period for which any refund made because of section 964(2) to the recipient company in respect of some or all of the surrendered amount or, as the case may be, that part of it is to carry interest under section 826 of ICTA.

(3) The interest-free period is excluded from any period for which a sum representing some or all of the surrendered amount or, as the case may be, that part of it would otherwise be treated (as a result of section 964) as not carrying interest under section 87A of TMA 1970.

(4) The following assumption is to be made in determining for the purposes of this section—
- (a) which part of any amount is applied in discharging a liability of the recipient company to pay corporation tax, and
- (b) which part is represented by a refund to the recipient company.

(5) The assumption is that the part in relation to which there is a period which would not have carried interest under section 826 of ICTA is applied in preference to any other part of that amount in or towards discharging the liability.

966 Payments for surrendered tax refunds

(1) This section applies if—
- (a) companies give a notice under section 963(2) in pursuance of an agreement, and
- (b) the company to which the surrender is made makes a payment under the agreement to the company by which the surrender is made that does not exceed the amount specified in the notice.

(2) The payment—
- (a) is not to be taken into account in determining profits or losses of either company for corporation tax purposes, and
- (b) is not to be regarded for the purposes of the Corporation Tax Acts as a distribution.

CHAPTER 5

SET OFF OF INCOME TAX DEDUCTIONS AGAINST CORPORATION TAX

967 Deductions from payments received by UK resident companies

(1) Subsection (2) applies if a UK resident company receives a payment on which it bears income tax by deduction.

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(2) The income tax on the payment is to be set off against any corporation tax assessable on the company for the accounting period in which the payment falls to be taken into account for corporation tax, or would fall to be so taken into account but for any exemption from corporation tax.

(3) Subsection (2) is subject to the provisions of the Corporation Tax Acts.

(4) The reference in subsection (1) to a payment received by a company—

(a) includes a reference to a payment received by another person on behalf of or in trust for the company, but

(b) does not include a reference to a payment received by the company on behalf of or in trust for another person.

[[F503](5) The reference in subsection (1) to a payment received by a company does not include a reference to a payment which is exempt from tax by virtue of any of the following—

section 472 (gifts qualifying for gift aid relief: charitable companies);

section 475 (gifts qualifying for gift aid relief: eligible bodies);

[[F504]section 486 (investment income and non-trading profits from loan relationships);

section 487 (public revenue dividends);

section 488 (certain miscellaneous income);

section 489 (income from estates in administration);**]**

section 664 (exemption for interest and gift aid income: community amateur sports clubs).**]**

Textual Amendments

F503 S. 967(5) inserted (with effect in accordance with Sch. 15 para. 17(2) of the amending Act) by Finance Act 2012 (c. 14), **Sch. 15 para. 10(2)**

F504 Words in s. 967(5) inserted (with effect in accordance with Sch. 15 para. 17(2) of the amending Act) by Finance Act 2012 (c. 14), **Sch. 15 para. 10(3)**

968 Deductions from payments received by non-UK resident companies

(1) Subsection (2) applies if—

(a) a non-UK resident company receives a payment on which it bears income tax by deduction, and

(b) the payment forms part of, or is to be taken into account in calculating, the company's income chargeable to corporation tax.

(2) The income tax on the payment is to be set off against any corporation tax assessable on that income for the accounting period in which the payment falls to be taken into account for corporation tax.

Status: *Point in time view as at 01/04/2014.*
Changes to legislation: *Corporation Tax Act 2010 is up to date with all changes known to be in force on or before 12 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

CHAPTER 6

COLLECTION ETC OF TAX FROM UK REPRESENTATIVES OF NON-UK RESIDENT COMPANIES

Modifications etc. (not altering text)
C44 Pt. 22 Ch. 6 applied (8.4.2010) by Finance Act 2010 (c. 13), **Sch. 1 para. 41**

969 Introduction to Chapter

(1) This Chapter applies to the enactments relating to corporation tax so far as they make provision for or in connection with the assessment, collection and recovery of tax, or of interest on tax.

(2) Those enactments have effect in accordance with section 970 in relation to a non-UK resident company and its UK representative.

(3) For the purposes of this Chapter, the following rules apply to a permanent establishment in the United Kingdom through which a non-UK resident company carries on a trade.

Rule 1

The permanent establishment is the UK representative of the non-UK resident company in relation to chargeable profits of the company attributable to that establishment.

Rule 2

The permanent establishment continues to be the company's UK representative in relation to those profits even after ceasing to be a permanent establishment through which the non-UK resident company carries on a trade.

Rule 3

The permanent establishment is to be treated as a distinct and separate person from the non-UK resident company (if it would not otherwise be so treated).

(4) For the determination of the chargeable profits attributable to a permanent establishment, see Chapter 4 of Part 2 of CTA 2009.

970 Obligations and liabilities in relation to corporation tax

(1) The obligations and liabilities of a non-UK resident company are to be treated, for the purposes of the enactments to which this Chapter applies, as if they were also the obligations and liabilities of its UK representative.

(2) Subsection (3) applies if—

(a) the UK representative of a non-UK resident company discharges an obligation or liability that corresponds to one to which the non-UK resident company is subject, or

(b) a non-UK resident company discharges an obligation or liability that corresponds to one to which its UK representative is subject.

(3) The corresponding obligation or liability—

(a) of the non-UK resident company (in a case within subsection (2)(a)), or

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(b) of the UK representative (in a case within subsection (2)(b)),

is discharged.

(4) A non-UK resident company is bound, as if they were its own, by acts or omissions of its UK representative in the discharge of the obligations and liabilities imposed on the UK representative by this section.

(5) This section is subject to section 971.

971 Exceptions

(1) An obligation or liability attaching to a non-UK resident company by reason of its having been given or served with a notice or other document does not also attach to its UK representative by virtue of section 970 unless the notice or other document (or a copy of it) has been given to or served on the representative.

(2) An obligation or liability attaching to a non-UK resident company by reason of its having received a request or demand does not also attach to its UK representative by virtue of section 970 unless the representative has been notified of the request or demand.

(3) A non-UK resident company is not bound by mistakes in information provided by its UK representative in pursuance of an obligation imposed on the representative by section 970 unless—

(a) the mistake is the result of an act or omission of the company, or

(b) the mistake is one to which the company consented or in which it connived.

(4) The UK representative of a non-UK resident company is not by virtue of section 970 liable to be proceeded against for a criminal offence unless the representative—

(a) committed the offence, or

(b) consented to or connived in its commission.

972 Interpretation of Chapter

(1) In this Chapter—

"enactment" includes an enactment contained in subordinate legislation within the meaning of the Interpretation Act 1978, and

"information" includes anything contained in a return, self-assessment, account, statement or report required to be provided to the Commissioners for Her Majesty's Revenue and Customs or to any officer of Revenue and Customs.

(2) In this Chapter references to carrying on a trade include holding an office.

CHAPTER 7

RECOVERY OF UNPAID CORPORATION TAX DUE FROM NON-UK RESIDENT COMPANY

973 Introduction to Chapter

(1) This Chapter enables unpaid corporation tax due from a non-UK resident company to be recovered from a related company.

Status: *Point in time view as at 01/04/2014.*
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(2) See also Chapter 6 of Part 14 (recovery of unpaid corporation tax from a linked person in some cases where there is a change in the ownership of a company).

(3) In subsection (1) and the following provisions of this Chapter, "company" means any body corporate.

(4) For the meaning of "related company", see section 976.

974 Case in which this Chapter applies

(1) This Chapter applies if—
- (a) an amount of corporation tax has been assessed on a company for an accounting period,
- (b) the whole or any part of that amount is unpaid at the end of the period of 6 months after the time when it became payable, and
- (c) the company is non-UK resident.

(2) In this Chapter "the taxpayer company" means the company mentioned in subsection (1).

975 Meaning of "the relevant period"

In this Chapter "the relevant period", in relation to an amount of unpaid corporation tax for an accounting period of the taxpayer company, means the period—
- (a) beginning 12 months before the start of the accounting period, and
- (b) ending when the unpaid tax became payable.

976 Meaning of "related company"

(1) A company is a "related company", for the purposes of this Chapter, if, at any time in the relevant period, it was a member—
- (a) of the same group as the taxpayer company,
- (b) of a consortium which at that time owned the taxpayer company, or
- (c) of the same group as a company which at that time was a member of a consortium owning the taxpayer company.

(2) For the purposes of subsection (1)(a), two companies are members of the same group if—
- (a) one is the 51% subsidiary of the other, or
- (b) both are 51% subsidiaries of a third company.

(3) For the purposes of subsection (1)(c), two companies are members of the same group if they are members of the same group of companies within the meaning of Part 5 (group relief).

(4) For the purposes of this Chapter—
- (a) a company is a member of a consortium if it is a member of a consortium within the meaning of Part 5, and
- (b) a company is owned by a consortium if it is owned by a consortium within the meaning of that Part.

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977 Notice requiring payment of unpaid tax

(1) An officer of Revenue and Customs may serve a notice on a related company requiring it, within 30 days of the service of the notice, to pay—
  (a) in a case which is not a consortium case, the amount of the unpaid tax, or
  (b) in a consortium case, the proportion of that amount found under section 979.

(2) The notice must state—
  (a) the amount of corporation tax assessed on the taxpayer company for the accounting period in question that remains unpaid,
  (b) the date when it first became payable, and
  (c) the amount which is to be paid by the company on which the notice is served.

(3) The notice has effect—
  (a) for the purposes of the recovery from that company of the amount required to be paid and of interest on that amount, and
  (b) for the purposes of appeals,

  as if it were a notice of assessment and that amount were an amount of tax due from that company.

(4) In this Chapter "consortium case" means a case where the related company is not within section 976(1)(a).

978 Time limit for giving notice

(1) A notice under this Chapter must be served before the end of the period of 3 years beginning with the date when the liability of the taxpayer company to corporation tax for the accounting period in question is finally determined.

(2) If the unpaid tax is charged as a result of a determination under paragraph 36 or 37 of Schedule 18 to FA 1998 (determination where no return delivered or return incomplete), the date mentioned in subsection (1) is taken to be the date when the determination is made.

(3) If the unpaid tax is charged in a self-assessment, the date mentioned in subsection (1) is taken to be the latest of—
  (a) the last date when notice of enquiry may be given into the return containing the self-assessment,
  (b) if notice of enquiry is given, 30 days after the enquiry is completed,
  (c) if more than one notice of enquiry is given, 30 days after the last notice of completion,
  (d) if after such an enquiry an officer of Revenue and Customs amends the return, 30 days after notice of the amendment is issued, and
  (e) if an appeal is brought against such an amendment, 30 days after the appeal is finally determined.

(4) If the unpaid tax is charged in a discovery assessment, the date mentioned in subsection (1) is taken to be—
  (a) if there is no appeal against the assessment, the date when the tax becomes due and payable, or
  (b) if there is such an appeal, the date when the appeal is finally determined.

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(5) The reference in subsection (3) to a self-assessment includes a self-assessment that supersedes a determination (see paragraph 40 of Schedule 18 to FA 1998).

979 Amount payable in consortium case

(1) In a consortium case, the amount that the related company may be required to pay by notice under this Chapter is the proportion of the unpaid tax corresponding—
   (a) if the company is only within section 976(1)(b), to the share which the company has had in the consortium for the relevant period,
   (b) if the company is only within section 976(1)(c), to the share which companies that have been members of the same group of companies as the company have had in the consortium for the relevant period, or
   (c) if the company is within section 976(1)(b) and (c), to whichever is the greater of the amounts given by paragraphs (a) and (b).

(2) For the purposes of this section, a member's share in a consortium, in relation to the relevant period, is whichever is the lowest in that period of the percentages specified in subsection (3).

(3) Those percentages are—
   (a) the percentage of the ordinary share capital of the taxpayer company which is beneficially owned by the member,
   (b) the percentage to which the member is beneficially entitled of any profits available for distribution to equity holders of the taxpayer company, and
   (c) the percentage to which the member would be beneficially entitled of any assets of the taxpayer company available for distribution to its equity holders on a winding up.

(4) If any of the percentages mentioned in subsection (3) has fluctuated in the relevant period, the average percentage over the period is to be taken.

(5) Chapter 6 of Part 5 (equity holders and profits or assets available for distribution) applies for the purposes of subsection (3) as it applies for the purposes of sections 143(3)(b) and (c) and 144(3)(b) and (c).

980 Chapter 7: supplementary

(1) A company that has paid an amount in pursuance of a notice under this Chapter may recover that amount from the taxpayer company.

(2) A payment in pursuance of a notice under this Chapter is not allowed as a deduction in calculating income, profits or losses for any tax purposes.

Status: *Point in time view as at 01/04/2014.*
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CHAPTER 8

EXEMPTIONS

Trade unions and employers' associations

981 Exemption for trade unions and eligible employers' associations

(1) No liability to corporation tax arises in respect of qualifying income or gains of a trade union or eligible employers' association if conditions A and B are met.

(2) Condition A is that the trade union or employers' association is prevented by its rules or by Act of Parliament from assuring to any person a sum exceeding—
- (a) £4,000 by way of gross sum, or
- (b) £825 by way of annuity.

(3) Condition B is that the trade union or employers' association makes a claim for exemption under this section.

(4) The following are to be ignored in determining whether condition A is met—
- (a) an annuity contract which constitutes a registered pension scheme, and
- (b) an annuity contract which is issued or held in connection with a registered pension scheme other than an occupational pension scheme (within the meaning of section 150(5) of FA 2004).

(5) The Treasury may by order—
- (a) amend the sum for the time being specified in subsection (2)(a) or (b) so as to increase it, and
- (b) make provision about the income or gains in relation to which an amendment under paragraph (a) has effect.

982 Qualifying income or gains

(1) In section 981(1)—
- (a) the reference to qualifying income of a trade union or eligible employers' association is to income which is not trading income and which is applicable and applied for the purposes of provident benefits, and
- (b) the reference to qualifying gains of a trade union or eligible employers' association is to chargeable gains which are applicable and applied for the purpose of provident benefits.

(2) In subsection (1) references to provident benefits include—
- (a) a payment expressly authorised by the rules of the trade union or employers' association which is made—
  - (i) to a member during sickness or incapacity from personal injury or while out of work,
  - (ii) to a member by way of superannuation by reason of age, sickness or incapacity from personal injury,
  - (iii) to a member who has met with an accident, or
  - (iv) to a member who has lost tools by fire or theft,

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(b) a payment in discharge or aid of funeral expenses on the death of a member or the spouse or civil partner of a member, and

(c) a payment as provision for the children of a deceased member.

983 Meaning of "trade union" and "eligible employers' association"

(1) This section applies for the purposes of sections 981 and 982.

(2) "Trade union" means—

(a) an organisation the name of which is entered in the list maintained by the Certification Officer under section 2 of the Trade Union and Labour Relations (Consolidation) Act 1992 (list of trade unions),

(b) an organisation the name of which is entered in the list maintained by the Certification Officer for Northern Ireland under Article 5 of the Industrial Relations (Northern Ireland) Order 1992 (S.I. 1992/807 (N.I. 5)) (corresponding provision for Northern Ireland), and

(c) the Police Federation for England and Wales, the Police Federation for Scotland, the Police Federation for Northern Ireland and any other organisation of persons in police service which has similar functions.

(3) "Employers' association" means—

(a) an organisation the name of which is entered in the list maintained by the Certification Officer under section 123 of the Trade Union and Labour Relations (Consolidation) Act 1992 (list of employers' associations), and

(b) an organisation the name of which is entered in the list maintained by the Certification Officer for Northern Ireland under Article 5 of the Industrial Relations (Northern Ireland) Order 1992 (S.I. 1992/807 (N.I. 5)) (corresponding provision for Northern Ireland).

(4) An employers' association is eligible if—

(a) in the case of an organisation falling with subsection (3)(a), it was a registered trade union for the purpose of section 338 of the Income and Corporation Taxes Act 1970 on 30 September 1971, and

(b) in the case of an organisation falling within subsection (3)(b), it was a trade union for the purposes of section 467 of ICTA immediately before the coming into operation of Article 5 of the Industrial Relations (Northern Ireland) Order 1992 (S.I. 1992/807 (N.I. 5)).

Local authorities etc

984 Local authorities and local authority associations

(1) A local authority in the United Kingdom is not liable to corporation tax.

(2) A local authority association in the United Kingdom is not liable to corporation tax.

Modifications etc. (not altering text)

C45 S. 984 modified by 1999 c. 29, s. 34A(3) (as inserted (15.1.2012) by Localism Act 2011 (c. 20), **ss. 224(2)**, 240(2); S.I. 2012/57, art. 4(1)(cc) (with arts. 6, 7, 9-11))

Status: *Point in time view as at 01/04/2014.*
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Health service bodies

985 Health service bodies

(1) A health service body is not liable to corporation tax.

(2) Subsection (1) is subject to any order made under section 987.

(3) See section 986 for the meaning of "health service body".

986 Meaning of "health service body"

In section 985 "health service body" means a body mentioned in the following table—

Body	*Provision under which body established*
[F505a clinical commissioning group	section 1I of the National Health Service Act 2006]
the Common Services Agency for the Scottish Health Service	section 10 of the National Health Service (Scotland) Act 1978
a Health and Social Services Board	Article 16 of the Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265 (N.I. 14))
a Health and Social Care trust	Article 10 of the Health and Personal Social Services (Northern Ireland) Order 1991 (S.I. 1991/194 (N.I. 1))
a Health Board	section 2(1)(a) of the National Health Service (Scotland) Act 1978
[F505Health and Social Care Information Centre	section 252 of the Health and Social Care Act 2012]
a Local Health Board	section 11 of the National Health Service (Wales) Act 2006
a National Health Service trust	section 25 of the National Health Service Act 2006 or section 18 of the National Health Service (Wales) Act 2006
an NHS foundation trust	section 30 of the National Health Service Act 2006
the Northern Ireland Central Services Agency for the Health and Social Services	Article 26 of the Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265 (N.I. 14))
a Primary Care Trust	section 18 of the National Health Service Act 2006
the Scottish Dental Practice Board	section 4 of the National Health Service (Scotland) Act 1978
a special health and social services agency	Article 3 of the Health and Personal Social Services (Special Agencies) (Northern Ireland) Order 1990 (S.I. 1990/247 (N.I. 3))

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a Special Health Authority	section 28 of the National Health Service Act 2006 or section 22 of the National Health Service (Wales) Act 2006
a Special Health Board	section 2(1)(b) of the National Health Service (Scotland) Act 1978
a Strategic Health Authority	section 13 of the National Health Service Act 2006
[[F505]National Health Service Commissioning Board	section 1H of the National Health Service Act 2006**]**
[[F505]National Institute for Health and Care Excellence	section 232 of the Health and Social Care Act 2012**]**

Textual Amendments

F505 Words in s. 986 inserted (17.7.2013) by Finance Act 2013 (c. 29), **s. 37**

987 NHS foundation trusts

(1) The Treasury may by order provide that an NHS foundation trust (see the table in section 986) is liable to corporation tax in relation to a specified activity or class of activity.

(2) The Treasury may make an order under subsection (1) only—
- (a) in relation to an activity or class of activity that appears to the Treasury to be of a commercial nature, and
- (b) if the condition in subsection (3) is met.

(3) The condition is that the making of an order appears to the Treasury to be expedient for the purpose of avoiding, removing or reducing differences between—
- (a) the tax treatment of the body undertaking the activity, and
- (b) the tax treatment of another body or class of body which is of a commercial nature and which undertakes or might undertake the same or a similar activity.

(4) For the purposes of subsection (2)(a) an activity authorised under section 43(1) of the National Health Service Act 2006 is not to be treated as an activity of a commercial nature.

(5) An order under subsection (1) must make provision for determining the amount of the profits relating to an activity that are to be charged to corporation tax as a result of the order.

(6) An order under subsection (1) may in particular—
- (a) make provision for disregarding profits of less than a specified amount in respect of a relevant period,
- (b) make provision for disregarding a specified part of profits in respect of a relevant period, or
- (c) make provision for disregarding all or part of profits relating to activity for which receipts or turnover (as defined by the order) are less than a specified amount in respect of a relevant period.

(7) "Relevant period" means—

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(a) a financial year or accounting period, or
(b) a specified part of a financial year or accounting period.

(8) An order under subsection (1)—
(a) may apply, with or without modification, a provision of the Tax Acts,
(b) may disapply a provision of the Tax Acts,
(c) may make provision similar to a provision of the Tax Acts, and
(d) may make provision generally or in relation to a specified body or class of bodies.

(9) No order may be made under subsection (1) unless a draft of the statutory instrument containing it has been laid before and approved by a resolution of the House of Commons.

[F506 Police

Textual Amendments

F506 S. 987A and cross-heading inserted (retrospective to 16.1.2012) by Finance Act 2013 (c. 29), **s. 38(1)**(2) (with s. 38(2))

987A Chief constables etc (England and Wales)

The following are not liable to corporation tax—
(a) a chief constable of a police force maintained under section 2 of the Police Act 1996;
(b) the Commissioner of Police of the Metropolis.**]**

Reserve Bank of India and State Bank of Pakistan

988 Issue departments of the Reserve Bank of India and the State Bank of Pakistan

No liability to corporation tax arises in respect of income of the issue department of—
(a) the Reserve Bank of India constituted under an Act of the Indian legislature called the Reserve Bank of India Act 1934, or
(b) the State Bank of Pakistan constituted under certain orders made under section 9 of the Indian Independence Act 1947.

Agricultural societies

989 Agricultural societies

(1) No liability to corporation tax arises in respect of profits of an agricultural society which—
(a) arise from an exhibition or show held for the purposes of the society, and
(b) are applied solely for the purposes of the society.

(2) In this section "agricultural society" means any society or institution established for the purpose of promoting the interests of—

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(a) agriculture,
(b) horticulture,
(c) forestry, or
(d) the breeding of any kind of animal.

CHAPTER 9

OTHER MISCELLANEOUS PROVISIONS

European Economic Interest Groupings

990 European Economic Interest Groupings

(1) The following rules about European Economic Interest Groupings apply for the purposes of charging corporation tax in respect of income—

Rule 1

A grouping is treated as acting as the agent of its members.

Rule 2

The activities of a grouping are treated as those of its members acting jointly.

Rule 3

Each member of a grouping is treated as having a share of the grouping's property, rights and liabilities.

Rule 4

Any trade carried on by the grouping is treated as carried on in partnership by the members of the grouping.

(2) For the purposes of Rule 3, a member's share of any property, rights or liabilities of a grouping is determined in accordance with the contract under which the grouping is established.

(3) If the contract does not provide for this, the member's share is determined by reference to the share of the profits of the grouping to which the member is entitled under the contract.

(4) If the contract does not provide for this either, the members are treated as having equal shares of the property, rights and liabilities of the grouping.

(5) Part 5 of CTA 2009 (loan relationships) applies in relation to a grouping as it applies in relation to a firm.

(6) For the purposes of subsection (5) see in particular the following provisions of Part 5 of CTA 2009—

Chapter 9 (partnerships involving companies),
section 467 (connections where partnerships involved),
section 472 (meaning of “control”), and
sections 473 and 474 (meaning of “major interest” etc).

Status: *Point in time view as at 01/04/2014.*
Changes to legislation: *Corporation Tax Act 2010 is up to date with all changes known to be in force on or before 12 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(7) "European Economic Interest Grouping" means a European Economic Interest Grouping formed under Council Regulation (EEC) No 2137/85 of 25 July 1985, whether registered in Great Britain, Northern Ireland or elsewhere.

Harbour reorganisation schemes

[F507]991 Harbour reorganisation schemes: corporation tax

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Textual Amendments

F507 Ss. 991-995 repealed (with effect in accordance with Sch. 39 para. 18(2) of the amending Act) by Finance Act 2012 (c. 14), **Sch. 39 para. 16**

[F507]992 Harbour reorganisation schemes: capital allowances etc

. . . . . .

Textual Amendments

F507 Ss. 991-995 repealed (with effect in accordance with Sch. 39 para. 18(2) of the amending Act) by Finance Act 2012 (c. 14), **Sch. 39 para. 16**

[F507]993 Harbour reorganisation schemes: chargeable gains

. . . . . .

Textual Amendments

F507 Ss. 991-995 repealed (with effect in accordance with Sch. 39 para. 18(2) of the amending Act) by Finance Act 2012 (c. 14), **Sch. 39 para. 16**

[F507]994 Transfer of part of trade

. . . . . .

