

CORPORATION TAX ACT 2010

EXPLANATORY NOTES

INTRODUCTION

Part 14: Change in company ownership

Chapter 4: Company with investment business: restrictions on relief: asset transferred within group

Overview

2141. **Chapter 4** is the third of four Chapters dealing with various kinds of loss buying. It rewrites section 768C of ICTA and the corresponding provisions of sections 768D and 768E of ICTA.
2142. Section 768C of ICTA was inserted by FA 1995 to block the following scheme. A company is about to realise a chargeable gain on an asset. The company purchases a company with excess management expenses. Relief for these is not restricted by section 768B of ICTA, because the conditions in section 768B(1)(a) to (c) are not met. The asset is transferred to the newly purchased company at no gain/no loss under section 171 of TCGA. When the transferee company disposes of the asset and crystallises the chargeable gain, it can use its pre-acquisition management expenses to shelter the gain.
2143. Sections 768D and 768E of ICTA (inserted by FA 1998 and FA 2002 respectively) included provisions corresponding to section 768C to cover pre-acquisition property losses and pre-acquisition non-trading losses on intangible fixed assets: see sections 768D(1)(a)(ii) and 768E(1)(b).
2144. Section 768C(13) (inserted by FA 2002) extended section 768C to cover tax-neutral intra-group transfers of intangible fixed assets.
2145. **Chapter 4** is similar in many respects to Chapter 3, but there are important differences of detail because, unlike Chapter 3, Chapter 4 needs to cater for chargeable gains and realisation gains on intangible fixed assets.
2146. **Chapter 4** has the following structure.
- Sections 692 to 694 lay down the conditions for the Chapter to apply and define some key terms.
 - If the Chapter applies, section 695 (notional split of accounting period in which change in ownership occurs) sets the stage. It splits the period in which the change in ownership occurs into two notional accounting periods, and indicates that certain amounts need to be apportioned between these two periods.
 - Sections 696 to 701 are a group of six sections restricting various kinds of corporation tax relief. If, having reviewed them, the reader is satisfied that in the case under review these sections makes no practical difference, the reader is able

to conclude that there is in practice no need to make the apportionments required by section 695.

- Sections 702 and 703 contain the detailed rules for making apportionments of amounts for the purposes of this Chapter.

Section 692: Introduction to Chapter

2147. This section introduces the Chapter. It is based on sections 768C, 768D and 768E of ICTA. If, having read this section, the reader is satisfied that the conditions for this Chapter to apply are not all met, the reader need read no further in this Chapter.

2148. *Subsections (1) to (4)* lay down the conditions for the Chapter to apply.

2149. Subsection (1) is based on, among other things, section 768D(1)(a)(ii) of ICTA. Unlike section 768D(1) of ICTA, subsection (1) does not refer to a change in the ownership of a company carrying on a UK property business; it refers to a change in the ownership of a company with investment business. The reason is that, if section 768D(1)(a)(ii) of ICTA applies, then:

- There is a change in the ownership of a company carrying on a UK property business (see the opening words of section 768D(1)); and
- The company whose ownership has changed is a company with investment business (see the opening words of section 768D(1)(a)).

2150. Accordingly, if section 768D(1)(a)(ii) of ICTA applies, there is by implication a change in the ownership of a company with investment business. There is therefore no need for section 768D(1) of ICTA to pick up the opening words of section 768B of that Act.

2151. *Subsections (5) and (6)* supplement subsection (4).

2152. *Subsection (7)* defines “the change in ownership”, “the company”, “non-trading chargeable realisation gain” and “the relevant gain” for the purposes of this Chapter.

Section 693: Meaning of “amount of profits which represents a relevant gain”

2153. This interpretative section is based on section 768C of ICTA.

Section 694: Meaning of “the relevant provisions”

2154. This interpretative section is based on section 768C of, and paragraph 13 of Schedule 28A to, ICTA.

2155. *Paragraph (a)* refers to section 8(1) of TCGA, which provides (in summary) that the chargeable gains included in a company’s total profits are its chargeable gains after deducting allowable losses. Paragraph (a) also refers to Schedule 7A to that Act. That Schedule is directed against another kind of loss buying, namely the purchase of allowable losses for the purposes of corporation tax on chargeable gains. In summary, if that Schedule bites, relief for allowable losses is restricted to the extent that (1) they accrued before the company joined the relevant group and (2) they cannot be deducted from chargeable gains accruing before that date. Defining “the relevant provisions” in this way ensures that Schedule 7A to TCGA is applied before the provisions of this Chapter are applied.

2156. The concept of “the relevant provisions” is used, in particular, in row 1 in the table in section 702(2).

2157. In a case in which section 768C of ICTA applies in relation to an asset to which Part 8 of CTA 2009 (intangible fixed assets) applies, section 768C(13)(d) of ICTA applies not only to section 768C(12) of that Act but also to paragraph 13(2) of Schedule 28A to that Act.

Section 695: Notional split of accounting period in which change in ownership occurs

2158. This section deems the accounting period in which the change in ownership occurs to be split into two notional accounting periods for the purposes of this Chapter. It is based on sections 768C, 768D and 768E of ICTA.
2159. *Subsection (3)* requires amounts for the actual accounting period to be apportioned between the two notional accounting periods in accordance with section 702.

