These notes refer to the Taxation (International and Other Provisions) Act 2010 (c.8) which received Royal Assent on 18 March 2010

TAXATION (INTERNATIONAL AND OTHER PROVISIONS) ACT 2010

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Taxation (International and Other Provisions) Act 2010 which received Royal Assent on 18 March 2010. They have been prepared by the Tax Law Rewrite project at HMRC to assist readers in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.

2. The notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of its contents. So if a section or part of a section does not seem to require explanation or comment, none is given.

3. The commentary on each section, or rewritten provision inserted in another Act by Schedules 1 to 7, indicates the main origin or origins of the section or rewritten provision. A full statement of the origins of each section, and of the paragraphs of Schedules 1 to 7 making such insertions, is contained in the Act's Table of Origins.

4. At the end of the commentary, there is supporting material in two annexes:

   - *Annex 1* contains details of the minor changes in the law made by the Act.
   - *Annex 2* contains a list of provisions not included in the Act on the grounds of redundancy.

Summary

5. The main purpose of the Taxation (International and Other Provisions) Act 2010 is to rewrite primary legislation relating to a number of provisions with an international dimension so that they are clearer and easier to use but without changing their general effect.

6. It contains provisions about double taxation relief, transfer pricing, advance pricing agreements, tax arbitrage, tax treatment of financing costs and income, and offshore funds. It also relocates and rewrites other provisions where it seems helpful to users to do so.

7. The Act reproduces the law on which it is based. It does not generally change the meaning of the law. The minor changes which it does make are within the remit of the Tax Law Rewrite project and the Parliamentary process for the Act. In the main, such minor changes are intended to clarify existing provisions, make them consistent or bring the law into line with well established practice.

Background

The Tax Law Rewrite project

8. In December 1995 the Inland Revenue presented a report to Parliament on the scope for simplifying the UK tax system (*The Path to Tax Simplification*). The main recommendation was that UK direct tax legislation should be rewritten in clearer, simpler language.

9. This recommendation was warmly welcomed, both in Parliament and in the tax community. In his November 1996 Budget speech the then Chancellor of the Exchequer (the Rt Hon Kenneth Clarke QC MP) announced that the Inland Revenue would propose detailed arrangements for a major project to rewrite direct tax legislation in plainer language.

10. The project team has been carrying out this work. The aim is that the rewritten legislation should use simpler language and structure than previous tax legislation. The members of the project are drawn from different backgrounds. They include HMRC employees, private sector tax professionals and parliamentary counsel including (as head of the drafting team) a senior member of the Parliamentary Counsel Office.

Steering Committee

11. The work of the project is overseen by a Steering Committee, chaired by the Rt Hon the Lord Newton of Braintree OBE DL. The membership of the Steering Committee as at 19 October 2009 was:

The Rt Hon the Lord Newton of Braintree OBE DL (Chairman)

Dr John Avery Jones CBE

Adam Broke

Nicholas Dee

Dave Hartnett CB

The Rt Hon Michael Jack MP

Eric Joyce MP

District Judge Rachel Karp

Professor John Tiley CBE

John Whiting OBE

Consultative Committee

12. The work is also reviewed by a Consultative Committee, representing the accountancy and legal professions and the interests of taxpayers. The membership of the Consultative Committee as at 19 October 2009 was:

Robina Dyall	Chairman
Adam Broke	Special Committee of Tax Law Consultative Bodies
Colin Campbell	Formerly Confederation of British Industry
Russell Chaplin	London Chamber of Commerce & Industry
Mary Fraser	Association of Chartered Certified Accountants
Malcolm Gammie CBE QC	The Law Society

Julian Ghosh QC	Revenue Bar Association
Keith Gordon	Chartered Institute of Taxation
Terry Hopes	Institute of Chartered Accountants in England and Wales
Vic Peake	Federation of Small Businesses
Isobel d'Inverno	Law Society of Scotland
Simon McKie	Institute of Chartered Accountants in England and Wales
Lakshmi Narain	Chartered Institute of Taxation
Francis Sandison	The Law Society
Michael Templeman	Institute of Directors
Professor David Williams	Office of the Social Security Commissioners
Mervyn Woods	Confederation of British Industry

Consultation

13. The work produced by the project has been subject to public consultation. This has allowed all interested parties an opportunity to comment on draft clauses.

14. Consultation took the form of a series of papers presenting clauses in draft and documents containing responses to comments received. These were published between September 2007 and October 2009. A draft Bill was published for consultation in March 2009. All these documents are available on the Tax Law Rewrite website.

15. In addition to this consultation the project also presented its papers to the Consultative and Steering Committees to inform them and to seek their views on particular issues. The project also consulted on an informal basis with specialists in particular subject areas.

16. Those who responded in writing to one or more of the papers or to the draft Bill include:

    BDO LLP

    Bircham Dyson Bell LLP

    The British Property Federation

    CASCS Development Forum

    The Charity Law Association

    Chartered Institute of Taxation

    Colin Campbell

    Confederation of British Industry

    Dr David Williams

    Ernst & Young LLP

    Francis Sandison

    Freshfields Bruckhaus Deringer LLP

    Horwath Clark Whitehill

    Institute of Chartered Accountants in England and Wales

KPMG LLP

Pinsent Masons LLP

PricewaterhouseCoopers LLP

Slaughter and May

The Law Society

The UK Oil Industry Taxation Committee

17. As there was some movement of material between this Act and the Corporation Tax Act 2010 during the course of the work on the Bills, this list includes respondents to both Bills. The list excludes any individuals who requested that their responses be treated in confidence.

Taxation (International and Other Provisions) Act 2010

18. The Act contains provisions relating to:

- double taxation relief;
- transfer pricing;
- advance pricing agreements;
- tax arbitrage;
- tax treatment of financing costs and income;
- offshore funds; and
- relocation of provisions of tax legislation.

19. The Act has 382 sections and 11 Schedules. The sections are arranged as follows:

Part 1: Overview

Part 2: Double taxation relief

Part 3: Double taxation relief for special withholding tax

Part 4: Transfer pricing

Part 5: Advance pricing agreements

Part 6: Tax arbitrage

Part 7: Tax treatment of financing costs and income

Part 8: Offshore funds

Part 9: Amendments to relocate provisions of tax legislation

Part 10: General provisions

20. The Schedules are:

Schedule 1: Oil activities: new Chapter 16A of Part 2 of ITTOIA 2005

Schedule 2: Alternative finance arrangements

Schedule 3: Leasing arrangements: finance leases and loans

Schedule 4: Sale and lease-back etc: new Part 12A of ITA 2007

Glossary

21. The commentary uses a number of abbreviations. They are listed below.

APA	advance pricing agreement
CAA	the Capital Allowances Act 2001
CRCA	the Commissioners for Revenue and Customs Act 2005
CTA 2009	the Corporation Tax Act 2009
CTA 2010	the Corporation Tax Act 2010
DTA	double taxation arrangement
DTR	double taxation relief
FA 1964	Finance Act 1964 (and similarly for other Finance Acts)
F(No 2)A	Finance (No 2) Act
GAAP	generally accepted accounting practice
HMRC	Her Majesty's Revenue and Customs
ICTA	the Income and Corporation Taxes Act 1988
ITA	the Income Tax Act 2007
ITEPA	the Income Tax (Earnings and Pensions) Act 2003
ITTOIA	the Income Tax (Trading and Other Income) Act 2005
OTA 1975	the Oil Taxation Act 1975
PRT	petroleum revenue tax
TCGA	the Taxation of Chargeable Gains Act 1992
TMA	the Taxes Management Act 1970

COMMENTARY ON SECTIONS

Part 1: Overview

Section 1: Overview of Act

22. This section gives an overview of the Act. It is new.

Part 2: Double taxation relief

Overview

23. This Part is based on sections 788, 790 to 806, 806L to 807G, 808A to 811 and 815A to 816 of, and Schedule 28AB to, ICTA, which are concerned with DTR.

24. The United Kingdom's comprehensive DTAs usually cover not only income tax and corporation tax but also capital gains tax, and may also cover PRT. The opportunity has therefore been taken to rewrite in this Part section 277(1) to (1C), (3) and (4) of TCGA (which apply certain provisions of Part 18 of ICTA (DTR) to capital gains tax) and sections 194(1), (3) and (5) and 195(2) of FA 1993 (which apply sections 788 and 816 of ICTA to PRT). This Part also rewrites section 278 of TCGA (deduction of foreign tax in calculating gains).

25. Section 194(4) of FA 1993 is rewritten as new section 43D of TMA, which is inserted by Schedule 8.

26. Section 808 of ICTA (DTR: restriction on deduction of interest or dividends from trading income) is rewritten in CTA 2010 and repealed. See section 54 of CTA 2010.

27. Section 158 of the Inheritance Tax Act 1984 makes provision for DTAs in relation to inheritance tax. Such DTAs are negotiated separately from the United Kingdom's comprehensive DTAs. Section 158 is therefore not rewritten.

Chapter 1: Double taxation arrangements and unilateral relief arrangements

Overview

28. This Chapter contains the main general provisions concerning DTAs and unilateral relief arrangements.

29. In Part 18 of ICTA, DTAs are given the colourless label "arrangements" (see section 792(1) of ICTA) and unilateral relief is presented as a relief which is given under hypothetical "arrangements" (see section 790(1) of ICTA). But tax professionals commonly refer to "arrangements" having effect by virtue of section 788 of ICTA as, specifically, "double taxation arrangements", and this convenient usage has been adopted in this Act. This Part rewrites the unilateral relief provisions as provisions for relief under "unilateral relief arrangements". Accordingly, in Chapter 2 of this Part "the arrangements" is used without qualification to refer to a DTA or, as the case may be, unilateral relief arrangements for a territory outside the United Kingdom. This approach means that there is no need to rewrite section 790(2) of ICTA (definition of "unilateral relief"). It is repealed without replacement.

30. Sections 2 to 7 deal with DTAs. Sections 8 to 17 deal with unilateral relief arrangements.

Section 2: Giving effect to arrangements made in relation to other territories

31. This section gives effect to DTAs made in relation to other territories. It is based on section 788(1) of ICTA, section 277(1) of TCGA and section 194(1) of FA 1993.

Section 3: Arrangements may include retrospective or supplementary provision

32. This section supplements section 2. It is based on section 788(8) of ICTA, section 277(1) of TCGA and section 194(1) of FA 1993.

33. *Subsection (2)* includes a minor change in the law to clarify how section 277(1) of TCGA applies section 788(8) of ICTA. See *Change 1* in Annex 1.

Section 4: Meaning of "double taxation" in sections 2 and 3

34. This section deems tax spared because of international development relief to have been payable for the purposes of sections 2 and 3. It is based on section 788(5) of ICTA.

35. Sections 2 and 3 refer to "double taxation" in general terms. Broadly speaking, there is double taxation if the same (for example) income is taxed in more than one territory. But that will not be the case if the income (in this example) is not in fact taxed in one of the territories concerned as a result of a relief. This section supplements sections 2 and 3. It requires certain reliefs to be ignored, with the result that one is to assume in certain cases that tax has been paid even though it has in fact not been paid. This deemed tax (in the territory giving the relief), taken with the actual tax (in the other territory), then means that there is "double taxation". As a result of this section, therefore, statutory effect can be given to provisions in arrangements which are about such cases.

36. See also section 20 (foreign tax includes tax spared because of international development relief).

Section 5: Orders under section 2: contents and procedure

37. This section supplements section 2. It is based on section 788(9) and (10) of ICTA.

Section 6: The effect given by section 2 to double taxation arrangements

38. This section delimits the scope of the effect given by section 2 to DTAs. It is based on section 788(3) and (6) of ICTA, section 277(1) of TCGA, section 194(1) and (3) of FA 1993 and section 107(5) of FA 2004.

39. *Subsections (2)(b)* and *(3)(b)* reflect the view that section 788(3)(b) of ICTA is:

- about taxing non-UK residents on (a) income arising in the United Kingdom or (b) gains accruing on the disposal of assets in the United Kingdom; and
- not about taxing persons generally on (a) income arising in the United Kingdom that is received by non-UK residents or (b) gains accruing where assets are disposed of to non-UK residents.

40. *Subsection (3)* expands section 788(3) of ICTA in relation to capital gains tax with the modifications directed by section 277(1) of TCGA. Section 788(3)(b) refers to income "arising from sources", but this income tax terminology is not used in the legislation on capital gains tax. Accordingly, subsection (3)(b) refers to gains "accruing on the disposal of assets", as does *subsection (2)(c)*, the corresponding provision in relation to corporation tax on chargeable gains.

41. *Subsection (4)* expands section 788(3) of ICTA in relation to PRT with the modifications directed by section 194(1) and (3) of FA 1993. On a literal interpretation, section 788(3) of ICTA, as thus modified, would enable DTAs to make provision about PRT generally. But this would run counter to the purpose expressed in section 194(1) of FA 1993. Accordingly, subsection (4) limits the effect of DTAs on PRT to the charge under section 12 of the Oil Taxation Act 1983. Furthermore, the requirement under section 194(1)(b) of FA 1993 to translate "income" in section 788 of ICTA as "consideration" is to be read in the context of section 194(1)(a) of FA 1993 and therefore does not extend to "income" in the phrase "corporation tax in respect of income or chargeable gains" in section 788(3)(a) of ICTA.

42. *Subsections (5)* and *(8)* refer to the provisions concerning special withholding tax. These provisions are rewritten in Part 3.

43. *Subsection (6)* expressly requires relief under subsection (2)(a), (3)(a) or (4) to be claimed. This requirement is implicit in section 788(6) of ICTA.

44. Unlike section 788(6) of ICTA, on which it is based, subsection (6) does not expressly state to whom a claim should be made. A claim must, therefore, be made in (or by amending) a return, or to an officer of Revenue and Customs. This is a minor change in the law, reflecting administrative reality. See *Change 2* in Annex 1.

Section 7: *General regulations*

45. This section is a general regulation-making power. It is based on section 791 of ICTA.

46. DTAs are colloquially known as tax treaties, and *subsections (1)* and *(5)* reflect this usage in the newly defined term "the treaty sections".

Section 8: *Interpretation: "unilateral relief arrangements" means rules 1 to 9, etc*

47. This interpretative section is based on section 790(3) and (12) of ICTA and section 277(1) of TCGA.

Section 9: *Rule 1: the unilateral entitlement to credit for non-UK tax*

48. This section unilaterally gives DTR by way of credit ("credit relief"). It is based on sections 790(4), (5) and (12) and 793A(2) and (3) of ICTA and section 277(1) of TCGA.

49. As directed by section 277(1) of TCGA, *subsection (2)(b)* extends "income arising or any chargeable gain accruing" in section 790(4) of ICTA beyond income tax and corporation tax to capital gains tax. On a literal interpretation, section 790(4) would have to be read, in relation to capital gains tax, as referring to gains "arising". But this terminology is not used in the enactments relating to capital gains tax. Subsection (2)(b) therefore refers to gains "accruing", as this terminology is used both in section 790(4) of ICTA and in the enactments relating to capital gains tax.

50. *Subsection (3)* rewrites the words in brackets in section 790(4) of ICTA. Section 277(1) of TCGA has not been applied in subsection (3), as this would have produced a meaningless reference to capital gains.

Section 10: *Rule 2: accrued income profits*

51. This section gives credit relief in certain cases involving accrued income profits. It is based on sections 790(5), 793A(2) and (3) and 807(1) and (5) of ICTA.

52. Although this relief is not so termed in the source legislation, it is unilateral relief and is therefore rewritten in this group of sections.

Section 11: *Rule 3: interaction between double taxation arrangements and rules 1 and 2*

53. This section concerns the relationship between treaty relief and unilateral relief. It is based on sections 790(5) and 793A(2) and (3) of ICTA.

Section 12: *Rule 4: cases in which, and calculation of, credit allowed for tax on dividends*

54. This section concerns unilateral credit relief for tax on dividends. It is based on section 790(5), (6) and (10) of ICTA.

55. *Subsection (3)* reflects the view that, in section 790(10) of ICTA, "if the company paying the dividend and the company receiving it were related to each other within the meaning of section 801(5)" means "if the company paying the dividend was related (within the meaning of section 801(5)) to the company receiving it".

Section 13: *Rule 5: credit for tax charged directly on dividend*

56. This section specifies when, in principle, unilateral credit relief is allowed for tax charged directly on a foreign dividend. It is based on section 790(5) of ICTA.

Section 14: *Rule 6: credit for underlying tax on dividend paid to 10% associate of payer*

57. This section specifies when, in principle, unilateral credit relief is allowed for underlying tax on a dividend paid to a substantial investor. It is based on section 790(5) to (6A) of ICTA.

58. The title of this section gives an indication of its contents. The title uses the expression "10% associate" by analogy with the use of that expression in section 64. Note, however, that the definition of "10% associate" in section 64(6) and (7) refers to control of at least 10% of the ordinary share capital, whereas the similar provision in *subsections (4)* and *(5)* does not.

Section 15: *Rule 7: credit for underlying tax on dividend paid to sub-10% associate*

Section 16: *Rule 8: credit for underlying tax on dividend paid by exchanged associate*

59. These sections specify when, in principle, unilateral credit relief is allowed for underlying tax on a dividend paid in certain cases in which section 14 does not apply. They are based on section 790(5) to (9) of ICTA, and are identical in every respect except for condition C (and the subsections which insert that condition).

60. *Subsection (2)* provides that three conditions must all be met if the section under review is to enable credit to be given under section 9.

61. Condition A in *subsection (3)* is the same as condition A in section 14(3).

62. Condition B in *subsection (4)* is met if condition B in section 14(4) is not.

63. *Subsection (5)* follows on from subsection (4). To lead into *subsection (6)*, it defines "the held percentage" in that subsection.

64. Condition C, in subsection (6), sets out the circumstances in which credit can in principle be given under the section under review even though section 14 does not apply.

65. *Subsections (7)* to *(10)* are interpretative.

Section 17: *Rule 9: credit in relation to dividends for spared tax*

66. This section specifies when, in principle, unilateral credit relief is allowed in relation to dividends for spared tax. It is based on section 790(10A) to (10C) of ICTA.

67. Section 790(10A) of ICTA gives unilateral relief in cases in which:

    - a UK resident company (company C) would have been entitled under a DTA to credit relief in relation to dividends for spared tax if it had invested directly in a non-UK resident company (company A); but
    - instead company C invests in company A through a holding company resident in the same non-UK territory (company B).

68. *Subsection (1)* is based on section 790(10A) of ICTA. Section 790(10A)(d) reads:

    "the circumstances are such that, had company B been resident in the United Kingdom, it would have been entitled, under arrangements made in relation to the territory outside the United Kingdom and having effect by virtue of section 788, to a relief to which subsection (5) of that section applies in respect of the spared tax.

69. A relief to which section 788(5) of ICTA applies is a tax relief, given for development purposes, under the law of the non-UK territory to which the DTA under review relates. See the second sentence of section 788(5). Accordingly, a relief to which section 788(5) applies is not a UK tax relief to which a person is entitled under a DTA. It is a foreign tax relief with respect to which provision is made in a DTA for DTR.

70. Accordingly, if company B had been resident in the United Kingdom, it would not have been entitled to a relief to which section 788(5) of ICTA applies. Rather, it would have been entitled to treat the spared tax as having been payable for the purposes of DTR by way of credit. Foreign tax is spared as a result of a relief to which section 788(5) applies. But entitlement to treat the spared tax as having been payable arises under the first sentence of section 788(5).

71. Section 790(10A)(a) to (d) of ICTA therefore address the following case. Company A receives a tax relief under the law of the non-UK territory in which it is resident. It pays a dividend out of the relieved profits to company B, which is resident in the same non-UK territory. Company B, out of the dividend received from company A, pays a dividend to UK resident company C. There is a DTA in relation to the non-UK territory the effect of which, when read with section 788(5) of ICTA, is that if company B was UK resident it would be entitled, for the purposes of DTR by way of credit to treat as payable the non-UK tax which company A would have paid but for the non-UK tax relief. Subsection (1)(d) is drafted accordingly.

72. Section 790(10B)(b) of ICTA refers to section 795(3) of that Act, which is rewritten to sections 31(4) and 32(5). *Subsection (2)*, which is based on section 790(10B)(b), refers to section 31(4). But subsection (2) does not refer to section 32(5), because section 790(10B) concerns the corporation tax liability of a UK resident company and section 32 has no application for corporation tax purposes.

73. The tail words of section 790(10C) of ICTA contain the proviso:

    "(notwithstanding any arrangements … which have effect by virtue of section 788 and provide for a relief to which subsection (5) of that section applies).

74. As noted in the commentary on subsection (1), a relief to which section 788(5) of ICTA applies is given under foreign law, not under a DTA. Accordingly, in the tail words of section 790(10C) of ICTA, "provide for" is elliptic drafting for "make provision with respect to". *Subsection (5)* is drafted accordingly.