Textual Amendments

F507 Ss. 991-995 repealed (with effect in accordance with Sch. 39 para. 18(2) of the amending Act) by Finance Act 2012 (c. 14), **Sch. 39 para. 16**

[F507]995 Interpretation of sections 991 to 994

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Status: *Point in time view as at 01/04/2014.*
Changes to legislation: *Corporation Tax Act 2010 is up to date with all changes known to be in force on or before 12 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Textual Amendments

F507 Ss. 991-995 repealed (with effect in accordance with Sch. 39 para. 18(2) of the amending Act) by Finance Act 2012 (c. 14), **Sch. 39 para. 16**

Groups: use of different accounting practices

996 Use of different accounting practices within a group of companies

(1) Subsection (2) applies if—

(a) a company ("company A") prepares accounts in accordance with international accounting standards,

(b) another company ("company B") in the same group of companies prepares accounts in accordance with UK generally accepted accounting practice,

(c) there is a transaction between, or a series of transactions involving, company A and company B, and

(d) a tax advantage would (apart from this section) be obtained by either or both of those companies in relation to the transaction or series of transactions as a result of the use of different accounting practices.

(2) The Tax Acts apply in relation to the transaction or series of transactions as if both company A and company B prepared accounts in accordance with UK generally accepted accounting practice.

(3) Section 170(3) to (6) of TCGA 1992 apply to determine for the purposes of this section whether companies are in the same group of companies.

(4) None of the following circumstances (individually or in combination) prevents a series of transactions from being a series of transactions involving company A and company B—

(a) there is no transaction in the series to which both those companies are parties,

(b) the parties to any arrangements in pursuance of which the transactions in the series are entered into do not include one or both of those companies,

(c) there are one or more transactions in the series to which neither of those companies is a party.

(5) In this section "tax advantage" has the meaning given by section 1139.

PART 23

COMPANY DISTRIBUTIONS

CHAPTER 1

INTRODUCTION

997 Overview of Part

(1) Chapters 2 to 5 contain provision about what is, and what is not, a distribution.

Status: *Point in time view as at 01/04/2014.*
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(2) Chapter 5 (demergers) includes provision that charges income tax, or applies the charge to corporation tax on income, in relation to certain payments.

(3) Chapters 2 to 5 also include—
  (a) provision about the persons to whom certain distributions are treated as made (see sections 1020(2) and 1064(2)),
  (b) provision about how the amount of certain distributions is determined (see sections 1003, 1004, 1020(2) and 1064(2)),
  (c) other special rules about distributions made by certain companies (see Chapter 4), and
  (d) provision about returns and information (see sections 1046, 1052, 1053 and 1095 to 1097).

(4) Chapter 6 contains provision of more general application about returns and information relating to distributions.

(5) Chapter 7 contains provision about tax credits.

(6) Chapter 8 contains definitions and other provision about the interpretation of this Part.

(7) Section 152(3)(b) of FA 1995 enables regulations under that section to include provision which modifies the following in relation to open-ended investment companies, or payments falling to be treated as the distributions of such companies—
  (a) Chapter 2 (except section 1000(2)),
  (b) sections 1030 to 1048 and section 1049(1) and (3),
  (c) sections 1059 to 1063,
  (d) Chapter 5.

CHAPTER 2

MATTERS WHICH ARE DISTRIBUTIONS

Introduction

998 Overview of Chapter

(1) Sections 1000 to 1023 are about the meaning of "distribution" in the Corporation Tax Acts.

(2) In particular, section 1000(1) lists the matters which are distributions.

(3) Sections **[**[F508]1003**]** to 1023 contain provisions supplementing the paragraphs of that list.

(4) The table in section 1001 mentions some of the main provisions which explain, supplement or limit particular paragraphs of the list in section 1000(1).

(5) Sections 1024 to 1028 are about the meaning of "repayment of share capital".

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Textual Amendments

F508 Words in s. 998(3) substituted (with effect in accordance with s. 33(6) of the amending Act) by Finance Act 2012 (c. 14), **s. 33(5)(b)**

999 Priority of negative rules

(1) The provisions of this Chapter are subject to any express exceptions.

(2) See, in particular—

(a) Chapter 3 (matters which are not distributions),

(b) section 1075 (exempt distributions), and

(c) paragraph 6 of Schedule 12 to FA 1988 (transfer of building society's business to a company: qualifying benefits),

and see also the table in section 1001.

Meaning of "distribution"

1000 Meaning of "distribution"

(1) In the Corporation Tax Acts "distribution", in relation to any company, means anything falling within any of the following paragraphs.

Any dividend paid by the company, including a capital dividend.

Any other distribution out of assets of the company in respect of shares in the company, except however much (if any) of the distribution—

(a) represents repayment of capital on the shares, or

(b) is (when it is made) equal in amount or value to any new consideration received by the company for the distribution.

For the purposes of this paragraph it does not matter whether the distribution is in cash or not.

Any redeemable share capital issued by the company—

(a) in respect of shares in, or securities of, the company, and

(b) otherwise than for new consideration (see sections 1003 and 1115).

Any security issued by the company—

(a) in respect of shares in, or securities of, the company, and

(b) otherwise than for new consideration (see sections 1004 and 1115).

Any interest or other distribution out of assets of the company in respect of securities of the company which are non-commercial securities (as defined in section 1005), except—

(a) however much (if any) of the distribution represents the principal secured by the securities, and

(b) however much (if any) of the distribution represents a reasonable commercial return for the use of the principal.

Any interest or other distribution out of assets of the company in respect of securities of the company which are special securities (as defined in section 1015), except—

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(a) however much (if any) of the distribution represents the principal secured by the securities, and

(b) however much (if any) of the distribution falls within paragraph E.

Any amount treated as a distribution by section 1020 (transfers of assets or liabilities).

Any amount treated as a distribution by section 1022 (bonus issues following repayment of share capital).

(2) In the Corporation Tax Acts "distribution", in relation to a close company, also includes anything treated as a distribution by section 1064 (certain expenses of close companies treated as distributions).

(3) See also section 1072 (which extends the meaning of "distribution" in relation to members of a 90% group).

1001 Provisions related to paragraphs A to H in section 1000(1)

The following table mentions, for each paragraph in section 1000(1)—

(a) some of the main provisions that explain or supplement it, and

(b) some of the main provisions that limit it.

Paragraph in section 1000(1)	***Explained or supplemented by***	***Limited by***
A (dividends).		Section 1054 (building society payments). Sections 1055(2) and 1057(2) (dividend paid by industrial and provident society or UK agricultural or fishing co-operative).
B (other distributions in respect of shares).	Sections 1024 to 1028 (meaning of "repayment of share capital"). Section 1113(1) (extends meaning of "in respect of shares in the company").	F509 . . .
C (redeemable share capital).	Section 1003 (redeemable share capital). Section 1113(1). Section 1114(1) (extends meaning of "in respect of securities of the company").	Section 1049(3)(a) (stock dividends).
D (securities issued otherwise than for new consideration).	Section 1004 (securities issued otherwise than for new consideration). Section 1113(1).	

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	Section 1114(1).	
E (distributions in respect of non-commercial securities).	Sections 1005 to 1014 (meaning of "non-commercial securities" etc).	
	Section 1114(1).	
F (distributions in respect of special securities).	Sections 1015 to 1018 (meaning of "special securities" etc).	Section 1019 (relevant alternative finance return).
	Section 1114(1).	Section 1032 (interest etc paid in respect of certain securities).
G (transfers of assets or liabilities).	Section 1020 (transfers of assets or liabilities treated as distributions).	
H (bonus issues following repayment of share capital).	Sections 1022 and 1023 (bonus issues following repayment of share capital treated as distributions).	Section 1049(3)(b)(i) (stock dividends).

Textual Amendments

F509 Words in s. 1001 omitted (with effect in accordance with s. 33(6) of the amending Act) by virtue of Finance Act 2012 (c. 14), **s. 33(5)(c)**

Distributions, other than dividends, in respect of shares

F510 1002 Exceptions for certain transfers of assets or liabilities between a company and its members

. . . . . .

Textual Amendments

F510 S. 1002 repealed (with effect in accordance with s. 33(6) of the amending Act) by Finance Act 2012 (c. 14), **s. 33(2)**

Redeemable share capital

1003 Redeemable share capital

(1) Subsection (2) applies if—

(a) a company issues redeemable share capital, and

(b) the issue is partly (but not wholly) for new consideration.

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(2) The part (if any) of the share capital that is properly referable to the new consideration does not fall within paragraph C in section 1000(1).

(3) In determining, for the purposes of paragraph C in section 1000(1), the amount of the distribution constituted by the issue of any redeemable share capital, the value of the share capital is taken to be the sum of—
  (a) the amount of the share capital, and
  (b) the amount of any premium payable on redemption, in a winding up, or in any other circumstances.

Securities issued otherwise than for new consideration

1004 Securities issued otherwise than for new consideration

(1) Subsection (2) applies if—
  (a) a company issues a security, and
  (b) the issue is partly (but not wholly) for new consideration.

(2) The part (if any) of the security that is properly referable to the new consideration does not fall within paragraph D in section 1000(1).

(3) In determining, for the purposes of paragraph D in section 1000(1), the amount of the distribution constituted by the issue of any security, the value of the security is taken to be the amount of the principal secured, including any premium payable—
  (a) at maturity,
  (b) in a winding up, or
  (c) in any other circumstances.

Distributions in respect of non-commercial securities

1005 Meaning of "non-commercial securities"

For the purposes of paragraph E in section 1000(1) securities of a company are non-commercial securities if the consideration given by the company under the securities for the use of the principal secured by them represents more than a reasonable commercial return for the use of that principal.

1006 Distributions exceeding consideration received for issue of security

No amount is to be regarded for the purposes of paragraph E in section 1000(1) as representing the principal secured by a security so far as it exceeds any new consideration which has been received by the company for the issue of the security.

1007 Securities issued at premium representing new consideration

(1) This section applies if any security of a company is issued at a premium representing new consideration (but see also section 1008).

(2) In relation to a distribution in respect of the security, the reference in paragraph E in section 1000(1) to however much of the distribution represents the principal secured by the security is to be read as a reference to the sum of—

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(a) however much of the distribution represents the principal, and
(b) however much of it represents the premium.

(3) In relation to a distribution in respect of the security, the reference in paragraph E in section 1000(1) to however much of the distribution represents a reasonable commercial return for the use of the principal secured by the security is to be read as a reference to the sum of—
(a) however much of the distribution represents a reasonable commercial return for the use of the principal, and
(b) however much of it represents (when regard is had to the extent to which distributions represent the premium) a reasonable commercial return for the use of the premium.

1008 Consideration for issue of security exceeding amount of principal

(1) This section applies if—
(a) a company issues a security, and
(b) the amount of new consideration received by the company for the issue of the security exceeds the amount of the principal secured by the security.

(2) The amount of the principal is treated for the purposes of paragraph E in section 1000(1) as increased to the amount of that new consideration.

(3) Section 1007 does not have effect in relation to the security.

(4) This section is subject to sections 1009 and 1012.

Exceptions to section 1008

1009 Securities reflecting dividends on certain shares etc: exclusion of section 1008

(1) Section 1008 does not apply in relation to a security issued by a company ("the issuing company") if—
(a) the security reflects to a significant extent dividends or other distributions in respect of, or fluctuations in the value of, shares, and
(b) those shares are in one or more companies each of which is the issuing company or an associated company of the issuing company.

(2) Subsection (1) does not prevent section 1008 from applying in relation to a security if—
(a) the issuing company is a bank or securities house,
(b) the issuing company issues the security in the ordinary course of its business, and
(c) the security reflects dividends or other distributions in respect of the shares mentioned in subsection (1), or fluctuations in the value of those shares, only because it reflects fluctuations in a qualifying index.

(3) In this section—
"bank" has the meaning given by section 1120, and
"securities house" means a person—
(a) who is authorised for the purposes of FISMA 2000, and

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(b) whose business consists wholly or mainly of dealing as principal in financial instruments within the meaning of section 984 of ITA 2007.

1010 Meaning of "qualifying index" in section 1009

(1) In section 1009 "qualifying index" means an index which meets the conditions in subsections (2) and (3).

(2) The underlying subject matter of the index must include both—
- (a) shares that meet the description in section 1009(1)(b), and
- (b) shares that do not meet that description.

(3) Shares that do not meet the description in section 1009(1)(b) must represent a significant proportion of the market value of the underlying subject matter of the index.

1011 Meaning of "associated company" in section 1009

(1) For the purposes of section 1009 a company is an "associated company" of another at any time when—
- (a) one has control of the other, or
- (b) both are under the control of the same person or persons.

(2) For the purposes of subsection (1) a person controls a company if the person has power to secure that the affairs of the company are conducted in accordance with the person's wishes, and has that power—
- (a) by holding shares in the company or any other company,
- (b) by possessing voting power in relation to the company or any other company, or
- (c) by virtue of any powers conferred by—
  - (i) the articles of association of the company or any other company, or
  - (ii) any other document regulating the company or any other company.

(3) Shares held by a company, and any voting power or other powers arising from the shares, must be ignored for the purposes of subsection (2) if—
- (a) a profit on a sale of the shares would be treated as a trading receipt of a trade carried on by the company, and
- (b) the shares are not assets of an insurance company's long-term insurance fund.

1012 Hedging arrangements

(1) Section 1008 does not at a given time apply in relation to a security issued by a company ("the issuing company") if—
- (a) at that time, or
- (b) at any earlier time after 16 April 2002,

there are or have been any hedging arrangements that relate to some or all of the company's liabilities under the security.

This is subject to section 1013.

(2) If, as a result of this section, section 1008 stops applying at any time in relation to a security, paragraph E in paragraph 1000(1) has effect in relation to the security from

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that time as it would have had effect if section 1008 had never applied in relation to the security.

1013 Exception to section 1012

(1) Section 1012 does not prevent section 1008 from applying in relation to a security at a given time if—
  (a) each of conditions A to D is met in relation to any hedging arrangements existing at that time that relate to some or all of the company's liabilities under the security, and
  (b) at all earlier times after 16 April 2002 when there have been hedging arrangements that relate to some or all of the company's liabilities under the security, each of conditions A to D was met in relation to those arrangements.

(2) Condition A is that the hedging arrangements do not constitute, include or form part of any scheme or arrangement the purpose or one of the main purposes of which is the avoidance of tax.

(3) In subsection (2) "tax" includes stamp duty and stamp duty land tax.

(4) Condition B is that the hedging arrangements are such that any amounts intended under the arrangements to offset some or all of a corporation tax deduction in respect of the security—
  (a) arise at the time when the deduction falls to be made, or within a reasonable time before or after that time, and
  (b) arise—
    (i) to the issuing company, or
    (ii) to a company which is a member of the same group of companies as the issuing company.

(5) In subsection (4) "corporation tax deduction" means a deduction that falls to be made for corporation tax purposes by the issuing company at any time.

(6) Condition C is that the whole of every amount arising as mentioned in subsection (4) is brought into charge to corporation tax—
  (a) by a company falling within subsection (4)(b)(i) or (ii), or
  (b) by two or more companies (taken together) each of which falls within subsection (4)(b)(i) or (ii).

(7) Condition D is that for corporation tax purposes any deductions in respect of expenses of establishing or administering the hedging arrangements are reasonable in proportion to the amounts required to be brought into charge to corporation tax by subsection (6).

(8) For the purposes of this section two companies are members of the same group of companies if they are members of the same group of companies for the purposes of Part 5 (see section 152).

1014 Meaning of "hedging arrangements"

(1) This section explains what "hedging arrangements" means, in relation to a security, in sections 1012 and 1013.

(2) "Hedging arrangements" means any scheme or arrangement for the purpose of securing that an offsetting amount of income or gain—

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(a) accrues, or
(b) is received or receivable.

(3) In subsection (2) "offsetting amount" means an amount which is intended to offset some or all of the amounts that fall to be brought into account in respect of amounts accruing or falling to be paid in accordance with the terms of the security.

(4) It does not matter whether the purpose mentioned in subsection (2) is the only purpose, or just one of the purposes, of the scheme or arrangement.

(5) It does not matter whether the purpose mentioned in subsection (2) is to secure that the offsetting amount accrues, or is received or receivable, directly or indirectly.

(6) In this section "brought into account" means brought into account in accordance with generally accepted accounting practice.

Distributions in respect of special securities

1015 Meaning of "special securities"

(1) Securities of a company are special securities for the purposes of paragraph F in section 1000(1) if they meet any of conditions A to E.

(2) Condition A is that the securities are issued as described in paragraph D in section 1000(1) (securities issued otherwise than for new consideration).

(3) Condition B is that—
(a) the securities—
(i) are convertible (directly or indirectly) into shares in the company, or
(ii) carry a right to receive shares in or securities of the company, and
(b) the securities are neither listed on a recognised stock exchange nor issued on terms which are reasonably comparable with the terms of issue of securities listed on a recognised stock exchange.

(4) Condition C is that under the securities the consideration given by the company for the use of the principal secured depends (to any extent) on the results of—
(a) the company's business, or
(b) any part of the company's business.

(5) Condition D is that the securities are connected with shares in the company (see section 1017(2)).

(6) Condition E is that the securities are equity notes—
(a) issued by the company ("the issuing company"), and
(b) held by a company which—
(i) is associated with the issuing company, or
(ii) is a funded company (see section 1017(3)).

1016 Meaning of "equity note" in section 1015

(1) For the purposes of section 1015(6) a security is an equity note if any of the tests in subsection (2) is satisfied either—
(a) as regards the whole of the principal, or

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(b) as regards any part of it.

(2) These are the tests.

Test 1 The security's terms contain no particular date by which it is to be redeemed.

Test 2 Under the security's terms the date for redemption, or the latest date for redemption, falls after the end of the permitted period.

Test 3 Under the security's terms redemption is to occur after the end of the permitted period if a particular event occurs, and the event is one which (judged at the time of the security's issue) is certain or likely to occur.

Test 4 The issuing company can secure—

(a) that there is no particular date by which the security is to be redeemed, or

(b) that the date for redemption falls after the end of the permitted period.

(3) In subsection (2) "the permitted period" means the period of 50 years beginning with the date of the security's issue.

1017 Section 1015: other interpretation

(1) For the purposes of section 1015(4) the consideration given by the company for the use of the principal secured is not treated as depending on the results of the company's business (or any part of it) merely because the terms of the security provide—

(a) for the consideration to be reduced if the results improve, or

(b) for the consideration to be increased if the results deteriorate.

(2) For the purposes of section 1015(5) securities are connected with shares in the company if—

(a) it is necessary or advantageous for a person who has, or disposes of or acquires, any of the securities also to have, or to dispose of or acquire, a proportionate holding of the shares, and

(b) that is a consequence of the nature of the rights attaching to the securities or shares and, in particular, any terms or conditions attaching to the right to transfer the securities or shares.

(3) For the purposes of section 1015(6) a company is a funded company if there are arrangements involving the company being put in funds (directly or indirectly) by—

(a) the issuing company, or

(b) a company associated with the issuing company.

(4) For the purposes of subsection (3) above and section 1015(6), a company is associated with the issuing company if—

(a) the issuing company is a 75% subsidiary of the other company,

(b) the other company is a 75% subsidiary of the issuing company, or

(c) both are 75% subsidiaries of a third company.

1018 The principal secured: special securities

(1) No amount is to be regarded for the purposes of paragraph F in section 1000(1) as representing the principal secured by a security so far as it exceeds any new consideration which has been received by the company for the issue of the security.

This is without prejudice to section 1117(6).

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(2) Subsection (3) applies if—
  (a) a security of a company is issued at a premium representing new consideration, and
  (b) there is a distribution in respect of the security.

(3) The reference in paragraph F in section 1000(1) to however much of the distribution represents the principal secured by the security is to be read as a reference to the sum of—
  (a) however much of the distribution represents the principal, and
  (b) however much of it represents the premium.

1019 Relevant alternative finance return

(1) Relevant alternative finance return is not treated by virtue of section 1015(4) as being a distribution for the purposes of the Corporation Tax Acts.

(2) For corporation tax purposes "relevant alternative finance return" in subsection (1) means—
  (a) anything that is alternative finance return for the purposes of Part 6 of CTA 2009 as a result of section 513 of that Act, or
  (b) any part of the redemption payment under arrangements to which section 507 of CTA 2009 (investment bond arrangements) applies.

(3) For income tax purposes "relevant alternative finance return" in subsection (1) means—
  (a) anything that is alternative finance return for the purposes of Part 10A of ITA 2007 as a result of section 564L of that Act, or
  (b) any part of the redemption payment under arrangements to which section 564G of ITA 2007 (investment bond arrangements) applies.

Transfers of assets or liabilities treated as distributions

1020 Transfers of assets or liabilities treated as distributions

(1) This section applies if on a transfer of assets or liabilities—
  (a) by a company to its members, or
  (b) to a company by its members,

  the amount or value of the benefit received by a member exceeds the amount or value of any new consideration given by the member.

(2) The company is treated for the purposes of the Corporation Tax Acts as making a distribution to the member of an amount equal to the excess.

F511 …

[F512(2A) But the company is not treated as making a distribution under subsection (2) if the transfer of assets or liabilities—
  (a) is a distribution by virtue of paragraph B in section 1000(1), or
  (b) would be such a distribution in the absence of sub-paragraph (a) of that paragraph (distribution representing repayment of capital on the shares).]

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(3) For the purposes of subsection (1) the amount or value of a benefit, or of any consideration, is determined in accordance with the market value.

Textual Amendments

F511 Words in s. 1020(2) omitted (with effect in accordance with s. 33(6) of the amending Act) by virtue of Finance Act 2012 (c. 14), **s. 33(3)(a)**

F512 S. 1020(2A) inserted (with effect in accordance with s. 33(6) of the amending Act) by Finance Act 2012 (c. 14), **s. 33(3)(b)**

F513 1021 Section 1020: exceptions

. . . . . .

Textual Amendments

F513 S. 1021 repealed (with effect in accordance with s. 33(6) of the amending Act) by Finance Act 2012 (c. 14), **s. 33(4)**

Bonus issue following repayment of share capital

1022 Bonus issue following repayment of share capital treated as distribution

(1) Subsection (3) applies if a company—

(a) repays or has repaid any share capital, and

(b) at or after the time of the repayment issues any share capital as paid up otherwise than by the receipt of new consideration.

(2) But subsection (3) does not apply so far as any provision of the Corporation Tax Acts makes contrary provision.

(3) The amount paid up as mentioned in subsection (1)(b) is treated for the purposes of the Corporation Tax Acts as a distribution made in respect of the shares on which it is paid up, except so far as that amount exceeds the adjusted amount of the repaid share capital.

(4) The reference in subsection (3) to the adjusted amount of the repaid share capital is to—

(a) the amount, or total amount, of share capital repaid as mentioned in subsection (1)(a), minus

(b) any amounts previously paid up as mentioned in subsection (1)(b) and treated as distributions by virtue of subsection (3).

1023 Exceptions to section 1022(3)

(1) Section 1022(3) does not apply if the issue of share capital mentioned in section 1022(1)(b)—

(a) takes place more than 10 years after the repayment of share capital mentioned in subsection 1022(1)(a), and

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(b) is not of redeemable share capital.

(2) But subsection (1) does not prevent section 1022(3) from applying in the case of a company which is a relevant company for the purposes mentioned in section 739 (certain companies not included in the official UK list etc).

(3) Section 1022(3) does not apply if the repaid share capital consists of fully paid preference shares and—

(a) those shares were issued as fully paid preference shares,

(b) they were issued wholly for new consideration not derived from ordinary shares, and

(c) throughout the period from their issue until the repayment those shares continued to be fully paid preference shares.

(4) For the purposes of subsection (3) consideration is derived from ordinary shares if (and only if)—

(a) it consists of the surrender, transfer or cancellation of ordinary shares,

(b) it consists of the variation of rights in ordinary shares, or

(c) it is derived from a repayment of share capital paid in respect of ordinary shares,

and for the purposes of this subsection it does not matter whether the ordinary shares are of the company or another company.

(5) In this section—

"ordinary shares" means shares other than preference shares, and

"preference shares" means shares which—

(a) do not carry any right to dividends other than dividends at a fixed rate per cent of the nominal value of the shares, and

(b) carry rights in respect of dividends and capital which are comparable with those general for fixed-dividend shares included in the official UK list.

Interpretation of references to repayment of share capital

1024 Premiums paid on redemption of share capital

Premiums paid on redemption of share capital are not treated as repayments of share capital for the purposes of this Chapter.

1025 Share capital issued at a premium representing new consideration

(1) This section applies if—

(a) share capital is issued at a premium representing new consideration, and

(b) a distribution is made in respect of shares representing the share capital.

(2) The amount of the premium is treated as forming part of the share capital for the purpose of determining under this Chapter whether the distribution is a repayment of share capital.