Section 696: Restriction on debits to be brought into account

2160. This section restricts debits on the company's loan relationships in cases in which this Chapter applies. It is based on section 768C of, and paragraph 10 of Schedule 28A to, ICTA.
2161. This section is the first of a group of six sections (sections 696 to 701) imposing restrictions on corporation tax relief. The first four of these sections restrict reliefs given by CTA 2009, and are arranged in the order in which those reliefs appear in that Act. The fifth and sixth of these sections restrict relief for property losses, and are arranged in the order in which those reliefs appear in Chapter 4 of Part 4 of this Act.
2162. *Subsection (1)* states the purpose of the section.
2163. Section 574 of CTA 2009 provides that non-trading credits and debits from derivative contracts are to be brought into account as if they were non-trading credits or non-trading debits for the purposes of Part 5 of CTA 2009 in respect of loan relationships of the company. The reference to that section in section 768C(9) of ICTA is therefore otiose. *Subsection (1)* therefore omits it.
2164. *Subsection (2)* limits the scope of the section to cases in which gains arise or accrue as discussed in the 'overview' paragraphs of the commentary on this Chapter. Its inclusion here emphasises the point that the section only makes a difference in practice if there are *both* debits to be restricted *and* a gain to be sheltered by those debits.
2165. *Subsections (3) to (5)* set out the consequences of the apportionment made in accordance with section 702.
2166. The other five sections in this group have a similar structure.

Section 697: Restriction on the carry forward of non-trading deficit from loan relationships

2167. This section restricts relief for the company's non-trading deficit on its loan relationships in cases in which this Chapter applies. It is based on section 768C of, and paragraph 10A of Schedule 28A to, ICTA.
2168. Debits and deficits have different functions in the loan relationships regime, therefore this Chapter imposes different restrictions on them.

Section 698: Restriction on relief for non-trading loss on intangible fixed assets

2169. This section restricts relief for the company's non-trading loss on its intangible fixed assets in cases in which this Chapter applies. It is based on section 768E of ICTA.
2170. *Subsection (2)* makes it clear that section 768E(5)(b) of ICTA refers to section 768C(6) of that Act by implication. This clarification is a minor change in the law: see *Change 50* in Annex 1.
2171. *Subsections (4) and (5)* include a minor change in the law. See *Change 49* in Annex 1 and the commentary on section 681.

Section 699: Restrictions on the deduction of expenses of management

2172. This section restricts relief for the company's expenses of management in cases in which this Chapter applies. It is based on section 768C of ICTA.
2173. *Subsection (4)* only operates on *subsection (5)*. The corresponding provision in the other sections in this group operates, in each case, on the whole section.

Section 700: Disallowance of UK property business losses

2174. This section restricts relief for the company's UK property business loss in cases in which this Chapter applies. It is based on section 768D of ICTA.
2175. *Subsection (2)* makes it clear that section 768D(6)(b) of ICTA refers by implication to section 768C(6) of that Act. This clarification is a minor change in the law: see *Change 50* in Annex 1.

Section 701: Disallowance of overseas property business losses

2176. This section restricts relief for the company's overseas property business loss in cases in which this Chapter applies. It is based on section 768D of ICTA.
2177. Section 768D(9) of ICTA has to be read as implying that, in a case in which section 768D of ICTA applies in relation to an overseas property business, references to section 392A of ICTA have to be read as references to the corresponding provisions of section 392B of that Act. Otherwise section 768D of that Act applies in such a case but does not actually do anything. *Subsections (1)* and *(3)* therefore refer to section 66, which is based on section 392B of ICTA.
2178. *Subsection (2)* includes a minor change in the law. See *Change 50* in Annex 1 and the commentary on section 700.

Section 702: Apportionment of amounts

2179. This section stipulates how various amounts are to be apportioned for the purposes of this Chapter. It is based on sections 768C and 768E of, and paragraphs 13 to 17 of Schedule 28A to, ICTA.
2180. The source legislation obliges the reader to tally sub-paragraphs of paragraph 13(1) of Schedule 28A to ICTA with sub-paragraphs of paragraphs 15 and 16(1) of that Schedule. This is inconvenient, as the sub-paragraphs are not always in one-to-one correspondence and the legislation has been amended several times. Paragraphs 13(1), 15 and 16(1) of that Schedule have therefore been rewritten in *subsection (2)* as a two-column table.
2181. Detailed comments on the table are given below.

Row	Origin
1	<i>Paragraphs 13(1)(a) and 15 of Schedule 28A to ICTA.</i>
2 and 3	<i>Paragraphs 13(1)(ea) and 16(1)(c) of that Schedule. The opportunity has been taken to deal with profits and deficits separately.</i>
4	<i>Paragraphs 13(1)(eb) and 16(1)(d) and (e) of that Schedule.</i>
5	<i>Paragraphs 13(1)(ec) and 16(1)(b) of that Schedule.</i>
6	<i>Paragraphs 13(1)(ee) and 16(1)(g) of that Schedule.</i>
7	<i>Paragraphs 13(1)(ef) and 16(1)(h) of that Schedule.</i>
8	<i>Paragraphs 13(1)(b) and 16(1)(a) of that Schedule.</i>

*These notes refer to the Corporation Tax Act 2010
(c.4) which received Royal Assent on 3 March 2010*

Row	Origin
–	<i>Paragraphs 13(1)(c) and 16(1)(aa) of that Schedule are repealed as obsolete. See the commentary on the amendments made to section 768B of ICTA by Schedule 1.</i>
9	<i>Paragraphs 13(1)(d) and 16(1)(b) of Schedule 28A.</i>
10	<i>Paragraphs 13(1)(e) and 16(1)(c) of that Schedule.</i>
11	<i>Paragraphs 13(1)(f) and 16(1)(c) of that Schedule.</i>

Section 703: Meaning of certain expressions in section 702

2182. This interpretative section is based on paragraphs 13, 13A and 16 of Schedule 28A to ICTA.