Chapter 2: Double taxation relief by way of credit

Overview

75. This Chapter contains the main provisions concerning credit relief.

76. This Chapter has the following structure.

- Sections 18 to 20 set out the effect to be given to credit for foreign tax allowed against United Kingdom tax.
- Section 21 defines some key terms used in the Chapter.
- Sections 22 to 24 concern the credits to be allowed where the same income is charged to income tax in more than one tax year.
- Sections 25 to 27 deal with cases in which credit is not allowed.
- Sections 28 to 30 are exceptions to the rule that relief is only available if the taxpayer is UK resident.
- Sections 31 and 32 are rules for calculating income and gains in respect of which credit is allowed.

- Sections 33 to 35 are general rules about limits on credit.
- Sections 36 to 39 limit and reduce credit against income tax.
- Section 40 limits credit against capital gains tax.
- Section 41 limits credit against income tax and capital gains tax.
- Sections 42 to 49 limit credit against corporation tax.
- Sections 50 and 51 are rules for calculating tax for the purposes of section 42(2).
- Sections 52 to 56 allocate deductions etc to profits for the purposes of section 42.
- Sections 57 to 62 concern foreign tax underlying dividends.
- Section 63 concerns tax underlying dividends which is not foreign tax.
- Sections 64 to 66 concern tax underlying a dividend which is treated as underlying tax paid by the dividend's recipient.
- Sections 67 to 71 contain further rules about tax underlying dividends. Among other things, they provide for relief to be restricted in certain cases.
- Sections 72 to 78 deal with unrelieved foreign tax on the profits of an overseas permanent establishment.
- Sections 79 and 80 concern the action to be taken after adjustments of amounts payable by way of United Kingdom or foreign tax.
- Sections 81 to 95 are anti-avoidance rules which counter schemes and arrangements designed to increase relief.
- Sections 96 to 104 concern insurance companies.

Section 18: Entitlement to credit for foreign tax reduces UK tax by amount of the credit

77. This section gives credit relief. It is based on sections 788(4), 790(1) and (3), 792(1) and (3) and 793(1) to (3) of ICTA and section 277(1) of TCGA.

78. Section 793(1) of ICTA, in relation to income tax and corporation tax, refers to tax "chargeable in respect of any income or chargeable gain". *Subsection (1)*, in relation to income tax, corporation tax and capital gains tax, also refers to tax "chargeable in respect of any income or chargeable gain". Taken literally, the substitution rule in section 277(1) of TCGA would require subsection (1) to refer to capital gains tax in respect of any "capital" gain.

79. Section 15(2) of TCGA provides: "every gain shall, except as otherwise expressly provided, be a chargeable gain." There is no indication that the gains excepted by section 15(2) of TCGA are not capital gains. It is, therefore, possible for a capital gain not to be a chargeable gain, and "capital" gains and "chargeable" gains are not synonymous.

80. But capital gains tax in respect of a capital gain is tax in respect of a chargeable gain. Subsection (1) therefore refers to any "chargeable" gain in relation to both corporation tax and capital gains tax.

81. *Subsection (6)* is confined to income tax because section 23 of ITA applies only in relation to income tax and so section 793(3) of ICTA can apply only in relation to income tax, notwithstanding section 277(1) of TCGA.

Section 19: Time limits for claims for relief under section 18(2)

82. This section sets the time limits for claims for DTR under section 18(2). It is based on section 806(1) of ICTA and section 277(1) of TCGA.

Section 20: Foreign tax includes tax spared because of international development relief

83. This section concerns tax sparing relief. It is based on section 788(5) of ICTA and paragraph 2(2) of Schedule 30 to FA 2000.

84. Section 4 enables DTAs to make provision for tax sparing relief (as explained in the commentary on that section). This section ensures that credit relief can be given for spared tax.

Section 21: Meaning of "the arrangements", "the non-UK territory", "foreign tax" etc

85. This interpretative section is based on sections 790(3) and 792(1) and (3) of ICTA and section 107(5) of FA 2005.

Section 22: Credit for foreign tax on overlap profit if credit for that tax already allowed

86. This section is the first of a group of three sections which ensure that the DTR rules work consistently with the rules about overlap profits in Chapter 15 of Part 2 of ITTOIA. It is based on section 804(1) to (4) and (8) of ICTA.

87. When a person starts trading, it can happen that the same amount of trading income is subject to income tax in more than one tax year. In such cases, this section gives credit relief twice in respect of the income which is subject to income tax twice.

88. It is relevant that, when section 804(2) of ICTA was enacted, "by virtue of this section" could only mean "by virtue of subsection (1)". *Subsection (3)* reflects the view that "by virtue of this section" in section 804(2) retains that meaning, notwithstanding the insertion in 1994 of what is now section 804(5B)(b).

89. Notwithstanding section 277(1) of TCGA, section 804 of ICTA is specific to income tax. The three sections which are based on it therefore have no application to capital gains tax.

Section 23: Time limits for claims for relief under section 22(2)

90. This section sets the time limits for claims for relief under section 22(2). It is based on section 804(7) of ICTA.

91. *Subsection (1)* expressly requires relief under section 22(2) to be claimed. This requirement is implicit in section 804(7) of ICTA.

Section 24: Claw-back of relief under section 22(2)

92. This section claws back, in certain cases, DTR given under section 22(2). It is based on section 804(5) to (5C) and (8) of ICTA.

93. If a person's income has been subject to income tax in more than one tax year when the person starts trading, then, when the trade ceases, the rules about overlap profits give a measure of relief for the income which has been taxed twice. In such cases, this section claws back DTR which has been given in respect of the income for which this relief is being given.

Section 25: Credit not allowed if relief allowed against overseas tax

94. This section is a priority rule. It is based on section 793A(1) of ICTA.

95. If tax is payable in a non-UK territory but, as a result of a DTA (or of the law of the territory giving effect to a DTA), relief is available in the territory against the tax then, whether or not the relief is in fact used, credit relief is not allowed under section 18(2) in respect of the tax.

Section 26: Credit not allowed under arrangements unless taxpayer is UK resident

96. This section lays down the general rule that relief under section 18(2) is restricted to UK residents. It is based on sections 792(1), 794(1) and 831(5) of ICTA and section 277(1) of TCGA.

97. In relation to income tax and corporation tax, section 794(1) of ICTA refers to "income or chargeable gains" in respect of which the tax is chargeable. On a literal interpretation, the substitution rule in section 277(1) of TCGA would require *subsection (1)* to refer to "capital" gains in relation to capital gains tax. But if capital gains tax is chargeable in respect of a gain, it must be a "chargeable" gain. Subsection (1) therefore refers to "chargeable gains" in relation both to corporation tax and to capital gains tax.

Section 27: Credit not allowed if person elects against credit

98. This section allows the taxpayer to elect against credit. It is based on sections 792(1) and 805 of ICTA and section 277(1) of TCGA.

99. In relation to income tax and corporation tax, section 805 of ICTA refers to "the United Kingdom taxes chargeable in respect of any income or chargeable gains". On a literal interpretation, section 277(1) of TCGA could be taken as requiring this section to refer to "capital" gains in relation to capital gains tax. But, if capital gains tax is chargeable in respect of gains, the gains are "chargeable" gains. This section therefore refers to "chargeable" gains, in relation both to corporation tax and to capital gains tax.

Section 28: Unilateral relief for Isle of Man or Channel Islands tax

100. This section is an exception to the rule that relief under section 18(2) is restricted to UK residents. It is based on sections 792(1), 794(2) and 831(5) of ICTA and section 277(1) of TCGA.

101. Section 18(3) makes it clear that section 18(2) only gives credit for tax paid under the law of the territory to which the arrangements relate. Accordingly, the credit mentioned in *subsection (1)* has to be credit for Manx tax within section 9 in relation to the Isle of Man, and the credit mentioned in *subsection (3)* has to be credit for tax payable under the law of the Channel island or islands concerned and within section 9 in relation to that island or those islands.

102. In section 794(2) of ICTA, "the person in question" harks back to "the person in respect of whose income or chargeable gains the United Kingdom tax is chargeable" in section 794(1), in relation to income tax and corporation tax. On a literal interpretation, section 277(1) of TCGA could be taken as requiring subsections (1) and (2) to refer to "capital" gains in relation to capital gains tax. But, if capital gains tax is chargeable in respect of gains, the gains are "chargeable" gains. Subsections (1) and (2) therefore refer to "chargeable" gains, in relation both to corporation tax and to capital gains tax.

Section 29: Unilateral relief for tax on income from employment or office

103. This section is another exception to the rule that relief under section 18(2) is restricted to UK residents. It is based on sections 790(12) and 794(2) of ICTA.

104. Section 794(2)(b) of ICTA refers to "income tax on employment income". This expression was substituted by ITEPA for "income tax chargeable under Schedule E". Section 277(1) of TCGA would not have been taken as requiring that expression to be read, in relation to capital gains tax, as "capital gains tax chargeable under Schedule E". Accordingly, section 277(1) of TCGA does not apply to section 794(2)(b) of ICTA and this section does not extend to capital gains tax.

Section 30: Unilateral relief for non-UK tax on non-resident's UK branch or agency etc

105. This section is concerned with unilateral relief for tax imposed on non-UK residents with branches, agencies or permanent establishments in the United Kingdom. It is based on sections 790(12), 792(1), 794(2) and 831(5) of ICTA, section 277(1) of TCGA and section 153(2) of FA 2003.

106. *Subsection (5)* imposes a limit on relief rather than a condition for relief. This is a minor change in the law. See *Change 3* in Annex 1.

Section 31: Calculation of income or gain where remittance basis does not apply

107. This section lays down the general rule for the calculation of income or gains in respect of which credit is allowed. It is based on section 795(2) to (5) of ICTA, section 277(1) of TCGA and paragraph 1(4) of Schedule 27 to FA 2001.

Section 32: Calculation of amount received where UK tax charged on remittance basis

108. This section is a special rule for the calculation of income or gains in respect of which credit is allowed. It applies if United Kingdom tax is charged on the remittance basis. It is based on section 795(1), (3) and (5) of ICTA and section 277(1) to (1C) of TCGA.

Section 33: Limit on credit: minimisation of the foreign tax

109. This section requires the taxpayer desiring credit relief for foreign tax to take reasonable steps to minimise the amount of that tax. It is based on section 795A of ICTA.

Section 34: Reduction in credit: payment by reference to foreign tax

110. This section reduces credit relief to the extent that the taxpayer (or a person connected with the taxpayer) receives a payment calculated by reference to the foreign tax. It is based on section 804G of ICTA.

Section 35: Disallowed credit: use as a deduction

111. This section gives a deduction for a foreign tax credit which cannot be set against the taxpayer's United Kingdom tax liability. It is based on section 798C of ICTA and section 277(1) of TCGA.

112. Section 798C(2) of ICTA requires the taxpayer's income to be treated as reduced. Section 277(1) of TCGA extends section 798C(2) to capital gains tax. Taken literally, the substitution rule in section 277(1) would require "income" to be translated as "capital gains". But, if the subsection is to give effective relief from capital gains tax, as indicated by the opening words of section 277(1), then it should be the taxpayer's chargeable gains that are reduced. *Subsection (4)* accordingly refers to the taxpayer's "chargeable gains".

Section 36: Amount of limit

113. This section restricts the amount of credit which may be allowed against income tax. It is based on section 796(1) to (2A) of ICTA.

114. Where credit relief is allowed against income tax in respect of income from more than one source, *subsection (3)* requires the sources of income to be taken in the order which provides the greatest reduction in the liability to income tax for the tax year. This minor change brings the law into line with practice. See *Change 4* in Annex 1. The corresponding change is proposed in relation to capital gains tax in section 40(3).

Section 37: *Credit against tax on trade income: further rules*

115. This section supplements section 36 in its application to trade income. It is based on section 798(1) to (3) and (5) of ICTA and paragraph 49 of Schedule 7 to FA 2008.

116. *Subsection (6)* requires apportionments to be not only reasonable but also just. This is a minor change in the law. See *Change 5* in Annex 1. The same change is proposed in section 44.

117. *Subsection (7)* rewrites section 798(5) of ICTA. Paragraph 49 of Schedule 7 to FA 2008 repealed Chapter 11 of Part 3 of ITTOIA and therefore by implication also repealed the reference to that Chapter in section 798(5)(c) of ICTA. Section 798(5)(c) is therefore expressly repealed without replacement.

Section 38: *Credit against tax on royalties: further rules*

118. This section supplements section 36 in its application to royalties. It is based on section 798(4) of ICTA.

119. If section 277(1) of TCGA applied to section 798(4) of ICTA, then "royalty income arising in different jurisdictions" would have to be read, in relation to capital gains tax, as "royalty capital gains arising in different jurisdictions". Even if the expression "royalty capital gains" could have an application, it is not clear how royalty capital gains could "arise" (or even accrue) "in" a particular jurisdiction. Section 798(4) of ICTA therefore has no application to capital gains tax.

Section 39: *Credit reduced by reference to accrued income losses*

120. This section provides for credit to be reduced by reference to accrued income losses. It is based on section 807(2) and (5) of ICTA.

Section 40: *Amount of limit*

121. This section restricts the amount of credit which may be allowed against capital gains tax. It is based on section 796(1) and (2) of ICTA and section 277(1) of TCGA.

122. *Subsection (3)* brings the law into line with practice. See *Change 4* in Annex 1 and the commentary on section 36(3).

123. In *subsection (4)*, the definition of TG is the result of applying section 796(1)(a) of ICTA in relation to capital gains tax in accordance with section 277(1) of TCGA.

124. In section 796(1) of ICTA, the words "allowing for the making of any other income tax reduction under the Income Tax Acts" have no application to capital gains tax. They are therefore not rewritten in *subsection (5)*.

Section 41: *Amount of limit*

125. This section restricts the total credit which may be allowed against income tax and capital gains tax. It is based on sections 790(3) and 796(3) of ICTA and section 277(1) of TCGA.

126. In applying the limit, *subsection (2)* takes the person's income tax and capital gains tax liabilities together. This minor change brings the law into line with practice. See *Change 6* in Annex 1.

127. The reference to section 414 of ITA (gift aid) in the definition of "A" in subsection (2) includes by implication a reference to section 426 of that Act (election by donor: gift treated as made in previous tax year).

128. Section 796(3) of ICTA refers to "total income tax" and, as applied by section 277(1) of TCGA, to "total capital gains tax". Attempting to spell out the meaning of these expressions could change their scope, with repercussions which could be difficult to predict. Accordingly, subsection (2) retains these expressions.

129. Also, persons other than individuals cannot make gift aid donations falling within section 414 of ITA. But the scope of "total income tax" and "total capital gains tax" in subsection (2) is not entirely clear. Accordingly, this section follows the source legislation in using "person" rather than "individual", to preserve the possibility that, in a case involving a person other than an individual, this section may set a limit on the amount of credit that is allowed in addition to the limits on credit that are set by sections 36 and 40.

Section 42: Amount of limit

130. This section restricts the amount of credit which may be allowed against corporation tax. It is based on sections 797(1) to (3B), 797A(3), (6) and (7) and 797B(3) of ICTA.

131. Section 797(2) of ICTA is subject to subsections (2A) and (3) of that section (provisions about permanent establishments and general deductions). The rule in section 797(2) of ICTA is primarily rewritten in *subsection (2)*.

132. *Subsection (3)* clarifies the relationship between the rewritten rule and (among others) the provisions based on section 797(3) of ICTA.

133. *Subsection (4)* then says that the rewritten rule is to be read with the provisions based on section 797(2A) of ICTA. In these ways, the section rewrites the words "Subject to subsections (2A) and (3)" that appear in section 797(2) of ICTA. Subsection (4) also says that the rewritten rule is to be read with the provisions based on sections 798A and 798B of ICTA (which qualify the rule so far as relating to trade income) and with the provisions based on sections 797A(1) and (2) and 797B(1) and (2) of ICTA (assumptions for the purposes of the rule about how tax is charged on loan relationships and intangible fixed assets).

134. The source legislation has the effect that the rule is to be read with those provisions, but does not expressly say that. The references in subsection (4) to the sections based on those provisions are therefore included as a drafting clarification.

Section 43: Profits attributable to permanent establishment for purposes of section 42(2)

135. This section supplements section 42 in its application to UK resident companies with permanent establishments outside the United Kingdom. It is based on section 797(2A) of ICTA.

Section 44: Credit against tax on trade income

136. This section supplements section 42 in its application to trade income. It is based on section 798A of ICTA.

137. Section 798A(2) of ICTA applies for the interpretation of "the relevant income or gain" in section 797(1) of that Act. Section 798A(2) refers to "income arising or gains accruing", and section 798A(3) has "income or gain" (three times). But "the relevant income or gain" in section 797(1) harks back to "any income or *chargeable* gain", and it follows from the definition of "trade income" in section 798A(4) that section 798A does not affect credit relief against corporation tax on chargeable gains. *Subsections (2)* and *(3)* therefore omit as otiose the references to gains in section 798A(2) and (3).

138. In section 798A(3)(a) of ICTA, "deductions" is apt to include expenses. Subsection (3)(a) therefore omits "or expenses" as otiose.

139. *Subsection (4)* requires apportionments to be not only reasonable but also just. See *Change 5* in Annex 1 and the commentary on section 37.

140. Before its amendment by paragraph 249 of Schedule 1 to CTA 2009, section 798A(4) of ICTA referred to section 104 of that Act and not to section 103 of that Act. Sections 103 and 104 of ICTA were rewritten for the purposes of corporation tax and repealed by CTA 2009. Most post-cessation receipts are charged under what used to be section 103 of ICTA, leaving what used to be section 104 of ICTA to pick up the "change of basis" adjustments. See section 104(3) of ICTA (repealed), which made it clear that section 103 of ICTA (repealed) had priority. *Subsection (7)* is based on section 798A(5) of ICTA, which was inserted by paragraph 249 of Schedule 1 to CTA 2009 in order to preserve the distinction between post-cessation receipts charged to tax by section 103 (to which section 798A does not apply) and those charged to tax by section 104 (to which section 798A does apply).

Section 45: Credit against tax on trade income: anti-avoidance rules

141. This section is directed against schemes and arrangements designed to divert income, for credit relief purposes, to other persons. It is based on section 798B(4) to (4C) of ICTA.

Section 46: Applying section 44(2): asset in hedging relationship with derivative contract

142. This section supplements section 44 in its application to assets in hedging relationships with derivative contracts. It is based on section 798B(1) and (2) of ICTA.

Section 47: Applying section 44(2): royalty income

143. This section supplements section 44 in its application to royalties. It is based on section 798B(3) of ICTA.

144. This section is a corporation tax provision, and *subsection (2)* therefore has "accounting period" where the source legislation has "year of assessment". This is a minor change in the law. See *Change 7* in Annex 1.

Section 48: Applying section 44(2): "portfolio" of transactions, arrangements or assets

145. This section supplements section 44 in its application to "portfolios" of transactions, arrangements or assets. It is based on section 798B(5) of ICTA.

146. Section 798B(5) of ICTA uses the expression "fair and reasonable". In rewriting this, *subsection (5)* follows the convention in this Act that apportionments are to be "just and reasonable". This is not a change in the law, because it is not possible for anything to be fair and reasonable without being just and reasonable or just and reasonable without being fair and reasonable.

Section 49: Restricting section 44(3) if company is a bank or connected with a bank

147. This section supplements section 44(3) in certain cases where the taxpayer is a bank (or is connected with a bank). It is based on section 798A(3A) to (3C) of ICTA.

Section 50: Tax for period on loan relationships

Section 51: Tax for period on intangible fixed assets

148. These sections harmonise the credit relief regime with, respectively, the loan relationships regime and the intangible fixed assets regime. They are based on sections 797A(1) and (2) and 797B(1) and (2) of ICTA.

149. For credit relief purposes, items of income are dealt with separately, as indicated by "any income" in section 42(1). And, broadly speaking, deductions which can be set against more than one description of profits are allocated for credit relief purposes as the company thinks fit: section 52. This contrasts with the treatment of the same matters under the loan relationships and intangible fixed assets regimes.

150. For loan relationships purposes, interest receivable (from both United Kingdom and foreign sources) from non-trading loan relationships, interest payable on non-trading loan relationships, and other gains and losses relating to non-trading loan relationships go into the same "pot". The net non-trading result is then either taxed or relieved.

151. Similarly, non-trading debits and non-trading credits on intangible fixed assets are netted off and the net non-trading result is taxed or relieved.

152. The effect of sections 50 and 51 is that, in the cases of (respectively) loan relationships and intangible fixed assets, one has to go behind the net non-trading results in order to analyse the figures from which those results are arrived at. The sections then provide that, for credit relief purposes, corporation tax is in those cases to be treated as being charged not on the net non-trading results but on the gross non-trading receipts.

Section 52: General deductions

153. This section lays down the general corporation tax rule that for credit relief purposes a company may allocate deductions as it thinks fit. It is based on section 797(3) of ICTA.