(3) Subsection (2) does not have effect in relation to any part of the premium after that part has been applied to paying up share capital.

Status: *Point in time view as at 01/04/2014.*
Changes to legislation: *Corporation Tax Act 2010 is up to date with all changes known to be in force on or before 12 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

1026 Distributions following a bonus issue

(1) This section applies if—

(a) a company issues, or has issued, any share capital ("the bonus share capital") as paid up otherwise than by the receipt of new consideration, and

(b) an amount paid up as mentioned in paragraph (a) does not fall to be treated as a qualifying distribution.

(2) Distributions made afterwards by the company in respect of shares representing the bonus share capital are not treated as repayments of share capital for the purposes of this Chapter.

But this is subject to section 1027 and any other contrary provision in the Corporation Tax Acts.

(3) Except where the company is a relevant company for the purposes mentioned in section 739 (certain companies not included in the official UK list etc), subsection (2) does not prevent a distribution being treated as a repayment of share capital if it is made—

(a) more than 10 years after the issue of the share capital mentioned in subsection (1)(a), and

(b) in respect of share capital other than redeemable share capital.

(4) For the purposes of this section and section 1027—

(a) all shares of the same class are treated as representing the same share capital, and

(b) if shares are issued in respect of other shares, or are (directly or indirectly) converted into or exchanged for other shares, all such shares are treated as representing the same share capital.

(5) This section is to be read with section 1049(3)(b) (stock dividends).

1027 Cap on amount of distributions affected by section 1026

(1) Section 1026(2) does not apply to the distributions in question so far as they, together with any affected distributions made previously but after the issue of the bonus share capital, exceed the cap.

(2) In subsection (1) "the cap" means the total of the amounts—

(a) paid up, otherwise than by the receipt of new consideration, on shares representing the bonus share capital, and

(b) not falling to be treated as qualifying distributions.

(3) In subsection (1) "affected distribution" means however much of a distribution made in respect of shares representing the bonus share capital—

(a) would, but for section 1026, be treated as a repayment of share capital, but

(b) cannot be so treated because of that section.

(4) In subsection (2)(a) the reference to amounts paid up is to amounts paid up at the time of the distributions in question or previously.

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[F514 1027A Distributions following reduction of share capital

(1) This section applies for the purpose of determining whether a distribution is treated as a repayment of share capital for the purposes of this Chapter.

(2) A distribution made out of a reserve arising from a reduction of share capital is to be treated as if it were made out of profits available for distribution otherwise than by virtue of the reduction.

(3) The reference in subsection (2) to share capital includes, in the case of share capital issued at a premium representing new consideration, the amount of the premium.

(4) The reference in subsection (2) to a reduction of share capital is—

(a) in the case of a limited company incorporated in a territory outside the United Kingdom, to a reduction under any provision of the law of that territory corresponding to Chapter 10 of Part 17 of the Companies Act 2006, and

(b) in the case of an unlimited company incorporated in a territory outside the United Kingdom, to a reduction under any provision of the law of that territory corresponding to any rule of law of any part of the United Kingdom under which an unlimited company may reduce its share capital.

(5) This section does not apply for the purposes of any provision to the extent that the provision relates to income tax.]

Textual Amendments

F514 S. 1027A inserted (with effect in accordance with Sch. 3 paras. 5, 7 of the amending Act) by Finance (No. 3) Act 2010 (c. 33), **Sch. 3 para. 1(3)**

1028 Certain payments connected with exempt distributions

(1) A chargeable payment made within 5 years after an exempt distribution is not to be (if it otherwise would be) treated as a repayment of share capital for the purposes of sections 1022 and 1023 (bonus issue following repayment of share capital).

(2) The purpose of the provisions about demergers (which include this section) is set out in section 1074.

(3) In this section—

(a) "chargeable payment" has the meaning given by section 1088, and

(b) "exempt distribution" has the meaning given by section 1075(2).

CHAPTER 3

MATTERS WHICH ARE NOT DISTRIBUTIONS

Introduction

1029 Overview of Chapter

(1) In this Chapter the following sections provide that a particular matter is not a distribution—

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(a) section 1030 (distributions in respect of share capital on a winding up),

[F515(aa) section 1030A (distributions in respect of share capital prior to dissolution of company),]

(b) section 1031 (distribution as part of a cross-border merger),

(c) section 1032 (interest etc paid in respect of certain securities),

F516(ca) . . . . . .

(d) section 1033 (purchase by unquoted trading company of own shares),

(e) section 1049 (stock dividends),

(f) section 1054 (building society payments),

(g) section 1055 (industrial and provident societies: interest and share dividends),

(h) section 1056 (dividend or bonus relating to transactions with industrial and provident society), and

(i) section 1057 (UK agricultural or fishing co-operatives: interest and share dividends).

(2) The following make similar provision outside this Chapter—

(a) section 1075 (exempt distributions), and

(b) paragraph 6 of Schedule 12 to FA 1988 (transfer of building society's business to a company: qualifying benefits).

Textual Amendments

F515 S. 1029(1)(aa) inserted (with effect in accordance with art. 18 of the amending S.I.) by The Enactment of Extra-Statutory Concessions Order 2012 (S.I. 2012/266), arts. 1, **16(2)**

F516 S. 1029(1)(ca) repealed (with effect in accordance with reg. 1(2)(3) of the amending S.I.) by The Taxation of Regulatory Capital Securities Regulations 2013 (S.I. 2013/3209), regs. 1(1), **12(a)(iii)**

Distributions in a winding up

1030 Distribution in respect of share capital in a winding up

A distribution made in respect of share capital in a winding up is not a distribution of a company for the purposes of the Corporation Tax Acts.

[F517Distributions prior to dissolution of company

Textual Amendments

F517 Ss. 1030A, 1030B and cross-heading inserted (with effect in accordance with art. 18 of the amending S.I.) by The Enactment of Extra-Statutory Concessions Order 2012 (S.I. 2012/266), arts. 1, **16(3)**

1030A Distributions in respect of share capital prior to dissolution of company

(1) This section applies where—

(a) the procedure in section 1000 of the Companies Act 2006 (power to strike off company not carrying on business or in operation) has been commenced in relation to a company, and

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(b) the company makes a distribution in respect of share capital in anticipation of its dissolution under that section.

(2) This section also applies where—

(a) a company intends to make, or has made, an application under section 1003 of that Act (striking off on application by company), and

(b) the company makes a distribution in respect of share capital in anticipation of its dissolution under that section.

(3) The distribution is not a distribution of a company for the purposes of the Corporation Tax Acts if conditions A and B are met (but see section 1030B).

(4) Condition A is that, at the time of the distribution, the company—

(a) intends to secure, or has secured, the payment of any sums due to the company, and

(b) intends to satisfy, or has satisfied, any debts or liabilities of the company.

(5) Condition B is that—

(a) the amount of the distribution, or

(b) in a case where the company makes more than one distribution falling within subsection (1)(b) or (2)(b), the total amount of the distributions,

does not exceed £25,000.

(6) In the case of a company incorporated in a territory outside the United Kingdom, any reference in subsection (1) or (2) to a section of the Companies Act 2006 is to be read as a reference to any provision of the law of that territory corresponding to that section.

1030B Section 1030A: effect of company not being dissolved, etc

(1) Where this section applies, a distribution made by a company is to be treated for the purposes of the Corporation Tax Acts as if section 1030A(3) had never applied to it.

(2) This section applies where 2 years have passed since the making of the distribution and—

(a) the company has not been dissolved during that time, or

(b) the company has failed—

(i) to secure, so far as is reasonably practicable, the payment of all sums due to the company, or

(ii) to satisfy all of its debts and liabilities.

(3) In a case where this section applies, all such adjustments as are required in order to give effect to subsection (1) are to be made, whether by the making of assessments or otherwise.**]**

Distribution as part of a cross-border merger

1031 Distribution as part of a cross-border merger

If—

(a) a company making a distribution as part of a merger ceases to exist (without being wound up), and

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(b) section 140E or 140F of TCGA 1992 (cross-border mergers) applies in relation to the merger,

the distribution is not a distribution of a company for the purposes of the Corporation Tax Acts.

Payments of interest

1032 Interest etc paid in respect of certain securities

(1) Any interest or other distribution which—

(a) is paid out of the assets of a company ("the borrower") to another company which is within the charge to corporation tax,

(b) is paid in respect of securities of the borrower which are special securities (as defined in section 1015), and

(c) does not fall within paragraph E in section 1000(1) (distributions in respect of non-commercial securities),

is not a distribution for the purposes of the Corporation Tax Acts.

(2) But subsection (1) does not apply if the company to which the interest or other distribution is paid is entitled under any enactment to an exemption from tax in respect of that interest or distribution.

Modifications etc. (not altering text)

C46 S. 1032(2) modified (with effect in accordance with art. 1 of the amending S.I.) by Corporation Tax Act 2010 (Transitional Provision) Order 2010 (S.I. 2010/665), arts. 1, **2**

[F518F519...

Textual Amendments

F518 S. 1032A and cross-heading inserted (retrospective to 26.10.2012) by Finance Act 2013 (c. 29), **s. 43(5)**(6)

F519 S. 1032A and heading repealed (with effect in accordance with reg. 1(2)(3) of the amending S.I.) by The Taxation of Regulatory Capital Securities Regulations 2013 (S.I. 2013/3209), regs. 1(1), **12(a)(iv)**

[F519]1032A Payment in respect of tier two capital

. . . . . .

Purchase of own shares

1033 Purchase by unquoted trading company of own shares

(1) A payment made by a company on the redemption, repayment or purchase of its own shares is not a distribution for the purposes of the Corporation Tax Acts if—

(a) the company is an unquoted trading company, or the unquoted holding company of a trading group, and

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(b) either Condition A or Condition B is met.

(2) Condition A is that—

(a) the redemption, repayment or purchase is made wholly or mainly for the purpose of benefiting a trade carried on by the company or any of its 75% subsidiaries,

(b) the redemption, repayment or purchase does not form part of a scheme or arrangement the main purpose or one of the main purposes of which is—

(i) to enable the owner of the shares to participate in the profits of the company without receiving a dividend, or

(ii) the avoidance of tax, and

(c) the requirements set out in sections 1034 to 1043 (so far as applicable) are met.

(3) Condition B is that the whole or substantially the whole of the payment (apart from any sum applied in paying capital gains tax charged on the redemption, repayment or purchase)—

(a) is applied by the person to whom it is made in discharging a liability of that person for inheritance tax charged on a death, and

(b) is applied in that way within two years after the death.

(4) But if condition B is met, subsection (1) does not apply so far as the liability in question could without undue hardship have been discharged otherwise than through the redemption, repayment or purchase of—

(a) shares in the company, or

(b) shares in another unquoted company which is a trading company or the holding company of a trading group.

(5) In sections 1034 to 1043—

"the purchase" means the redemption, repayment or purchase referred to in subsection (1), and

"the seller" means the owner of the shares at the time the redemption, repayment or purchase is made.

(6) In this section and sections 1034 to 1047 references to a payment made by a company include anything else that—

(a) is a distribution, or

(b) would be a distribution but for this section.

1034 Requirements as to residence

(1) The seller must be resident [F520]... in the United Kingdom in the tax year in which the purchase is made.

(2) If the shares are held through a nominee, the nominee must also be resident [F520]... in the United Kingdom in the tax year in which the purchase is made.

(3) The residence [F521]... of personal representatives are taken for the purposes of this section to be the same as the deceased person's residence [F521]... immediately before that person's death.

[F522](4) . . . . . .

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Textual Amendments

F520 Words in s. 1034(1)(2) omitted (17.7.2013) by virtue of Finance Act 2013 (c. 29), **Sch. 46 para. 145(2)** (with Sch. 46 para. 145(5))

F521 Words in s. 1034(3) omitted (17.7.2013) by virtue of Finance Act 2013 (c. 29), **Sch. 46 para. 145(3)** (with Sch. 46 para. 145(5))

F522 S. 1034(4) omitted (17.7.2013) by virtue of Finance Act 2013 (c. 29), **Sch. 46 para. 145(4)** (with Sch. 46 para. 145(5))

1035 Requirement as to period of ownership

(1) The shares must have been owned by the seller throughout the 5 years ending with the date of the purchase.

(2) In determining whether the requirement in subsection (1) is met in a case where the seller acquired shares of the same class at different times—

(a) shares acquired earlier are taken into account before shares acquired later, and

(b) any previous disposal by the seller of shares of that class is assumed to be a disposal of shares acquired later rather than of shares acquired earlier.

(3) If the time when any shares were acquired would be determined for the purposes of capital gains tax under any provision of Chapter 2 of Part 4 of TCGA 1992 (reorganisation of share capital, conversion of securities etc) then, unless the shares—

(a) were allotted for payment, or

(b) were comprised in share capital to which section 1049 (stock dividends) applies,

the time when the shares were acquired is determined in the same way for the purposes of this section.

1036 Determining the period of ownership

(1) If at any time during the period mentioned in section 1035(1) the shares were transferred to the seller by a person ("the transferor") who—

(a) was then the seller's spouse or civil partner, and

(b) was then living with the seller (see section 1116),

any period during which the shares were owned by the transferor is treated for the purposes of section 1035(1) as a period of ownership by the seller.

(2) But subsection (1) does not apply if at the date of the purchase the transferor is alive but is no longer the seller's spouse or civil partner living with the seller.

(3) If the seller became entitled to the shares under the will or on the intestacy of a previous owner, or is the personal representative of a previous owner—

(a) any period during which the shares were owned by the previous owner, or the personal representatives of the previous owner, is treated for the purposes of section 1035(1) as a period of ownership by the seller, and

(b) section 1035(1) has effect as if it referred to three years instead of five.

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1037 Requirement as to reduction of seller's interest as shareholder

(1) If, immediately after the purchase, the seller owns shares in the company, the seller's interest as a shareholder must be substantially reduced.

This is subject to section 1043.

(2) If, immediately after the purchase, any associate of the seller owns shares in the company, the combined interests as shareholders of the seller and the seller's associates must be substantially reduced.

This is subject to section 1043.

(3) The seller's interest as a shareholder is substantially reduced if (and only if) the seller's subsequent interest is not more than 75% of the seller's prior interest.

This is subject to section 1038.

(4) "The seller's prior interest" means the total nominal value of the shares owned by the seller immediately before the purchase, expressed as a fraction of the issued share capital of the company at that time.

(5) "The seller's subsequent interest" means the total nominal value of the shares owned by the seller immediately after the purchase, expressed as a fraction of the issued share capital of the company at that time.

(6) The question whether the combined interests as shareholders of the seller and the seller's associates are substantially reduced is determined in the same way as the question whether a seller's interest as shareholder is substantially reduced, except that the seller is assumed to have the interests of the seller's associates as well as the seller's own.

1038 Section 1037: effect of entitlement to profits

(1) The seller's interest as a shareholder is not taken to be substantially reduced for the purposes of section 1037(1) if—

(a) the seller would, if the company distributed all its profits available for distribution immediately after the purchase, be entitled to a share of those profits, and

(b) that share expressed as a fraction of the total of those profits is more than 75% of the corresponding fraction immediately before the purchase.

(2) In determining for the purposes of subsection (1) the division of profits among the persons entitled to them, a person entitled to periodic distributions calculated by reference to fixed rates or amounts is regarded as entitled to a distribution of the amount, or maximum amount, to which the person would be entitled for a year.

(3) In subsection (1) "profits available for distribution" has the meaning given by section 830(2) of the Companies Act 2006, but with the differences mentioned in subsections (4) and (5).

(4) For the purposes of subsection (1) the amount of the profits available for distribution (whether immediately before or immediately after the purchase) is treated as increased—

(a) in the case of every company, by £100, and

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(b) in the case of a company from which any person is entitled to periodic distributions calculated by reference to fixed rates or amounts, by a further amount equal to that required to make the distribution to which the person is entitled in accordance with subsection (2).

(5) If the total of the sums payable by the company—

(a) on the purchase, and

(b) on any redemption, repayment or purchase of other shares of the company taking place at the same time,

exceeds the amount of the profits available for distribution immediately before the purchase, that amount is treated as further increased by an amount equal to the excess.

(6) References in this section to entitlement are, except in the case of trustees and personal representatives, references to beneficial entitlement.

1039 Requirements where purchasing company is a member of a group

(1) This section applies if the company making the purchase is immediately before the purchase a member of a group.

(2) In this section and sections 1040 to 1041 that group is referred to as "the purchaser's group".

(3) If—

(a) immediately after the purchase the seller owns shares in one or more other members of the purchaser's group (whether or not the seller then owns shares in the company making the purchase), or

(b) immediately after the purchase the seller owns shares in the company making the purchase, and immediately before the purchase the seller owns shares in one or more other members of the group,

the seller's interest as a shareholder in the group must be substantially reduced (see section 1040(1)).

(4) If immediately before the purchase an associate of the seller owns shares in any member of the purchaser's group, the combined interests as shareholders in the group of the seller and the seller's associates must be substantially reduced (see section 1040(4)).

(5) This section is subject to section 1043 (relaxation of requirements in certain cases).

1040 Determining whether interests as shareholders in a group are substantially reduced

(1) The seller's interest as a shareholder in the purchaser's group is taken to be substantially reduced if (and only if) it is not more than 75% of the corresponding interest immediately before the purchase.

This is subject to section 1041(1).

(2) The seller's interest as a shareholder in the group is calculated by—

(a) expressing the total nominal value of the shares owned by the seller in each relevant company as a fraction of the issued share capital of the company,

(b) adding together the fractions obtained under paragraph (a), and

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(c) dividing the result by the number of relevant companies (including any in which the seller owns no shares).

(3) In this section and section 1041 "relevant company" means—

(a) the company making the purchase, and

(b) any other member of the purchaser's group in which the seller owns shares immediately before or immediately after the purchase.

This is subject to subsection (4).

(4) The question whether the combined interests as shareholders in the purchaser's group of the seller and the seller's associates are substantially reduced is determined in the same way as the question whether a seller's interest as a shareholder in a group is substantially reduced, except that—

(a) the seller is assumed to have the interests of the seller's associates as well as the seller's own, and

(b) references in subsection (2) and section 1041(2) to a relevant company are read accordingly.

1041 Section 1040: effect of entitlement to profits

(1) The seller's interest as a shareholder in the purchaser's group is not taken to be substantially reduced if—

(a) the seller would, if every member of the group distributed all its profits available for distribution immediately after the purchase (including any profits received by it on a distribution by another member), be entitled to a share of the profits of one or more of them, and

(b) the new entitlement exceeds 75% of the old entitlement.

(2) In subsection (1)—

"the new entitlement" means the share, or the aggregate of the shares, mentioned in subsection (1)(a), expressed as a fraction of the aggregate of the profits available for distribution of every member of the group which is—

(a) a relevant company, or

(b) a 51% subsidiary of a relevant company, and

"the old entitlement" means the corresponding fraction immediately before the purchase.

(3) Subsections (2) to (5) of section 1038 apply for the purposes of this section as they apply for the purposes of section 1038(1).

1042 Other requirements

(1) The seller must not, immediately after the purchase, be connected with—

(a) the company making the purchase, or

(b) any other company which is a member of the same group as that company.

(2) The purchase must not be part of a scheme or arrangement which is designed, or likely, to result in—

(a) the seller, or

(b) an associate of the seller,

having disqualifying interests in the company.

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(3) For the purposes of subsection (2), interests in the company are disqualifying interests if any of the requirements in subsection (1) and sections 1037 and 1039 could not be met if the person in question had those interests immediately after the purchase.

(4) A transaction occurring within one year after the purchase is treated for the purposes of subsection (2) as part of a scheme or arrangement of which the purchase is also part.

(5) Subsections (1) and (2) are subject to section 1043.

1043 Relaxation of requirements in certain cases

(1) Subsection (2) applies if—
  (a) any requirement under any of sections 1037 to 1042 which is applicable is not met in relation to the seller, but
  (b) the seller proposed or agreed to the purchase in order that the requirement in section 1037(2) or 1039(4) could be met in respect of the redemption, repayment or purchase of shares owned by a person of whom the seller is an associate.

(2) So far as that result is achieved through the purchase, section 1033(2) has effect as if the requirements in sections 1037 to 1042 were met in relation to the seller.

Purchase of own shares: supplementary

1044 Advance clearance of payments by Commissioners

(1) A company may make an application under this section to the Commissioners for Her Majesty's Revenue and Customs ("the Commissioners") before making a payment on the redemption, repayment or purchase of its own shares.

(2) If, before the payment is made, the Commissioners notify the company that they are satisfied that section 1033 will apply to it, the payment is treated as one to which section 1033 applies.

(3) If, before the payment is made, the Commissioners notify the company that they are satisfied that section 1033 will not apply to it, the payment is treated as one to which section 1033 does not apply.

1045 Advance clearance: supplementary

(1) An application under section 1044—
  (a) must be in writing, and
  (b) must contain particulars of the relevant transactions.

(2) The Commissioners may by notice require the applicant to provide further particulars for the purpose of enabling them to make their decision.

(3) The power under subsection (2) must be exercised within 30 days of the receipt of—
  (a) the application, or
  (b) any further particulars previously required under subsection (2).

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(4) If a notice under subsection (2) is not complied with within 30 days, or any longer period that the Commissioners may allow, the Commissioners need not proceed further on the application.

(5) The Commissioners must notify their decision to the applicant—
  (a) within 30 days of receiving the application, or
  (b) if they give notice under subsection (2), within 30 days of the notice being complied with.

(6) If particulars provided under this section do not fully and accurately disclose all facts and circumstances material for the decision of the Commissioners, any resulting notification by the Commissioners is void.

1046 Information and returns

(1) A company which treats a payment made by it as one to which section 1033 applies must make a return to an officer of Revenue and Customs giving details of—
  (a) the payment, and
  (b) the circumstances by reason of which section 1033 is regarded as applying to it.

(2) The return must be made within 60 days after the payment.

(3) A person connected with a company must give notice to an officer of Revenue and Customs if—
  (a) the company treats a payment made by it as one to which section 1033 applies and in relation to which Condition A in that section is met, and
  (b) the person knows of any scheme or arrangement of the kind mentioned in section 1042(2) that affects the payment.

(4) The notice—
  (a) must contain particulars of the scheme or arrangement, and
  (b) must be given within 60 days after the person first knows of both the payment and the scheme or arrangement.

[F523](5) . . . . . .

[F523](6) . . . . . .

[F523](7) . . . . . .

Textual Amendments

F523 S. 1046(5)-(7) omitted (with effect in accordance with Sch. 23 para. 65 of the amending Act) by virtue of Finance Act 2011 (c. 11), **Sch. 23 paras. 64(2)(d)**, 65(1)(a) (with Sch. 23 paras. 50, 65(1)(b))

1047 Meaning of "group" and "51% subsidiary" in sections 1033 to 1047

(1) In this section and sections 1033 to 1046 "group" (except in the expression "trading group") means a company which has one or more 51% subsidiaries but is not itself a 51% subsidiary of any other company, together with those subsidiaries.

This is subject to subsection (2).

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(2) If the whole or a significant part of the business carried on by an unquoted company ("the successor company") was previously carried on by—

(a) the company making the purchase, or

(b) a company which is, apart from this subsection, a member of a group to which the company making the purchase belongs,

the successor company and any company of which it is a 51% subsidiary are treated as being members of the same group as the company making the purchase (whether or not, apart from this subsection, the company making the purchase is a member of a group).

(3) But subsection (2) does not apply if the successor company first carried on the business in question more than 3 years before the time of the purchase.

(4) For the purposes of this section and sections 1033 to 1046, a company which has ceased to be a 51% subsidiary of another company before the time of the purchase is treated as continuing to be a 51% subsidiary of that company if at the time of the purchase there exist arrangements under which it could again become such a subsidiary.

1048 Sections 1033 to 1047: other interpretation

(1) In sections 1033 to 1047—

"holding company" means a company whose business (ignoring any trade carried on by it) consists wholly or mainly of holding shares or securities of one or more companies which are its 75% subsidiaries,

"quoted company" means a company whose shares (or any class of whose shares) are listed in the official list of a stock exchange,

"shares" includes stock,

"trade" does not include dealing in shares, securities, land or futures,

"trading company" means a company whose business consists wholly or mainly of carrying on a trade or trades,

"trading group" means a group the business of whose members (taken together) consists wholly or mainly of carrying on a trade or trades, and

"unquoted company" means a company which is neither a quoted company nor a 51% subsidiary of a quoted company.

(2) In the definition of "trading group" in subsection (1) "group" means a company which has one or more 75% subsidiaries, together with those subsidiaries.

(3) References in sections 1033 to 1047 to the owner of shares are to the beneficial owner except where the shares—

(a) are settled property, or

(b) are comprised in the estate of a person who has died.

In such cases the references are to the trustees of the settlement or, as the case may be, the deceased's personal representatives.

(4) References in sections 1033 to 1047 to a payment made by a company are to be read in accordance with section 1033(6).

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Stock dividends

1049 Stock dividends

(1) This section applies to—
- (a) share capital issued by a UK resident company in lieu of a cash dividend, and
- (b) bonus share capital issued by a UK resident company in respect of shares in the company of a qualifying class.

(2) For the purposes of subsection (1)(b) shares are of a qualifying class if—
- (a) shares of that class carry the right to receive bonus share capital in the company (of the same or a different class), and
- (b) that right is conferred by the terms on which shares of that class were originally issued or by those terms as subsequently extended or otherwise varied.

(3) If the share capital is issued in a case where section 410(2), (3) or (4) of ITTOIA 2005 (stock dividend income) applies—
- (a) the share capital does not, despite paragraph C in section 1000(1) (redeemable share capital), constitute a distribution within the meaning of section 1000(1), and
- (b) the share capital is not, for the purposes of—
  - (i) section 1022 (bonus issues following repayment of share capital), or
  - (ii) section 1026 (distributions following a bonus issue),

  treated as issued "as paid up otherwise than by the receipt of new consideration".

(4) This section is subject to—
- (a) section 1050, and
- (b) paragraph 108 of Schedule 2 (special rules for share capital issued in respect of shares issued before 6 April 1975).

1050 Application of section 1049 where bonus share capital is converted etc

(1) This section applies if bonus share capital falling within section 1049(1)(b) is converted into, or exchanged for, shares in the company of a different class.

(2) In this section "replacement shares" means shares in the company issued—
- (a) in connection with the conversion or exchange, and
- (b) in consideration of the cancellation, extinguishment or acquisition by the company of the bonus share capital.

(3) Section 1049 does not apply to any replacement shares.

(4) But if section 410 of ITTOIA 2005 (stock dividend income) applied to any of the bonus share capital, subsection (5) applies to replacement shares issued in consideration of the cancellation, extinguishment or acquisition by the company of the bonus share capital to which section 410 of ITTOIA 2005 applied.

(5) The replacement shares referred to in subsection (4)—
- (a) do not, despite paragraph C in section 1000(1), constitute a distribution within the meaning of section 1000(1), and

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(b) are not, for the purposes of—
(i) section 1022 (bonus issues following repayment of share capital), or
(ii) section 1026 (distributions following a bonus issue),
treated as issued "as paid up otherwise than by the receipt of new consideration".

1051 "Bonus share capital" and "in lieu of a cash dividend"

(1) In sections 1049 and 1050 "bonus share capital" means—
(a) share capital issued otherwise than wholly for new consideration, or
(b) the part (if there is such a part) of any share capital so issued that is not properly referable to new consideration.

(2) For the purposes of section 1049(1)(a) share capital is issued by a company in lieu of a cash dividend if—
(a) it is issued in consequence of the exercise by a person of an option conferred on the person, and
(b) that option is an option to receive, in respect of shares in the company, either a dividend in cash or additional share capital.

(3) For the purposes of subsection (2), an option to receive either a dividend in cash or additional share capital is conferred on a person not only—
(a) if the person is required to choose one or the other, but also
(b) if the person is offered the one subject to a right, however expressed, to choose the other instead.

(4) The reference in subsection (2) to a person's exercise of an option includes a person's abandonment of, or failure to exercise, a right such as is mentioned in subsection (3)(b).

1052 Share capital to which section 1049 applies: returns

(1) If a company issues, in an accounting period, share capital to which section 1049 applies ("relevant share capital"), the company must make a return of the capital for each return period in which it was issued (see section 1053).

(2) The return must be made—
(a) to an officer of Revenue and Customs, and
(b) within 30 days from the end of the return period.

(3) A return made under this section for a return period must give the following information for any relevant share capital issued by the company in the period—
(a) the date on which it was issued,
(b) the date on which the company was first required to issue it (if different from the date on which it was issued),
(c) details of the terms on which it was issued, and
(d) what its cash equivalent is under section 412 of ITTOIA 2005.

(4) If it appears to an officer of Revenue and Customs that a company should have, but has not, made a return under this section for a particular return period, the officer may by notice require the company to do so.

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(5) If no relevant share capital was issued by the company in the return period, a return required to be made under subsection (4) must state that that is the case.

(6) The notice under subsection (4) must specify the period within which the return must be made.

(7) That period must be at least 30 days.

1053 Return periods

(1) For the purposes of section 1052 a company's return periods in any accounting period are the periods that begin and end as follows.

Rule 1 A return period begins at the beginning of the accounting period.

Rule 2 If one or more quarterly days fall within the accounting period (excluding the last day of the accounting period), the end of each such day is the end of a return period, and a new return period begins immediately afterwards.

Rule 3 A return period ends at the end of the accounting period.

(2) For the purposes of subsection (1) the quarterly days are 31 March, 30 June, 30 September and 31 December.

Building society payments

1054 Building society payments

(1) This section applies if—

(a) any interest, or

(b) any dividend or other distribution,

is payable in respect of shares in, or a deposit with or loan to, a building society.

(2) No part of the interest, or of the dividend or other distribution, is a distribution of the society for corporation tax purposes.

(3) See also section 372 of ITTOIA 2005 (which makes provision about the income tax treatment of building society dividends).

Modifications etc. (not altering text)

C47 S. 1054 excluded (1.3.2013) by The Building Societies (Core Capital Deferred Shares) Regulations 2013 (S.I. 2013/460), regs. 1(1), **3(1)(f)** (with reg. 1(2))

Industrial and provident society payments

1055 Industrial and provident societies: interest and share dividends

(1) Interest paid by a registered industrial and provident society in respect of a mortgage, loan, loan stock or deposit is not a distribution for corporation tax purposes.

(2) If any dividend, bonus, interest or other sum—

(a) is paid to a shareholder in a registered industrial and provident society, and

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(b) is payable by reference to the amount of the shareholder's holding in the society's share capital,

it is not a distribution for corporation tax purposes.

(3) Subsections (1) and (2) apply even if the amount in question would otherwise be a distribution by virtue of any enactment relating to corporation tax.

(4) For the purposes of this section crediting an amount counts as paying it.

(5) See also section 379(1) of ITTOIA 2005 (income tax treatment of sums payable as mentioned in subsection (2)).

1056 Dividend or bonus relating to transactions

(1) This section applies if—

(a) a dividend or bonus is granted by a registered industrial and provident society, and

(b) section 132 of CTA 2009 (dividends etc relating to transactions with an industrial and provident society) allows the sum representing the dividend or bonus to be deducted in calculating the profits of a trade.

(2) The dividend, or the bonus, is not a distribution for the purposes of the Corporation Tax Acts.

Payments made by UK agricultural or fishing co-operatives

1057 UK agricultural or fishing co-operatives: interest and share dividends

(1) Interest paid by a UK agricultural or fishing co-operative in respect of a mortgage, loan, loan stock or deposit is not a distribution for corporation tax purposes.

(2) If any dividend, bonus, interest or other sum—

(a) is paid to a shareholder in a UK agricultural or fishing co-operative, and

(b) is payable by reference to the amount of the shareholder's holding in the co-operative's share capital,

it is not a distribution for corporation tax purposes.

(3) Subsections (1) and (2) apply even if the amount in question would otherwise be a distribution by virtue of any enactment relating to corporation tax.

(4) For the purposes of this section crediting an amount counts as paying it.

(5) See also section 379(1) of ITTOIA 2005 (income tax treatment of sums payable as mentioned in subsection (2)).

1058 Meaning of "UK agricultural or fishing co-operative"

(1) In section 1057 "UK agricultural or fishing co-operative" means a co-operative association—

(a) which is established in the United Kingdom and UK resident, and

(b) whose primary object is assisting its members in—

(i) carrying on agricultural or horticultural businesses on land occupied by them in the United Kingdom, or

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(ii) carrying on businesses consisting of the catching or taking of fish or shellfish.

(2) In subsection (1) "co-operative association" means a body with a written constitution from which the Secretary of State is satisfied that it is in substance a co-operative association.

(3) For the purposes of subsection (2) the Secretary of State must have regard to the way in which the body's constitution provides for its income to be applied for its members' benefit, and all other relevant provisions.

(4) In Northern Ireland subsections (2) and (3) apply with the substitution for "the Secretary of State" of "the Department of Agriculture and Rural Development".

Supplementary provisions

1059 Associated persons

(1) This section and sections 1060 and 1061 contain the rules for determining whether a person is an associate of another (in relation to a company) for the purposes of this Chapter.

(2) Two persons living together (see section 1116) who are—
(a) a husband and wife, or
(b) civil partners of each other,
are associates of one another.

(3) If a person ("the young person") is under the age of 18—
(a) the young person is an associate of the young person's parents, and
(b) the young person's parents are associates of the young person.

(4) If a person is connected with a company—
(a) the person is an associate of the company and any company controlled by it, and
(b) the company and any company controlled by it are associates of the person.

(5) If a person—
(a) is connected with one company ("company A"), and
(b) has control of another company ("company B"),
company B is an associate of company A.

(6) If one person is accustomed to act on the directions of another in relation to the affairs of a company, the two persons are associates of one another in relation to that company.

1060 Associated persons: trustees

(1) If shares in a company are held by the trustees of a settlement then, in relation to the company—
(a) the trustees are associates of—
(i) any person who (directly or indirectly) provided property to the trustees or has made a reciprocal arrangement for another to do so,

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(ii) any person who is, by virtue of section 1059(2) or (3), an associate of a person within sub-paragraph (i), and

(iii) any person who is, or may become, beneficially entitled to a significant interest in the shares, and

(b) any such person is an associate of the trustees.

(2) Subsection (1) does not apply to shares held on trusts which relate exclusively to a registered pension scheme.

(3) Subsection (1) does not apply to shares held on trusts which—

(a) are exclusively for the benefit of—

(i) the employees, or the employees and directors, of the company referred to in subsection (1) (or of companies in a group to which that company belongs), or

(ii) their dependants, and

(b) are not wholly or mainly for the benefit of directors or their relatives.

(4) For the purposes of subsection (1) a person's interest is significant if its value is greater than 5% of the value of all the settled property, excluding any property in which the person is not and cannot become beneficially entitled to an interest.

(5) In subsection (3) "group" means a company which has one or more 51% subsidiaries, together with those subsidiaries.

1061 Associated persons: personal representatives

(1) If shares in a company are comprised in the estate of a person who has died then, in relation to the company—

(a) the deceased's personal representatives are associates of any person who is or may become beneficially entitled to a significant interest in the shares, and

(b) any such person is an associate of the personal representatives.

(2) For the purposes of subsection (1) a person's interest is significant if its value is greater than 5% of the value of all the property comprised in the estate concerned, excluding any property in which the person is not and cannot become beneficially entitled to an interest.

1062 Connected persons

(1) This section contains the rules for determining whether a person is connected with a company for the purposes of this Chapter.

(2) A person is connected with a company if the person directly or indirectly possesses, or is entitled to acquire, more than 30% of—

(a) the issued ordinary share capital of the company,

(b) the loan capital and the issued share capital of the company, or

(c) the voting power in the company.

(3) If a person—

(a) acquired, or became entitled to acquire, loan capital of a company in the ordinary course of a business which includes the lending of money, and

(b) takes no part in the management or conduct of the company,

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the person's interest in that loan capital is ignored for the purposes of subsection (2).

(4) A person is connected with a company if the person (directly or indirectly)—
- (a) possesses, or
- (b) is entitled to acquire,

rights that would, in the event of a winding up or in any other circumstances, entitle the person to receive more than 30% of the assets of the company which would then be available for distribution to equity holders of the company.

(5) For the purposes of subsection (4)—
- (a) "equity holder" is to be read in accordance with sections 158 to 164, and
- (b) the percentage of the assets of a company to which a person would be entitled is to be determined in accordance with sections 166 and 167.

(6) In section 166 as it applies for the purposes of subsection (4)—
- (a) references to company A are to be read as including a person who is not a company, and
- (b) references to a winding up are to be read as including references to any other circumstances in which assets of a company are available for distribution to equity holders.

(7) A person who has control of a company is connected with it.

1063 Section 1062: supplementary

(1) References in section 1062 to the loan capital of a company are to any debt incurred by the company—
- (a) for any money borrowed or capital assets acquired by the company,
- (b) for any right to receive income created in favour of the company, or
- (c) for consideration the value of which to the company was (at the time when the debt was incurred) substantially less than the amount of the debt.

(2) For the purposes of subsection (1)(c) the amount of the debt includes any premium on the debt.

(3) For the purposes of section 1062 a person is treated as entitled to acquire anything which the person—
- (a) is entitled to acquire at a future date, or
- (b) will at a future date be entitled to acquire.

(4) For the purposes of this section and section 1062 a person is assumed to have the rights and powers of the person's associates (as well as the person's own rights and powers).

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CHAPTER 4

SPECIAL RULES FOR DISTRIBUTIONS MADE BY CERTAIN COMPANIES

Close companies

1064 Certain expenses of close companies treated as distributions

(1) This section applies if a close company incurs an expense in, or in connection with, the provision for any participator of—
  (a) living or other accommodation,
  (b) entertainment,
  (c) domestic or other services, or
  (d) other benefits or facilities of any kind.

(2) The company is treated for the purposes of the Corporation Tax Acts as making a distribution to the participator of an amount equal to—
  (a) the expense, less
  (b) any part of the expense that the participator makes good to the company (so far as not already deducted in calculating the amount of the expense in accordance with subsection (3)).

(3) For the purposes of subsection (2)(a), the amount of the expense is equal to what would, under Chapter 6, 7 or 10 of Part 3 of ITEPA 2003, be the cash equivalent of the resultant benefit to the participator.

(4) Subsection (2) is subject to sections 1065 and 1066, and to any other express exceptions.

1065 Exception for benefits treated as employment income etc

Section 1064 does not apply to expenses incurred—
  (a) in the provision for a person or persons mentioned in the first column of the table in this subsection of anything mentioned in the corresponding entry in the second column of the table, or
  (b) in connection with such provision.

Person benefiting	***Benefit***
A person employed in employment to which Part 3 of ITEPA 2003 (benefits etc treated as employment income) applies without the exclusion in section 216 of that Act (provisions not applicable to lower-paid employment).	Such benefits as are mentioned in— (a) Chapter 6, 7 or 10 of Part 3 of ITEPA 2003 (cars and vans, loans and other benefits), or (b) section 223 of that Act (payments on account of director's tax).
Any person.	Living accommodation which is (within the meaning of Chapter 5 of Part 3 of ITEPA 2003) provided by reason of the person's employment.

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The spouse or civil partner, children or dependants of a person ("the employee") employed by the company.	A pension, annuity, lump sum, gratuity or other like benefit to be given on the employee's death or retirement.

1066 Exception for certain transfers between UK resident companies

(1) Section 1064 does not apply if the company and the participator are both UK resident and—
  (a) one is a 51% subsidiary of the other or both are 51% subsidiaries of a third company which is also UK resident, and
  (b) the benefit to the participator arises on a transfer of assets or liabilities—
    (i) by the company to the participator, or
    (ii) to the company by the participator,
  or in connection with such a transfer.

(2) In determining whether one body corporate ("A") is a 51% subsidiary of another ("B") for the purposes of subsection (1), B is treated as not being the owner of—
  (a) any share capital which it owns directly in a body corporate as trading stock,
  (b) any share capital which it owns indirectly, and which is owned directly by a body corporate as trading stock, or
  (c) any share capital which it owns directly or indirectly in a body corporate that is not UK resident.

(3) For the purposes of subsection (2) share capital owned by a body is owned as trading stock if (and only if) a profit on the sale of the shares would be treated as a trading receipt of the body's trade.

1067 Companies acting in concert or under arrangements

(1) Subsection (2) applies if—
  (a) each of two or more close companies makes a payment,
  (b) each of those payments is made to a person who—
    (i) is not a participator in the company making the payment, but
    (ii) is a participator in another of those companies, and
  (c) the companies are acting in concert or under arrangements made by any person.

(2) For the purposes of sections 1064 to 1066, each payment made to a person as mentioned in subsection (1) is treated as if it had been made to that person by the company in which that person is a participator.

(3) Subsections (1) and (2) apply, with any necessary adaptations, in relation to the giving of any consideration, and to the provision of any facilities, as they apply in relation to the making of a payment.

1068 Meaning of "participator" in sections 1064 to 1067

(1) In sections 1064 to 1067 "participator" has the same meaning as in Part 10 (see section 454).

(2) Section 1069 extends the meaning given by subsection (1).

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1069 Additional persons treated as participators

(1) In sections 1064 to 1067 any reference to a participator includes an associate of a participator.

(2) If a company ("A") controls another company ("B"), a person who—
  (a) is a participator in A, or
  (b) is an associate of a participator in A,
  is treated for the purposes of sections 1064 to 1067 as being a participator in B as well.

(3) In this section the following expressions have the same meaning as in Part 10 (close companies)—
  (a) "associate" (see section 448),
  (b) "control" (see sections 450 and 451), and
  (c) "participator" (see section 454).

Companies carrying on a mutual business

1070 Companies carrying on a mutual business

(1) Subsection (2) applies if a company carries on a business ("the mutual business") of—
  (a) mutual trading,
  (b) mutual insurance, or
  (c) other mutual business.

(2) The provisions of the Corporation Tax Acts relating to distributions apply to relevant distributions made by the company only so far as they are made out of—
  (a) profits of the company which are brought into charge to corporation tax, or
  (b) franked investment income.
  This is subject to subsection (4).

(3) In subsection (2) "relevant distributions" means distributions which—
  (a) are made to persons participating in the mutual activities of the mutual business, and
  (b) derive from those activities.

(4) If a company carries on a mutual life assurance business, the provisions of the Corporation Tax Acts relating to distributions do not apply to distributions made by the company which—
  (a) are made to persons participating in the mutual activities of the business, and
  (b) derive from those activities.

(5) Subject to subsections (1) to (4), the fact that—
  (a) a distribution made by a company carrying on a mutual business is derived from the mutual activities of that business, and
  (b) the recipient is a company participating in those activities,
  does not affect the character that the payment or other receipt has for the purposes of corporation tax or income tax in the hands of the recipient.

(6) In subsection (2) "profits" means income and chargeable gains.

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Companies not carrying on a business

1071 Companies not carrying on a business

(1) This section applies if a company meets conditions A, B and C.

(2) Condition A is that the company does not carry on, and has never carried on—
- (a) a trade, or
- (b) a business of holding investments.

(3) Condition B is that the company does not hold, and has never held, an office.

(4) Condition C is that the company is not established for purposes which include—
- (a) carrying on a trade,
- (b) carrying on a business of holding investments, or
- (c) holding an office.

(5) The provisions of the Corporation Tax Acts relating to distributions apply to distributions made by the company only so far as the distributions are made out of—
- (a) profits of the company which are brought into charge to corporation tax, or
- (b) franked investment income.

(6) In subsection (5) "profits" means income and chargeable gains.

Members of a 90% group

1072 Members of a 90% group

(1) In the Corporation Tax Acts "distribution", in relation to a company which is a member of a 90% group, includes anything distributed out of assets of the company (whether in cash or otherwise) in respect of shares in or securities of another company in the group.

(2) Subsection (1) is without prejudice to paragraph B in section 1000(1) (distributions, other than dividends, in respect of shares) as extended by section 1113(1).

(3) Nothing in subsection (1) requires a company to be treated as making a distribution to any other company which is in the same group and is UK resident.

(4) In this section "90% group" means a company and all its 90% subsidiaries.

CHAPTER 5

DEMERGERS

Introduction

1073 Key terms etc

(1) The following are key terms in this Chapter—
- (a) "chargeable payment" (see sections 1088 and 1089),
- (b) "company concerned in an exempt distribution" (see section 1090),

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(c) "the distributing company" (see section 1079),
(d) "exempt distribution" (defined in section 1075), and
(e) "relevant company" (defined in section 1080).

(2) For a further rule about chargeable payments made within 5 years after an exempt distribution see section 1028 (rule that they are not treated as repayments of capital for certain purposes).

1074 Purpose of provisions about demergers

(1) The purpose of the provisions about demergers is to facilitate certain transactions by which trading activities carried on by a single company or group are divided so as to be carried on—
(a) by two or more companies not belonging to the same group, or
(b) by two or more independent groups.

(2) In subsection (1) "the provisions about demergers" means—
(a) this Chapter, except section 1078 (and section 1075, so far as relating to section 1078), and
(b) section 1028 (chargeable payments not treated as repayments of share capital).

Exempt distributions

1075 Exempt distributions

(1) An exempt distribution is not a distribution of a company for the purposes of the Corporation Tax Acts.

(2) In this Chapter "exempt distribution" means a distribution which is an exempt distribution by virtue of section 1076, 1077 or 1078.

1076 Transfer of shares in subsidiaries to members

A distribution is an exempt distribution if—
(a) it consists of the transfer by a company to all or any of its members of shares in one or more companies which are its 75% subsidiaries,
(b) each of conditions A to F in sections 1081 and 1082 is met in respect of the distribution, and
(c) if the company making the transfer is a 75% subsidiary of another company, conditions L and M in section 1085 are met in respect of the distribution.

1077 Transfer by distributing company and issue of shares by transferee company

(1) This section applies to a distribution which consists of both of the following—
(a) the transfer by a company to one or more other companies ("the transferee company or companies") of—
(i) a trade or trades, or
(ii) shares in one or more companies which are 75% subsidiaries of the company making the transfer, and

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(b) the issue of shares by the transferee company or companies to all or any of the members of the company making the transfer.

(2) A distribution to which this section applies is an exempt distribution if—

(a) each of conditions A to D in section 1081 and each of conditions G to K in section 1083 is met in respect of the distribution, and

(b) if the company making the transfer is a 75% subsidiary of another company, conditions L and M in section 1085 are met in respect of the distribution.

1078 Division of business in a cross-border transfer

(1) This section applies to a distribution which consists of—

(a) the transfer of part of a business by a company to one or more other companies ("the transferee company or companies"), and

(b) the issue of shares by the transferee company or companies to the members of the company making the transfer.

(2) A distribution to which this section applies is an exempt distribution if either—

(a) each of the tests in paragraphs (a) to (f) of section 140A(1A) of TCGA 1992 (cross-border transfers: division of UK business) is met in relation to it, or

(b) each of the tests in paragraphs (a) to (e) of section 140C(1A) of TCGA 1992 (cross-border transfers: division of non-UK business) is met in relation to it.

1079 "The distributing company"

References in this Chapter to the distributing company are—

(a) in the case of a distribution falling within paragraph (a) of section 1076, to the company that makes the transfer of shares mentioned in that paragraph,

(b) in the case of a distribution falling within section 1077(1), to the company that makes the transfer mentioned in section 1077(1)(a), and

(c) in the case of a distribution falling within section 1078(1), to the company that makes the transfer of part of a business mentioned in section 1078(1)(a).

1080 Meaning of "relevant company"

(1) This section gives the meaning of "relevant company" in this Chapter.

(2) In the case of a distribution falling within section 1076(a) the relevant companies are—

(a) the distributing company, and

(b) each subsidiary whose shares are transferred as mentioned in section 1076(a).

(3) In the case of a distribution falling within section 1077(1), the relevant companies are—

(a) the distributing company,

(b) each transferee company mentioned in section 1077(1)(a), and

(c) each subsidiary whose shares are transferred as mentioned in section 1077(1)(a)(ii).

(4) In the case of a distribution falling within section 1078(1), the relevant companies are—

(a) the distributing company, and

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(b) each transferee company mentioned in section 1078(1)(a).

Exemption by virtue of section 1076 or 1077: conditions

1081 General conditions

(1) Condition A is that each relevant company must be resident in a member State at the time of the distribution.

(2) Condition B is that at the time of the distribution—
- (a) the distributing company must be either a trading company or a member of a trading group, and
- (b) each subsidiary whose shares are transferred as mentioned in section 1076(a) or 1077(1)(a)(ii) must be either a trading company or the holding company of a trading group.

(3) Condition C is that the distribution must be made wholly or mainly for the purpose of benefiting some or all of the trading activities which—
- (a) before the distribution are carried on by a single company or group, and
- (b) after the distribution will be carried on by two or more companies or groups.

(4) Condition D is that the distribution must not form part of a scheme or arrangement to which subsection (5) applies.