154. Section 797(3) of ICTA refers to there being "any deduction to be made for charges on income, expenses of management, expenses payable (within the meaning of section 76(1)) or other amounts which can be deducted from or set against or treated as reducing profits of more than one description". *Subsection* (1) refers, more succinctly, to there being "any amount ("the deduction") that for corporation tax purposes is deductible from, or otherwise allowable against, profits of more than one description". This compression does not change the law.

Section 53: Earlier years' non-trading deficits on loan relationships

Section 54: Non-trading debits on loan relationships

Section 55: Current year's non-trading deficits on loan relationships

155. These sections harmonise the credit relief regime with the loan relationships regime. They are based on sections 797(3) to (6) and 797A of ICTA.

156. As explained in the commentary on section 50, the figures calculated for the purposes of the loan relationships regimes need to be analysed for the purposes of credit relief. Sections 53 and 55 are about the allocation for those purposes of non-trading deficits. Section 54 is about the allocation for those purposes of non-trading debits.

157. In sections 53 to 55, "the period" is the period mentioned in section 42(2).

Section 56: Non-trading debits on intangible fixed assets

158. This section harmonises the credit relief regime with the intangible fixed assets regime. It is based on sections 797(3) and 797B(1), (3) and (4) of ICTA.

159. As explained in the commentary on section 51, the figures calculated for the purposes of the intangible fixed assets regimes need to be analysed for the purposes of credit relief. This section is about the allocation for those purposes of non-trading debits.

160. In this section, "the period" is the period mentioned in section 42(2).

Section 57: Credit in respect of dividend: taking account of underlying tax

161. This section is the first in a series of sections dealing with credit relief for tax underlying dividends. It is based on section 799(1), (1A), (2) and (2A) of ICTA, section 277(1) of TCGA, paragraphs 8(5) and 9(3) of Schedule 30 to FA 2000 and paragraph 2(4) of Schedule 27 to FA 2001.

Section 58: Calculation if dividend paid by non-resident company to resident company

162. This section quantifies the underlying tax to be taken into account if the dividend under review is paid by a company resident outside the United Kingdom to a UK resident company. It is based on section 799(1), (1A) and (2) of ICTA.

Section 59: Meaning of "relevant profits" in section 58

163. This interpretative section is based on section 799(3) to (7) of ICTA.

Section 60: Underlying tax to be left out of account on claim to that effect

164. This section permits a claim for credit relief to be framed so as to exclude specified amounts of underlying tax. It is based on section 799(1B) of ICTA and paragraph 2(4) of Schedule 27 to FA 2001.

Section 61: Calculation if section 58 does not apply

165. This section quantifies the underlying tax to be taken into account if the dividend under review is not paid by a company resident outside the United Kingdom to a UK resident company (and is thus outside section 58). It is based on section 799(1) and (2) of ICTA.

Section 62: Meaning of "relevant profits" in section 61

166. This interpretative section is based on section 799(3) and (4) of ICTA.

Section 63: Non-UK company dividend paid to 10% investor: relief for UK and other tax

167. This section provides, if the appropriate conditions are met, for certain other taxes to be treated as underlying tax, namely taxes which are (a) payable in respect of the profits of the company paying the dividend and (b) not imposed in the jurisdiction in which that company is resident. It is based on sections 792(2) and 801(1), (1A) and (5) of ICTA.

168. *Subsection (5)(a)* does not mention capital gains tax payable by the overseas company, because companies resident outside the United Kingdom are outside the scope of capital gains tax.

169. In the italicised cross-heading before this section, "tax...that is not foreign tax" is to be read in accordance with section 21(1) and therefore includes third country tax within *subsection (5)(b)*.

Section 64: Meaning of "dividend-paying chain" of companies

170. This interpretative section is based on sections 792(2) and 801(1), (2), (3), (5) and (5A) of ICTA.

Section 65: Relief for underlying tax paid by company lower in dividend-paying chain

171. This section provides for tax payable by the company paying the dividend to be treated as underlying tax paid by the dividend's recipient. It is based on section 801(1), (2), (2A), (3), (4) and (5A) of ICTA and paragraphs 8(5) and 11(3) of Schedule 30 to FA 2000.

172. *Subsections (2)* and *(3)* set the conditions for the section to apply.

173. *Subsection (4)* is the main operative provision. Subsection (4)(b) enables the section to be applied repeatedly and thus deals with dividend-paying chains of companies comprising more than three companies.

Section 66: Limitations on section 65(4)

174. This section sets limitations on section 65(4). It is based on section 801(4) of ICTA.

Section 67: Restriction of relief if underlying tax at rate higher than rate of corporation tax

175. This section combats schemes designed to inflate relievable underlying tax. It is based on section 801A(1) to (5) of ICTA.

Section 68: Meaning of "avoidance scheme" in section 67

176. This interpretative section is based on sections 792(2) and 801A(6) to (11) of ICTA.

Section 69: Dividends paid out of transferred profits

177. This section applies the rules about underlying tax to cases in which the profits of one company become profits of another company otherwise than by way of dividend. It is based on section 801B of ICTA.

Section 70: Underlying tax reflecting interest on loans

178. This section, which deals with cases involving banks, prevents the rules about underlying tax from being used to circumvent the restrictions on credit relief imposed by sections 44(3) and 49. It is based on sections 792(2) and 803 of ICTA.

Section 71: Foreign taxation of group as single entity

179. This section applies the rules about underlying tax to cases in which, under non-UK tax law, groups of companies are taxed as single entities. It is based on sections 792(2) and 803A of ICTA and paragraph 15(2) of Schedule 30 to FA 2000.

Section 72: Application of section 73(1)

180. This section is the first of a series of sections concerned with DTR for unrelieved foreign tax suffered on the profits of an overseas permanent establishment. It is based on section 806L(1), (4) and (5) of ICTA.

Section 73: Carry-forward and carry-back of unrelieved foreign tax

181. This section permits unrelieved foreign tax to be carried forward and carried back. It is based on sections 806L(2) and (6) and 806M(1) and (2) of ICTA.

Section 74: Rules for carrying back unrelieved foreign tax

182. This section sets out the rules for carrying back unrelieved foreign tax. It is based on section 806L(2) to (4) of ICTA.

Section 75: Two or more establishments treated as a single establishment

183. This section treats two or more overseas permanent establishments as a single establishment if they are so treated for the purposes of overseas tax law. It is based on section 806M(1) and (4) of ICTA.

Section 76: Former and subsequent establishments regarded as distinct establishments

184. This section requires former and subsequent overseas permanent establishments to be regarded as different establishments. It is based on section 806M(1) and (3) of ICTA.

Section 77: Claims for relief under section 73(1)

185. This section stipulates that relief under section 73(1) needs to be claimed and lays down rules about such a claim. It is based on section 806M(1) and (5) to (7) of ICTA.

Section 78: Meaning of "overseas permanent establishment"

186. This interpretative section is based on sections 806L(7) and 806M(1) of ICTA.

Section 79: Time limits for action if tax adjustment makes credit excessive or insufficient

187. This section permits assessments or claims for relief to be made after the normal time limits, if the amount of credit given is found to be excessive or insufficient by reason of an adjustment of the amount of tax payable. It is based on section 806(2) of ICTA and section 277(1) of TCGA.

Section 80: Duty to give notice that adjustment has rendered credit excessive

188. This section requires the taxpayer to give notice that an adjustment of the amount of tax payable has rendered the amount of credit given excessive. It is based on sections 806(3) to (6) and 831(5) of ICTA and section 277(1) of TCGA.

Section 81: Giving a counteraction notice

189. This section is the first of a group of anti-avoidance sections directed against schemes and arrangements designed to increase DTR. It enables an officer of Revenue and Customs to activate these anti-avoidance provisions by giving a counteraction notice. It is based on sections 804ZA(1), (8) and (11A) and 831(5) of ICTA and section 277(1) of TCGA.

190. Section 804ZA of ICTA gives this function to the Commissioners for HMRC. In practice, the Commissioners delegate this function to officers of Revenue and Customs, and *subsections (1)* and *(2)* reflect this. This is a minor change in the law: see *Change 2* in Annex 1. The Commissioners delegate the function of giving counteraction notices to a group of specialist officers; *Change 2* makes no change to this practice.

191. Section 703 of ICTA (transactions in securities) gave the function of giving counteraction notices to the Board. Rewriting this for income tax purposes, Chapter 1 of Part 13 of ITA gives this function to officers of Revenue and Customs, and the same change in the law is made in Part 15 of CTA 2010 which rewrites section 703 of ICTA for corporation tax purposes. This Change is also made in Part 6 of this Act (tax arbitrage). *Change 2* in this section is consistent with this approach.

192. As *Change 2* is made in this section, it is also made in sections 89, 91 and 92.

Section 82: Conditions for the purposes of section 81(1)

193. This section sets out the conditions mentioned in section 81(1). It is based on sections 804ZA(1) to (7) and (11A), 831(5) and 832(3) of ICTA and section 277(1) of TCGA.

Section 83: Schemes and arrangements referred to in section 82(4)

194. This section concerns the schemes and arrangements against which these provisions are directed. It fills out condition C in section 82(4), and introduces sections 84 to 88 (which specify the general features of the schemes and arrangements in question). It is based on section 804ZA(11) of ICTA and paragraph 1 of Schedule 28AB to that Act.

195. If a scheme or arrangement is not an underlying-tax scheme or arrangement (as defined in *subsection (3)*), *subsection (2)* brings it within this section if one or more of sections 84 to 88 apply to it.

196. In the case of an underlying-tax scheme or arrangement, *subsections (4)* to *(7)* modify the application of sections 84 to 88. If one or more of sections 84 to 88 would apply to the scheme or arrangement if the overseas-resident body corporate in question was resident in the United Kingdom, subsection (4) brings the scheme or arrangement within this section.

Section 84: Section 83(2) and (4): schemes enabling attribution of foreign tax

197. This section applies to schemes or arrangements which shift foreign tax from one source of income or chargeable gain to another. It is based on paragraph 2 of Schedule 28AB to ICTA and section 277(1) of TCGA.

Section 85: Section 83(2) and (4): schemes about effect of paying foreign tax

198. This section applies to schemes or arrangements which inflate credit for foreign tax. It is based on section 831(5) of ICTA, paragraph 3 of Schedule 28AB to that Act and section 277(1) of TCGA.

Section 86: Section 83(2) and (4): schemes about claims or elections etc

199. This section applies, in particular, to schemes or arrangements about claims or elections. It is based on paragraph 4 of Schedule 28AB to ICTA.

Section 87: Section 83(2) and (4): schemes that would reduce a person's tax liability

200. This section applies to schemes that would reduce a person's tax liability. It is based on sections 831(5) and 832(3) of ICTA, paragraph 5 of Schedule 28AB to that Act and section 277(1) of TCGA.

Section 88: Section 83(2) and (4): schemes involving tax-deductible payments

201. This section applies to schemes involving tax-deductible payments. It is based on paragraph 6 of Schedule 28AB to ICTA and section 277(1) of TCGA.

Section 89: Contents of counteraction notice

202. This section sets out what a counteraction notice may contain. It is based on section 804ZA(9), (10) and (11A) of ICTA.

203. *Subsections (1)* and *(2)* include a minor change in the law. See *Change 2* in Annex 1 and the commentary on section 81.

Section 90: *Consequences of counteraction notices*

204. This section sets out the consequence of a counteraction notice being given. It is based on section 804ZB of ICTA.

Section 91: *Counteraction notices given before tax return made*

205. This section meshes the DTR legislation in with the machinery of Self Assessment in cases in which a counteraction notice is given before the taxpayer's tax return is made for the chargeable period specified in the notice. It is based on section 804ZC(1), (2) and (11) of ICTA.

206. *Subsection (1)* includes a minor change in the law. See *Change 2* in Annex 1 and the commentary on section 81.

207. Section 804ZC(2)(b) and (11)(b) of ICTA refer to the taxpayer amending the return "for the purpose of complying with the notice". To sharpen the drafting, *subsections (2)(b)* and *(3)(a)* refer to the taxpayer amending the return "for the purpose of complying with the provision referred to in the notice".

Section 92: *Counteraction notices given after tax return made*

208. This section meshes the DTR legislation in with the machinery of Self Assessment in cases in which a counteraction notice is given after the taxpayer's tax return has been made for the accounting period specified in the notice. It is based on section 804ZC(3) to (7) of ICTA.

209. *Subsections (1)* to *(5)* include a minor change in the law. See *Change 2* in Annex 1 and the commentary on section 81.

Section 93: *Amendment, closure notices and discovery assessments in section 92 cases*

210. This section concerns amendments to tax returns, and is also about closure notices and discovery assessments in cases in which section 92 applies. It is based on section 804ZC(8) to (11) of ICTA.

211. Section 804ZC(8), (9)(b), (10)(b) and (11)(b) of ICTA refer to the taxpayer amending the return "for the purpose of complying with the notice". To sharpen the drafting, *subsections (2)*, *(5)* and *(6)* refer to the taxpayer amending the return "for the purpose of complying with the provision referred to" in the notice.

Section 94: *Information made available for the purposes of section 92(4)*

212. This section supplements section 92(4). It is based on section 804ZC(6) of ICTA.

213. This section expands the cross-references in section 804ZC(6)(a) and (b) of ICTA to section 29 of TMA and paragraph 44 of Schedule 18 to FA 1998.

214. In section 29(6)(a) of TMA, there cannot be "accounts" which are not "documents", nor can there be "statements … accompanying the return" which are not "documents". *Subsection (2)(c)* and *(3)(c)* therefore compress "accounts, statements or documents accompanying the return" to "documents accompanying a return".

215. Similarly:

- *subsections (2)(d), (3)(d)* and *(5)(c)* omit as otiose the reference to "accounts" in section 29(6)(c) of TMA;
- *subsections (4)(d)* and *(6)(d)* omit as otiose the reference to "accounts" in paragraph 44(2)(c) of Schedule 18 to FA 1998; and

- *subsections (5)(b)* and *(6)(c)* compress "any accounts, statements or documents accompanying any such claim" in, respectively, section 29(6)(b) of TMA and paragraph 44(2)(b) of Schedule 18 to FA 1998 to "any documents accompanying such a claim".

216. Section 29(6)(c) of TMA uses the word "furnished". Paragraph 44(2)(c) of Schedule 18 to FA 1998 is very similar, but uses the more modern word "provided". Subsections (2)(d), (3)(d) and (5)(c), which are based on section 29(6)(c) of TMA, therefore use the word "provided".

217. Section 29(6)(d) of TMA refers to "the situation mentioned in subsection (1) above" and paragraph 44(2)(d) of Schedule 18 to FA 1998 refers to "the situation mentioned in paragraph 41(1) or (2)". *Subsection (7)* makes it clear that, in the present context, these references are references to exercise of power to give the person a counteraction notice.

Section 95: Interpretation of sections 89 to 94

218. This interpretative section is based on sections 804ZA(6) and (12), 804ZC(12) and 831(5) of ICTA and section 277(1) of TCGA.

Section 96: Companies with overseas branches: restriction of credit

219. This section governs the allowance of credit relief against corporation tax charged on profits of life assurance business if the relief is in respect of foreign tax on insurance business carried on through an overseas branch of an insurance company. It is based on section 804A of ICTA.

220. This section provides that, where tax is charged overseas otherwise than wholly by reference to profits, the shareholders' share of the foreign tax (to be measured in accordance with the rules in *subsections (5)* and *(6)*) is to qualify for credit relief, even though the balance of the foreign tax can be deducted in calculating the profits of life assurance business carried on by the company.

221. This section is the first of a group of sections concerned with DTR for insurance companies. Chapter 1 of Part 12 of ICTA (insurance companies) is not rewritten. But, as the bulk of Part 18 of ICTA (DTR) is being rewritten in this Act, the balance of convenience favours including sections 804A to 804E of ICTA (DTR: insurance companies) in the rewrite. Since the rewrite of those sections needs to be read alongside the unrewritten Chapter 1 of Part 12 of ICTA, their rewrite takes a relatively conservative approach.

Section 97: Companies with more than one category of business: restriction of credit

222. This section gives specific apportionment rules for attributing foreign tax to different categories of long-term business carried on by an insurance company where an item of income or gain on which foreign tax is payable is referable to more than one category of business. It is based on section 804B(1) to (5), (8) and (9) of ICTA.

Section 98: Attribution for section 97 purposes if category is gross roll-up business

223. This section supplements section 97. It is based on section 804B(6) to (7A) of ICTA.

Section 99: Allocation of expenses etc in calculations under section 35 of CTA 2009

224. This section sets out rules for setting an insurance company's expenses and other deductions against items of income to calculate the measure of income, and therefore of corporation tax in respect of it, against which the creditability of foreign tax is to be measured. It is based on section 804C(1), (2), (5) and (10) to (13) of ICTA.

225. Under *subsection (1)(b)*, this section only applies if a calculation falls to be made in accordance with the provisions applicable for the purposes of section 35 of CTA 2009.

226. Under *subsection (2)*, the amount of credit for foreign tax is restricted, first in accordance with section 100 and then (if relevant) by section 101.

Section 100: First limitation for purposes of section 99(2)

227. This section specifies the first limitation on the amount of credit for foreign tax imposed by section 99(2). It is based on section 804C(3) and (6) to (8) of ICTA.

228. *Subsection (4)(b)* refers to "any … unilateral relief arrangements for any territory outside the United Kingdom" (rather than "… a territory outside the United Kingdom"), because the total may relate to several sets of arrangements.

Section 101: Second limitation for purposes of section 99(2)

229. This section specifies the second limitation on the amount of credit for foreign tax imposed by section 99(2). It is based on section 804C(4) and (9) of ICTA.

230. *Subsection (2)* refers to "unilateral relief arrangements for any territory outside the United Kingdom" (rather than "… a territory outside the United Kingdom"), because the total may relate to several sets of arrangements.

Section 102: Interpreting sections 99 to 101 for life assurance or gross roll-up business

Section 103: Interpreting sections 99 to 101 for other insurance business

Section 104: Interpreting sections 100 and 101: amounts referable to category of business

231. These interpretative sections are based on sections 804C(13) and (14), 804D and 804E of ICTA.

Chapter 3: Miscellaneous provisions

Overview

232. This Chapter contains miscellaneous provisions relating to DTR. It has the following structure.

- Sections 105 and 106 concern the application of this Part to capital gains tax.
- Sections 107 to 110 provide for foreign tax to be disregarded in certain circumstances when this Part is applied for corporation tax purposes.
- Section 111 makes special rules for discretionary trusts.
- Sections 112 to 115 allow a deduction for foreign tax in cases in which no credit is allowed.
- Sections 116 to 123 concern the Mergers Directive.
- Sections 124 and 125 deal with cases about being taxed otherwise than in accordance with DTAs.
- Sections 126 to 128 deal with the Arbitration Convention.
- Section 129 concerns the disclosure of information.
- Sections 130 to 133 make provision about the interpretation of rules in DTAs.

- Section 134 concerns assessments.

Section 105: Meaning of "chargeable gain"

233. This interpretative section is based on section 831(5) of ICTA and section 277(1) of TCGA.

Section 106: Chapters 1 and 2 apply to capital gains tax separately from other taxes

234. This section ensures that, to the extent that DTR is available for foreign capital gains tax against United Kingdom capital gains tax under Chapters 1 and 2, DTR is not available for it against United Kingdom income tax or United Kingdom corporation tax. It is based on section 277(1) and (3) of TCGA.

Section 107: Disregard of foreign tax referable to derivative contract

235. This section requires foreign tax referable to a derivative contract (such as an interest-rate swap) to be ignored to the extent that the foreign tax is attributable to a time when the taxpayer company was not a party to the derivative contract. It is based on section 807A(1), (2) and (7) of ICTA.

236. Under the derivative contracts and loan relationships regimes, income is (broadly speaking) recognised for tax purposes in the periods in which gains are recognised in the accounts. By contrast, withholding taxes are generally imposed on cash flows. This section is the first of a group of sections which (to summarise) adjust DTR attributable to cash flows from derivative contracts and loan relationships in order to bring the DTR into line with the taxation of income.

Section 108: Disregard of foreign tax attributable to interest under a loan relationship

237. This section requires foreign tax referable to a loan relationship to be ignored if the foreign tax is attributable to a time when the taxpayer company was not a party to the loan relationship. It is based on section 807A(1) to (2A) of ICTA.

Section 109: Repo cases in which no disregard under section 108

238. This section makes an exception to section 108 in cases involving repos. It is based on section 807A(2A), (6A) and (6B) of ICTA and paragraph 5(1) of Schedule 2 to CTA 2009.

Section 110: Stock-lending cases in which no disregard under section 108

239. This section makes an exception to section 108 in cases involving stock lending. It is based on section 807A(2A), (6A) and (6C) of ICTA.

Section 111: When payment to beneficiary treated as arising from foreign source

240. This section lays down special rules for discretionary trusts. It is based on section 809 of ICTA.

241. A body of trustees is treated for income tax purposes as a separate person from the settlor and the beneficiaries of the trust. In certain circumstances, a payment by discretionary trustees is (a) treated as income in the hands of the recipient and (b) treated as received under deduction of income tax. See sections 493 and 494 of ITA. Broadly speaking, for income tax purposes such a payment effectively transfers income from the trustees to the recipient. And income tax suffered by the trustees on such income is credited to the recipient.