(5) This subsection applies to any scheme or arrangement the main purpose or one of the main purposes of which is—
- (a) the avoidance of tax,
- (b) the making of a chargeable payment (see section 1088),
- (c) the making, in pursuance of a scheme or arrangements with a company ("A") or with any of its main participators, of what would be a chargeable payment if A were an unquoted company,
- (d) the acquisition by any person or persons, other than the members of the distributing company, of control of—
  - (i) the distributing company,
  - (ii) any other relevant company, or
  - (iii) any company which belongs to the same group as the distributing company or any other relevant company,
- (e) the cessation of a trade after the distribution, or
- (f) the sale of a trade after the distribution.

(6) Subsections (5)(b) and (c) are without prejudice to the width of subsection (5)(a).

(7) In subsection (5)—

"group" means a company which has one or more 51% subsidiaries together with those subsidiaries,

"main participators" has the meaning given by section 1089(1)(b), and

"tax" includes stamp duty and stamp duty land tax.

1082 Conditions for distributions within section 1076(a)

(1) Condition E is that the shares mentioned in section 1076(a)—

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(a) must not be redeemable,
(b) must constitute the whole or substantially the whole of the distributing company's holding of the ordinary share capital of the subsidiary, and
(c) must confer the whole or substantially the whole of the distributing company's voting rights in the subsidiary.

(2) Condition F is that the distributing company must after the distribution be either—
(a) a trading company, or
(b) the holding company of a trading group.

But see subsections (3) and (4).

(3) Condition F need not be met if the distributing company is a 75% subsidiary of another company.

(4) Condition F need not be met if—
(a) the transfer mentioned in section 1076(a) relates to two or more 75% subsidiaries of the distributing company, and
(b) the distributing company is dissolved without there having been after the distribution any net assets of the company available for distribution on a winding up or otherwise.

1083 Conditions for distributions within section 1077(1)

(1) Condition G is that if a trade is transferred, the distributing company must either—
(a) not retain any interest in that trade, or
(b) retain only a minor interest in it.

(2) Condition H is that if shares in a subsidiary are transferred those shares—
(a) must constitute the whole or substantially the whole of the distributing company's holding of the ordinary share capital of the subsidiary, and
(b) must confer the whole or substantially the whole of the distributing company's voting rights in the subsidiary.

(3) Condition I is that the only or main activity of the transferee company, or each transferee company, after the distribution must be—
(a) the carrying on of the trade, or
(b) the holding of the shares transferred to it.

(4) Condition J is that the shares issued by the transferee company or each transferee company—
(a) must not be redeemable,
(b) must constitute the whole or substantially the whole of its issued ordinary share capital, and
(c) must confer the whole or substantially the whole of the voting rights in that company.

(5) Condition K is that the distributing company must after the distribution be either a trading company or the holding company of a trading group.

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1084 Cases where condition K does not apply

(1) Condition K need not be met if the distributing company is a 75% subsidiary of another company.

(2) Condition K need not be met if—
- (a) there are two or more transferee companies each of which has transferred to it—
  - (i) a trade, or
  - (ii) shares in a separate 75% subsidiary of the distributing company, and
- (b) the distributing company is dissolved without there having been after the distribution any net assets of the company available for distribution on a winding up or otherwise.

1085 Conditions to be met if the distributing company is a 75% subsidiary

(1) Condition L is that the group (or, if more than one, the largest group) to which the distributing company belongs at the time of the distribution must be a trading group.

(2) Condition M is that the distribution ("the original distribution") must be followed by one or more other distributions ("further distributions") falling within section 1076(a) or 1077(1)(a)(ii) which—
- (a) are exempt distributions, and
- (b) comply with subsection (3).

(3) To comply with this subsection a further distribution must result in members of the holding company of the group (or, if more than one, the largest group) to which the distributing company belonged at the time of the original distribution becoming members of—
- (a) the transferee company or each transferee company to which a trade was transferred by the distributing company,
- (b) the subsidiary or each subsidiary whose shares were transferred by the distributing company, or
- (c) a company (other than the holding company) of which the company or companies mentioned in paragraph (a) or (b) are 75% subsidiaries.

Chargeable payments

1086 Chargeable payments connected with exempt distributions

(1) This section applies if a chargeable payment is made within 5 years after an exempt distribution.

(2) The amount or value of the payment is chargeable—
- (a) to income tax, or
- (b) to corporation tax under the charge to corporation tax on income.

(3) An amount charged to income tax under subsection (2) is treated for income tax purposes as an amount of income.

(4) Income tax under subsection (2) is charged on the full amount or value of the payment made in the tax year.

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(5) The person liable for any income tax charged under subsection (2) is the person receiving or entitled to the payment.

(6) References in this section and sections 1087 to 1094 to a payment include—
  (a) the assumption of a liability, and
  (b) any other transfer of money's worth.

1087 Chargeable payments not deductible in calculating profits

If a chargeable payment is made within 5 years after an exempt distribution, the chargeable payment is treated as a distribution for the purposes of section 1305 of CTA 2009 (no deduction for distributions in calculation of a company's profits).

1088 Meaning of "chargeable payment"

(1) In this Chapter "a chargeable payment" means any payment which—
  (a) meets each of conditions A to D in this section, or
  (b) is a chargeable payment by virtue of section 1089.

(2) Condition A is that the payment is made by a company concerned in an exempt distribution and is made (directly or indirectly)—
  (a) to a member of that company, or
  (b) to a member of any other company concerned in the exempt distribution.

(3) Condition B is that the payment is made—
  (a) in connection with the shares in the company making the payment,
  (b) in connection with the shares in any other company concerned in the exempt distribution, or
  (c) in connection with any transaction affecting the shares mentioned in paragraph (a) or (b).

(4) Condition C is that the payment—
  (a) is not made for genuine commercial reasons, or
  (b) forms part of a tax avoidance scheme.

(5) Condition D is that the payment—
  (a) is not a distribution or an exempt distribution, and
  (b) is not made to a company that belongs to the same group as the company making the payment.

(6) In this section and section 1089—

"tax avoidance scheme" means a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax, and

"tax" includes stamp duty and stamp duty land tax.

(7) This section is to be read with section 1089.

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1089 Meaning of "chargeable payment": unquoted companies

(1) This section applies if a company concerned in an exempt distribution is an unquoted company and a person makes a payment (to any person) in pursuance of a scheme or arrangement made—
- (a) with the unquoted company, or
- (b) if the unquoted company—
  - (i) is under the control of 5 or fewer persons (its "main participators"), and
  - (ii) is not excepted by subsection (6),

  with any of the unquoted company's main participators.

(2) The payment is a chargeable payment if it meets each of conditions B1 to D1.

(3) Condition B1 is that the payment is made—
- (a) in connection with the shares in the company (if it is a company) making the payment,
- (b) in connection with the shares in any company concerned in the exempt distribution, or
- (c) in connection with any transaction affecting the shares mentioned in paragraph (a) or (b).

(4) Condition C1 is that the payment—
- (a) is not made for genuine commercial reasons, or
- (b) forms part of a tax avoidance scheme.

(5) Condition D1 is that the payment (if made by a company)—
- (a) is not a distribution or an exempt distribution, and
- (b) is not made to a company that belongs to the same group as that company.

(6) The unquoted company is excepted for the purposes of subsection (1)(b)(ii) if—
- (a) it is under the control of (and only of) a company, and
- (b) that company is not under the control of 5 or fewer persons.

1090 Meaning of "company concerned in an exempt distribution"

(1) For the purposes of this Chapter the companies concerned in an exempt distribution are—
- (a) any relevant company (as defined in section 1080), and
- (b) any other company which was connected with any relevant company for the whole or any part of the affected period.

(2) In this section "the affected period" means the period—
- (a) beginning with the exempt distribution, and
- (b) ending with the making of the payment in question.

(3) For the purposes of this section, if a company ("A") is connected with another company ("B") in the affected period, A is also connected in that period with any company with which B is connected (with or without the help of this subsection) in that period.

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Advance clearance

1091 Advance clearance of distributions

(1) Before a distribution is made, the distributing company may apply under this section to the Commissioners for Her Majesty's Revenue and Customs ("the Commissioners").

(2) If, before the distribution is made, the Commissioners notify that company that they are satisfied that it will be an exempt distribution, the distribution is treated as an exempt distribution.

1092 Advance clearance of payments

(1) If—

(a) a person intending to make a payment applies under this section to the Commissioners, and

(b) before the payment is made the Commissioners notify the person that they are satisfied that the payment meets the conditions set out in subsection (2),

the payment is not treated as a chargeable payment.

(2) The conditions are that the payment—

(a) will be made for genuine commercial reasons, and

(b) will not form part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax.

(3) In subsection (2) "tax" includes stamp duty and stamp duty land tax.

(4) A company which—

(a) becomes connected with another company, or

(b) ceases to be connected with another company,

may make an application under subsection (1) with respect to any payments that may be made by it at any time after becoming or ceasing to be connected with the company in question (whether or not there is any present intention to make any payments).

(5) If the Commissioners give a notification on an application made by virtue of subsection (4), no payment to which the notification relates is to be treated as a chargeable payment merely because the company is or has been connected with the other company.

1093 Requirements relating to applications for clearance

(1) Any application under section 1091 or 1092—

(a) must be in writing, and

(b) must contain particulars of the relevant transactions.

(2) The Commissioners may by notice require a person making an application under section 1091 or 1092 to provide further particulars for the purpose of enabling them to make their decision.

(3) The power under subsection (2) must be exercised within 30 days of the receipt of—

(a) the application, or

(b) any further particulars previously required under subsection (2).

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(4) If a notice under subsection (2) is not complied with within 30 days, or any longer period that the Commissioners may allow, the Commissioners need not proceed further on the application.

1094 Decision of the Commissioners or tribunal

(1) The Commissioners must notify their decision to the person making the application under section 1091 or 1092—
  (a) within 30 days of receiving the application, or
  (b) if they give a notice under section 1093(2), within 30 days of when the notice is complied with.

(2) Subsection (3) applies if the Commissioners—
  (a) (in the case of an application under section 1091) notify the applicant that they are not satisfied that the distribution will be an exempt distribution,
  (b) (in the case of an application under section 1092) notify the applicant that they are not satisfied that a payment meets the conditions set out in section 1092(2), or
  (c) (in either case) do not notify their decision to the applicant within the time required by subsection (1).

(3) The applicant may require the Commissioners to transmit the application, together with any notice given and further particulars provided under section 1093(2), to the tribunal.

(4) In that event, any notification by the tribunal has effect for the purposes of this section as if it were a decision of the Commissioners.

(5) The right under subsection (3) must be exercised within 30 days of—
  (a) the notification of the Commissioners' decision, or
  (b) the time by which the Commissioners are required to notify their decision to the applicant.

(6) If any particulars provided under section 1093 in relation to an application under section 1091 do not fully and accurately disclose all facts and circumstances material for the decision of the Commissioners or tribunal, any resulting notification that the Commissioners are satisfied, or that the tribunal is satisfied, that the distribution will be an exempt distribution is void.

(7) If any particulars provided under section 1093 in relation to an application under section 1092 do not fully and accurately disclose all facts and circumstances material for the decision of the Commissioners or tribunal, any resulting notification that the Commissioners are satisfied, or that the tribunal is satisfied, that the payment in question meets the conditions set out in section 1092(2) is void.

Information and returns

1095 Exempt distributions: returns

(1) A company which makes an exempt distribution must make a return to an officer of Revenue and Customs.

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(2) The return must give details of—
  (a) the distribution, and
  (b) the circumstances by reason of which it is exempt.

(3) The return must be made within 30 days after the distribution.

1096 Chargeable payments etc: returns

(1) A person must make a return to an officer of Revenue and Customs if—
  (a) the person makes a chargeable payment within 5 years after the making of an exempt distribution, and
  (b) the chargeable payment consists of a transfer of money's worth.

(2) The return under subsection (1) must give details of—
  (a) the transaction effecting the transfer,
  (b) the name and address of each recipient,
  (c) the value of what is transferred to each recipient, and
  (d) any payment of money which accompanies the transfer and is itself a chargeable payment.

(3) A person must make a return to an officer of Revenue and Customs if, within 5 years after the making of an exempt distribution, the person makes a payment or transfer of money's worth which—
  (a) is made for genuine commercial reasons and does not form part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax, but
  (b) would be a chargeable payment if that were not so.

(4) In subsection (3)(a) “tax” includes stamp duty and stamp duty land tax.

(5) Subsection (3) does not apply if a notification under section 1092(5) (payment not to be treated as a chargeable payment merely because of a connection between two companies) has effect in relation to the payment or transfer.

(6) In the case of a transfer, the return under subsection (3) must give the following information—
  (a) details of the transaction which effects the transfer,
  (b) the name and address of each recipient,
  (c) the value of what is transferred to each recipient, and
  (d) a statement of the circumstances by reason of which the transfer is not a chargeable payment.

(7) In the case of a payment, the return under subsection (3) must give the following information—
  (a) the name and address of each recipient,
  (b) the amount of the payment made to each recipient, and
  (c) a statement of the circumstances by reason of which the payment is not a chargeable payment.

(8) The return under subsection (1) or (3) must be made within 30 days after the transfer or payment.

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[F524]1097 Information about person for whom a payment is received

. . . . . .

Textual Amendments

F524 S. 1097 omitted (with effect in accordance with Sch. 23 para. 65 of the amending Act) by virtue of Finance Act 2011 (c. 11), **Sch. 23 paras. 64(2)(e)**, 65(1)(a) (with Sch. 23 paras. 50, 65(1)(b))

Supplementary

1098 Meaning of "unquoted company"

(1) A company is an unquoted company for the purposes of this Chapter if none of its shares is—

(a) listed in the Official List of the Stock Exchange, and

(b) dealt in on the Stock Exchange regularly or from time to time.

(2) But a company is not an unquoted company for the purposes of this Chapter if it is under the control of (and only of) one or more companies which are not unquoted companies for those purposes.

(3) The reference in subsection (1) to shares does not include debenture stock, loan stock, preferred shares or preferred stock.

1099 Other definitions etc

(1) In this Chapter—

"control" has the same meaning as in Part 10 (see sections 450 and 451),

"group" means a company which has one or more 75% subsidiaries together with those subsidiaries (but there is a separate definition of "group" for the purposes of section 1081(5)(d)),

"holding company" means a company whose business (ignoring any trade carried on by it) consists wholly or mainly of holding shares or securities of one or more companies which are its 75% subsidiaries,

"member" where the reference is to a member of a company—

(a) in section 1088(2) includes a person who is a member otherwise than by virtue of holding shares forming part of the ordinary share capital of the company, but

(b) elsewhere only includes persons who are members by virtue of holding shares forming part of the ordinary share capital of the company,

"shares" includes stock,

"trade", except in subsection (4), does not include dealing in shares, securities, land, trades or commodity futures,

"trading activities" is to be read in accordance with the above definition of "trade",

"trading company" means a company whose business consists wholly or mainly of carrying on a trade or trades, and

"trading group" means a group the business of whose members (taken together) consists wholly or mainly of carrying on a trade or trades.

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(2) In determining for the purposes of sections 1076(a), 1077(1), 1082(4) or 1084(2) whether a company ("A") whose shares are transferred by the distributing company is a 75% subsidiary of the distributing company, ignore any share capital of A which is owned indirectly by the distributing company.

(3) In determining for the purposes of this Chapter whether one company is a 75% subsidiary of another, the other company is treated as not being the owner of—
   (a) any share capital which it owns directly in a body corporate as trading stock, or
   (b) any share capital which it owns indirectly and which is owned directly by a body corporate as trading stock.

(4) For the purposes of subsection (3) share capital owned by a person is owned as trading stock if (and only if) a profit on a sale of the shares would be treated as a trading receipt of that person's trade.

CHAPTER 6

INFORMATION AND RETURNS: FURTHER PROVISIONS

General duties to provide information

1100 Qualifying distributions: right to request a statement

(1) If a company makes a qualifying distribution, the recipient is entitled to ask the company to provide a statement in writing showing—
   (a) the amount or value of the distribution, and
   (b) the amount of the tax credit (under section 1109(2) below or section 397(1) of ITTOIA 2005) to which an eligible person would be entitled in respect of the distribution.

(2) For the purposes of subsection (1)(b) it does not matter whether or not the recipient is in fact an eligible person.

(3) The request must be in writing.

(4) The company which makes the distribution has a duty to comply with a request under subsection (1), and that duty is enforceable by the recipient.

(5) In this section "eligible person" means a person who is entitled to a tax credit in respect of the dividend.

(6) This section does not affect the operation of section 1104 (duty to provide tax certificates).

1101 Non-qualifying distributions etc: returns and information

(1) If a company makes a distribution which is not a qualifying distribution, it must make a return to an officer of Revenue and Customs.

(2) The return must—
   (a) contain particulars of the transaction giving rise to the distribution,

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(b) state the name and address of the recipient, or each recipient, of the distribution, and

(c) state the amount or value of the distribution received by the recipient, or each recipient.

(3) The return must be made—

(a) within 14 days from the end of the accounting period in which the distribution is made, or

(b) if the date on which the distribution is made does not fall in an accounting period, within 14 days from that date.

(4) If it is not apparent whether or not a transaction gives rise to a distribution which is not a qualifying distribution, the company—

(a) must make a return to an officer of Revenue and Customs containing particulars of the transaction, and

(b) must do so within the time limit that would be given by subsection (3) if the transaction did give rise to such a distribution.

(5) If subsection (4) applies, an officer of Revenue and Customs may serve a notice on the company requiring it to provide any further information in relation to the transaction that the officer reasonably requires.

(6) If it appears to an officer of Revenue and Customs that particulars of any transaction should have been, but have not been, included in a return under subsection (1) or (4), the officer may serve a notice on the company requiring it to provide any information relating to the transaction that the officer reasonably requires.

(7) The company must provide the information required under subsection (5) or (6) within the time specified in the notice.

1102 Non-qualifying distributions etc: additional information

(1) This section—

(a) gives officers of Revenue and Customs power to require persons to provide information for the purposes of section 1101, and

(b) applies only if section 1101(1), (4) or (6) applies.

F525(2) . . . . . .

(3) Subsections (4) and (5) apply if a company ("the issuing company") appears to an officer of Revenue and Customs to be a close company.

(4) The officer may, for the purposes of section 1101, by notice require the issuing company to provide the officer with—

(a) particulars of any bearer securities issued by the company,

(b) the names and addresses of the persons to whom the securities were issued, and

(c) details of the amounts issued to each person.

(5) The officer may, for the purposes of section 1101, by notice require—

(a) any person to whom bearer securities were issued by the company, or

(b) any person to or through whom bearer securities issued by the company were subsequently sold or transferred,

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to provide any further information that the officer reasonably requires with a view to enabling the officer to find out the names and addresses of the persons beneficially interested in the securities.

(6) In this section—

"securities" includes—

(a) shares, stocks, bonds, debentures and debenture stock, and

(b) any promissory note or other instrument evidencing indebtedness to a loan creditor of the company, and

"loan creditor" has the meaning given by section 453.

Textual Amendments

F525 S. 1102(2) omitted (with effect in accordance with Sch. 23 para. 65 of the amending Act) by virtue of Finance Act 2011 (c. 11), **Sch. 23 paras. 64(2)(f)**, 65(1)(a) (with Sch. 23 paras. 50, 65(1)(b))

1103 Power to modify or replace sections 1101 and 1102

(1) The Commissioners for Her Majesty's Revenue and Customs may by regulations modify, supplement or replace any of the provisions of sections 1101 and 1102 for the purpose stated in subsection (2).

(2) That is the purpose of requiring UK resident companies to—

(a) make returns, and

(b) give information,

to an officer of Revenue and Customs in respect of distributions made by the companies which are not qualifying distributions.

(3) References in this Act and in any other enactment to sections 1101 and 1102 are to be read as including a reference to any regulations made under this section.

(4) Regulations under this section may authorise the Commissioners to make special arrangements as regards the matters specified in subsection (5) if in their opinion there are circumstances justifying it.

(5) Those matters are—

(a) the repayment of income tax borne by a company, and

(b) the payment to a company of amounts in respect of any tax credit to which it is entitled.

(6) Regulations under this section may—

(a) make different provision for different descriptions of companies and for different circumstances, and

(b) contain incidental, supplemental, consequential and transitional provision and savings.

(7) No regulations may be made under this section unless a draft of the statutory instrument containing them has been laid before and approved by a resolution of the House of Commons.

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Companies and nominees required to provide tax certificates

1104 Company distributing dividend or interest: duty to provide tax certificates

(1) This section applies if a distribution consisting of any dividend or interest is made by a company which is—
  (a) a company as defined in section 1(1) of the Companies Act 2006, or
  (b) a company created by letters patent or by or in pursuance of an Act.

(2) If the company makes a payment of dividend or interest into a bank or building society account held by any person the company must, within a reasonable period, send a tax certificate (see section 1106) to either—
  (a) the bank or building society, or
  (b) the person holding the account.

(3) If the company makes a payment of dividend or interest to a person without paying it into a bank or building society account, the company must, within a reasonable period, send a tax certificate to that person.

1105 Duties of nominees

(1) This section applies if—
  (a) a tax certificate is received by a person under section 1104(2)(b) or (3), and
  (b) the sum concerned (or part of it)—
    (i) is paid to that person as nominee for another person, or
    (ii) is paid into the account of that person as nominee for another person.

(2) If the nominee pays the sum (or the part concerned) into a bank or building society account held by the other person the nominee must, within a reasonable period, send a tax certificate to either—
  (a) the bank or building society, or
  (b) the other person.

(3) If the nominee pays the sum (or the part concerned) to the other person without paying it into a bank or building society account held by that person, the nominee must, within a reasonable period, send a tax certificate to that person.

1106 Meaning of "tax certificate" etc

(1) This section gives the meaning of "bank", "send" and "tax certificate" in sections 1104 and 1105.

(2) "Bank" has the meaning given by section 1120.

(3) "Send" means send by post.

(4) "Tax certificate", in relation to a payment of dividend or interest, means a written statement showing—
  (a) the amount of the dividend or interest paid,
  (b) the date of the payment, and

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(c) the amount of the tax credit (under section 1109(2) below or section 397(1) of ITTOIA 2005) to which an eligible person would be entitled in respect of the dividend or interest.

(5) In subsection (4)(c) "eligible person" means a person who is entitled to a tax credit in respect of the dividend or interest.

(6) But for the purposes of subsection (4)(c) it does not matter whether or not any person is in fact entitled to a tax credit in respect of the dividend or interest.

1107 Penalties

(1) A person who fails to comply with section 1104(2) or (3) or section 1105(2) or (3) is liable to a penalty of £60 for each offence.

(2) But, in respect of offences connected with any one distribution of dividends or interest, the total amount of any penalties imposed on a person under subsection (1) must not exceed £600.

1108 Alternative means of compliance with sections 1104 and 1105

(1) The Commissioners for Her Majesty's Revenue and Customs may by regulations provide that a person may comply with section 1104(2) or (3) or section 1105(2) or (3) either—

(a) by acting in accordance with the subsection concerned, or

(b) by acting in accordance with rules contained in the regulations.

(2) Regulations under subsection (1) may make different provision for different circumstances.

CHAPTER 7

TAX CREDITS

1109 Tax credits for certain recipients of exempt qualifying distributions

(1) This section applies if a company makes a qualifying distribution which is exempt for the purposes of Part 9A of CTA 2009 (company distributions).

(2) If the person receiving the distribution is a UK resident company, that company is entitled to a tax credit equal to one-ninth of the amount or value of the distribution (but see subsection (5)).

(3) If the distribution is, or is treated under any provision of the Tax Acts as, the income of a person ("P") other than the recipient ("R"), P (not R) is treated as receiving it for the purposes of subsection (2) (and so P (not R) is entitled to a tax credit if P falls within subsection (2)).

(4) Section **[**[F526]1102(3)**]** to (6) (power to obtain certain information from close companies and others) applies for the purposes of this section as it applies for the purposes of section 1101.

(5) This section is subject to the following provisions—

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F527(a) . . . . . .
F527(b) . . . . . .
F527(c) . . . . . .
[F528(ca) section 814D (no tax credits for recipient of manufactured dividend), and]
(d) section 219(4B) of FA 1994 (no tax credit for distributions in respect of assets in Lloyd's member's premium trust fund).

Textual Amendments

F526 Word in s. 1109(4) substituted (with effect in accordance with Sch. 23 para. 65 of the amending Act) by Finance Act 2011 (c. 11), **Sch. 23 paras. 64(3)**, 65(1)(a) (with Sch. 23 paras. 50, 65(1)(b))

F527 S. 1109(5)(a)-(c) omitted (1.1.2014) by virtue of Finance Act 2013 (c. 29), **Sch. 29 paras. 44(2)**, 52

F528 S. 1109(5)(ca) inserted (1.1.2014) by Finance Act 2013 (c. 29), **Sch. 29 paras. 44(3)**, 52

1110 Recovery of overpaid tax credit etc

(1) If an officer of Revenue and Customs discovers that a payment or set-off of tax credit should not have been made or is excessive, the officer may act in accordance with subsection (3) or (4).

(2) For the purposes of subsection (1) it does not matter whether the payment or set-off was excessive when made or became so later.

(3) The officer may make any assessment that in the officer's judgement is needed to recover—
(a) any corporation tax that should have been paid, or
(b) any payment of tax credit that should not have been made.

(4) More generally, the officer may make any assessment that in the officer's judgement is needed to secure that the liabilities to corporation tax (and any liabilities to interest on corporation tax) of the persons concerned are what they would have been if only the correct set-offs and payments had been made.

(5) Subsection (6) applies if—
(a) interest on a payment of tax credit comprised in any franked investment income has been paid under section 826 of ICTA, and
(b) interest should not have been paid on the payment, or should only have been paid on part of it.

(6) An officer of Revenue and Customs may make an assessment for recovering the interest, so far as it should not have been paid.

1111 Section 1110: supplementary

(1) If—
(a) an assessment is made under section 1110 to recover tax credit paid to a company in respect of franked investment income received in an accounting period, and
(b) more than one payment of tax credit was made in respect of that period,

then as far as possible a sum recovered is treated as relating to a payment of tax credit made later rather than to one made earlier.

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(2) TMA 1970 applies to an assessment under section 1110 for recovering a payment of tax credit, or of interest on a tax credit—
  (a) as if it were an assessment to corporation tax for the accounting period in respect of which the payment was claimed, and
  (b) as if the payment represented a loss of tax to the Crown.

(3) Any sum charged by an assessment such as is mentioned in subsection (2) is due within 14 days after the notice of assessment is issued.

(4) The duty to comply with subsection (3) is subject to any appeal against the assessment.

CHAPTER 8

INTERPRETATION OF PART

1112 Arrangements between companies

(1) This section applies if two or more companies enter into arrangements to make distributions to each other's members.

(2) For the purposes mentioned in subsection (3) all parties concerned (however many) may be treated as if anything done by any one of those companies had been done by any one of the others.

(3) The purposes are those of this Part except sections 1054 to 1058 and 1064 to 1071.

Modifications etc. (not altering text)

C48 S. 1112 applied by 2004 c. 12, s. 196L(3) (as inserted (with effect in accordance with Sch. 13 para. 17 of the amending Act) by Finance Act 2012 (c. 14), **Sch. 13 para. 15** (with Sch. 13 Pt. 4))

1113 "In respect of shares"

(1) In this Part "in respect of shares in the company", in relation to a company which is a member of a 90% group, means in respect of shares in—
  (a) that company, or
  (b) any other company in the group.

(2) Nothing in subsection (1) requires a company to be treated as making a distribution to any company which is in the same group and is UK resident.

(3) For the purposes of this Part a thing is regarded as done in respect of a share if it is done to a person—
  (a) as the holder of the share, or
  (b) as the person who held the share at a particular time.

(4) For the purposes of this Part a thing is also regarded as done in respect of a share if it is done in pursuance of a right granted, or an offer made, in respect of a share.

(5) Subsections (3) and (4) do not affect the meaning of "in respect of shares" in section 1054 (building society payments).

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(6) In this section "90% group" means a company and all its 90% subsidiaries.

Modifications etc. (not altering text)

C49 S. 1113 applied by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 2 para. 78A(5) (as inserted (with effect in accordance with s. 1184(1) of the amending Act) by 2010 c. 4, s. 1184(1), **Sch. 1 para. 471(3)** (with Sch. 2))

C50 S. 1113 applied by Income Tax (Trading and Other Income) Act 2005 (c. 5), s. 414A(7)(a) (as inserted (with effect in accordance with s. 1184(1) of the amending Act) by 2010 c. 4, s. 1184(1), **Sch. 1 para. 461** (with Sch. 2))

1114 "In respect of securities"

(1) In this Part "in respect of securities of the company", in relation to a company which is a member of a 90% group, means in respect of securities of—

(a) that company, or

(b) any other company in the group.

(2) Nothing in subsection (1) requires a company to be treated as making a distribution to any company which is in the same group and is UK resident.

(3) For the purposes of this Part, except where the context otherwise requires—

(a) interest paid by a company on money advanced without the issue of a security for the advance, or

(b) other consideration given by a company for the use of money so advanced,

is treated as if paid, or given, in respect of a security issued for the advance by the company.

(4) For the purposes of this Part a thing is regarded as done in respect of a security if it is done to a person—

(a) as the holder of the security, or

(b) as the person who held the security at a particular time.

(5) For the purposes of this Part a thing is also regarded as done in respect of a security if it is done in pursuance of a right granted, or an offer made, in respect of a security.

(6) In this section "90% group" means a company and all its 90% subsidiaries.

1115 "New consideration"

(1) In this Part, unless the context otherwise requires—

(a) "new consideration" means consideration not provided (directly or indirectly) out of assets of the company, and

(b) in particular, "new consideration" does not include amounts retained by the company by way of capitalising a distribution.

But paragraph (a) is subject to the other subsections of this section.

(2) Subsection (3) applies if—

(a) share capital has been issued at a premium representing new consideration, and

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(b) any part ("the applied part") of that premium is afterwards applied in paying up share capital.

(3) The applied part of the premium is also treated as new consideration for that share capital.

But the premium is not so treated so far as it has been taken into account under section 1025(2) so as to enable a distribution to be treated as a repayment of share capital.

(4) The general rule is that no consideration derived from the value of any share capital or security of a company, or from voting or other rights in a company, is to be treated for the purposes of this Part as new consideration.

(5) The general rule in subsection (4) applies unless the consideration consists of—

(a) money or value received from the company as a qualifying distribution,

(b) money received from the company as a payment which for the purposes of this Part constitutes a repayment of the share capital in question, or of the principal secured by the security in question, or

(c) the giving up of the right to the share capital or security on its cancellation, extinguishment or acquisition by the company.

This is subject to subsection (6).

(6) No amount is regarded as new consideration by virtue of subsection (5)(b) or (c) so far as it exceeds—

(a) any new consideration received by the company for the issue of the share capital or security in question, or

(b) in the case of share capital which constituted a qualifying distribution on issue, the nominal value of that share capital.

Modifications etc. (not altering text)

C51 S. 1115 applied by Income Tax (Trading and Other Income) Act 2005 (c. 5), s. 414A(7)(b) (as inserted (with effect in accordance with s. 1184(1) of the amending Act) by 2010 c. 4, s. 1184(1), **Sch. 1 para. 461** (with Sch. 2))

1116 References to married persons, or civil partners, living together

Individuals who are married to, or are civil partners of, each other are treated for the purposes of this Part as living together unless—

(a) they are separated under an order of a court of competent jurisdiction,

(b) they are separated by a deed of separation, or

(c) they are in fact separated in circumstances in which the separation is likely to be permanent.

1117 Other interpretation

(1) In this Part, except where the context otherwise requires—

"security" includes securities not creating or evidencing a charge on assets, and

"share" includes stock, and any other interest of a member in a company.

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(2) Subsection (1) does not affect the meaning of "share" in section 1054 (building society payments).

(3) For the purposes of this Part a distribution is treated as made out of assets of a company if the cost falls on the company.

(4) For the purposes of this Part consideration is treated as provided out of assets of a company if the cost falls on the company.

(5) References in this Part to issuing share capital as paid up also apply to the paying up of any issued share capital.

(6) If securities—
   (a) are issued at a price less than the amount repayable on them, and
   (b) are not listed on a recognised stock exchange,

   then, for the purposes of this Part the principal secured is not taken to exceed the issue price, unless the securities are issued on terms reasonably comparable with the terms of issue of securities listed on a recognised stock exchange.

(7) For the purposes of this Part, if something done in respect of shares is done by reference to share holdings at a particular time, it is regarded as done—
   (a) to the then holders of the shares, or
   (b) to the personal representatives of any holder then dead.

(8) For the purposes of this Part, if something done in respect of securities is done by reference to holdings of securities at a particular time, it is regarded as done—
   (a) to the then holders of the securities, or
   (b) to the personal representatives of any holder then dead.

PART 24

CORPORATION TAX ACTS DEFINITIONS ETC

CHAPTER 1

DEFINITIONS

1118 Introduction to Chapter

(1) This Chapter contains definitions for the purposes of the Corporation Tax Acts.

(2) Section 1119 lists the definitions and either sets them out in full or indicates where they are set out in full.

(3) The definitions set out in sections 1120, 1129, 1138 and 1139 apply only for the purposes of the provisions of the Corporation Tax Acts that apply them.

(4) The definitions set out in sections 1122 and 1124 apply only for the purposes of provisions of the Corporation Tax Acts—
   (a) which apply them, or

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(b) to which they are applied (see section 1316 of CTA 2009 and section 1176 of this Act).

(5) The other definitions apply for the purposes of the Corporation Tax Acts unless otherwise indicated (whether expressly or by implication).

1119 The definitions

The definitions referred to in section 1118(2) are—

"accounting date" means the date to which a company makes up its accounts,

"accounting period" is to be read in accordance with Chapter 2 of Part 2 of CTA 2009,

"Act" includes Northern Ireland legislation,

"allowable loss", in relation to corporation tax in respect of chargeable gains, has the same meaning as in TCGA 1992 (see section 288(1) of that Act),

"authorised unit trust" has the same meaning as in Chapter 2 of Part 13 (see sections 616 and 619),

"bank" is to be read in accordance with section 1120,

"basic rate" means the rate of income tax determined in pursuance of section 6(2) of ITA 2007,

"body of persons" means any body politic, corporate or collegiate and any company, fraternity, fellowship and society of persons whether corporate or not corporate,

"branch or agency" means any factorship, agency, receivership, branch or management,

"building society" means a building society within the meaning of the Building Societies Act 1986,

"capital allowance" means any allowance under CAA 2001,

"the Capital Allowances Act" means CAA 2001,

"the charge to corporation tax on income" has the same meaning as in CTA 2009 (see section 2(3) of that Act),

"chargeable gain" has the same meaning as in TCGA 1992,

"chargeable period" means an accounting period of a company or a tax year,

"chargeable profits", in relation to a non-UK resident company carrying on a trade in the United Kingdom through a permanent establishment, has the meaning given by section 19 of CTA 2009,

F529 …

"close company" is to be read in accordance with Chapter 2 of Part 10 (see in particular section 439),

"company" has the meaning given by section 1121,

"connected", in relation to two persons being connected with one another, is to be read in accordance with sections 1122 and 1123,

"control", in relation to the control of a body corporate or a partnership, is to be read in accordance with section 1124,

"derivative contract" has the same meaning as in Part 7 of CTA 2009,

"distribution" has the meaning given by Chapters 2 to 5 of Part 23,

"farming" has the meaning given by section 1125,

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"the financial year 2010" means the financial year beginning with April 2010 (and any corresponding expression in which a year is similarly mentioned is to be read in the same way),

"for accounting purposes" has the meaning given by section 1127(4),

"forestry" is to be read in accordance with section 1125,

"franked investment income" has the meaning given by section 1126,

"generally accepted accounting practice" has the meaning given by section 1127(1) and (3),

"grossing up" is to be read in accordance with section 1128,

"group relief" has the meaning given by section 97(2),

"hire-purchase agreement" is to be read in accordance with section 1129,

"income" includes anything to which the charge to corporation tax on income applies,

"international accounting standards" has the meaning given by section 1127(5),

"investment trust" has the meaning given by section 1158,

"loan relationship" has the same meaning as in Part 5 of CTA 2009,

"local authority" has the meaning given by section 1130,

"local authority association" has the meaning given by section 1131,

"market gardening" has the meaning given by section 1125(5),

"non-UK resident" means not resident in the United Kingdom (and references to a non-UK resident are to a person not resident there),

"notice" means notice in writing,

"offshore installation" has the meaning given by sections 1132 and 1133,

"oil and gas exploration and appraisal" has the meaning given by section 1134,

"ordinary share capital", in relation to a company, means all the company's issued share capital (however described), other than capital the holders of which have a right to a dividend at a fixed rate but have no other right to share in the company's profits,

"overseas property business" has the meaning given by Chapter 2 of Part 4 of CTA 2009,

"period of account"—

(a) in relation to a person, means any period for which the person draws up accounts, and

(b) in relation to a trade or other business, means any period for which the accounts of the business are drawn up,

"permanent establishment", in relation to a company, is to be read in accordance with Chapter 2 of this Part,

"personal representatives", in relation to a person who has died, means—

(a) in the United Kingdom, persons responsible for administering the estate of the deceased, and

(b) in a territory outside the United Kingdom, those persons having functions under its law equivalent to those of administering the estate of the deceased,

"property investment LLP" has the meaning given by section 1135,

"qualifying charitable donation" has the same meaning as in Part 6 (see section 190),

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"qualifying distribution" has the meaning given by section 1136,

"recognised stock exchange" has the meaning given by section 1137,

"registered industrial and provident society" means—

(a) a society registered or treated as registered under the Industrial and Provident Societies Act 1965 or the Industrial and Provident Societies Act (Northern Ireland) 1969 (c. 24 (N.I.)), or

(b) an SCE formed in accordance with Council Regulation (EC) No 1435/2003 on the Statute for a European Cooperative Society,

"registered pension scheme" has the meaning given by section 150(2) of FA 2004,

"research and development" is to be read in accordance with section 1138,

"retail prices index" means—

(a) the general index of retail prices (for all items) published by the Statistics Board, or

(b) if that index is not published for a relevant month, any substituted index or index figures published by that Board,

"scheme administrator", in relation to a pension scheme, has the meaning given by section 270 of FA 2004 (but see also sections 271 to 274 of that Act),

"settled property" (together with references to property comprised in a settlement) is to be read in accordance with section 466 of ITA 2007 (as a result of the application of that section for the purposes of the Corporation Tax Acts by section 1169 below),

"settlor" is to be read in accordance with sections 467 to 473 of ITA 2007 (as a result of the application of those sections for the purposes of the Corporation Tax Acts by section 1169 below),

"51% subsidiary", "75% subsidiary" and "90% subsidiary", in relation to bodies corporate, is to be read in accordance with Chapter 3 of this Part,

"tax", if neither income tax nor corporation tax is specified, means either of those taxes,

"tax advantage" has the meaning given by section 1139,

"tax credit" means a tax credit under section 1109,

"tax year" means a year for which income tax is charged (see section 4(2) of ITA 2007),

"the tax year 2010-11" means the tax year beginning on 6 April 2010 (and any corresponding expression in which two years are similarly mentioned is to be read in the same way),

"total profits", in relation to an accounting period of a company, is to be read in accordance with section 4(3) and (4),

"trade" includes any venture in the nature of trade,

"tribunal" means the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal,

"UK generally accepted accounting practice" has the meaning given by section 1127(2),

"UK property business" has the meaning given by Chapter 2 of Part 4 of CTA 2009,

"UK resident" means resident in the United Kingdom (and references to a UK resident are to a person resident there),

"unauthorised unit trust" has the meaning given by section 1140,

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"unit holder" has the same meaning as in Chapter 2 of Part 13 (see sections 616 and 619),

"unit trust scheme" has the meaning given by section 237 of FISMA 2000,

"venture capital trust" and "VCT" have the same meaning as in Part 6 of ITA 2007,

"woodlands" has the meaning given by section 1125(4),

"year of assessment" means a tax year, and

"the year 2010-11" means the tax year 2010-11 (and any corresponding expression in which two years are similarly mentioned is to be read in the same way).

Textual Amendments

F529 Definition of "charity" in s. 1119 omitted (with effect in accordance with art. 21 of the commencing S.I.) by virtue of Finance Act 2010 (c. 13), **Sch. 6 paras. 27(6)**, 34(2); S.I. 2012/736, art. 21

1120 "Bank"

(1) This section has effect for the purposes of the provisions of the Corporation Tax Acts which apply this section.

(2) "Bank" means—

(a) the Bank of England,

(b) a person who has permission under **[**[F530]Part 4A**]** of FISMA 2000 to accept deposits (but see subsection (3) for exclusions),

(c) an EEA firm of the kind mentioned in paragraph 5(b) of Schedule 3 to FISMA 2000 which has permission under paragraph 15 of that Schedule to accept deposits (as a result of qualifying for authorisation under paragraph 12(1) of that Schedule),

(d) the European Investment Bank, and

(e) an international organisation designated as a bank for the purposes of this section by an order made by the Treasury.

(3) The reference to a person who has permission under **[**[F531] Part 4A**]** of FISMA 2000 to accept deposits does not include—

(a) a building society,

(b) a society registered within the meaning of the Friendly Societies Act 1974 or incorporated under the Friendly Societies Act 1992,

(c) a society registered as a credit union under the Industrial and Provident Societies Act 1965 or the Credit Unions (Northern Ireland) Order 1985 (S.I. 1985/1205 (N.I. 12)), or

(d) an insurance company within the meaning of section 275 of FA 2004.

(4) The Treasury may designate an international organisation for the purposes of this section only if the United Kingdom is a member of the organisation.

(5) An order under subsection (2)(e) may include provision for a designation to have effect only in relation to the application of this section by a provision specified in the order.

Status: *Point in time view as at 01/04/2014.*
Changes to legislation: *Corporation Tax Act 2010 is up to date with all changes known to be in force on or before 12 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Textual Amendments

F530 Words in s. 1120(2)(b) substituted (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments) Order 2013 (S.I. 2013/636), art. 1(2), **Sch. para. 12**

F531 Words in s. 1120 substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 18 para. 129(4)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

Modifications etc. (not altering text)

C52 S. 1120 applied by 2009 c. 4, s. 18D(4) (as inserted (19.7.2011) by Finance Act 2011 (c. 11), **Sch. 13 paras. 4**, 31)

1121 "Company"

(1) In the Corporation Tax Acts "company" means any body corporate or unincorporated association, but does not include a partnership, **[**[F532]a co-ownership scheme (as defined by section 235A of the Financial Services and Markets Act 2000),**]** a local authority or a local authority association.

(2) Subsection (1) needs to be read with section 617 (under which the trustees of an authorised unit trust are treated for certain purposes as a UK resident company).

Textual Amendments

F532 Words in s. 1121(1) inserted (6.6.2013) by The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (S.I. 2013/1388), regs. 1, **5** (with reg. 24)

1122 "Connected" persons

(1) This section has effect for the purposes of the provisions of the Corporation Tax Acts which apply this section (or to which this section is applied).

(2) A company is connected with another company if—

(a) the same person has control of both companies,

(b) a person ("A") has control of one company and persons connected with A have control of the other company,

(c) A has control of one company and A together with persons connected with A have control of the other company, or

(d) a group of two or more persons has control of both companies and the groups either consist of the same persons or could be so regarded if (in one or more cases) a member of either group were replaced by a person with whom the member is connected.

(3) A company is connected with another person ("A") if—

(a) A has control of the company, or

(b) A together with persons connected with A have control of the company.

(4) In relation to a company, any two or more persons acting together to secure or exercise control of the company are connected with—

(a) one another, and

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(b) any person acting on the directions of any of them to secure or exercise control of the company.

(5) An individual ("A") is connected with another individual ("B") if—

(a) A is B's spouse or civil partner,
(b) A is a relative of B,
(c) A is the spouse or civil partner of a relative of B,
(d) A is a relative of B's spouse or civil partner, or
(e) A is the spouse or civil partner of a relative of B's spouse or civil partner.

(6) A person, in the capacity as trustee of a settlement, is connected with—

(a) any individual who is a settlor in relation to the settlement,
(b) any person connected with such an individual,
(c) any close company whose participators include the trustees of the settlement,
(d) any non-UK resident company which, if it were UK resident, would be a close company whose participators include the trustees of the settlement,
(e) any body corporate controlled (within the meaning of section 1124) by a company within paragraph (c) or (d),
(f) if the settlement is the principal settlement in relation to one or more sub-fund settlements, a person in the capacity as trustee of such a sub-fund settlement, and
(g) if the settlement is a sub-fund settlement in relation to a principal settlement, a person in the capacity as trustee of any other sub-fund settlements in relation to the principal settlement.

(7) A person who is a partner in a partnership is connected with—

(a) any partner in the partnership,
(b) the spouse or civil partner of any individual who is a partner in the partnership, and
(c) a relative of any individual who is a partner in the partnership.

(8) But subsection (7) does not apply in relation to acquisitions or disposals of assets of the partnership pursuant to genuine commercial arrangements.

Modifications etc. (not altering text)

C53 S. 1122 applied (27.7.2010) by Finance (No. 2) Act 2010 (c. 31), **Sch. 2 para. 8**

C54 S. 1122 applied by 2003 c. 14, Sch. 6B para. 6(8) (as inserted (with effect in accordance with Sch. 22 para. 9 of the amending Act) by Finance Act 2011 (c. 11), **Sch. 22 para. 3**)

C55 S. 1122 applied (with effect in accordance with reg. 1(2) of the amending S.I.) by The Investment Trust (Approved Company) (Tax) Regulations 2011 (S.I. 2011/2999), regs. 1(1), **34(3)(b)**

C56 S. 1122 applied by 1981 c. 63, Sch. 4B para. 8(6) (as inserted (with effect in accordance with Sch. 25 para. 12 of the amending Act) by Finance Act 2012 (c. 14), **Sch. 25 para. 9**)

C57 S. 1122 applied by 2000 c. 17, Sch. 6 para. 42B(7) (as inserted (with effect in accordance with Sch. 32 para. 19 of the amending Act) by Finance Act 2012 (c. 14), **Sch. 32 para. 15**)

C58 S. 1122 applied by 1981 c. 63, Sch. 1A para. 8(6) (as inserted (with effect in accordance with Sch. 25 para. 12 of the amending Act) by Finance Act 2012 (c. 14), **Sch. 25 para. 7**)

C59 S. 1122 applied by 1994 c. 23, Sch. 9 Pt. 2 Note (19) (as inserted (1.10.2012) by Finance Act 2012 (c. 14), **Sch. 26 paras. 5(6)**, 7(1))

Status: *Point in time view as at 01/04/2014.*
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C60 S. 1122 applied by S.I. 2005/1868 reg. 1(3) (as substituted (1.11.2012) by The Stamp Duty Land Tax Avoidance Schemes (Prescribed Descriptions of Arrangements) (Amendment) Regulations 2012 (S.I. 2012/2395), regs. 1(1), **4**)

C61 S. 1122 applied by 2000 c. 17, Sch. 6 paras. 42C(7), 152B(5) (as inserted (retrospective to 26.3.2013) by Finance Act 2013 (c. 29), **Sch. 42 paras. 14**, 19, 21)

C62 S. 1122 applied by 2003 c. 14, Sch. 2A para. 20 (as inserted (with effect in accordance with Sch. 39 para. 11 of the amending Act) by Finance Act 2013 (c. 29), **Sch. 39 para. 3**)

C63 S. 1122 applied (with modifications) (17.7.2013) by Finance Act 2013 (c. 29), **ss. 136(6)**, 172

C64 S. 1122 applied (with modifications) by 2003 c. 14, Sch. 4A para. 5A(10) (as inserted (with effect in accordance with Sch. 40 para. 8 of the amending Act) by Finance Act 2013 (c. 29), **Sch. 40 para. 2(4)**)

1123 "Connected" persons: supplementary

(1) In section 1122 and this section—

"company" includes any body corporate or unincorporated association, but does not include a partnership (and see also subsection (2)),

"control" is to be read in accordance with sections 450 and 451 (except where otherwise indicated),

"principal settlement" has the meaning given by paragraph 1 of Schedule 4ZA to TCGA 1992,

"relative" means brother, sister, ancestor or lineal descendant,

"settlement" has the same meaning as in Chapter 5 of Part 5 of ITTOIA 2005 (see section 620 of that Act), and

"sub-fund settlement" has the meaning given by paragraph 1 of Schedule 4ZA to TCGA 1992.

(2) For the purposes of section 1122—

(a) a unit trust scheme is treated as if it were a company, and

(b) the rights of the unit holders are treated as if they were shares in the company.

(3) For the purposes of section 1122 "trustee", in the case of a settlement in relation to which there would be no trustees apart from this subsection, means any person—

(a) in whom the property comprised in the settlement is for the time being vested, or

(b) in whom the management of that property is for the time being vested.

Section 466(4) of ITA 2007 (which applies for the purposes of the Corporation Tax Acts as a result of section 1169 below) does not apply for the purposes of this subsection.

(4) If any provision of section 1122 provides that a person ("A") is connected with another person ("B"), it also follows that B is connected with A.