242. In such circumstances, this section enables credit relief to be transferred from the trustees to the recipient.

Section 112: Deduction from income for foreign tax (instead of credit against UK tax)

243. This section provides that, in certain circumstances in which credit is not allowed for foreign tax paid on income, the amount of the income is to be reduced for the purposes of the Tax Acts. It is based on sections 807(4) and 811 of ICTA.

244. The section should be read with section 189 (interaction between section 112 and certain transfer-pricing claims).

Section 113: Deduction from capital gain for foreign tax (instead of credit against UK tax)

245. This section allows, in certain circumstances in which credit is not allowed for foreign tax chargeable on the disposal of an asset, a deduction in calculating the gain on the disposal for the purposes of capital gains tax and corporation tax on chargeable gains. It is based on sections 8(3) and 278(1) of TCGA.

Section 114: Time limits for action if tax adjustment makes reduction too large or too small

246. This section permits assessments or claims to be made after the normal time limits, if the reduction given under section 112(1) or 113(2) is found to be excessive or insufficient by reason of an adjustment of the amount of tax payable. It is based on section 811(4) of ICTA and section 278(2) of TCGA.

Section 115: Duty to give notice that adjustment has rendered reduction too large

247. This section requires the taxpayer to give notice that an adjustment of the amount of tax payable has rendered the reduction excessive. It is based on section 811(5) to (10) and 832(1) of ICTA, sections 278(3) to (7) and 288(1) of TCGA and section 989 of ITA.

Section 116: Introduction to section 117

248. This section is the first of a series of sections dealing with European cross-border transfers of business and mergers under the Mergers Directive; introducing section 117, it concerns cross-border transfers of business. It is based on section 807B of ICTA.

249. This section and sections 117 to 121 and 123 rewrite sections 807B to 807G of ICTA; they largely replicate the source legislation, which was inserted by CTA 2009. The need for DTR provisions to take account of the Mergers Directive is discussed in the commentary on section 122, which rewrites section 815A of ICTA.

Section 117: Tax treated as chargeable in respect of transfer of loan relationship, derivative contract or intangible fixed assets

250. This section provides for tax to be treated as chargeable, for DTR purposes, in respect of the transfer of loan relationships, derivative contracts or intangible fixed assets if tax would have been chargeable but for the Mergers Directive. It is based on section 807C of ICTA.

Section 118: Introduction to section 119

251. This section, which concerns cross-border mergers, introduces section 119. It is based on section 807D of ICTA.

Section 119: Tax treated as chargeable in respect of transfer of loan relationship, derivative contract or intangible fixed assets

252. This section provides for tax to be treated as chargeable, for DTR purposes, in respect of the transfer of loan relationships, derivative contracts or intangible fixed assets if tax would have been chargeable but for the Mergers Directive. It is based on sections 807D(12) and 807E of ICTA.

Section 120: Introduction to section 121

253. This section, which concerns transparent entities involved in cross-border transfers and mergers, introduces section 121. It is based on section 807F of ICTA.

Section 121: Tax treated as chargeable in respect of relevant transactions

254. This section provides for tax to be treated as chargeable, for DTR purposes, in respect of the transfer of loan relationships, derivative contracts or intangible fixed assets if tax would have been chargeable but for the Mergers Directive. It is based on section 807G of ICTA.

Section 122: Tax treated as chargeable in respect of gains on transfer of non-UK business

255. This section provides for tax to be treated as chargeable, for DTR purposes, in respect of certain (a) transfers of non-UK businesses, (b) transfers of parts of non-UK businesses and (c) mergers if tax would have been chargeable but for the Mergers Directive. It is based on section 815A of ICTA.

256. Suppose that a non-UK business is transferred. The Mergers Directive applies if (to summarise the main conditions):

- company A has a permanent establishment in another member State (the host State);
- company A transfers the assets it uses for the purposes of the business it carries on through the permanent establishment to a company (the transferee) resident in a member State other than company A's home State; and
- the transfer is in exchange for shares or debentures in the transferee.

257. If the Mergers Directive applies, the general rule is that neither company A's home State, nor the host State, is permitted to tax any capital gain arising on the transfer. But there is an exception if company A's home State operates, as the United Kingdom does, a system of taxing worldwide profits. If the exception applies, company A's home State may tax the gain, but only if it allows relief for the tax that would have been charged in the host State but for the Directive. This section gives relief for the notional tax in cases where the United Kingdom is company A's home State.

258. The legislation needs:

- to specify when the relief is to be given;
- to say how to calculate the relief; and
- to lay down rules determining the corporation tax against which the notional tax can be credited.

259. Sections 140C and 140F of TCGA specify when the relief applies. Section 140C(1) of TCGA deals with the transfer of a non-UK business (as in the example above) or part of a non-UK business, but only if the transferee is resident in an EU member State other than the United Kingdom. Section 140C(1A) of TCGA deals with the transfer of part of a non-UK business. Section 140F of TCGA deals with cross-border mergers of companies etc each resident in an EU member State (but not all resident in the same

State). Under *subsection (1)(a)*, section 140C or 140F needs to apply if relief is to be given under *subsection (3)*.

260. *Subsection (1)(b)* lays down the other condition for relief to be given under subsection (3), namely that (to summarise) the Mergers Directive has sheltered gains from foreign tax.

261. Subsection (3) enables credit relief to be given for notional foreign tax. This section is, however, located in Chapter 3 rather than Chapter 2 of this Part, because its potential application is not limited to credit relief.

262. *Subsections (4)* and *(5)* say how the notional foreign tax is to be calculated.

263. Section 140C(3) or, as the case may be, section 140F(3) of TCGA has two consequences. First, the allowable losses accruing to the UK-resident transferor company on the transfer are set off against the chargeable gains so accruing. Second, the transfer is treated as giving rise to a single chargeable gain equal to the aggregate of those gains after deducting the aggregate of those losses. These provisions enable credit relief for the notional foreign tax to be capped by section 42.

264. The Corporation Tax (Implementation of the Mergers Directive) Regulations 2007 (SI 2007/3186) amended section 140C of TCGA and substituted new section 140F of TCGA. They did not, however, amend section 815A of ICTA. But each of sections 140C and 140F continues to say that if it applies then section 815A of ICTA also applies. Accordingly, this section rewrites section 815A of ICTA in a way which gives effect to that legislative intention.

265. Two verbal changes have been made. First, the definition of "host State" in *subsection (2)* follows sections 140C and 140F of TCGA in referring to the company's "business" rather than section 815A of ICTA, which refers to the company's "trade". As it happens, section 140F of TCGA always referred to a "business" rather than a "trade", and both "trade" and "business" on the one hand, and the Mergers Directive's "branch of activity" on the other, refer to the same thing. Second, subsection (2) refers expressly to section 140C(1A) of TCGA, which was inserted in 2007 and, as noted above, deals with certain transfers of part of a non-UK business. These are drafting clarifications which do not change the law.

266. In the parenthetical descriptions in the definition of "the transfer subsections" in subsection (2), the word "company" appears in inverted commas because it is used in an extended sense. See section 140L of TCGA.

Section 123: Interpretation of sections 116 to 122

267. This interpretative section is based on sections 807B(9), 807D(11), 807F(6) and 815A(6) of ICTA.

268. Council Directive 90/434/EEC of 23 July 1990 has been codified (i.e. repealed and its provisions restated without substantive change) by Council Directive 2009/133/EC of 19 October 2009. In particular, the Annex to the 1990 Directive has become Part A of Annex I to the 2009 Directive.

Section 124: Giving effect to solutions to cases and mutual agreements resolving cases

269. This section is a machinery provision for resolving disputes under DTAs. It is based on section 815AA(1) to (3) of ICTA, section 277(1) of TCGA and section 194(1) of FA 1993.

270. *Subsection (4)* extends the scope of the section to include the enactments relating to capital gains tax and the enactments relating to PRT. This brings the law into line with practice. See *Change 8* in Annex 1. The same change is made in section 125.

Section 125: Effect of, and deadline for, presenting a case

271. This section supplements section 124. It is based on section 815AA(4) to (6) of ICTA, section 277(1) of TCGA and section 194(1) of FA 1993.

272. *Subsection (2)(a)* includes a minor change in the law. See the commentary on section 124(4) and *Change 8* in Annex 1.

Section 126: Meaning of "the Arbitration Convention"

273. This interpretative section is based on sections 815B(4) and 816(2A) of ICTA.

Section 127: Giving effect to agreements, decisions and opinions under the Convention

274. This section is a machinery provision relating to the Arbitration Convention. It is based on section 815B(1) to (3) of ICTA.

275. *Subsection (4)* specifically refers to "the allowance of credit against tax payable in the United Kingdom" for the sake of consistency with section 124(3). This does not change the law, because the added words are implicit in "or otherwise".

Section 128: Disclosure under the Convention

276. This section supplements section 127. It is based on section 816(2A) and (5) of ICTA.

Section 129: Disclosure where relief given overseas for tax paid in the United Kingdom

277. This section permits Revenue and Customs officials to disclose information in cases in which other jurisdictions give relief for United Kingdom tax. It is based on sections 790(12) and 816(1) and (5) of ICTA, section 277(1) and (4) of TCGA and section 194(5) of FA 1993.

Section 130: Interpreting provision about UK taxation of profits of foreign enterprises

278. This section ensures that a specific provision commonly found in DTAs (that is designed largely to limit the rights of the States to tax the business profits of residents of the other State) cannot be read as preventing the income of UK residents being charged to United Kingdom tax. It is based on section 815AZA of ICTA.

Section 131: Interpreting provision about interest influenced by special relationship

279. This section explains how the provisions of certain DTAs about amounts of interest are to be interpreted. It is based on section 808A of ICTA.

Section 132: Interpreting provision about royalties influenced by special relationship

280. This section explains how the royalties provisions of certain DTAs are to be interpreted. It is based on section 808B(1) to (4), (8) and (9) of ICTA.

Section 133: Special relationship rule for royalties: matters to be shown by taxpayer

281. This section supplements section 132. It is based on section 808B(5) to (7) of ICTA.

Section 134: Correcting assessments where relief is available

282. This section allows correcting assessments to be made in DTR cases. It is based on sections 788(7) and 790(11) of ICTA, section 277(1) of TCGA and section 195(2) of FA 1993.

283. In relation to income tax and corporation tax, sections 788(7)(a) and 790(11) of ICTA refer to "any income or chargeable gain". At first sight, in relation to capital gains tax, the substitution rule in section 277(1) of TCGA would seem to require references to "capital" gains in *subsections (1)(a)* and *(2)(a)*, since it is possible that a DTA might provide for relief in the non-UK territory to be given in respect of tax in respect of a capital gain that is not a chargeable gain.

284. But the references to capital gains tax in conditions A and B in this section are necessarily references to UK capital gains tax. The gain therefore has to be a "chargeable" gain. Subsections (1)(a) and (2)(a) therefore refer to "any chargeable gain" in relation both to corporation tax and to capital gains tax.

285. The tail words of section 790(11) of ICTA refer to a "chargeable gain" being "entrusted to … [a person] … for payment". It is not clear how a chargeable gain can be entrusted to a person for payment, and *subsection (6)* omits these words.

286. *Subsection (7)* reflects administrative reality by giving the function of making PRT amendments to officers of Revenue and Customs. This is a minor change in the law. See *Change 2* in Annex 1.

Part 3: Double taxation relief for special withholding tax

Overview

287. This Part allows DTR for special withholding tax. It is based on sections 107 to 111, 113 and 114 of FA 2004. It has the following structure.

- Sections 135 and 136 are introductory.
- Sections 137 to 141 concern credit etc for special withholding tax.
- Sections 142 and 143 are rules for calculating the income or gain on the remittance basis in cases in which special withholding tax is withheld.
- Sections 144 and 145 concern certificates to avoid the levy of special withholding tax.

Section 135: Relief under this Part: introductory

288. This section introduces this Part and explains how relief under this Part is to be given. It is based on section 107 of FA 2004.

289. *Subsection (1)* refers to sections 144 and 145. Section 144 concerns the issue of certificates by officers of Revenue and Customs to avoid a levy of special withholding tax in a non-UK territory. Section 145 concerns (i) officers' refusal to issue such certificates and (ii) appeals against such refusal.

Section 136: Interpretation of Part

290. This interpretative section is based on section 107 of FA 2004.

Section 137: Income tax credit etc for special withholding tax

291. This section deems an income tax credit to be given for special withholding tax. It is based on section 108 of FA 2004.

Section 138: Amount and application of the deemed tax under section 137

292. This section quantifies the deemed tax under section 137 and specifies how it is to be treated. It is based on section 108 of FA 2004.

Section 139: Capital gains tax credit etc for special withholding tax

293. This section deems a capital gains tax credit to be given for special withholding tax. It is based on section 109 of FA 2004 and paragraph 5 of Schedule 2 to FA 2008.

Section 140: Provisions about the deemed tax under section 139

294. This section quantifies the deemed tax under section 139 and specifies how it is to be treated. It is based on section 109 of FA 2004.

Section 141: Credit under Chapter 2 of Part 2 to be allowed first

295. This section is a priority rule. It is based on section 110 of FA 2004.

Section 142: Conditions for purposes of section 143

296. This section is the first of two sections about special withholding tax and income and chargeable gains charged on the remittance basis. It is based on section 111 of FA 2004.

Section 143: Taking account of special withholding tax in calculating income or gains

297. This section quantifies the deemed income tax credit or, as the case may be, deemed capital gains tax credit for special withholding tax on income or chargeable gains charged on the remittance basis. It is based on section 111 of FA 2004.

Section 144: Issue of certificate

298. This section enables officers of Revenue and Customs to issue certificates to enable income to be paid without the levy (under the law of a non-UK territory) of special withholding tax. It is based on section 113 of FA 2004.

Section 145: Refusal to issue certificate and appeal against refusal

299. This section supplements section 144. It is based on sections 113(6) and 114 of FA 2004.

300. Paragraph 422 of Schedule 1 to the Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (SI 2009/56) substituted "the tribunal" for "the Special Commissioners" in section 114 of FA 2004, but did not expressly define "the tribunal" in that context. *Subsection (8)* gives "the tribunal" its usual meaning in the taxing Acts. See, for example, section 47C of TMA, the definition of "tribunal" in TMA inserted by paragraph 27 of that Schedule.

Part 4: Transfer pricing

Overview

301. This Part provides the rules on transfer pricing. The transfer pricing provisions apply where "provision" is made between two persons by means of a transaction and, broadly, one of the persons controls the other or both are controlled by the same person or persons. The actual provision is compared to the arm's length provision (that is to say the provision that would have been made between independent enterprises) and, if the actual provision confers a potential United Kingdom tax advantage, the taxable profits of the person receiving that tax advantage are adjusted to what they would have been if the persons had been at arm's length.

302. This basic rule is also applied where "provision" is made between the ring-fence trade of an oil company and other activities carried on by the same company.

303. The Part also provides for claims and adjustments to be made between a person whose profits are increased as a result of a non-arm's length transaction and a person whose

profits have been reduced. These either eliminate double counting of profits or restore the cash position of the companies involved to its original state.

304. The Part rewrites Schedule 28AA to ICTA (provision not at arm's length) and sections 110 and 111 of FA 1998 (notice to potential claimants, and determinations requiring the sanction of the Commissioners for HMRC).

305. Schedule 28AA was inserted into ICTA by section 108 of and Schedule 16 to FA 1998, replacing the transfer pricing legislation in sections 770 to 773 of ICTA. Schedule 28AA was then substantially amended by FA 2004 and F(No 2)A 2005.

306. Chapter 1 gives the basic transfer-pricing rule and Chapter 2 gives the meaning of important terms used in that Chapter.

307. Chapter 3 gives the exemptions from the basic rule.

308. Chapters 4 and 5 deal with claims to prevent double taxation following an uplift in profits and Chapter 6 with balancing payments made by the disadvantaged to the advantaged person.

309. Chapter 7 deals with oil-related matters and finally Chapter 8 contains supplementary provisions and definitions.

Chapter 1: Basic transfer-pricing rule

Overview

310. This Chapter gives the basic transfer-pricing rule and explains the meaning of "participation condition".

Section 146: Application of this Part

311. This section provides that the Part applies for both corporation tax and income tax purposes. It is based on section 832(3) of ICTA.

Section 147: Tax calculations to be based on arm's length, not actual, provision

312. This section gives the conditions necessary for the Part to apply (broadly where a transaction take place between two persons who meet the "participation condition" and that transaction differs from one at arm's length) and the basic transfer pricing rule that the profits and losses should be computed as if the transaction had been at arm's length. It is based on paragraphs 1(1) and (2), 9(1), 10 and 11(3) of Schedule 28AA to ICTA.

313. Paragraph 1(2) of Schedule 28AA makes the basic rule subject to paragraph 8 of the Schedule. *Subsection (6)(e)* and *(f)* recognise that paragraph 8 is rewritten in Parts 5 (loan relationships) and 7 (derivative contracts) of CTA 2009.

Section 148: The "participation condition"

314. This section explains when the participation condition is met for the purposes of section 147. It is based on paragraphs 1(1), 4A(6) and 4B(1) and (2) of Schedule 28AA to ICTA.

Chapter 2: Key interpretative provisions

Overview

315. This Chapter explains terms used in Chapter 1, in particular what is meant by participation by a person in the management, control or capital of another person. The term is used in section 148 which defines the "participation condition" for section 147.

Section 149: "Actual provision" and "affected persons"

316. This section gives the meaning for this Part of two terms used in section 147. It is based on paragraphs 4A(7), 11(3) and 14(1) of Schedule 28AA to ICTA.

Section 150: "Transaction" and "series of transactions"

317. This section gives the meaning of "transaction" and "series of transactions" for this Part. It is based on paragraph 3 of Schedule 28AA to ICTA.

Section 151: "Arm's length provision"

318. This section gives the meaning of "arm's length provision" by reference to section 147 and also applies the basic rule where a transaction that has occurred would not in fact have occurred between independent enterprises. It is based on paragraphs 1(3) and 14(1) of Schedule 28AA to ICTA.

Section 152: Arm's length provision where actual provision relates to securities

319. This section deals with what is generally known as "thin capitalisation". It provides that, where a security is issued between connected companies, in applying the basic rule in section 147, account must be taken as to whether the loan concerned would have been made, and would have been made on the same terms, if the parties had been at arm's length. It is based on paragraph 1A(1) to (5) of Schedule 28AA to ICTA.

Section 153: Arm's length provision where security issued and guarantee given

320. This section provides that, where a security is issued by one of the affected persons and a guarantee given by the other, in applying the basic rule in section 147, account must be taken of whether that guarantee would have been given, and would have been given on the same terms, if the parties had been at arm's length. It is based on paragraph 1B(1) to (5) of Schedule 28AA to ICTA.

Section 154: Interpretation of sections 152 and 153

321. This section explains terms used in the two preceding sections. It is based on paragraphs 1A(6) to (10) and 1B(6) of Schedule 28AA to ICTA.

Section 155: "Potential advantage" in relation to United Kingdom taxation

322. This section explains what is meant by conferring a potential advantage in relation to United Kingdom taxation in this Part. It is based on paragraph 5(1), (7), (8) and (9) of Schedule 28AA to ICTA.

Section 156: "Losses" and "profits"

323. This section explains the meaning of "losses" and "profits" for this Part. It is based on paragraph 14(1) of Schedule 28AA to ICTA, paragraph 5(1) of Schedule 2 to ITTOIA, paragraph 5(1) of Schedule 2 to ITA and paragraph 5(1) of Schedule 2 to CTA 2009.

324. Paragraph 14(1) of Schedule 28AA to ICTA brings relief in accordance with section 468L(5) of ICTA within the definition of losses for the purposes of that Schedule. Section 468L was repealed by section 17(1) of F(No 2)A 2005 although section 17(3) confers power to make provision by regulations in place of the provisions repealed by section 17(1) (see the Authorised Investment Funds (Tax) Regulations 2006 (SI 2006/964) as amended). Although paragraph 14(1) of Schedule 28AA to ICTA was not amended in consequence of the repeal of section 468L of that Act, this section does not include a reference to relief under section 468L as there is now no such relief.

Section 157: Direct participation

325. This section explains what is meant by direct participation in the management, control or capital of another person. It is based on section 808B(9) of ICTA, paragraph 4(1) of Schedule 28AA to ICTA and section 85(6) of FA 1999.

326. "Partnership" in paragraph 4(1) is rewritten in *subsection (2)* as "firm" in accordance with rewrite practice ("firm" is defined for the Part in section 217(8)).

Section 158: Indirect participation: defined by sections 159 to 162

327. This section lists the meanings which apply for each reference to indirect participation in the Act. It is based on section 808B(9) of, and paragraphs 4(2), 4A(1) and (2) and 6(4C) of Schedule 28AA to, ICTA and section 85(6) of FA 1999.

328. Sections 159 to 162 set out four possible meanings of indirect participation in the management, control or capital of another person. Any particular reference to indirect participation has two or three of those meanings.

Section 159: Indirect participation: potential direct participant

329. This section provides for a person to be indirectly participating in the management, control or capital of another if that person would be a direct participant in the other (see section 157) were the person to have the rights and powers listed in *subsection (3)*. It is based on section 808B(9) of, and paragraph 4(2) to (6) and (10) of Schedule 28AA to, ICTA and section 85(6) of FA 1999.

330. *Subsection (6)*, which rewrites paragraph 4(6) of Schedule 28AA, serves to clarify that *all* connected parties must be considered in applying the rule in subsection (3)(e), which rewrites paragraph 4(3)(d) of Schedule 28AA.

Section 160: Indirect participation: one of several major participants

331. This section provides that a person is indirectly participating in the management, control or capital of another person where a 40% holdings test is met. It is based on section 808B(9) of, and paragraph 4(2) and (7) to (10) of Schedule 28AA to, ICTA and section 85(6) of FA 1999.

332. For the 40% test to be met two conditions must apply. The first condition is that the person, along with another person, must between them control the body or firm. Then, looking at the holdings, rights and powers that give the pair control of the body or firm, the second condition is that each of the pair must have at least a 40% share of all holdings, rights and powers of the kinds that give them that control. It is possible to read the section (and the source legislation) as saying that each of the pair must merely have a 40% share of their combined stake. This alternative reading would, however, be less favourable to taxpayers and does not reflect the approach that has been taken in HMRC's published International Manual at INTM 432070.

333. "Enterprise" in *subsections (2)* and *(3)* is not defined. It is a term used in Article 9 of the OECD Model Tax Convention and defined in Article 3 as "the carrying on of any business". Article 3 goes on to say that "business" includes the performance of professional services and of other activities of an independent character. This meaning of enterprise applies here by virtue of section 164 which requires this Part to be read consistently with Article 9.

Section 161: Indirect participation: sections 148 and 175: financing cases

334. Under this section an affected person acting with others to provide financing arrangements to the other affected person is treated as indirectly participating in that person's management, control or capital. It is based on paragraphs 4A(1), (3) to (6) and 6(4C) of Schedule 28AA to ICTA.

Section 162: Indirect participation: sections 148 and 175: further financing cases

335. This section provides for someone other than an affected person acting with others to provide financing arrangements to one of the affected persons to be treated as indirectly participating in the management, control or capital of each affected person. It is based on paragraphs 4A(2) to (6) and 6(4C) of Schedule 28AA to ICTA.

Section 163: Meaning of "connected" in section 159

336. This section gives the meaning of "connected" for section 159 and for *subsection (3)(b)*. It is based on paragraph 4(11) and (12) of Schedule 28AA to ICTA.

Section 164: Part to be interpreted in accordance with OECD principles

337. This section requires the Part to be read in a way that is consistent with the way in which Article 9 of the OECD Model Tax Convention is read when included in a tax treaty entered into by the United Kingdom. It is based on paragraphs 2 and 14(1) of Schedule 28AA to ICTA.

338. This requirement is regardless of whether there is or is not a tax treaty between the United Kingdom and any particular non-UK territory.

339. This section imports into the transfer pricing legislation not only the principles of Article 9 of the OECD Model Tax Convention but also that organisation's transfer pricing guidelines. The Transfer Pricing Guidelines for Multinational Enterprises and Tax Administration referred to in *subsection (4)(a)* were first issued in 1979 and extensively updated in 1995 with revisions and additions published periodically.

340. No Treasury order has been issued under paragraph 2(3)(b) of Schedule 28AA to ICTA, which is the provision rewritten by *subsection (4)(b)*.

341. *Subsection (2)* recognises that paragraph 8 of Schedule 28AA to ICTA is rewritten in Parts 5 (loan relationships) and 7 (derivative contracts) of CTA 2009.

Chapter 3: Exemptions from basic rule

Overview

342. This Chapter gives the exemptions from the basic transfer-pricing rule in section 147 for dormant companies and small and medium-sized enterprises.

Section 165: Exemption for dormant companies

343. This section exempts dormant companies from the basic rule in section 147. It is based on paragraph 5A of Schedule 28AA to ICTA.

Section 166: Exemption for small and medium-sized enterprises

344. This section exempts, with three exceptions, small and medium-sized enterprises (defined in section 172) from the basic rule in section 147. It is based on paragraph 5B(1) and (2) of Schedule 28AA to ICTA.

Section 167: Small and medium-sized enterprises: exceptions from exemption

345. This section gives two of the exceptions to section 166: where there is an election that the exemption should not apply and where the other affected person is a resident of a non-qualifying territory. It is based on paragraph 5B of Schedule 28AA to ICTA.

Section 168: Medium-sized enterprises: exception from exemption: transfer pricing notice

346. This section gives the third exception to the exemption in section 166. This is where the Commissioners for HMRC give a notice (a "transfer pricing notice") to the potentially advantaged person that section 147 is to apply. It is based on paragraph 5C(1) of Schedule 28AA to ICTA.

347. "In question" in paragraph 5C(1)(a) of Schedule 28AA was not rewritten on the ground that it was unnecessary.

348. "The Board" in paragraph 5C(1)(b) (which meant the Commissioners of Inland Revenue) is rewritten as "the Commissioners for Her Majesty's Revenue and Customs" in accordance with section 50(1) of CRCA.

Section 169: Giving of transfer pricing notices

349. This section gives details of transfer pricing notices given under section 168. It is based on paragraph 5C(2) to (4) and (12) of Schedule 28AA to ICTA.

350. "Officer of the Board" in paragraph 5C(4) and (6) is rewritten as "officer of Revenue and Customs" both here and in section 170 in accordance with section 50(2) of CRCA.

Section 170: Appeals against transfer pricing notices

351. This section enables a person receiving a transfer pricing notice to appeal within 30 days against the decision to give the notice. It is based on paragraph 5C(5) to (7) of Schedule 28AA to ICTA.

Section 171: Tax returns where transfer pricing notice given

352. This section allows the taxpayer to make amendments to his tax return following receipt of a transfer pricing notice under section 168. It is based on paragraph 5C(8) to (12) of Schedule 28AA to ICTA.

353. Paragraph 5C(8)(b) refers to the taxpayer appealing "against the notice" although paragraph 5C(5) states that appeals are against the decision *to give* the notice. In rewriting paragraph 5C(8)(b) subsection (1) has been made consistent with section 170(1).

Section 172: Meaning of "small enterprise" and "medium-sized enterprise"

354. This section defines "small enterprise" and "medium-sized enterprise" for purposes of Chapter 3. It is based on paragraph 5D of Schedule 28AA to ICTA.

Section 173: Meaning of "qualifying territory" and "non-qualifying territory"

355. This section defines "qualifying territory" and "non-qualifying territory" for the purposes of Chapter 3. It is based on paragraph 5E of Schedule 28AA to ICTA.

Chapter 4: Position, if only one affected person potentially advantaged, of other affected person

Overview

356. This Chapter provides for claims to be made by the person whose profits have increased or losses decreased (the disadvantaged person) as a result of another person's profits decreasing (the advantaged person). The claim prevents double taxation and is only relevant where both the advantaged and disadvantaged persons are liable to UK taxation.

357. Suppose company A sells goods to connected company B for an amount less than an arm's length price would require. While this reduces A's profits it increases B's profits by the same amount. B may therefore make a claim to reduce its profits by the same amount by which A's are increased to avoid double taxation on the arm's length differential which would otherwise arise.

Section 174: Claim by the affected person who is not potentially advantaged

358. This section allows the affected person who is not potentially advantaged to make a claim to calculate profits in accordance with the arm's length provision imposed on the advantaged person. It is based on paragraphs 6(1) and (2) and 6A(1) of Schedule 28AA to ICTA and paragraph 5(1) of Schedule 2 to CTA 2009.

359. "For the purposes of this paragraph" in paragraph 6(2) of Schedule 28AA has not been rewritten on the grounds that it was unnecessary to do so since the person making the claim can be expected to identify the purpose for which the claim is made. This omission is consistent with the approach taken in paragraph 6C(2) of Schedule 28AA to ICTA.

360. Paragraph 6(2) of Schedule 28AA makes a claim subject to paragraph 8 of the Schedule. *Subsection (4)* of this section recognises that paragraph 8 is rewritten Parts 5 (loan relationships) and 7 (derivative contracts) of CTA 2009.

361. Subsection (4) provides that *subsection (2)* is subject to section 180 (which rewrites the trading stock rules in paragraph 6A of Schedule 28AA). Although paragraph 6A was not listed in the opening words of paragraph 6(2) of Schedule 28AA, the opening words of paragraph 6A achieve the same result as would have been achieved by such listing.

Section 175: Claims under section 174 where actual provision relates to a security

362. This section prevents a claim from being made under section 174 where the participatory condition is satisfied as a result of indirect participation of a kind within sections 161 and 162 and a guarantee has been issued in respect of a security. It is based on paragraphs 1A(7), (9) and (10) and 6(4A) and (4B) of Schedule 28AA to ICTA.

Section 176: Claims under section 174: advantaged person must have made return

363. As a result of this section a claim under section 174 may not be made by the disadvantaged person unless an arm's length calculation of the advantaged person's profits has been made and the claim is in accordance with that calculation. It is based on paragraph 6(3) and (4) of Schedule 28AA to ICTA.

Section 177: Time for making, or amending, claim under section 174

364. This section provides the time limit for making or amending claims under section 174. It is based on paragraph 6(5) and (6) of Schedule 28AA to ICTA.

Section 178: Meaning of "return" in sections 176 and 177

365. This section provides the interpretation of "return" in sections 176 and 177. It is based on paragraph 6(7) of Schedule 28AA of ICTA.

Section 179: Compensating payment if advantaged person is controlled foreign company

366. This section provides for a compensating adjustment to be made to the disadvantaged company where the advantaged company is a non-UK resident company whose profits have been apportioned to UK residents under the controlled foreign company (CFC) provisions in Chapter 4 of Part 17 of ICTA. It is based on paragraph 6B of Schedule 28AA to ICTA.

367. Because the CFC's profits on which the adjustment is made are not those of a person on whom a potential advantage in relation to United Kingdom taxation is conferred, the "advantaged person" does not fall within section 174(1). There is no advantage to the CFC in relation to United Kingdom taxation.

368. Special provision is therefore required to allow a claim under section 174. This is done by treating the CFC as if it fell within that section.

369. "Chargeable profits" in *subsection (1)(b)* is the term used by the controlled foreign company legislation for the CFC's taxable profits (section 747(6) of ICTA).

370. In *subsection (3)* the amended readings to sections 174 to 178 are necessary because the return of the chargeable profits of the CFC is not made by the "advantaged person" (the CFC) but by the company which controls that company and on whom the apportionment of chargeable profits will be made. Likewise the relevant notice will be given to the same company.

Section 180: Application of section 174(2)(a) in relation to transfers of trading stock etc

371. This section provides for a broad timing match between the adjustments arising on the advantaged and disadvantaged company where there is a transfer of stock between the two. It is based on paragraph 6A of Schedule 28AA to ICTA.

372. A mismatch in timing may arise with stock transfers because, while an increase to open market value of the stock transferred will immediately result in an increase to the transferor company's profits, the compensating adjustment will not arise in the case of the transferee company until that stock has been disposed of.

Section 181: Section 182 applies to claims where actual provision relates to a security

373. This and the following three sections relate to claims under section 174 where a security has been issued between companies. This section provides that the claim may be made in accordance with section 182. It is based on paragraphs 1A(9) and (10) and 6C(1) and (2) of Schedule 28AA to ICTA.

Section 182: Making of section 182 claims

374. This section provides the basic requirements for the claim. It is based on paragraph 6C(3) to (5) of Schedule 28AA to ICTA.

375. *Subsection (3)* allows the claim to be made before the calculation of profits has been made by the advantaged person. This allows tax to be deducted from the arm's length sum rather than the actual sum, thus enabling inward investors to obtain certainty on the consequences of loan financing.

Section 183: Giving effect to section 182 claims

376. This section gives rules applicable to a section 182 claim. It is based on paragraph 6C(6) to (9) of Schedule 28AA to ICTA.

377. *Subsection (1)* means that a section 182 claim is made outside the rules applied by Schedule 18 to FA 1998 to company tax returns and assessments as the claim relates to the deduction of tax.

378. Because the claim may be made before a section 176 calculation has been made, *subsection (3)* allows claims to be treated as if they were consistent with the eventual calculation.

Section 184: Amending a section 182 claim if it is followed by relevant notice

379. This section allows either the advantaged or disadvantaged person to amend a section 182 claim where a closure notice or similar has been served on the advantaged person, in the former case the amendment being treated as made on the disadvantaged person's behalf. It is based on paragraph 6C(10) to (12) of Schedule 28AA to ICTA.

Section 185: Notice to potential claimants

380. This section requires an officer of Revenue and Customs, on giving a closure etc notice, to inform a disadvantaged person who appears to be entitled to make or amend a claim for compensating relief or to be party to proceedings on an appeal relating to a transfer pricing adjustment. It is based on section 111(1), (2), (4) and (5) of FA 1998 and section 87(5) of FA 1999.

Section 186: Extending claim period if notice under section 185 not given or given late

381. This section allows the Commissioners for HMRC to extend the time limit for the making or amendment of claims for compensating relief if they consider any person has been prejudiced as the result of a notice under section 185 not being given or being given late. It is based on section 111(3) of FA 1998.

Section 187: Tax treatment if actual interest exceeds arm's length interest

382. This section requires a company not to deduct tax from interest so far as it exceeds interest payable under the arm's length rule. It is based on paragraph 6E of Schedule 28AA to ICTA.

383. Without this rule tax would be deductible from the whole of the interest notwithstanding that that interest was not allowed in the calculation.

Section 188: Double taxation relief by way of credit for foreign tax

384. This section requires a reduction in the amount of DTR given against United Kingdom tax, whether given unilaterally or by treaty, where a disadvantaged person's profits are reduced as a result of a claim under section 174. It is based on paragraphs 7(1), (2), (5) and (6) and 14(1) and (3) of Schedule 28AA to ICTA.

385. Without the reduction required by this paragraph a UK resident would obtain relief for foreign tax which would exceed the actual foreign tax payable on the reduced profits. The foreign tax is therefore restricted to what would have been payable if the adjusted profits were the actual profits.

Section 189: Double taxation relief by way of deduction for foreign tax

386. This section requires a restriction in foreign tax given as a deduction from United Kingdom profits under section 112 where a disadvantaged person's profits are reduced as a result of a claim under section 174. It is based on paragraph 7(3) to (5) of Schedule 28AA to ICTA.

387. Without the reduction required by this section a UK resident would obtain relief for foreign tax which would exceed the actual foreign tax payable on the reduced profits. The foreign tax is therefore restricted to what would have been payable if the adjusted profits were the actual profits.

Section 190: Meaning of "relevant notice"

388. This section gives the definition of "relevant notice" for the purposes of this Chapter. It is based on paragraphs 6(7) and 6C(10) of Schedule 28AA to ICTA and section 111(6) of FA 1998.

Chapter 5: Position of guarantor of affected person's liabilities under a security issued by the person

Overview

389. This Chapter provides for the guarantor company to obtain a deduction for interest which is disallowed on the advantaged company under section 147 (basic transfer pricing rule) because section 153 (guarantees on issue of a security) operates to cause the guarantee given on the issue of the security to be treated as one that would not be given if the parties were at arm's length.

Section 191: When sections 192 to 194 apply

390. This section explains that section 192 (as supplemented by sections 193 and 194) applies when interest paid under a security is disallowed under section 147 as a result of the operation of section 153 in the case of a guarantee given for liabilities under the security. It is based on paragraphs 1A(7), (9) and (10) and 6D(1) and (10) of Schedule 28AA to ICTA.

Section 192: Attribution to guarantor company of things done by issuing company

391. This section requires the guarantor company to be treated as the issuing company on the making of a claim but only in order to allow the guarantor company to obtain a deduction for the disallowed interest. It is based on paragraphs 1A(7) and 6D(2), (3), (10) and (11) of Schedule 28AA to ICTA.

392. The closing words of the first sentence of paragraph 6D(2) have not been rewritten as adding nothing to the preceding provisions of the sub-paragraph.

Section 193: Interaction between claims under sections 174 and 192(1)

393. This section ensures that only one compensating adjustment is given where the guarantor makes a claim under section 192 and the lender makes a claim under section 174. This may happen where the lender and borrower are connected for the purposes of this Part. It is based on paragraph 6D(4) to (7) of Schedule 28AA to ICTA.

Section 194: Claims under section 192(1): general provisions

394. This section explains who can make the claim under section 192 and applies the provisions, as appropriate, in sections 175 to 177. It is based on paragraph 6D(8) and (9) of Schedule 28AA to ICTA.

Chapter 6: Balancing payments

Overview

395. Balancing payments may be made following a transfer pricing adjustment and are not taken into account in computing profits and losses. These payments enable the result of a transaction between two connected persons to be adjusted so that the persons end up in a position they would have been in had they been taxed on the basis of their actual transaction.

396. Balancing payments may also be made in cases where a guarantee is given and there is a transfer pricing adjustment as a result of the operation of section 153. Here the guarantor makes a payment to the borrower in recognition of the fact that the guarantor has received the benefit of the interest deduction, thus restoring the cash position to its original state.

397. The disadvantaged person or guarantor may alternatively elect to pay the additional tax incurred by the advantaged person following a transfer pricing adjustment.

Section 195: Qualifying conditions for purposes of section 196

398. This section provides the qualifying conditions for section 196. It is based on paragraph 7A(1) of Schedule 28AA to ICTA.

Section 196: Balancing payments between affected persons: no charge to, or relief from, tax

399. This section prevents balancing payments from being taken into account for tax purposes up to the level of the available compensating adjustment. It is based on paragraph 7A(1) to (3) of Schedule 28AA to ICTA.

Section 197: Qualifying conditions for purposes of section 198

400. This section provides the qualifying conditions for section 198. It is based on paragraphs 1A(7), (9) and (10) and 7C(1) of Schedule 28AA to ICTA.

Section 198: Balancing payments by guarantor to issuer: no charge to, or relief from, tax

401. This section prevents balancing payments by the guarantor company from being taken into account for tax purposes. It is based on paragraph 7C(1) and (2) of Schedule 28AA to ICTA.

Section 199: Pre-conditions for making election under section 200

402. This section provides the conditions for section 200. It is based on paragraphs 1A(9) and (10) and 7B(1) to (3) and (10) of Schedule 28AA to ICTA.

Section 200: Election to pay tax rather than make balancing payments

403. This section allows the disadvantaged person to elect to pay the tax of the advantaged person rather than to make a balancing payment within section 196. It is based on paragraph 7B(2) and (4) of Schedule 28AA to ICTA.

Section 201: Pre-conditions for making election under section 202

404. This section provides the conditions for section 202. It is based on paragraphs 1A(7), (9) and (10), 7B(2) and 7D(1) to (3) of Schedule 28AA to ICTA.

Section 202: Election, in guarantee case, to pay tax rather than make balancing payments

405. This section allows the disadvantaged person in a guarantee case to elect to pay the tax of the advantaged person rather than to make a balancing payment within section 198. It is based on paragraphs 7B(2) and (4) and 7D(2) and (4) of Schedule 28AA to ICTA.

Section 203: Elections under section 200 or 202

406. This section explains how elections under sections 200 and 202 are to be made and the effect of such elections. It is based on paragraphs 7B(5) to (9) and 7D(2) of Schedule 28AA to ICTA.

Section 204: Meaning of "capital market condition" in sections 199 and 201

407. This section explains the meaning of "capital market condition" and is based on paragraphs 1A(8), 7B(1), (3), (9) and (10) and 7D(2) to Schedule 28AA to ICTA.

408. Paragraph 7B(9) of Schedule 28AA excludes from the definition of "independent person" a person who has a participatory relationship with either of the affected persons. Paragraph 7B(10) applies the definition of "participatory relationship" given

in paragraph 1A of Schedule 28AA. That definition is expressed to be about cases where one company has a participatory relationship with another company. It therefore suggests that a person excluded by paragraph (b) of the definition of "independent person" must necessarily be a company. While there may be an argument that the definition in paragraph 1A should apply with modifications to make it work in the context of paragraph 7B, such an argument is not considered persuasive.

Chapter 7: Oil-related ring-fence trades

Overview

409. This Chapter has to be read with section 147(4). Between them they apply the Part to transactions between the ring-fence trade of an oil company and other activities engaged in by that same company as if they were separate enterprises.

Section 205: Provision made or imposed between ring-fence trade and other activities

410. If provision is made or imposed as between the ring-fence trade of an oil company and other activities of that company this section has the effect that this Part applies as if that trade and those other activities were carried on by two separate persons controlled by the same person. It is based on paragraph 11(1), (3) and (4) of Schedule 28AA to ICTA.