Modifications etc. (not altering text)

C65 S. 1123 applied (with effect in accordance with reg. 1(2) of the amending S.I.) by The Investment Trust (Approved Company) (Tax) Regulations 2011 (S.I. 2011/2999), regs. 1(1), **34(3)(b)**

Status: *Point in time view as at 01/04/2014.*
Changes to legislation: *Corporation Tax Act 2010 is up to date with all changes known to be in force on or before 12 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

1124 "Control"

(1) This section has effect for the purposes of the provisions of the Corporation Tax Acts which apply this section (or to which this section is applied).

(2) In relation to a body corporate ("company A"), "control" means the power of a person ("P") to secure—
  (a) by means of the holding of shares or the possession of voting power in relation to that or any other body corporate, or
  (b) as a result of any powers conferred by the articles of association or other document regulating that or any other body corporate,

  that the affairs of company A are conducted in accordance with P's wishes.

(3) In relation to a partnership, "control" means the right to a share of more than half the assets, or of more than half the income, of the partnership.

Modifications etc. (not altering text)
C66 S. 1124 applied (19.7.2011) by Finance Act 2011 (c. 11), Sch. 13 paras. 31, **33(4)**

1125 "Farming" and related expressions

(1) In the Corporation Tax Acts "farming" means the occupation of land wholly or mainly for the purposes of husbandry, but does not include market gardening (see subsection (5)).

(2) In subsection (1) "husbandry" includes—
  (a) hop growing, and
  (b) the breeding and rearing of horses and the grazing of horses in connection with those activities.

(3) For the purposes of the Corporation Tax Acts the cultivation of short rotation coppice is regarded as husbandry and not as forestry.

(4) In the Corporation Tax Acts "woodlands" does not include land on which short rotation coppice is cultivated.

(5) In the Corporation Tax Acts "market gardening" means the occupation of land as a garden or nursery for the purpose of growing produce for sale.

(6) For the purposes of this section "short rotation coppice" means a perennial crop of tree species planted at high density, the stems of which are harvested above ground level at intervals of less than 10 years.

(7) In the application of this section for the purposes of paragraph 26 of Schedule 15 to FA 2000—
  (a) both references to the occupation of land, and the reference to land on which short rotation coppice is cultivated, refer to land in the United Kingdom, and
  (b) the reference to the cultivation of such coppice refers to its cultivation in the United Kingdom.

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1126 "Franked investment income"

(1) In the Corporation Tax Acts "franked investment income" means income of a UK resident company which consists of a distribution in respect of which the company is entitled to a tax credit.

(2) Accordingly, a reference in the Corporation Tax Acts to the amount of any franked investment income is to the total of the amount or value of the distribution and the amount of the tax credit.

(3) In the Corporation Tax Acts a reference to franked investment income received by a company includes a reference to franked investment income received by another person on behalf of, or in trust for, the company.

(4) But a reference in the Corporation Tax Acts to franked investment income received by a company does not include a reference to franked investment income received by the company on behalf of, or in trust for, another person.

1127 "Generally accepted accounting practice" and related expressions

(1) In the Corporation Tax Acts "generally accepted accounting practice" means UK generally accepted accounting practice.

This is subject to subsection (3).

(2) In the Corporation Tax Acts "UK generally accepted accounting practice"—

(a) means generally accepted accounting practice in relation to accounts of UK companies (other than IAS accounts) that are intended to give a true and fair view, and

(b) has the same meaning in relation to—

(i) individuals,

(ii) entities other than companies, and

(iii) companies that are not UK companies,

as it has in relation to UK companies.

(3) In relation to the affairs of a company or other entity that prepares IAS accounts, in the Corporation Tax Acts "generally accepted accounting practice" means generally accepted accounting practice in relation to IAS accounts.

(4) In the Corporation Tax Acts "for accounting purposes" means for the purposes of accounts drawn up in accordance with generally accepted accounting practice.

(5) In the Corporation Tax Acts "international accounting standards" has the same meaning as in Regulation (EC) No 1606/2002 of the European Parliament and the Council of 19 July 2002 on the application of international accounting standards.

(6) If the European Commission has in accordance with that Regulation adopted an international accounting standard with modifications, then as regards matters covered by that standard—

(a) generally accepted accounting practice with respect to IAS accounts is to be regarded as permitting the use of the standard either with or without modifications, and

(b) accounts prepared on either basis are to be regarded for the purposes of the Corporation Tax Acts as prepared in accordance with international accounting standards.

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(7) In this section—

"IAS accounts" means accounts prepared in accordance with international accounting standards, and

"UK companies" means companies incorporated or formed under the law of a part of the United Kingdom.

Modifications etc. (not altering text)

C67 S. 1127 applied (with modifications) (19.7.2011) by Finance Act 2011 (c. 11), **s. 53(6)**

C68 S. 1127 applied (26.3.2015 with effect in accordance with s. 116(1) of the amending Act) by Finance Act 2015 (c. 11), **s. 87(8)**

1128 "Grossing up"

(1) In the Corporation Tax Acts references to grossing up by reference to a rate of tax are to calculating the amount ("the grossed up amount") which after deduction of income tax at that rate would equal the amount to be grossed up ("the net amount").

(2) The grossed up amount is the sum of the net amount and the tax deducted.

(3) The grossed up amount may also be expressed as—

$$GA = NA + \left(NA \times \frac{R}{100 - R}\right)$$

where—
GA is the grossed up amount,
NA is the net amount, and
R is the percentage rate of tax by reference to which the net amount is to be grossed up.

1129 "Hire-purchase agreement"

(1) This section has effect for the purposes of the provisions of the Corporation Tax Acts which apply this section.

(2) A hire-purchase agreement is an agreement in whose case conditions A, B and C are met.

(3) Condition A is that under the agreement goods are bailed (or in Scotland hired) in return for periodical payments by the person to whom they are bailed (or hired).

(4) Condition B is that under the agreement the property in the goods will pass to the person to whom they are bailed (or hired) if the terms of the agreement are complied with and one or more of the following events occurs—

(a) the exercise of an option to purchase by that person,

(b) the doing of another specified act by any party to the agreement,

(c) the happening of another specified event.

(5) Condition C is that the agreement is not a conditional sale agreement.

(6) In subsection (5) "conditional sale agreement" means an agreement for the sale of goods under which—

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(a) the purchase price or part of it is payable by instalments, and
(b) the property in the goods is to remain in the seller (even though they are to be in the possession of the buyer) until conditions specified in the agreement are met (whether as to the payment of instalments or otherwise).

1130 "Local authority"

(1) In the Corporation Tax Acts "local authority", in relation to England and Wales, means—
(a) a billing authority as defined in section 1(2) of the Local Government Finance Act 1992,
(b) a precepting authority as defined in section 69(1) of that Act,
(c) a body with power to issue a levy (by virtue of regulations under section 74 of the Local Government Finance Act 1988),
(d) a body with power to issue a special levy (by virtue of regulations under section 75 of that Act),
(e) a fire and rescue authority in Wales constituted by a scheme under section 2 of the Fire and Rescue Services Act 2004 or a scheme to which section 4 of that Act applies,
(f) an authority with power to make or determine a rate, or
(g) a residuary body established by order under section 22(1) of the Local Government Act 1992.

(2) In the Corporation Tax Acts "local authority", in relation to Scotland, means—
(a) a council constituted under section 2 of the Local Government etc (Scotland) Act 1994,
(b) a joint board or committee within the meaning of the Local Government (Scotland) Act 1973, or
(c) an authority with power to requisition any sum from a council such as is mentioned in paragraph (a).

(3) In the Corporation Tax Acts "local authority", in relation to Northern Ireland, means a district council constituted under section 1 of the Local Government Act (Northern Ireland) 1972 (c. 9 (N.I.)).

(4) In this section "rate" means a rate—
(a) whose proceeds are applicable for public local purposes, and
(b) which is leviable by reference to the value of land or property.

1131 "Local authority association"

(1) In the Corporation Tax Acts "local authority association" means any incorporated or unincorporated association which meets conditions A and B.

(2) Condition A is that all of its members are local authorities, groups of local authorities or local authority associations.

(3) Condition B is that its purpose, or primary purpose, is to protect and further the general interests of local authorities or any description of local authorities.

(4) For the purposes of condition A, if a member ("M") of a local authority association is a representative of, or is appointed by, a local authority, group of local authorities or a

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local authority association, the authority, group or association concerned (rather than M) is to be treated as a constituent member of the local authority association.

1132 "Offshore installation"

(1) In the Corporation Tax Acts "offshore installation" means a structure which is, is to be, or has been, put to a relevant use while in water (see subsections (3) and (4)).

(2) But a structure is not an offshore installation if—
- (a) it has permanently ceased to be put to a relevant use,
- (b) it is not, and is not to be, put to any other relevant use, and
- (c) since permanently ceasing to be put to a relevant use, it has been put to a use which is not relevant.

(3) A use is a relevant use if it is—
- (a) for the purposes of exploiting mineral resources by means of a well,
- (b) for the purposes of exploration with a view to exploiting mineral resources by means of a well,
- (c) for the storage of gas in or under the shore or the bed of any waters,
- (d) for the recovery of gas so stored,
- (e) for the conveyance of things by means of a pipe, or
- (f) mainly for the provision of accommodation for individuals who work on or from a structure which is, is to be, or has been, put to any of the above uses while in water.

(4) For the purposes of this section references to a structure being put to a use while in water are to the structure being put to a use while—
- (a) standing in any waters,
- (b) stationed (by whatever means) in any waters, or
- (c) standing on the foreshore or other land intermittently covered with water.

(5) In this section "structure" includes a ship or other vessel.

1133 Regulations about the meaning of "offshore installation"

(1) The Treasury may by regulations make provision as to the meaning of "offshore installation" in the Corporation Tax Acts.

(2) The regulations may—
- (a) add to, amend or repeal any provision of section 1132,
- (b) make different provision for different purposes, and
- (c) contain incidental, supplemental, consequential and transitional provision and savings.

1134 "Oil and gas exploration and appraisal"

(1) In the Corporation Tax Acts "oil and gas exploration and appraisal" means activities carried out for the purpose of—
- (a) searching for petroleum anywhere in an area,
- (b) ascertaining a petroleum-bearing area's extent or characteristics, or
- (c) ascertaining its reserves of petroleum,

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so that it may be determined whether the petroleum is suitable for commercial exploitation.

(2) In this section "petroleum" has the meaning given by section 1 of the Petroleum Act 1998.

1135 "Property investment LLP"

(1) In the Corporation Tax Acts "property investment LLP" means a limited liability partnership—
  (a) whose business consists wholly or mainly in the making of investments in land, and
  (b) the principal part of whose income is derived from investments in land.

(2) Whether a limited liability partnership is a property investment LLP is determined for each period of account of the partnership.

1136 "Qualifying distribution"

(1) In the Corporation Tax Acts "qualifying distribution" means any distribution, except—
  (a) one which is a distribution for corporation tax purposes only because it falls within paragraph C or D in section 1000(1) (redeemable share capital or security issued in respect of shares in, or securities of, the company), or
  (b) a distribution which is derived from a distribution that falls within paragraph (a).

(2) A distribution made by a company ("A") is derived from a distribution that falls within subsection (1)(a) if it consists of share capital or a security which A has received (directly or indirectly) from another company ("B") which issued the share capital or security by way of a distribution that falls within subsection (1)(a).

1137 "Recognised stock exchange"

(1) In the Corporation Tax Acts "recognised stock exchange" means—
  (a) any market of a recognised investment exchange which is for the time being designated as a recognised stock exchange for the purposes of section 1005 of ITA 2007 by an order made by the Commissioners for Her Majesty's Revenue and Customs, and
  (b) any market outside the United Kingdom which is for the time being so designated.

(2) References in the Corporation Tax Acts to securities which are listed on a recognised stock exchange are to securities—
  (a) which are admitted to trading on that exchange, and
  (b) which are included in the official UK list or are officially listed in a qualifying country outside the United Kingdom in accordance with provisions corresponding to those generally applicable in EEA states.

(3) For this purpose "qualifying country outside the United Kingdom" means any country outside the United Kingdom in which there is a recognised stock exchange.

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(4) References in the Corporation Tax Acts to securities which are included in the official UK list are to securities which are included in the official list (within the meaning of Part 6 of FISMA 2000) in accordance with the provisions of that Part.

(5) In this section—

"recognised investment exchange" has the same meaning as in FISMA 2000 (see section 285 of that Act), and

"securities" includes shares and stock.

1138 "Research and development"

(1) This section has effect for the purposes of the provisions of the Corporation Tax Acts which apply this section.

(2) "Research and development" means activities that fall to be treated as research and development in accordance with generally accepted accounting practice.

This is subject to subsections (3) and (4).

(3) Activities that are "research and development" for the purposes of section 1006 of ITA 2007 as a result of regulations under that section are "research and development" for the purposes of this section.

(4) Activities that are not "research and development" for the purposes of section 1006 of ITA 2007 as a result of regulations under that section are not "research and development" for the purposes of this section.

(5) Unless otherwise expressly provided, "research and development" does not include oil and gas exploration and appraisal.

1139 "Tax advantage"

(1) This section has effect for the purposes of the provisions of the Corporation Tax Acts which apply this section.

(2) "Tax advantage" means—

(a) a relief from tax or increased relief from tax,

(b) a repayment of tax or increased repayment of tax,

(c) the avoidance or reduction of a charge to tax or an assessment to tax, [F533]...

(d) the avoidance of a possible assessment to tax**[**[F534], [F535]...

[F536]**[** (da) the avoidance or reduction of a charge or assessment to a charge under Part 9A of TIOPA 2010 (controlled foreign companies), or**]**

(e) the avoidance or reduction of a charge or assessment to the bank levy under Schedule 19 to FA 2011 (the bank levy).**]**

(3) For the purposes of subsection (2)(c) and (d) it does not matter whether the avoidance or reduction is effected—

(a) by receipts accruing in such a way that the recipient does not pay or bear tax on them, or

(b) by a deduction in calculating profits or gains.

[[F537](3A) The avoidance or reduction of a charge or assessment to the bank levy as a result of arrangements to which paragraph 47 of Schedule 19 to FA 2011 (bank levy: anti-

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avoidance) applies is to be ignored for the purposes of subsection (2)(e) to the extent that it results from arrangements, or part of arrangements, to which any of paragraph 47(7) to (12) of that Schedule applies.**]**

(4) In this section "relief from tax" includes—

(a) a tax credit under section 1109 for the purposes of corporation tax, and

(b) a tax credit under section 397(1) or 397A(1) of ITTOIA 2005 for the purposes of income tax.

Textual Amendments

F533 Word in s. 1139(2)(c) omitted (19.7.2011) by virtue of Finance Act 2011 (c. 11), **Sch. 19 para. 48(2)(a)**

F534 S. 1139(2)(e) and preceding word inserted (19.7.2011) by Finance Act 2011 (c. 11), **Sch. 19 para. 48(2)(b)**

F535 Word in s. 1139(2)(d) omitted (17.7.2012) by virtue of Finance Act 2012 (c. 14), **Sch. 20 para. 40(a)**

F536 S. 1139(2)(da) inserted (17.7.2012) by Finance Act 2012 (c. 14), **Sch. 20 para. 40(b)**

F537 S. 1139(3A) inserted (19.7.2011) by Finance Act 2011 (c. 11), **Sch. 19 para. 48(3)**

1140 "Unauthorised unit trust"

(1) In the Corporation Tax Acts "unauthorised unit trust" means a unit trust scheme which is neither an authorised unit trust nor an umbrella scheme.

(2) But if a unit trust scheme is not, under regulations made under section 1007(2) of ITA 2007, to be a unit trust scheme for the purposes of the definition of "unauthorised unit trust" in section 989 of that Act, it is not to be a unit trust scheme for the purposes of subsection (1).

(3) In subsection (1) "umbrella scheme" has the same meaning as in section 619.

CHAPTER 2

PERMANENT ESTABLISHMENTS

Modifications etc. (not altering text)

C69 Pt. 24 Ch. 2 applied by 2007 c. 3, **s. 1007A** (as inserted (with effect in accordance with Sch. 2 paras. 7(3), 8 of the amending Act) by Finance (No. 3) Act 2010 (c. 33), **Sch. 2 para. 3(3)**; S.I. 2011/662, **art. 2**)

General

1141 Permanent establishments of companies

(1) For the purposes of the Corporation Tax Acts a company has a permanent establishment in a territory if (and only if)—

(a) it has a fixed place of business there through which the business of the company is wholly or partly carried on, or

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(b) an agent acting on behalf of the company has and habitually exercises there authority to do business on behalf of the company.

(2) For this purpose a "fixed place of business" includes (without prejudice to the generality of that expression)—
(a) a place of management,
(b) a branch,
(c) an office,
(d) a factory,
(e) a workshop,
(f) an installation or structure for the exploration of natural resources,
(g) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources, and
(h) a building site or construction or installation project.

(3) Subsection (1) is subject to sections 1142 to 1144.

Circumstances where there is no permanent establishment

1142 Agent of independent status

(1) A company is not regarded as having a permanent establishment in a territory by reason of the fact that it carries on business there through an agent of independent status acting in the ordinary course of the agent's business.

(2) Sections 1145 to 1151 apply for the purpose of supplementing subsection (1) in relation to transactions carried out on behalf of a non-UK resident company by a person in the United Kingdom acting as—
(a) a broker (section 1145),
(b) an investment manager (sections 1146 to 1150), or
(c) a members' or managing agent at Lloyd's (section 1151).

1143 Preparatory or auxiliary activities

(1) If the condition in subsection (2) is met, a company is not regarded as having a permanent establishment in a territory by reason of the fact that—
(a) a fixed place of business is maintained there for the purpose of carrying on activities for the company, or
(b) an agent carries on activities there for and on behalf of the company.

(2) The condition is that, in relation to the business of the company as a whole, the activities carried on are only of a preparatory or auxiliary character.

(3) For this purpose "activities of a preparatory or auxiliary character" include (without prejudice to the generality of that expression)—
(a) the use of facilities for the purpose of storage, display or delivery of goods or merchandise belonging to the company,
(b) the maintenance of a stock of goods or merchandise belonging to the company for the purpose of storage, display or delivery,
(c) the maintenance of a stock of goods or merchandise belonging to the company for the purpose of processing by another person, and

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(d) purchasing goods or merchandise, or collecting information, for the company.

1144 Alternative finance arrangements

(1) Subsection (2) applies if alternative finance return is paid to a non-UK resident company.

(2) The company is not regarded as having a permanent establishment in the United Kingdom merely by virtue of anything done for the purposes of the alternative finance arrangements—
  (a) by the other party to the arrangements, or
  (b) by any other person acting for the company in relation to the arrangements.

(3) In subsection (1) "alternative finance return" means alternative finance return within the application of—
  (a) section 564I, 564K or 564L(2) or (3) of ITA 2007, or
  (b) section 511, 512 or 513(2) or (3) of CTA 2009.

(4) In subsection (2) the reference to "the alternative finance arrangements" is a reference to the alternative finance arrangements under which the alternative finance return mentioned in subsection (1) is paid.

Brokers

1145 The independent broker conditions

(1) This section applies if a transaction is carried out on behalf of a non-UK resident company in the course of the company's trade by a person in the United Kingdom acting as a broker.

(2) In relation to the transaction, the broker is regarded for the purposes of section 1142(1) as an agent of independent status acting in the ordinary course of the broker's business if (and only if) each of conditions A to D is met.

(3) Condition A is that at the time of the transaction the broker is carrying on the business of a broker.

(4) Condition B is that the transaction is carried out in the ordinary course of that business.

(5) Condition C is that the remuneration which the broker receives in respect of the transaction for the provision of the services of a broker to the non-UK resident company is not less than is customary for that class of business.

(6) Condition D is that the broker does not fall (apart from this subsection) to be treated as a permanent establishment of the non-UK resident company in relation to any other transaction of any kind carried out in the same accounting period of the non-UK resident company as the transaction in question.

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Investment managers

1146 The independent investment manager conditions

(1) This section applies if an investment transaction is carried out on behalf of a non-UK resident company in the course of the company's trade by a person in the United Kingdom acting as an investment manager.

(2) In relation to the investment transaction, the investment manager is regarded for the purposes of section 1142(1) as an agent of independent status acting in the ordinary course of the investment manager's business if (and only if) each of conditions A to E is met ("the independent investment manager conditions").

(3) Condition A is that at the time of the transaction the investment manager is carrying on a business of providing investment management services.

(4) Condition B is that the transaction is carried out in the ordinary course of that business.

(5) Condition C is that, when the investment manager acts on behalf of the non-UK resident company in relation to the transaction, the relationship between them, having regard to its legal, financial and commercial characteristics, is a relationship between persons carrying on independent businesses dealing with each other at arm's length.

(6) Condition D is that the requirements of the 20% rule are met (see section 1147).

(7) Condition E is that the remuneration which the investment manager receives in respect of the transaction for the provision of investment management services to the non-UK resident company is not less than is customary for that class of business.

1147 Investment managers: the 20% rule

(1) The requirements of the 20% rule are met if conditions A and B are met.

(2) Condition A is that, in relation to a qualifying period, it has been or is the intention of the investment manager and the persons connected with the investment manager that at least 80% of the non-UK resident company's relevant disregarded income should consist of amounts to which none of them has a beneficial entitlement.

(3) Condition B is that, so far as there is a failure to fulfil that intention, that failure—
   (a) is attributable (directly or indirectly) to matters outside the control of the investment manager and persons connected with the investment manager, and
   (b) does not result from a failure of any of them to take such steps as may be reasonable for mitigating the effect of those matters in relation to the fulfilment of that intention.

1148 Section 1147: interpretation

(1) This section applies for the purposes of section 1147.

(2) A "qualifying period" means—
   (a) the accounting period of the non-UK resident company in which the transaction in question is carried out, or
   (b) a period of not more than 5 years comprising two or more complete accounting periods including that one.

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(3) The "relevant disregarded income" of the non-UK resident company for a qualifying period is the total of the non-UK resident company's income for the accounting periods comprised in the qualifying period which derives from transactions—
  (a) carried out by the investment manager on the non-UK resident company's behalf, and
  (b) in relation to which the investment manager does not (apart from the requirements of the 20% rule) fall to be treated as a permanent establishment of the company.

(4) A person has a "beneficial entitlement" to relevant disregarded income if the person has or may acquire a beneficial entitlement that is, or would be, attributable to the relevant disregarded income as a result of having an interest or other rights mentioned in subsection (5).

(5) The interests and rights referred to in subsection (4) are—
  (a) an interest (whether or not an interest giving a right to an immediate payment of a share in the profits or gains) in property in which the whole or any part of the relevant disregarded income is represented, or
  (b) an interest in, or other rights in relation to, the non-UK resident company.

1149 Application of 20% rule to collective investment schemes

(1) This section applies if amounts arise or accrue to the non-UK resident company as a participant in a collective investment scheme.

(2) It applies for the purposes of determining whether the requirements of the 20% rule are met in relation to a transaction carried out for the purposes of the scheme (so far as the transaction is one in respect of which amounts so arise or accrue).

(3) In applying this section make the following assumptions—
  (a) that all the transactions carried out for the purposes of the scheme are carried out on behalf of a company ("the assumed company") which is—
    (i) constituted for the purposes of the scheme, and
    (ii) non-UK resident, and
  (b) that the participants do not have any rights in respect of the amounts arising or accruing in respect of those transactions, other than the rights which, if they held shares in the assumed company, would be their rights as shareholders.

(4) If the scheme is such that the assumed company would not be regarded for tax purposes as carrying on a trade in the United Kingdom in relation to the accounting period in which the transaction was carried out, the requirements of the 20% rule are to be treated as met in relation to a transaction carried out for the purposes of the scheme.

(5) If the scheme is such that the assumed company would be so regarded for tax purposes, sections 1147 and 1148 have effect in relation to a transaction carried out for the purposes of the scheme with the modifications in subsection (6).

(6) The modifications are—
  (a) for references to the non-UK resident company substitute references to the assumed company, and
  (b) for references to the non-UK resident company's relevant disregarded income for a qualifying period substitute references to the sum of the amounts that would, for accounting periods comprised in the qualifying period, be

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chargeable to tax on the assumed company as profits deriving from the transactions—

(i) carried out by the investment manager, and

(ii) assumed to be carried out on behalf of the company.

(7) In this section—

"collective investment scheme" has the meaning given by section 235 of FISMA 2000, and

"participant", in relation to a collective investment scheme, is to be read in accordance with that section.