411. In *subsection (1)(a)* the words "oil-related" have been added to "ring-fence trade" in paragraph 11(1) and (3) of Schedule 28AA to make clear the area of taxation referred to. "Oil-related ring-fence trade" is defined in section 206.

Section 206: Meaning of "oil-related ring-fence trade" in sections 205 and 218

412. This section gives the meaning of "oil-related ring-fence trade" and is based on paragraph 11(1) of Schedule 28AA to ICTA and section 85(7) of FA 1999.

Chapter 8: Supplementary provisions and interpretation of Part

Overview

413. This Chapter contains provisions on various matters relating to the Part: application to unit trusts, transfer-pricing determinations requiring the sanction of the Commissioners for HMRC, determination of appeals, effects on capital allowances and chargeable gains, the manner of making adjustments and some definitions.

Section 207: Application of Part to unit trusts

414. This section explains how the transfer pricing rules in this Part are applied to unit trusts. It is based on paragraph 14(5) of Schedule 28AA to ICTA.

Section 208: The determinations which require the Commissioners' sanction

415. This section provides that certain determinations in transfer pricing cases require the sanction of the Commissioners for HMRC. It is based on section 110(1), (4) and (9) of FA 1998.

Section 209: Determinations exempt from requirement for Commissioners' sanction

416. This section sets out the circumstances in which a Commissioners' sanction under section 208 is not required. It is based on section 110(5) to (7) of FA 1998.

Section 210: The requirement for the Commissioners' sanction

417. This section applies certain rules where a transfer-pricing determination requires the Commissioners' sanction. It is based on section 110(1) to (3) of FA 1998.

418. If a transfer-pricing determination requires the Commissioners' sanction, the determination will be one made for the purposes of a notice or matter mentioned in section 208(3). This section applies when the notice, or notice of the matter, is given. If the determination (so far as relating to the notice or matter) has not been approved by the Commissioners or if the determination has been approved but the taxpayer is not informed that approval has been given, the notice or matter has the effect it would have if it had been prepared without taking account of the determination.

Section 211: Restriction of right to appeal against Commissioners' approval

419. This section provides that the Commissioners' approval of a determination for the purposes of section 210(2) or (4) may not be questioned on an appeal. It is based on section 110(8) of FA 1998.

Section 212: Appeals

420. This section provides rules relating to proceedings on appeals against matters relevant to this Part. It is based on paragraph 12 of Schedule 28AA to ICTA.

Section 213: Capital allowances

421. This section prevents the transfer pricing provisions from applying for the purposes of capital allowances and balancing charges. It is based on paragraph 13(1) and (2) of Schedule 28AA to ICTA.

Section 214: Chargeable gains

422. This section prevents the transfer pricing provisions from applying for the purposes of chargeable gains. TCGA has its own arm's length rule. It is based on paragraph 13(1) and (2) of Schedule 28AA to ICTA.

Section 215: Manner of making adjustments to give effect to Part

423. This section explains how adjustments under this Part are to be made. It is based on paragraphs 6C(8) and 14(4) of Schedule 28AA to ICTA.

Section 216: Meaning of "the relevant activities"

424. This section gives the meaning of "the relevant activities". It is based on paragraph 14(1) of Schedule 28AA to ICTA.

Section 217: Meaning of "control" and "firm"

425. This section gives the meaning of "control" and "firm" for the purposes of this Part and also applies a special meaning of "control" for applying the transfer pricing rules in relation to company oil sales. It is based on paragraphs 9 and 14(2) of Schedule 28AA to ICTA.

426. The definition of "control" is by reference to section 1124 of CTA 2010 which has rewritten section 840 of ICTA.

427. Under the definition of control for company oil sales, the oil producer, seller and buyer are connected persons for the purposes of the Part where the control threshold would not otherwise be met because the shareholding is insufficient. This allows the transfer pricing rules to apply where the oil-producing company is owned by a consortium.

Part 5: Advance pricing agreements

Overview

428. This Part provides the rules on APAs. These are written agreements between an enterprise and the Commissioners for HMRC which determine a method for resolving pricing issues in advance of a return being made. When the terms of the agreement are complied with they provide assurance that the treatment of those pricing issues will be accepted by both HMRC and the enterprise for the period covered by the agreement.

429. The APA legislation was put in place to enable HMRC to enter into APAs independently of pricing agreements under DTAs.

430. The Part sets out the matters which can be covered by an APA, what a taxpayer must do to obtain an agreement and how an agreement is applied.

Section 218: Meaning of "advance pricing agreement"

431. This section gives the meaning of an APA and the matters it can cover. It is based on section 85(1) and (2) of FA 1999 and section 153(2) of FA 2003.

432. *Subsection (2)(a)* applies only to persons other than companies. It is based on section 85(2)(a) of FA 1999, but without the meaning of "permanent establishment" applied by section 153(2)(c) of FA 2003 in cases where the taxpayer is a company. This subsection allows agreement on income chargeable as arising in the United Kingdom under the territorial provisions of ITTOIA (see in particular section 6(2) of that Act).

433. *Subsection (2)(b)* rewrites section 85(2)(a) of FA 1999 with the modification for companies applied by section 153(2)(c) of FA 2003. It allows agreement in the case of income attributed to a permanent establishment in the United Kingdom under Chapter 4 of Part 2 of CTA 2009.

434. *Subsection (2)(c)* is based on section 85(2)(b) of FA 1999. For the meaning of permanent establishment see Chapter 2 of Part 24 of CTA 2010.

435. *Subsection (2)(d)* allows agreement on the territorial location of income and *subsection (2)(e)* covers transfer pricing matters.

436. *Subsection (2)(f)* deals with the application of transfer pricing provisions to oil-related ring fence trades.

Section 219: Meaning of "associate" in section 218(2)(e)

437. This section brings in the meaning of direct and indirect participation given by Part 4 (transfer pricing) for the purposes of section 218(2)(e) (advance pricing agreement). It is based on section 85(6) of FA 1999.

Section 220: Effect of agreement on party to it

438. This section provides that matters covered by an APA are to be determined under the agreement without reference to the usual means of determining such questions. In the case of transfer pricing matters, although reference to Part 4 may be excluded, an APA cannot exclude reference to other statutory provisions. The section is based on section 85(1), (3), (4) and (8) of FA 1999.

439. The opening words of section 85(3) of FA 1999 make section 85 subject to the following provisions of the section and to section 86. This is regarded, in fact, as referring to the remainder of section 85(3) and to sections 85(4) and 86(2) only and *subsection (3)* is drafted accordingly.

440. *Subsection (5)* rewrites, from section 85(4)(b), "a question falling within another paragraph of that subsection". "That subsection" is section 85(2) which is rewritten

in section 218(2). These words are rewritten as "a question that relates to a matter within another paragraph of section 218(2)" since section 85(2) (and section 218) lists "matters" rather than "questions".

Section 221: Effect of revocation of agreement or breach of its conditions

441. This section states the conditions under which an APA does not have effect. It is based on section 86(2) of FA 1999.

Section 222: Effect of agreement on non-parties

442. This section applies if one of the parties to a transfer pricing transaction has entered into an APA in relation to that transaction. The section provides that the APA also applies in the case of the other party to the transfer pricing transaction for the purpose of determining questions related to the transaction. The section is based on section 87 of FA 1999.

Section 223: Application for agreement

443. This section specifies the requirements that apply as regards an application for an APA made to HMRC by a taxpayer. It is based on section 85(1) and (5) of FA 1999.

Section 224: Provision in agreement about years ended or begun before agreement made

444. This section allows an APA to cover a period before the APA is made and gives effect to provisions of an APA relating to a period ending or beginning before the APA is made. It is based on sections 85(8) and 86(1) and (7) of FA 1999.

Section 225: Modification and revocation of agreement

445. This section allows an APA to provide for HMRC to determine the time from which any modification or revocation of the APA is to take effect in a case where the APA gives HMRC powers to modify or revoke the agreement. It is based on section 86(6) of FA 1999.

Section 226: Annulment of agreement for misrepresentation

446. This section allows an APA to be nullified if the Commissioners for HMRC have been provided by the other party with fraudulent or negligent information. It is based on section 86(5) of FA 1999.

Section 227: Penalty for misrepresentation in connection with agreement

447. This section provides the maximum penalty for fraudulently or negligently providing false or misleading information in connection with the preparation of an APA. It is based on section 86(8) of FA 1999.

Section 228: Party to agreement: duty to provide information

448. This section places a duty on a party to an APA to provide the Commissioners for HMRC with reports and other information. It is based on section 86(4) of FA 1999.

Section 229: Modifications of agreement for double taxation purposes

449. This section provides that mutual agreements under a DTA take precedence over APAs. It is based on section 86(3) and (10) of FA 1999.

450. "Mutual agreement" is undefined in the Taxes Acts but considered to have the same meaning as in section 124 (section 815AA of ICTA) where it refers to agreements between the United Kingdom and an authority in a territory with which the United

Kingdom has a DTA. Such agreements are envisaged in Article 25 of the OECD Model Tax Convention.

Section 230: Interpretation of Part: meaning of "Commissioners" and "officer"

451. This section is based on sections 85(1) and (5) and 86(2) to (6) and (8) of FA 1999.

Part 6: Tax arbitrage

Overview

452. This Part rewrites sections 24 to 28 and 30 of, and Schedule 3 to, F(No 2)A 2005, which were enacted to counteract avoidance involving tax arbitrage ("the tax arbitrage provisions").

453. Different jurisdictions have different tax regimes, and different tax regimes often treat the same transaction in different ways. Multinational groups can arrange their affairs to take advantage of such discrepancies: this practice is called "tax arbitrage". In tax arbitrage, the multinational group benefits at the expense of one or more of the fiscs.

454. The provisions in this Part have to be specifically activated by a notice from HMRC.

455. In general, the tax arbitrage provisions apply where an arbitrage scheme using a hybrid entity or instrument results in:

- a double deduction for the same expense, or a UK deduction for the payer in circumstances where the recipient is not taxed on the receipt (because, for example, a tax credit has eliminated a liability to tax); or
- amounts being received by a company in a way that would not otherwise be taxable in the UK.

456. The hybrid entity or instrument will usually have been used deliberately to achieve one of these results.

457. The tax arbitrage provisions deal separately with deduction cases and receipts cases.

458. The sections in this Part are laid out in the following order.

- Section 231 introduces the Part.
- Sections 232 to 235 are about deduction notices.
- Sections 236 to 242 are about the kinds of schemes which may be counteracted by deduction notices.
- Sections 243 to 248 are about the consequences of deduction notices.
- Sections 249 to 254 are about receipt notices.
- Sections 255 to 257 make general provision about deduction notices and receipt notices.
- Sections 258 and 259 are interpretative.

Section 231: Overview

459. This section introduces the Part and summarises its structure. It is new.

Section 232: Deduction notices

460. This section says when an officer of Revenue and Customs may give a company a deduction notice. It is based on section 24(1) and (2) of F(No 2)A 2005.

461. Briefly, the officer may give a company a deduction notice if the officer considers, on reasonable grounds, that the "deduction scheme conditions" are or may be met in relation to a transaction to which the company is party.

462. Section 24(1) of F(No 2)A 2005 gives this function to the Commissioners for HMRC. In practice, the Commissioners delegate this function to officers of Revenue and Customs, and *subsection (1)* reflects this. See *Change 2* in Annex 1.

463. Because *Change 2* is made in section 232, it is also made in sections 235, 255 and 256.

464. Section 24(2) of F(No 2)A 2005 provides that the company has to be within the charge to corporation tax. This condition is rewritten more succinctly in subsection (1).

465. *Subsection (2)* defines the expressions "deduction notice" and "the deduction scheme conditions".

466. *Subsection (3)* signposts the consequences of a deduction notice.

Section 233: The deduction scheme conditions

467. This section specifies the "deduction scheme conditions". It is based on section 24(3) to (6) of, and paragraph 1 of Schedule 3 to, F(No 2)A 2005.

468. The source legislation labels these conditions "conditions A to D". These labels have been retained.

Section 234: Schemes achieving UK tax advantage for a company

469. This section defines when a scheme achieves a UK tax advantage for a company. It is based on section 30(2) to (4) of F(No 2)A 2005.

470. The references in the source legislation to income tax are redundant and are not rewritten.

471. Section 30(3) of F(No 2)A 2005 refers to "a tax credit". By virtue of section 832(1) of ICTA, this has the meaning given by section 231 of that Act. *Subsection (2)* accordingly refers to the provision of CTA 2010 which is based on section 231 of ICTA.

Section 235: Further provisions about deduction notices

472. This section makes further provisions about deduction notices. It is based on section 24(7) and (8) of F(No 2)A 2005.

473. *Subsections (1)* and *(2)* refer to an officer of Revenue and Customs. See the commentary on section 232 and *Change 2* in Annex 1.

Section 236: Schemes involving hybrid entities

474. This section is the first of a group of seven sections defining types of "deduction scheme" (see condition A in section 233(2)). It is based on paragraphs 2 and 3 of Schedule 3 to F(No 2)A 2005.

Section 237: Instruments of alterable character

475. This section is the second in a group of seven sections defining types of "deduction scheme". It is based on paragraphs 4 and 5 of Schedule 3 to F(No 2)A 2005.

Section 238: Shares subject to conversion

476. This section is the third in a group of seven sections defining types of "deduction scheme". It is based on paragraphs 4 and 6 of Schedule 3 to F(No 2)A 2005.

477. Paragraph 6(1)(a) and (b) of Schedule 3 to F(No 2)A 2005 define a scheme, in two alternative ways, by reference to "shares subject to conversion". This two-part definition is rewritten in *subsection (1)*.

478. Paragraph 6(2) of Schedule 3 to F(No 2)A 2005 defines "shares subject to conversion", using the expression "the relevant time". This definition is rewritten in *subsections (2)* to *(4)*.

479. Paragraph 6(3) of Schedule 3 to F(No 2)A 2005 defines "the relevant time" for the purposes of paragraph 6(2) of that Schedule.

480. The definition of "the relevant time" in paragraph 6(3)(a) of Schedule 3 to F(No 2)A 2005 only applies to cases within paragraph 6(1)(a) of that Schedule, and the definition of "the relevant time" in paragraph 6(3)(b) of that Schedule only applies to cases within paragraph 6(1)(b) of that Schedule. But the source legislation does not make this distinction immediately obvious. Accordingly, *subsections (5)* and *(6)* rewrite paragraph 6(3)(a) and (b) as two separate propositions applying, respectively, for the purposes of the two alternative cases in *subsection (1)*.

Section 239: Securities subject to conversion

481. This section is the fourth in a group of seven sections defining types of "deduction scheme". It is based on paragraphs 4 and 7 of Schedule 3 to F(No 2)A 2005.

482. *Subsections (5)* and *(6)* rewrite paragraph 7(3)(a) and (b) of Schedule 3 to F(No 2)A 2005 as two separate propositions. See the commentary on section 238 concerning the rewrite of paragraph 6(3) of that Schedule.

Section 240: Debt instruments treated as equity

483. This section is the fifth in a group of seven sections defining types of "deduction scheme". It is based on paragraphs 4 and 8 of Schedule 3 to F(No 2)A 2005.

Section 241: Scheme including issue of shares not conferring qualifying beneficial entitlement

484. This section is the sixth in a group of seven sections defining types of "deduction scheme". It is based on paragraphs 9 and 10 of Schedule 3 to F(No 2)A 2005.

Section 242: Scheme including transfer of rights under a security

485. This section is the last in a group of seven sections defining types of "deduction scheme". It is based on paragraphs 9 and 11 of Schedule 3 to F(No 2)A 2005.

486. "Security" is defined for the purposes of the Part in section 259. That definition is based on paragraph 11(6)(a) of Schedule 3 to F(No 2)A 2005. For the purposes of this section, that definition is extended by *subsection (8)*, which is based on paragraph 11(6)(b) of that Schedule.

Section 243: Consequences of deduction notices

487. This section sets out the consequences of a deduction notice being given. It is based on section 25(1), (2) and (14) to (16) of F(No 2)A 2005.

488. *Subsection (1)* says when this section applies.

489. *Subsection (2)* obliges the company to calculate (or recalculate) its income or chargeable gains for the purposes of corporation tax or its liability to corporation tax.

490. *Subsection (3)* stipulates that the calculation (or recalculation) must be done in accordance with the rule against double deduction (section 244) and, if appropriate, the rule against deduction for untaxable payments (section 248).

491. If the company considers that the deduction scheme conditions are in fact not met in relation to the transaction specified in the deduction notice, the company can make (or decide not to amend) its company tax return on the basis that the deduction notice is invalid. It is then up to HMRC to open an enquiry into the return if it considers the notice still to be valid.

492. If, however, the company concedes that the deduction notice is valid, it can adjust its company tax return. *Subsection (4)* provides that (so far as the scheme specified in the deduction notice is concerned) the company is treated as having complied with subsections (2) and (3) if it incorporates "the necessary relevant adjustments" in its company tax return for the accounting period specified in the notice.

493. *Subsection (5)* defines when adjustments are "relevant".

494. *Subsection (6)* defines when relevant adjustments are "necessary".

Section 244: The rule against double deduction

495. This section sets out the rule against double deduction referred to in section 243(3)(a). It is based on section 25(3) to (5) and (17) of F(No 2)A 2005.

496. To the extent to which an amount in relation to an expense is "otherwise deductible or allowable", *subsection (1)* restricts the amount allowable as a deduction.

497. *Subsection (2)* defines "otherwise deductible or allowable", by reference to the purposes of any tax to which this subsection applies.

498. *Subsection (3)* provides that subsection (2) applies to any tax (including any "non-UK tax"), with two exceptions. The two exceptions relate to oil taxation because, in that area, the United Kingdom tax system envisages relief being obtained for the same amount twice.

499. *Subsection (4)* extends the scope of subsection (2) to cover amounts for which relief (a) is not available but (b) would be available but for a "tax rule" that has the same effect as the rule in subsection (1).

500. The definition of "tax rule" is given in *subsection (5)*.

Section 245: Application of the rule against deduction for untaxable payments

501. This section sets out the conditions for the rule against deduction for untaxable payments to apply. It is based on section 25(6) and (17) of F(No 2)A 2005.

502. Under *subsection (1)*, the rule applies if three conditions are all met. These conditions are set out in *subsections (2)* to *(4)*.

503. In section 25(6)(c) of F(No 2)A 2005, the phrase "as a result of provision made or imposed by the scheme" appears to qualify "is not liable to tax" as well as "his liability to tax is reduced". But it does so by implication rather than explicitly. Subsection (4) makes this explicit. This is a minor change in the law, in the taxpayer's favour: see *Change 9* in Annex 1.

Section 246: Cases where payee's non-liability treated as not a result of scheme

504. This section makes further provision about condition C in section 245. It is based on section 25(7) to (10) of F(No 2)A 2005.

Section 247: Cases where payee treated as having reduced liability as a result of scheme

505. This section makes further provision about condition C in section 245. It is based on section 25(7) of F(No 2)A 2005.

Section 248: The rule against deduction for untaxable payments

506. This section sets out the rule against deduction for untaxable payments referred to in section 243. It is based on section 25(11) to (13) of F(No 2)A 2005.

507. *Subsection (1)* states that the rule is that "the total deduction amount" must be reduced.

508. *Subsection (2)* defines "the total deduction amount".

509. If the payee is not liable to tax at all in respect of the payment or payments under review, *subsection (3)* reduces the total deduction amount to nil.

510. *Subsections (4)* and *(5)* deal with the case in which the payee is liable to tax in respect of part, but not all, of the payment or payments under review.

Section 249: Receipt notices

511. This section says when an officer of Revenue and Customs may give a company a receipt notice. It is based on section 26(1) of F(No 2)A 2005.

512. Briefly, the officer may give a UK resident company a receipt notice if the officer considers, on reasonable grounds, that the "receipt scheme conditions" are or may be met in relation to the company.

513. Section 26(1) of F(No 2)A 2005 gives this function to the Commissioners for HMRC. In practice, the Commissioners delegate this function to officers of Revenue and Customs, and *subsection (1)* reflects this. See *Change 2* in Annex 1.

514. Because *Change 2* is made in section 249, it is also made in sections 252, 255 and 256.

515. *Subsection (2)* defines a "receipt notice" and "the receipt scheme conditions".

Section 250: The receipt scheme conditions

516. This section specifies the "receipt scheme conditions". It is based on section 832(3) of ICTA and sections 26(2) to (5), (8), (11) and (13) and 27(4) of F(No 2)A 2005.

517. Section 26(5) of F(No 2)A 2005 uses the expression "tax purposes", and by virtue of section 832(3) of ICTA "tax" in that context means "income tax or corporation tax". Elsewhere in the Part, however, "tax purposes" is used with a different meaning. Accordingly, to prevent possible confusion, *subsection (6)* expands "tax purposes" to "income tax purposes or corporation tax purposes".

518. Section 26(4) of F(No 2)A 2005 provides: "Condition C is that, as regards the qualifying payment made by the paying party, there is an amount that … may be deducted or otherwise allowed *in respect of the payment* under the tax law of any territory outside the United Kingdom." The definition of "deductible amount" in *subsection (7)* omits as otiose the italicised words.

Section 251: Amounts within corporation tax

519. This section supplements section 250(3) and (5). It is based on section 26(8), (9), (10) and (14) of F(No 2)A 2005.

520. Section 26(9)(a) of F(No 2)A 2005 refers to "the accounting period in which the qualifying payment was made *in relation to the company*". *Subsection (2)(a)* omits as otiose the italicised words.

Section 252: Further provisions about receipt notices

521. This section makes further provisions about receipt notices. It is based on section 26(12) of F(No 2)A 2005.

522. *Subsections (1)* and *(2)*, refer to an officer of Revenue and Customs. This is a minor change in the law: see the commentary on section 249 and *Change 2* in Annex 1.

Section 253: Exception for dealers

523. This section provides an exception for some dealers who would otherwise meet condition D of the receipt scheme conditions. It is based on section 26(6) and (7) of F(No 2)A 2005.

Section 254: Rule for calculation or recalculation of income etc following receipt notice

524. This section gives the rule for calculating or recalculating income, chargeable gains or liability to corporation tax following a receipt notice. It is based on section 27 of F(No 2)A 2005.

Section 255: Notices given before tax return made

525. This section meshes the tax arbitrage legislation in with the machinery of Self Assessment in cases in which a deduction notice or a receipt notice is given before the company's company tax return is made for the accounting period specified in the notice. It is based on section 28(1), (2) and (11) of F(No 2)A 2005.

526. *Subsection (1)* reflects the fact that deduction notices and receipt notices are to be given by officers of Revenue and Customs. This is a minor change in the law: see the commentary on sections 232 and 249 and *Change 2* in Annex 1.

Section 256: Notices given after tax return made

527. This section meshes the tax arbitrage legislation in with the machinery of Self Assessment in cases in which a deduction notice or a receipt notice is given after the company's company tax return has been made for the accounting period specified in the notice. It is based on section 28(3) to (7) and (12) of F(No 2)A 2005.

528. *Subsections (1), (2)* and *(6)* reflect the fact that deduction notices and receipt notices are to be given by officers of Revenue and Customs. This is a minor change in the law: see the commentary on sections 232 and 249 and *Change 2* in Annex 1

529. Section 28(7) of F(No 2)A 2005 refers to the company being requested "to produce or provide information". It is, however, not possible for a company to produce information without providing it. *Subsection (6)(a)* therefore omits "produce or" as superfluous.

Section 257: Amendments, closure notices and discovery assessments where section 256 applies

530. This section concerns amendments to company tax returns, closure notices and discovery assessments in cases in which section 256 applies. It is based on section 28(8) to (11) of F(No 2)A 2005.

Section 258: Schemes and series of transactions

531. This interpretative section is based on section 30(1) of F(No 2)A 2005.

Section 259: Minor definitions

532. This interpretative section is based on sections 25(18) and 28(12) of F(No 2)A 2005 and paragraphs 6(4), 7(4), 11(6) and 12 of Schedule 3 to that Act.

533. For the purposes of paragraphs 6, 7 and 11(6)(a) of Schedule 3 to F(No 2)A 2005, "security" has the same meaning as in Part 6 of ICTA. Section 254(1) of that Act defines

"security" for the purposes of that Part of that Act. Section 254(1) of that Act is rewritten in section 1117(1) of CTA 2010, to which *subsection (1)* accordingly refers.

Part 7: Tax treatment of financing costs and income

Overview

534. This Part rewrites Schedule 15 to FA 2009, the rules on debt capping.

535. The Part provides for the restriction of the tax deduction for finance expenses of group companies. The aggregate tax deduction for United Kingdom group members is limited to the consolidated gross finance expense of the group.

536. The restricted net expense is then allocated to one or more group companies. If other group members have net finance *income* from the group that finance income may be reduced in computing their profits.

Chapter 1: Introduction

Section 260: Introduction

537. This section gives an overview of the Part by setting out what each subsequent Chapter does and is based on paragraph 1 of Schedule 15 to FA 2009.

Chapter 2: Application of Part

Overview

538. This Chapter sets out the "gateway" conditions to be applied by reference to a comparison of the consolidated gross debt of the worldwide group with the aggregate figure of net debt of the UK group companies. If this condition is met for any given period of account of the worldwide group then the United Kingdom members of the group are not subject to the remaining Chapters of this Part.

Section 261: Application of Part

539. This section sets the condition for application of the Part based on the amount of the worldwide group's debt. The Part applies if the United Kingdom net debt of the group exceeds 75% of the worldwide gross debt of the group. The section is based on paragraph 2 of Schedule 15 to FA 2009.

Section 262: UK net debt of worldwide group for period of account of worldwide group

540. This section defines "UK net debt" for the purposes of section 261. It is based on paragraph 3 of Schedule 15 to FA 2009.

Section 263: Net debt of a company

541. This section defines the "net debt" of a relevant group company at any particular time as the company's debt liabilities less its liquid assets taken from the company's balance sheet. It is based on paragraph 4 of Schedule 15 to FA 2009.

Section 264: Worldwide gross debt of worldwide group for period of account of the group

542. This section defines "worldwide gross debt". It is based on paragraph 5 of Schedule 15 to FA 2009.

Section 265: References to amounts disclosed in balance sheet of relevant group company

543. This section explains what is meant by references to amounts disclosed in the balance sheet of a relevant group company. It is based on paragraph 6 of Schedule 15 to FA 2009.

Section 266: Qualifying financial services groups

544. This section gives the meaning of "qualifying financial services group". It is based on paragraph 7 of Schedule 15 to FA 2009.

Section 267: Qualifying activities

545. This section provides the list of activities that are to be regarded as "qualifying activities". It is based on paragraph 8 of Schedule 15 to FA 2009.

Section 268: Lending activities and activities ancillary to lending activities

546. This section defines "lending activities" and "activities that are ancillary to lending activities". It is based on paragraph 9 of Schedule 15 to FA 2009.

Section 269: Insurance activities and insurance-related activities

547. This section defines "insurance activities" and "insurance-related activities". It is based on paragraph 10 of Schedule 15 to FA 2009.

Section 270: Relevant dealing in financial instruments

548. This section gives the meaning of the phrase "relevant dealing in financial instruments" in section 267. It is based on paragraph 11 of Schedule 15 to FA 2009.

Section 271: UK trading income of the worldwide group

549. This section explains how UK trading income of the worldwide group is calculated for the purposes of section 266. It is based on paragraph 12 of Schedule 15 to FA 2009.

Section 272: Worldwide trading income of the worldwide group

550. This section explains how the worldwide trading income of the worldwide group is calculated for the purposes of section 266. It is based on paragraph 13 of Schedule 15 to FA 2009.

Section 273: Foreign currency accounting

551. This section provides that if an amount disclosed in balance sheets at any given date is expressed in a currency other than sterling, then the amount must be translated into sterling by reference to the spot rate at that date. It is based on paragraph 14 of Schedule 15 to FA 2009.

552. Paragraphs 14(3)(b) and (4) of Schedule 15 to FA 2009 refer to the £3 million minimum limit in paragraph 3(3) of that Schedule. The figure in paragraph 3(3) of Schedule 15 to FA 2009 may be amended by Treasury order under paragraph 3(5) of that Schedule. The order does not allow an amendment to paragraph 14(3)(b) and (4) but *subsections (3)(b)* and *(4)* of this section, which rewrite those sub-paragraphs, have been rewritten to allow the amount specified in section 263(3), which rewrites paragraph 3(3) of Schedule 15 to FA 2009, to apply to subsections (3) and (4) of this section whether or not amended by Treasury order.

Chapter 3: Disallowance of deductions

Overview

553. This Chapter applies if the "tested expense amount" exceeds the "available amount". In broad terms, the "tested expense amount" is the aggregate of the net amount of financing expense payable by each of the relevant group companies that have net financing expense, while the "available amount" is the external gross finance expense of the worldwide group of companies. The excess is the amount of financing expense that must be disallowed in computing the corporation tax profits of the relevant group companies. This Chapter also sets out how the group should notify HMRC of the allocation of the disallowance between the relevant group companies by submitting an allocation statement, and provides for an alternative procedure if the group fails to do so.

Section 274: Application of Chapter and meaning of "total disallowed amount"

554. This section applies the Chapter if, for any period of account ("the relevant period of account") of the "worldwide group", the "tested expense amount" exceeds the "available amount". It is based on paragraph 15 of Schedule 15 to FA 2009.

Section 275: Meaning of "company to which this Chapter applies"

555. This section provides that the Chapter applies to a company that is a relevant group company at any time during the relevant period of account. It is based on paragraph 16 of Schedule 15 to FA 2009.

Section 276: Appointment of authorised company for relevant period of account

556. This section provides that the companies to which the Chapter applies may appoint one of their number to act on their behalf for the relevant period of account in respect of matters governed by the Chapter. It is based on paragraph 17 of Schedule 15 to FA 2009.

Section 277: Meaning of "the reporting body"

557. This section defines the term "the reporting body" for the purposes of this Chapter as the company appointed under section 276 for the relevant period of account, or the companies to which this Part applies (acting jointly) if no such appointment has effect. It is based on paragraph 18 of Schedule 15 to FA 2009.

Section 278: Statement of allocated disallowances: submission

558. This section requires the reporting body to send a "statement of allocated disallowances" for the relevant period of account to HMRC. It is based on paragraph 19 of Schedule 15 to FA 2009.

Section 279: Statement of allocated disallowances: submission of revised statement

559. This section allows the reporting body to submit a revised statement to HMRC, with subsequent revisions also being allowed. It is based on paragraph 20 of Schedule 15 to FA 2009.

Section 280: Statement of allocated disallowances: requirements

560. This section sets out the requirements of a statement of allocated disallowances. It is based on paragraph 21 of Schedule 15 to FA 2009.

Section 281: Statement of allocated disallowances: effect

561. This section gives the effect of the statement of allocated disallowances, namely that a financing expense amount of a company specified in a statement is not to be brought

into account by the company for corporation tax purposes. It is based on paragraph 22 of Schedule 15 to FA 2009.

Section 282: Company tax returns

562. This section provides that where a company has delivered a company tax return for the relevant period, and as a result of a revised statement either the amount of profits on which corporation tax is chargeable for a relevant accounting period of a company changes, or any other information contained in the return is rendered incorrect, then the company is treated as having amended its return for the accounting period so as to reflect the change or correct the information. It is based on paragraph 23 of Schedule 15 to FA 2009.

Section 283: Power to make regulations about statement of allocated disallowances

563. This section provides a regulation-making power to allow the Commissioners for HMRC to introduce rules governing a statement of allocated disallowances, and mentions matters that may be covered in particular circumstances. It is based on paragraph 24 of Schedule 15 to FA 2009.

Section 284: Failure of reporting body to submit statement of allocated disallowances

564. This section sets out the consequences of a failure by a reporting body to submit a statement of allocated disallowances that complies with the requirements of section 280. It is based on paragraph 25 of Schedule 15 to FA 2009.

Section 285: Powers to make regulations in relation to reductions under section 284

565. This section provides a regulation-making power to allow the Commissioners for HMRC to introduce rules to ensure that a company in relation to which a financing expense amount is reduced under section 284 has sufficient information to determine its amount and describes matters that may be covered in particular. It is based on paragraph 26 of Schedule 15 to FA 2009.

Chapter 4: Exemption of financing income

Overview

566. This Chapter sets out how the group should notify HMRC of the allocation of the exemption between the group companies by submitting an allocation statement, providing an alternative procedure on failure to do so.

Section 286: Application of Chapter and meaning of "total disallowed amount"

567. This section applies this Chapter to deal with the exemption of financing income for a period of account of the worldwide group where the tested expense amount exceeds the available amount. It is based on paragraph 27 of Schedule 15 to FA 2009.

Section 287: Meaning of "company to which this Chapter applies"

568. This section provides that this Chapter applies to a company that is a UK group company at any time during the period of account of the worldwide group. It is based on paragraph 28 of Schedule 15 to FA 2009.

Section 288: Appointment of authorised company for relevant period of account

569. This section provides a regulation-making power to allow the Commissioners for HMRC to introduce rules governing a statement of allocated exemptions, mentioning

matters that may be covered in particular. It is based on paragraph 29 of Schedule 15 to FA 2009.

Section 289: Meaning of "the reporting body"

570. This section gives the meaning of "the reporting body". It is based on paragraph 30 of Schedule 15 to FA 2009.

Section 290: Statement of allocated exemptions: submission

571. This section requires a statement of allocated exemptions to be submitted to HMRC. It is based on paragraph 31 of Schedule 15 to FA 2009.

Section 291: Statement of allocated exemptions: submission of revised statement

572. This section allows the reporting body to submit a revised statement to HMRC. It is based on paragraph 32 of Schedule 15 to FA 2009.

Section 292: Statement of allocated exemptions: requirements

573. This section sets out the requirements of a statement of allocated exemptions in terms of the information it must contain. It is based on paragraph 33 of Schedule 15 to FA 2009.

Section 293: Statement of allocated exemptions: effect

574. This section gives the effect of the statement of allocated exemptions. It is based on paragraph 34 of Schedule 15 to FA 2009.

Section 294: Company tax returns

575. This section provides that where a company has delivered a company tax return and there is a change in the profits as a result of a revised statement of allocated exemptions or other information in the return is rendered incorrect, the company is treated as having amended its return for the accounting period concerned. It is based on paragraph 35 of Schedule 15 to FA 2009.

Section 295: Power to make regulations about statement of allocated exemptions

576. This section provides a regulation-making power to allow the Commissioners for HMRC to introduce rules governing a statement of allocated exemptions and mentions matters which may be covered in particular. It is based on paragraph 36 of Schedule 15 to FA 2009.

Section 296: Failure of reporting body to submit statement of allocated exemptions

577. This section sets out the consequences of a failure by a reporting body to submit a statement of allocated exemptions that complies with the requirements of section 292. It is based on paragraph 37 of Schedule 15 to FA 2009.

Section 297: Power to make regulations in relation to reductions under section 296

578. This section provides a regulation-making power to allow the Commissioners for HMRC to introduce rules to ensure that a company in whose case a financing income amount is reduced under section 296 has sufficient information to determine its amount and mentions matters that may be covered in particular. It is based on paragraph 38 of Schedule 15 to FA 2009.

Section 298: Balancing payments between group companies: no tax charge or relief

579. This section provides that, where in certain defined circumstances one company makes a payment to another company as a result of an adjustment to taxable income or

expenses made under this Part, then those amounts are not taken into account in computing the taxable profits of either company. It is based on paragraph 39 of Schedule 15 to FA 2009.

Chapter 5: Intra-group financing income where payer denied deduction

Overview

580. Chapter 5 allows intra-group financing income received from a company resident in the EEA, excluding the United Kingdom, to be exempt from corporation tax. To the extent that tax relief is not available for finance costs within the EEA other than the United Kingdom, the income is not brought into account for the purposes of corporation tax in the hands of the recipient.

Section 299: Tax exemption for certain financing income received from EEA companies

581. This section gives an exemption for an amount of financing income received from a group company that is resident in the EEA, excluding the United Kingdom. Exemption is subject to meeting all of conditions A to C, which are explained in subsequent sections. The section is based on paragraph 40 of Schedule 15 to FA 2009.

Section 300: Meaning of "relevant associate"

582. This section defines "relevant associate" for the purposes of the Chapter. It is based on paragraph 41 of Schedule 15 to FA 2009.

Section 301: Meaning of "tax-resident" and "EEA territory"

583. This section defines "tax resident" and "EEA territory" for the purposes of this Chapter. It is based on paragraph 42 of Schedule 15 to FA 2009.

Section 302: Qualifying EEA tax relief for payment in current or previous period

584. This section defines the requirement set out in the first of the two elements of condition C of section 299. It is based on paragraph 43 of Schedule 15 to FA 2009.

Section 303: Qualifying EEA tax relief for payment in future period

585. This section defines the second requirement of condition C in section 299. It is similar to the first requirement described in the previous section except that it refers to future periods. The section is based on paragraph 44 of Schedule 15 to FA 2009.

Section 304: References to tax of a territory

586. This section defines the term "tax" for the purposes of this Chapter. It is based on paragraph 45 of Schedule 15 to FA 2009.

Section 305: Financing income amounts of a company

587. This section defines the term "financing income amount", which is the term used in section 299 to describe the amount that is exempt in the hands of a company. It is based on paragraph 46 of Schedule 15 to FA 2009.

Chapter 6: Tax avoidance

Overview

588. This Chapter provides anti-avoidance rules for the Part. The first rule is targeted at avoidance schemes that manipulate the rules in Chapter 2 in order to avoid the application of the Part to a group of companies that would not otherwise have met the

'gateway' conditions in section 261. The second targets schemes to reduce the amount of a disallowance under the debt cap, whether by decreasing the tested expense amount or by increasing the available amount or the tested income amount, or any combination of these. The third rule counters manipulation of the Chapter 5 rules which disregard certain intra-group financing income.

Section 306: Schemes involving manipulation of rules in Chapter 2

589. This section counters schemes that attempt to manipulate the "gateway" conditions. For example, a group that would otherwise fail the test in section 261 (so that the debt cap rules applied) might borrow from a bank at the end of its period of account to boost the "worldwide gross debt" amount defined in section 264, repaying the loan the next day. The section is based on paragraph 47 of Schedule 15 to FA 2009.

Section 307: Schemes involving manipulation of rules in Chapters 3 and 4

590. This section is directed at schemes manipulating the tested expense amount, the tested income amount or the available amount, or any combination of these three by considering the aggregate effect of these three amounts – the "relevant net deduction" – defined in section 308. It is based on paragraph 48 of Schedule 15 to FA 2009.

Section 308: Meaning of "relevant net deduction"

591. This section defines the "relevant net deduction" for the purposes of section 307(2). This is so much of the total disallowed amount (the tested expense amount less the available amount) as cannot be covered by a disregard of financing income of UK group companies. The relevant amount may be nil. The section is based on paragraph 49 of Schedule 15 to FA 2009.

Section 309: Calculation of amounts

592. This section sets out the assumptions to be made for the purposes of section 307. It is based on paragraph 50 of Schedule 15 to FA 2009.

Section 310: Meaning of "carried-back amount" and "carried-forward amount"

593. This section defines the "carried-back amount" and "carried-forward amount" for the purposes of section 307. It is based on paragraph 51 of Schedule 15 to FA 2009.

Section 311: Schemes involving manipulation of rules in Chapter 5

594. This section deals with schemes that manipulate the rules in Chapter 5. Under section 299 financing income received by a United Kingdom company is disregarded for corporation tax purposes where three conditions are met and this section counters a scheme if it has the effect of securing that any of these three section 299 conditions is met and that is the main purpose or one of the main purposes of the scheme. It is based on paragraph 52 of Schedule 15 to FA 2009.

Section 312: Meaning of "scheme" and "excluded scheme"

595. This section defines "scheme" and "excluded scheme" for the purposes of this Chapter. It is based on paragraph 53 of Schedule 15 to FA 2009.

Chapter 7: "Financing expense amount" and "financing income amount"

Overview

596. This Chapter explains what is meant by "financing expense amount" and "financing income amount" of a company. These amounts are used in Chapter 8 to compute the "tested expense amount" and "tested income amount" which in turn are used, together

with the "available amount" (defined in Chapter 9), to calculate the amounts, if any, of the financing expense incurred by relevant group companies to be disallowed and of the financing income receivable by UK group companies to be exempted. In setting the basic rules for the "financing expense amount" this Chapter includes specific activities or certain types of finance amount.

Section 313: The financing expense amounts of a company

597. This section provides that a "financing expense amount" of a worldwide group company for a period of account is an amount that is brought into account for corporation tax purposes in accordance with condition A, B or C . It is based on paragraph 54 of Schedule 15 to FA 2009.

Section 314: The financing income amounts of a company

598. This section provides that a "financing income amount" of a worldwide group company for a period of account is an amount that is brought into account for corporation tax purposes in accordance with condition A, B or C . It is based on paragraph 55 of Schedule 15 to FA 2009.

Section 315: Interpretation of sections 313 and 314

599. This section provides that various terms used in sections 313 and 314 have the same meaning as they do in the loan relationships rules in CTA 2009. It is based on paragraph 56 of Schedule 15 to FA 2009.

Section 316: Group treasury companies

600. This section excludes financing expense or income amounts if the company is a group treasury company during the worldwide group's period of account. It is based on paragraph 57 of Schedule 15 to FA 2009.

Section 317: Real estate investment trusts

601. This section provides for an exclusion from financing expense or income amounts for amounts taken into account in computing profits exempted from tax by virtue of the special rules applying to real estate investment trusts. It is based on paragraph 58 of Schedule 15 to FA 2009.