1150 Meaning of "investment manager" and "investment transaction"

(1) In this Chapter—

"investment manager" means a person who provides investment management services, and

"investment transaction" means any transaction of a description specified for the purposes of this subsection in regulations made by the Commissioners for Her Majesty's Revenue and Customs.

(2) Provision made in regulations under subsection (1) may, in particular, have effect in relation to accounting periods current on the day on which the regulations are made.

Lloyd's agents

1151 Lloyd's agents

(1) This section applies if a transaction is carried out on behalf of a non-UK resident company in the course of the company's trade by a person in the United Kingdom acting as a members' agent or managing agent at Lloyd's.

(2) In relation to the transaction, the person is regarded for the purposes of section 1142(1) as an agent of independent status acting in the ordinary course of the person's business if conditions A, B and C are met.

(3) Condition A is that the non-UK resident company is a member of Lloyd's.

(4) Condition B is that the transaction is carried out in the course of the company's underwriting business.

(5) Condition C is that the person acting on behalf of the company in relation to the transaction acts as members' agent or as managing agent of the syndicate in question.

(6) For the purposes of this section—

(a) a non-UK resident company is a member of Lloyd's if it is a corporate member within the meaning of Chapter 5 of Part 4 of FA 1994, and

(b) "members' agent" and "managing agent" are to be read in accordance with section 230 of that Act.

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Supplementary

1152 Investment managers: disregard of certain chargeable profits

(1) This section applies if—

(a) an investment manager carries out one or more investment transactions on behalf of a non-UK resident company (whether or not the investment manager also carries out other transactions of any kind on behalf of the company), and

(b) the investment manager falls to be treated as a permanent establishment of the non-UK resident company (whether because the independent investment manager conditions are not met in relation to such investment transactions, or otherwise).

(2) In determining under Chapter 4 of Part 2 of CTA 2009 the amount of profits attributable to the permanent establishment represented by the investment manager acting as an agent on behalf of the non-UK resident company, chargeable profits deriving from an investment transaction carried out by the investment manager on behalf of the non-UK resident company are to be disregarded in either of the following two cases—

Case 1

The independent investment manager conditions are met in relation to the investment transaction.

Case 2

The independent investment manager conditions, other than Condition D in section 1146(6) (the 20% rule), are met in relation to the investment transaction.

(3) But if Case 2 applies in relation to the investment transaction, chargeable profits deriving from the transaction are to be disregarded only to the extent that they do not represent relevant disregarded income of the non-UK resident company to which the investment manager or a person connected with the investment manager has or has had any beneficial entitlement.

(4) In subsection (3) "relevant disregarded income" and "beneficial entitlement" have the meanings given in section 1148.

1153 Miscellaneous

(1) For the purposes of this Chapter a person is regarded as carrying out a transaction on behalf of another if the person—

(a) undertakes the transaction, whether on behalf of or to the account of the other, or

(b) gives instructions for it to be so carried out by another.

(2) In the case of a person who acts as a broker or investment manager as part only of a business, this Chapter has effect as if that part were a separate business.

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CHAPTER 3

SUBSIDIARIES

1154 Meaning of "51% subsidiary", "75% subsidiary" and "90% subsidiary"

(1) Subsections (2) to (4) define, for the purposes of the Corporation Tax Acts, the circumstances in which a body corporate ("B") is a 51% subsidiary, a 75% subsidiary or a 90% subsidiary of another body corporate ("A").

(2) B is a 51% subsidiary of A if more than 50% of B's ordinary share capital is owned directly or indirectly by A.

(3) B is a 75% subsidiary of A if at least 75% of B's ordinary share capital is owned directly or indirectly by A.

(4) B is a 90% subsidiary of A if at least 90% of B's ordinary share capital is owned directly by A.

(5) For the purposes of subsections (2) and (3) ordinary share capital is owned "directly or indirectly" by a body corporate if it is owned by it—
   (a) directly,
   (b) indirectly, or
   (c) partly directly and partly indirectly.

(6) In this Chapter references to ownership are to be read as references to beneficial ownership.

Modifications etc. (not altering text)

C70 S. 1154 modified by Income and Corporation Taxes Act 1988 (c. 1), Sch. 25 para. 12(3) (as amended) (with effect in accordance with s. 1184(1) of the amending Act) by 2010 c. 4, s. 1184(1), **Sch. 1 para. 147(3)** (with Sch. 2)

1155 Indirect ownership of ordinary share capital

(1) For the purposes of this Chapter ordinary share capital is owned indirectly by a body corporate if it is owned through another body corporate or other bodies corporate.

(2) References in this Chapter to ownership through a body corporate are to be read in accordance with subsections (3) and (4).

(3) Suppose that 3 or more bodies corporate are ordered in a series such that each body in the series (other than the last) owns ordinary share capital of the body immediately below it in the series.

(4) If B is a body that is below, but not immediately below, A in the series, A is said to own ordinary share capital of B through each body corporate that is between A and B in the series.

(5) Sections 1156 and 1157 contain rules for calculating, for the purposes of this Chapter, the amount of a body corporate's ordinary share capital that another body corporate owns—
   (a) indirectly, or

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(b) partly directly and partly indirectly.

1156 Calculation of amounts owned indirectly: main rules

(1) If a body corporate ("A") directly owns the whole of the ordinary share capital of another body corporate ("B"), A is treated as indirectly owning the whole of any ordinary share capital that is owned directly or indirectly by B.

(2) If a body corporate ("A") directly owns a fraction of the ordinary share capital of another body corporate ("B") and B directly or indirectly owns ordinary share capital of a third body corporate ("C"), A is treated as indirectly owning the amount of C's ordinary share capital given by the formula—

$$F \times M$$

where—
F is the fraction of B's ordinary share capital that is owned by A, and
M is the amount of the ordinary share capital of C that is owned directly or indirectly by B.

(3) For the purposes of subsections (1) and (2), the amount of any ordinary share capital that is owned indirectly by B is calculated using subsection (1) or (2), or both, as appropriate.

1157 Adding fractions together

(1) If A and C are bodies corporate and—
(a) A owns, through one or more bodies corporate ("the intermediaries in the first series"), a fraction of C's ordinary share capital, and
(b) A also owns a further fraction of C's ordinary share capital (or further fractions of C's ordinary share capital),

all those fractions are added together to find the amount of C's ordinary share capital that is owned by A.

(2) The reference in subsection (1)(b) to a further fraction of C's share capital is to a fraction of C's share capital that A owns—
(a) directly, or
(b) indirectly but through one or more bodies corporate which do not (together) constitute all of the intermediaries in the first series, or which include a body corporate that is not an intermediary in the first series.

CHAPTER 4

INVESTMENT TRUSTS

[F538 1158 Meaning of "investment trust"

(1) For the purposes of the Corporation Tax Acts a company is an "investment trust" with respect to an accounting period if—
(a) conditions A to C are met throughout the period, and

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(b) the company is approved for the period by the Commissioners for Her Majesty's Revenue and Customs (see section 1159).

(2) Condition A is that **[**[F539]all, or substantially all, of the business of the company is**]** investing its funds in shares, land or other assets with the aim of spreading investment risk and giving members of the company the benefit of the results of the management of its funds.

(3) Condition B is that the shares making up the company's ordinary share capital (or, if there are such shares of more than one class, those of each class) are admitted to trading on a regulated market.

(4) For this purpose " regulated market " has the same meaning as in Directive 2004/39/EC of the European Parliament and of the Council on markets in financial instruments (see Article 4.1(14)).

(5) Condition C is that the company is not—

(a) a venture capital trust (within the meaning of Part 6 of ITA 2007), or

(b) a company UK REIT (within the meaning of Part 12 of this Act).

(6) The Treasury may by regulations provide—

(a) for one or both of conditions A and B to be treated as met in the cases, and subject to any conditions, specified in the regulations, and

(b) for the period for which the condition or conditions are treated as met.

(7) The Treasury may also by regulations amend subsection (3) or (4).

(8) A statutory instrument containing the first regulations under subsection (6) may not be made unless a draft of the instrument has been laid before and approved by a resolution of the House of Commons.

(9) Any other statutory instrument containing regulations under this section is subject to annulment in pursuance of a resolution of the House of Commons.**]**

Textual Amendments

F538 S. 1158 substituted (with effect in accordance with s. 49(6) of the amending Act) by Finance Act 2011 (c. 11), **s. 49(2)**; S.I. 2011/2977, art. 2

F539 Words in s. 1158(2) substituted (with effect in accordance with s. 45(2) of the amending Act) by Finance Act 2013 (c. 29), **s. 45(1)**

[[F540]**1159A Approval**

(1) The Treasury may by regulations make provision about the approval of a company for an accounting period for the purposes of section 1158(1)(b), including provision about—

(a) applications for approval,

(b) the determination of applications for approval,

(c) requirements to be met by the company while approved,

(d) the withdrawal of approval by notice, or

(e) the consequences of the withdrawal of approval.

(2) The regulations may, in particular—

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(a) include provision under which an application for approval—
  (i) is to be made by reference to the accounting period in which the application is made or such earlier or later accounting period as may be specified in the application, and
  (ii) is to constitute an application for approval for that and all subsequent accounting periods,
(b) specify the form and content of, and information to accompany, an application,
(c) permit or require the Commissioners to grant or refuse an application where conditions specified in the regulations are met (or appear to the Commissioners to be met) in relation to the company,
(d) permit or require the Commissioners to withdraw approval where—
  (i) conditions specified in the regulations are met (or appear to the Commissioners to be met) in relation to the company, or
  (ii) the company has failed to comply with requirements imposed by the regulations,
(e) include provision prohibiting a company from which approval has been withdrawn from reapplying, or
(f) include provision under which approval may or must be withdrawn in relation to an accounting period that ends before the notice withdrawing approval is given.

(3) Regulations under this section—
(a) may make different provision for different cases or purposes, and
(b) may make incidental, consequential, supplementary or transitional provision.

(4) A statutory instrument containing the first regulations under this section may not be made unless a draft of the instrument has been laid before and approved by a resolution of the House of Commons.

(5) Any other 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 " the Commissioners " means the Commissioners for Her Majesty's Revenue and Customs. **]**

Textual Amendments

F540 S. 1159 substituted (with effect in accordance with s. 49(6) of the amending Act) by Finance Act 2011 (c. 11), **s. 49(3)**; S.I. 2011/2977, art. 2

F541 1160 Calculation of income

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Textual Amendments

F541 Ss. 1160-1165 omitted (with effect in accordance with s. 49(6) of the amending Act) by virtue of Finance Act 2011 (c. 11), **s. 49(4)**; S.I. 2011/2977, art. 2

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[F541] 1161 The income retention condition: exceptions

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Textual Amendments

F541 Ss. 1160-1165 omitted (with effect in accordance with s. 49(6) of the amending Act) by virtue of Finance Act 2011 (c. 11), **s. 49(4)**; S.I. 2011/2977, art. 2

[F541] 1162 The 15% holding limit: exceptions

. . . . . .

Textual Amendments

F541 Ss. 1160-1165 omitted (with effect in accordance with s. 49(6) of the amending Act) by virtue of Finance Act 2011 (c. 11), **s. 49(4)**; S.I. 2011/2977, art. 2

[F541] 1163 Basic meaning of "holding in a company"

. . . . . .

Textual Amendments

F541 Ss. 1160-1165 omitted (with effect in accordance with s. 49(6) of the amending Act) by virtue of Finance Act 2011 (c. 11), **s. 49(4)**; S.I. 2011/2977, art. 2

[F541] 1164 More about the meaning of "holding in a company"

. . . . . .

Textual Amendments

F541 Ss. 1160-1165 omitted (with effect in accordance with s. 49(6) of the amending Act) by virtue of Finance Act 2011 (c. 11), **s. 49(4)**; S.I. 2011/2977, art. 2

[F541] 1165 Other interpretation

. . . . . .

Textual Amendments

F541 Ss. 1160-1165 omitted (with effect in accordance with s. 49(6) of the amending Act) by virtue of Finance Act 2011 (c. 11), **s. 49(4)**; S.I. 2011/2977, art. 2

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CHAPTER 5

OTHER CORPORATION TAX ACTS PROVISIONS

1166 Scotland

(1) In the application of the Corporation Tax Acts to Scotland—

"assignment" means assignation,

"estate in land" includes the land,

"mortgage" means—

(a) a standard security, or

(b) a heritable security, as defined in the Conveyancing (Scotland) Act 1924, but including a security constituted by ex facie absolute disposition or assignation, and

"surrender" includes renunciation.

(2) In the application of the Corporation Tax Acts to Scotland, any reference to property or rights being held on trust or on trusts is a reference to the property or rights being held in trust.

1167 Sources of income within the charge to corporation tax or income tax

In the Corporation Tax Acts, a source of income is within the charge to corporation tax or income tax if that tax—

(a) is chargeable on the income arising from it, or

(b) would be so chargeable if there were any income arising from it,

and references to a person, or income, being within the charge to corporation tax or income tax are to be read in the same way.

1168 Payment of dividends

(1) For the purposes of the Corporation Tax Acts dividends are to be treated as paid on the date when they become due and payable.

(2) Subsection (1) is subject to any provision to the contrary.

1169 Settlements and trustees

(1) Chapter 2 of Part 9 of ITA 2007 (which relates to settlements and trustees) applies for the purposes of the Corporation Tax Acts as it applies for the purposes of the Income Tax Acts.

(2) See (in particular)—

(a) section 466 of that Act, which explains what is meant by references to settled property, and

(b) sections 467 to 473 of that Act, which explain what is meant by references to a settlor in relation to a settlement.

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1170 Territorial sea of the United Kingdom

The territorial sea of the United Kingdom is treated for the purposes of the Corporation Tax Acts as part of the United Kingdom.

1171 Orders and regulations

(1) This section applies to all powers under the Corporation Tax Acts of the Treasury or the Commissioners for Her Majesty's Revenue and Customs to make orders or regulations, other than excluded powers.

(2) All powers under the following are excluded—
- (a) ICTA (see instead section 828 of that Act),
- (b) TCGA 1992 (see instead section 287 of that Act),
- (c) CAA 2001 (see instead section 570B of that Act),
- (d) Part 4 of FA 2004 (see instead section 282 of that Act),
- (e) CTA 2009 (see instead section 1310 of that Act),
- (f) TIOPA 2010 (see instead section 372 of that Act), [F542]...
- (g) the following provisions of this Act—
  - (i) section 204(3) (markets in the United Kingdom on which shares or securities are dealt in), and
  - (ii) section 1150(1) (meaning of "investment transaction")**[**[F543], and
- (h) Parts 2 and 3 of FA 2012.**]**

(3) Any power to which this section applies is exercisable by statutory instrument.

(4) Any statutory instrument containing any order or regulations made under a power to which this section applies is subject to annulment in pursuance of a resolution of the House of Commons.

(5) Subsection (4) does not apply in relation to any order or regulations made under—
- (a) section 73A of FA 2004 (exemption for designated international organisations), or
- (b) either of the following provisions of this Act—
  - (i) section 1120(2)(e) (designation of international organisations as banks), or
  - (ii) section 1180(2) (power to make transitional or saving provision in connection with the coming into force of this Act).

(6) Further, subsection (4) does not apply—
- (a) if any other Parliamentary procedure is expressly provided to apply in relation to the order or regulations, or
- (b) if the order in question appoints a day for the purposes of any provision of the Corporation Tax Acts from which the provision will have effect (with or without amendments) or will cease to have effect.

(7) Subsection (4) is also subject to any other provision to the contrary.

Textual Amendments

F542 Word in s. 1171(2)(f) omitted (17.7.2012) by virtue of Finance Act 2012 (c. 14), **Sch. 16 para. 230(a)**

Status: *Point in time view as at 01/04/2014.*
Changes to legislation: *Corporation Tax Act 2010 is up to date with all changes known to be in force on or before 12 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

F543 S. 1171(2)(h) and preceding word inserted (17.7.2012) by Finance Act 2012 (c. 14), **Sch. 16 para. 230(b)**

1172 Apportionment to different periods

(1) Any apportionment to different periods which falls to be made under the Corporation Tax Acts is to be made on a time basis according to the respective lengths of the periods.

(2) Subsection (1) is subject to any provision to the contrary.

1173 Miscellaneous charges

(1) In the Corporation Tax Acts references to any provision to which this section applies are references to any provision listed in the following table, so far as the provision relates to corporation tax (but subject to any applicable limitation in subsection (3)).

(2) This is the table—

PART 1

Provisions of CTA 2009	***Description***
Chapter 15 of Part 3	Post-cessation receipts: trades
Chapter 7 of Part 4	Rent receivable in connection with a UK section 39(4) concern
Chapter 8 of Part 4	Rent receivable for UK electric-line wayleaves
Chapter 9 of Part 4	Post-cessation receipts: UK property businesses
Section 752	Non-trading gains on intangible fixed assets
Section 908	Profits from disposals of know-how
Section 912	Profits from sales of patent rights
Section 965(4)	Adjustments after the administration period
Chapter 8 of Part 10	Income not otherwise charged
Section 986(4), so far as it relates to an amount treated as received under section 998(3)	Withdrawal of deductions if approval for share incentive plan withdrawn: non-trading cases
F544	**F544**
. . .	. . .
Section 1229	Management expenses: claw back of relief
Section 1252	Industrial development grants: companies with investment business

Status: *Point in time view as at 01/04/2014.*
Changes to legislation: *Corporation Tax Act 2010 is up to date with all changes known to be in force on or before 12 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Section 1253	Contributions to local enterprise organisations or urban regeneration companies: disqualifying benefits
Section 1254	Repayments under FISMA 2000
Section 1277(4)	Withdrawal of relief for unremittable foreign income after source ceases

PART 2

Provisions of this Act	***Description***
Section 538(3)	Real estate investment trusts: entry charge
Section 636(1)	Banks etc in compulsory liquidation
Section 779(2)	Loan or credit transactions
Section 818(1)	Gains from transactions in land
Section 851(8)	Sale and lease-back: taxation of consideration
Section 874(1)	Leased assets: capital sums
Section 1086(2)	Chargeable payments connected with exempt distributions

PART 3

Other provisions	***Description***
Section 56(2) of ICTA	Transactions in deposits
F545	**F545**
. . .	. . .
F546	**F546**
. . .	. . .
Section 571(1) of ICTA	Cancellation of tax certificates
Section 774(1) of ICTA	Transactions between dealing company and associated company
F547	**F547**
. . .	. . .
F548	**F548**
. . .	. . .
Section 256(2) of CAA 2001	Life assurance business: capital allowances
Section 254(2) of TIOPA 2010	Tax arbitrage: calculation or recalculation of income etc following receipt notice
Regulation 18(4) of the Offshore Funds (Tax) Regulations 2009 (S.I. 2009/3001)	Offshore income gains

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(3) The reference in Part 1 of the above table to Chapter 8 of Part 10 of CTA 2009 does not include that Chapter so far as relating to income which arises from a source outside the United Kingdom.

Textual Amendments

F544 Words in s. 1173(2) omitted (with effect in accordance with Sch. 15 paras. 28, 29 of the amending Act) by virtue of Finance Act 2013 (c. 29), **Sch. 15 para. 24(3)**

F545 S. 1173(2) entry omitted (17.7.2012) by virtue of Finance Act 2012 (c. 14), **Sch. 16 para. 231(a)**

F546 S. 1173(2) entry omitted (17.7.2012) by virtue of Finance Act 2012 (c. 14), **Sch. 16 para. 231(b)**

F547 S. 1173(2) entry omitted (17.7.2012) by virtue of Finance Act 2012 (c. 14), **Sch. 16 para. 231(c)**

F548 S. 1173(2) entry omitted (17.7.2012) by virtue of Finance Act 2012 (c. 14), **Sch. 16 para. 231(d)**

PART 25

DEFINITIONS FOR PURPOSES OF ACT AND FINAL PROVISIONS

Definitions for the purposes of Act

1174 Abbreviated references to Acts

In this Act—

"CAA 2001" means the Capital Allowances Act 2001,

"CTA 2009" means the Corporation Tax Act 2009,

"FA", followed by a year, means the Finance Act of that year,

"F(No.2)A", followed by a year, means the Finance (No.2) Act of that year,

"FISMA 2000" means the Financial Services and Markets Act 2000,

"ICTA" means the Income and Corporation Taxes Act 1988,

"ITA 2007" means the Income Tax Act 2007,

"ITEPA 2003" means the Income Tax (Earnings and Pensions) Act 2003,

"ITTOIA 2005" means the Income Tax (Trading and Other Income) Act 2005,

"TCGA 1992" means the Taxation of Chargeable Gains Act 1992,

"TIOPA 2010" means the Taxation (International and Other Provisions) Act 2010, and

"TMA 1970" means the Taxes Management Act 1970.

1175 Claims and elections

In this Act any reference to a claim or election is to a claim or election in writing.

1176 Meaning of "connected" persons and "control"

(1) Section 1122 (how to tell whether persons are connected) applies for the purposes of this Act unless otherwise indicated (whether expressly or by implication).

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(2) Section 1124 (meaning of control in relation to a body corporate or partnership) applies for the purposes of this Act unless otherwise indicated (whether expressly or by implication).

Final provisions

1177 Minor and consequential amendments

Schedule 1 (minor and consequential amendments) has effect.

1178 Power to make consequential provision

(1) The Treasury may by order make provision in consequence of this Act.

(2) The power conferred by subsection (1) may not be exercised after 31 March 2013.

(3) An order under this section may amend, repeal or revoke any provision made by or under an Act.

(4) An order under this section may contain provision having retrospective effect.

(5) An order under this section may contain incidental, supplemental, consequential and transitional provision and savings.

(6) In subsection (3) "Act" includes an Act of the Scottish Parliament and Northern Ireland legislation.

1179 Power to undo changes

(1) The Treasury may by order make provision, in relation to a case in which the Treasury consider that a provision of this Act changes the effect of the law, for the purpose of returning the effect of the law to what it would have been if this Act had not been passed.

(2) The power conferred by subsection (1) may not be exercised after 31 March 2013.

(3) An order under this section may amend, repeal or revoke any provision made by or under—
   (a) this Act, or
   (b) any other Act.

(4) An order under this section may contain provision having retrospective effect.

(5) An order under this section may contain incidental, supplemental, consequential and transitional provision and savings.

(6) In subsection (3)(b) "Act" includes an Act of the Scottish Parliament and Northern Ireland legislation.

1180 Transitional provisions and savings

(1) Schedule 2 (transitional provisions and savings) has effect.

Status: *Point in time view as at 01/04/2014.*
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(2) The Treasury may by order make transitional or saving provision in connection with the coming into force of this Act.

(3) An order under subsection (2) may contain provision having retrospective effect.

(4) The following (which provide for negative resolution procedure in relation to Treasury orders under certain enactments) do not apply in relation to an order under subsection (2)—
  (a) section 828(3) of ICTA (orders under the Corporation Tax Acts before 1 April 2010),
  (b) section 287(3) of TCGA 1992 (orders under enactments relating to the taxation of chargeable gains), and
  (c) section 1014(4) of ITA 2007 (orders under the Income Tax Acts).

Commencement Information

I1 S. 1180 wholly in force at 1.4.2010; s. 1180(2)-(4) in force at Royal Assent and s. 1180(1) in force at 1.4.2010 see s. 1184(1)(2)(c)

1181 Repeals and revocations

(1) Schedule 3 (repeals and revocations, including of spent enactments) has effect.

(2) The repeals and revocations specified in Part 2 of Schedule 3 have effect for corporation tax purposes only.

1182 Index of defined expressions

(1) Schedule 4 (index of defined expressions that apply for the purposes of this Act) has effect.

(2) That Schedule lists the places where some of the expressions used in this Act are defined or otherwise explained.

1183 Extent

(1) This Act extends to England and Wales, Scotland and Northern Ireland (but see subsection (2)).

(2) An amendment, repeal or revocation contained in Schedule 1 or 3 has the same extent as the provision amended, repealed or revoked.

1184 Commencement

(1) This Act comes into force on 1 April 2010 and has effect—
  (a) for corporation tax purposes, for accounting periods ending on or after that day, and
  (b) for income tax and capital gains tax purposes, for the tax year 2010-11 and subsequent tax years.

(2) Subsection (1) does not apply to the following provisions (which therefore come into force on the day on which this Act is passed)—

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(a) section 1178,
(b) section 1179,
(c) section 1180(2) to (4),
(d) section 1183,
(e) this section, and
(f) section 1185.

(3) Subsection (1) is subject to Schedule 2.

(4) The reference in subsection (1)(a) to corporation tax includes amounts due or chargeable as if they were corporation tax.

1185 Short title

This Act may be cited as the Corporation Tax Act 2010.

Status:
Point in time view as at 01/04/2014.

Changes to legislation:
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