Section 318: Companies engaged in oil extraction activities

602. This section excludes the financing expense or income amounts if a company is engaged in oil extraction activities within the meaning of section 277 of CTA 2010. It is based on paragraph 59 of Schedule 15 to FA 2009.

Section 319: Intra-group short-term finance: financing expense

603. This section prevents an intra-group short-term financing expense which meets condition A in section 313 from being treated as a finance expense. It is based on paragraph 60 of Schedule 15 to FA 2009.

Section 320: Intra-group short-term finance: financing income

604. This section excludes intra-group short-term financing income from being treated as such if the corresponding finance expense is not treated as a financing expense in accordance with section 319. It is based on paragraph 61 of Schedule 15 to FA 2009.

Section 321: Short-term loan relationships

605. This section explains which finance arrangements can be treated as short-term loan arrangements for the purposes of section 319. It is based on paragraph 62 of Schedule 15 to FA 2009.

Section 322: Stranded deficits in non-trading loan relationships: financing expense

606. This section deals with stranded deficits in non-trading loan relationships from the perspective of the company incurring the financing expense and prevents a financing expense which meets condition A in section 313 from being treated as such. It is based on paragraph 63 of Schedule 15 to FA 2009.

Section 323: Stranded deficits in non-trading loan relationships: financing income

607. This section prevents an amount from being treated as financing income if the corresponding financing expense is not treated as such under section 322. It is based on paragraph 64 of Schedule 15 to FA 2009.

Section 324: Stranded management expenses in non-trading loan relationships: financing expense

608. This section deals with stranded management expenses in non-trading loan relationships from the perspective of the company incurring the financing expense and prevents a financing expense which meets condition A in section 313 from being treated as such. It is based on paragraph 65 of Schedule 15 to FA 2009.

Section 325: Stranded management expenses in non-trading loan relationships: financing income

609. This section prevents an amount from being treated as financing income if the corresponding financing expense is not treated as such under section 324. It is based on paragraph 66 of Schedule 15 to FA 2009.

Section 326: Charities

610. This section excludes relevant amounts paid to charities from being taken into account in computing any disallowance under this Part. This prevents a disallowance being made where a corresponding disregard of amounts receivable is not available because of the tax status of the receiving body. The section is based on paragraph 67 of Schedule 15 to FA 2009.

Section 327: Educational and public bodies

611. This section excludes relevant amounts paid to certain educational and public bodies from being taken into account in computing any disallowance under this Part. This prevents a disallowance being made where a corresponding disregard of amounts receivable is not available because of the tax status of the receiving body. The section is based on paragraph 68 of Schedule 15 to FA 2009.

Section 328: Interpretation of sections 316 to 327

612. This section defines "finance arrangement" for the purposes of sections 316 to 327. It is based on paragraph 69 of Schedule 15 to FA 2009.

Chapter 8: "Tested expense amount" and "tested income amount"

Overview

613. This Chapter sets out how two key amounts, the "tested expense amount" and the "tested income amount", are to be calculated. The "tested expense amount" must be calculated

so that, by comparison with the "available amount" dealt with in Chapter 9, it can be determined whether the adjustments provided for by Chapters 3 and 4 are necessary. In calculating the amount of financing income the "tested income amount" is exempted from corporation tax by Chapter 4.

Section 329: The tested expense amount

614. Under this section the "tested expense amount" for a worldwide group is built up from the sum of each relevant group company's "net financing deduction" (explained in *subsections (2)* to *(5)*). It is based on paragraph 70 of Schedule 15 to FA 2009.

Section 330: The tested income amount

615. Under this section the "tested income amount" for a worldwide group is built up from the sum of each UK group company's "net financing income" (explained in *subsections (2)* to *(5)*). It is based on paragraph 71 of Schedule 15 to FA 2009.

Section 331: Companies with net financing deduction or net financing income that is small

616. This section provides the figure used to determine whether a relevant group company's net financing deduction or a UK group company's net financing income is "small" (less than £500,000) and allows the amount to be increased or decreased by Treasury order. It is based on paragraph 72 of Schedule 15 to FA 2009.

Chapter 9: "Available amount"

Overview

617. This Chapter deals with the computation of the "available amount", which in broad terms is the external gross finance expense of the worldwide group of companies. This Chapter sets out the basic rules for computing that amount and provides for the external financing expense arising from certain activities to be disregarded in the calculation.

Section 332: The available amount

618. This section provides that the "available amount" for a period of account of the worldwide group is derived from amounts disclosed in the group's income statement for that period. It is based on paragraph 73 of Schedule 15 to FA 2009.

Section 333: Group members with income from oil extraction subject to particular tax treatment in UK

619. This section excludes from the available amount financing costs arising from oil extraction activities. It is based on paragraph 74 of Schedule 15 to FA 2009.

Section 334: Group members with income from shipping subject to particular tax treatment in UK

620. This section excludes from the available amount financing costs relating to profits which are dealt with under the tonnage tax regime. It is based on paragraph 75 of Schedule 15 to FA 2009.

Section 335: Group members with income from property rental subject to particular tax treatment in UK

621. This section excludes from the available amount financing costs relating to profits exempted from corporation tax by virtue of the special rules applying to real estate investment trusts. It is based on paragraph 76 of Schedule 15 to FA 2009.

Section 336: Meaning of accounting expressions used in this Chapter

622. This section confirms that in the absence of any contrary provision, expressions used in this Chapter have the meaning given by international accounting standards. It is based on paragraph 77 of Schedule 15 to FA 2009.

Chapter 10: Other interpretative provisions

Overview

623. This Chapter defines a number of terms used in the Part.

Section 337: The worldwide group

624. This section defines "the worldwide group" for the purposes of this Part as any group of entities that is "large" (defined in section 344). It is based on paragraph 78 of Schedule 15 to FA 2009.

Section 338: Meaning of "group"

625. This section provides that the term "group" for the purposes of this Part takes it meaning from international accounting standards, thus establishing that "the worldwide group" defined in section 337 will, in the majority of cases, be the group of companies whose results are included in the consolidated accounts of the group headed by the ultimate parent. It is based on paragraph 79 of Schedule 15 to FA 2009.

Section 339: Meaning of "ultimate parent"

626. This section defines "ultimate parent" for the purposes of this Part. It is based on paragraph 80 of Schedule 15 to FA 2009.

Section 340: Meaning of "corporate entity"

627. This section defines "corporate entity" for the purposes of this Part. It is based on paragraph 81 of Schedule 15 to FA 2009.

Section 341: Meaning of "relevant non-corporate entity"

628. This section defines "relevant non-corporate entity" for the purposes of this Part. It is based on paragraph 82 of Schedule 15 to FA 2009.

Section 342: Treatment of entities stapled to corporate, or relevant non-corporate, entities

629. This section provides that, where a corporate or relevant non-corporate entity is stapled to another entity, they will be treated as a single corporate or relevant non-corporate entity for the purposes of the Part. It is based on paragraph 83 of Schedule 15 to FA 2009.

Section 343: Treatment of business combinations

630. This section treats entities as one corporate entity for the purposes of the Part if international accounting standards treat them as a single economic entity by reason of being a business combination achieved by contract. It is based on paragraph 84 of Schedule 15 to FA 2009.

Section 344: Meaning of "large" in relation to a group

631. This section defines a large group as a group no member of which is within the category of micro, small and medium-sized enterprises as defined (with modifications) in the

Annex to European Commission Recommendation 2003/361/EC of 6 May 2003. It is based on paragraph 85 of Schedule 15 to FA 2009.

Section 345: Meaning of "UK group company" and "relevant group company"

632. This section defines "UK group company" and "relevant group company" for the purposes of this Part. It is based on paragraph 86 of Schedule 15 to FA 2009.

Section 346: Financial statements of the worldwide group

633. This section explains which consolidated financial statements of the worldwide group are to be used in applying this Part. It is based on paragraph 87 of Schedule 15 to FA 2009.

Section 347: Non-compliant financial statements of the worldwide group

634. This section provides that where a group has not prepared consolidated financial statements of the worldwide group in accordance with acceptable accounting standards, the Part applies as if the group had prepared consolidated financial statements for the period in accordance with international accounting standards. It is based on paragraph 88 of Schedule 15 to FA 2009.

Section 348: Non-existent financial statements of the worldwide group

635. This section provides that where consolidated financial statements of an ultimate parent and its subsidiaries are not prepared, the Part will apply as if financial statements had been drawn up under international accounting standards. It is based on paragraph 89 of Schedule 15 to FA 2009.

Section 349: References to amounts disclosed in financial statements

636. This section sets out what is meant by "amounts disclosed in financial statements". It is based on paragraph 90 of Schedule 15 to FA 2009.

Section 350: Translation of amounts disclosed in financial statements

637. This section provides that amounts disclosed in financial statements for a period which are expressed in a currency other than sterling must be converted at the average rate of exchange for that period. It is based on paragraph 91 of Schedule 15 to FA 2009.

Section 351: Expressions taking their meaning from international accounting standards

638. This section provides for specified terms within the Part to take their meaning for the purposes of the Part from the definition given to them, for the time being, by international accounting standards. It is based on paragraph 92 of Schedule 15 to FA 2009.

Section 352: Meaning of "relevant accounting period"

639. This section defines a "relevant accounting period" for the purposes of this Part. It is based on paragraph 93 of Schedule 15 to FA 2009.

Section 353: Other expressions

640. This section defines various terms for the purposes of this Part. It is based on paragraph 94 of Schedule 15 to FA 2009.

Part 8: Offshore funds

Overview

641. This Part deals with the tax treatment of participants in offshore funds.

Section 354: Power to make regulations about tax treatment of participants

642. This section enables the Treasury to make regulations governing the tax treatment of participants in offshore funds. It is based on sections 41 and 42 of FA 2008.

Section 355: Meaning of "offshore fund"

643. This section sets out the main definition of the expression "offshore fund". It is based on section 40A(2), (3) and (6) of FA 2008.

644. The definition is in turn dependent on the definition of "mutual fund" to be found in section 356.

645. *Subsection (3)* defines "co-ownership" for the purposes of the section. The meaning is not restricted to the definition of the term in the law of any part of the United Kingdom. It takes its meaning from the law of the territory in which the arrangements take effect.

Section 356: Meaning of "mutual fund"

646. This section defines "mutual fund". It is based on sections 40B and 42A(2) of FA 2008.

647. To qualify as a mutual fund, arrangements must meet conditions A, B and C.

648. Condition C requires that an investor in the arrangements would expect to be able to realise the investment on a basis calculated entirely, or almost entirely, by reference to net asset value ("NAV") or by reference to an index of any description.

Section 357: Exceptions to definition of "mutual fund"

649. This section provides some exceptions to the definition of "mutual fund" set out in section 356. It is based on section 40E of FA 2008.

650. Arrangements are not a mutual fund if condition D is met and either condition E or condition F is also met.

651. Condition D qualifies condition C in section 356. An investor in a company would normally only reasonably expect to be able to realise NAV on the liquidation of the company. So condition D potentially excludes from the mutual fund definition any case where a reasonable investor would only be able to realise the investment in arrangements in the event of a winding-up, dissolution or termination of the arrangements.

652. Condition E is that the arrangements are not designed to terminate on a fixed date.

653. Condition F comprises three parts.

- The first is that the arrangements are designed to terminate on a fixed date.
- The second is that *subsection (5), (6)* or *(7)* applies.
  - — Subsection (5) applies if none of the assets are chargeable income-producing assets.
  - — Subsection (6) applies if the participants in the arrangements have no entitlement to benefit from the income arising on the assets that are the subject of the arrangements.

— Subsection (7) applies if all of the net income arising is required to be paid or credited to participants in such a manner that a UK resident individual would be charged to income tax on the amounts paid or credited.

- The third is that the arrangements are not designed to produce a return that is, in substance, equivalent to interest.

Section 358: Meaning of "relevant income-producing asset"

654. This section defines "relevant income-producing asset" for the purposes of section 357. It is based on section 40F of FA 2008.

Section 359: Power to make regulations about exceptions to definition of "mutual fund"

655. This section allows the Treasury to amend or repeal any provision of section 357 or section 358 by regulation. It is based on sections 40G and 42A(2) of FA 2008.

Section 360: Treatment of umbrella arrangements

656. This section sets out the treatment of umbrella arrangements (as defined in section 363). It is based on section 40A(1) and 40C(1) of FA 2008.

657. *Subsection (2)* provides that where there are such arrangements, each separate part (usually known as a "sub-fund") is to be treated as a separate arrangement and the overall arrangements are disregarded. In such a case the overall arrangements themselves do not constitute a mutual fund or an offshore fund.

Section 361: Treatment of arrangements comprising more than one class of interest

658. This section sets out the treatment of arrangements where there is more than one class of interest. It is based on sections 40A(1) and 40D of FA 2008.

659. Each class of arrangements is looked at separately for the purposes of determining whether the arrangements constitute a mutual fund, and the main arrangements are disregarded.

Section 362: Meaning of "participant" and "participation"

660. This section defines "participant" and "participation". It is based on section 40A(5) of FA 2008.

Section 363: Meaning of "umbrella arrangements" and "part of umbrella arrangements"

661. This section defines "umbrella arrangements" and "part of umbrella arrangements". It is based on section 40C(2) and (3) of FA 2008.

Part 9: Amendments to relocate provisions of tax legislation

Overview

662. This Part contains sections introducing Schedules which relocate various provisions of tax legislation, together with section 366 which itself contains certain relocated provisions.

Section 364: Oil activities

663. This section introduces Schedule 1 (oil activities: new Chapter 16A of Part 2 of ITTOIA). See the commentary on that Schedule.

Section 365: Alternative finance arrangements

664. This section introduces Schedule 2 which inserts new sections into ITA and TCGA dealing with the income tax and capital gains tax rules for alternative finance arrangements. See the commentary on that Schedule.

Section 366: Power to amend the alternative finance provisions

665. This section provides a regulatory power to amend the legislation about alternative finance arrangements including power to extend it to cover other forms of alternative finance that may be developed in the future. It is based on section 98(1), (1A), (2), (4) and (6) of FA 2006 and sections 521 and 1310(4) and (5) of CTA 2009.

666. The section provides a regulatory power for income tax, corporation tax and capital gains tax. The single power is clearer in its scope than would be the case with separate powers. Section 521 of CTA 2009 is repealed and the specific procedural rules relevant to this power, previously in section 1310(5) of CTA 2009, are brought into this section.

Section 367: Leasing arrangements: finance leases and loans

667. This section introduces Schedule 3 which inserts new Part 11A of ITA and new section 37A of TCGA. See the commentary on that Schedule.

Section 368: Sale and lease-back etc

668. This section introduces Schedule 4 which inserts new Part 12A of ITA. See the commentary on that Schedule.

Section 369: Factoring of income etc

669. This section introduces Schedule 5 which inserts new Chapters 5B and 5C of Part 13 of ITA. See the commentary on that Schedule.

Section 370: UK representatives of non-UK residents

670. This section introduces Schedule 6 which inserts new Chapters 2B and 2C of Part 14 of ITA and new Part 7A of TCGA. See the commentary on that Schedule.

Section 371: Miscellaneous relocations

671. This section introduces Schedule 7 which makes amendments to relocate some miscellaneous tax enactments. See the commentary on that Schedule.

Part 10: General provisions

Overview

672. This Part contains general provisions.

Section 372: Orders and regulations

673. This section rewrites the procedural provisions which are to apply in relation to the making of orders and regulations under powers rewritten in the sections of this Act. Also, it provides for the negative procedure to apply, in the House of Commons only, to instruments containing orders under sections 375 and 376 (powers to make consequential provision, or to undo changes). It is based on section 828(1), (3) and (4) of ICTA, section 98(3) and (5) of FA 2006, section 42A(1) and (3) of FA 2008 and section 1310(1) to (3) and (5) of CTA 2009.

674. *Subsection (3)* lists the powers to which, exceptionally, the negative procedure is not to apply. Regulations under section 7 and orders under section 377(2) are mentioned

because no parliamentary procedure applies to them. Regulations under sections 354(1) and 359(2) are mentioned in order to give a choice between the negative and affirmative procedures.

675. Subsection (3)(d) refers to cases where other parliamentary procedure is expressly provided for. This refers to Orders in Council under section 2, to regulations under sections 173, 321(4), 356(7) and 359(1), to orders under sections 261(3), 262(5) and 331(2) and to some orders under section 366. In these listed cases, express provision is made for the affirmative procedure to apply, in the House of Commons only.

676. The section needs to be read with the amendments which are made by Part 13 of Schedule 8 to this Act for the purpose of ensuring that the section does not overlap the procedural rules in section 287 of TCGA and section 1014 of ITA. Section 1171 of CTA 2010 contains provision to ensure that there is no overlap between the two sections.

Section 373: Abbreviated references to Acts

677. This section provides details of abbreviations used in this Act.

Section 374: Minor and consequential amendments

678. This section introduces Schedule 8.

Section 375: Power to make consequential provision

679. This section provides a power for the Treasury to make by order consequential amendments additional to those contained in Schedules 7 and 8. It is new.

680. The power is in substance the same as that in section 1323 of CTA 2009. As with that power, it will not be exercised without the agreement of the Tax Law Rewrite Project's Consultative and Steering Committees to the proposed modifications.

681. *Subsection (2)* provides that the power may not be used after 31 March 2013. It is sensible to enable additional consequential amendments to be made in this way only over a limited period, and it would in any case become progressively more difficult to do so accurately as subsequent Finance Bills are enacted. The date of 31 March 2013 takes account of this while giving a reasonable amount of time for missed consequential amendments to come to light.

682. *Subsection (4)* provides that the power may be used to make provision having retrospective effect. Whether that would be appropriate would need to be considered on a case-by-case basis. As the power can be used only to make provision in consequence of this Act, any retrospective effect is limited to provision having effect from the date the Act comes into force.

Section 376: Power to undo changes

683. This section provides a power for the Treasury to undo changes in the law made by the Act for the purpose of restoring the effect of the law to what it was immediately before 1 April 2010. It is new. A corresponding provision is in section 1324 of CTA 2009.

684. The power will not be exercised without the agreement of the Tax Law Rewrite Project's Consultative and Steering Committees to the proposed modifications. It will make it possible for any errors made in rewriting the source legislation, or in making consequential amendments, to be corrected without recourse to a Finance Bill.

685. *Subsection (2)* provides that the power may not be exercised after 31 March 2013. As with section 1324 of CTA 2009, it is considered sensible to time-limit the power in this way, especially as successive Finance Acts may make it progressively more difficult

to make such amendments. The time limit will provide a reasonable period for errors to come to light.

686. *Subsection (4)* provides that the power may be used to make provision having retrospective effect. Whether that would be appropriate would need to be considered on a case-by-case basis.

Section 377: Transitional provisions and savings

687. This section introduces Schedule 9 and provides for the Treasury to make transitional or saving provisions additional to those contained within the Schedule. It is new. A corresponding provision is in section 1325 of CTA 2009.

688. The power will not be exercised without the agreement of the Tax Law Rewrite Project's Consultative and Steering Committees.

689. *Subsection (3)* provides that the power may be used to make provision having retrospective effect.

Section 378: Repeals and revocations

690. This section introduces Schedule 10.

Section 379: Index of defined expressions

691. This section introduces Schedule 11.

Section 380: Extent

692. This section provides for the Act to form part of the law of each part of the United Kingdom.

Section 381: Commencement

693. This section provides for the commencement of the Act.

Section 382: Short title

694. This section specifies the short title for the Act.

Schedule 1: Oil activities: new Chapter 16A of Part 2 of ITTOIA 2005

Overview

695. This Schedule contains provisions relating to the income tax charge on profits from oil extraction and related activities. It rewrites Chapter 5 of Part 12 of ICTA and sections 62 to 65 of FA 1991 by inserting the rules for income tax into ITTOIA after section 225 of that Act.

696. The provisions are inserted at this point because they are, in essence, variations of the general rules relating to trading income in Part 2 of ITTOIA. The starting point is that all normal trading income rules apply unless they are modified by a provision of this Chapter.

697. Some parts of the source legislation apply only for corporation tax – for example, the ring fence expenditure supplement - and are therefore not reproduced for income tax. There is, therefore, no income tax equivalent of the following sections of CTA 2010: 271, 276, 280, 286 to 288, 299 to 301 and 303 to 357. Section 492(2) of ICTA (restriction of relief for trading losses) was rewritten for income tax purposes in section 80 of ITA , and section 16 of ITTOIA is the income tax equivalent of sections 274 and 279 of CTA 2010.

698. A number of PRT definitions are used in the income tax rules, and some parts of the legislation depend on calculations made for PRT purposes. In particular the legislation uses the PRT term "participator" (see section 12(1) of OTA 1975). The legislation for PRT is not itself being rewritten.

699. The rewritten definitions of "exploration and exploitation activities", "exploration and exploitation rights" and "designated area" are in section 874 of ITTOIA. The extension of the United Kingdom to its territorial sea for the purposes of income tax is in section 1013 of ITA.

700. Oil is used as a shorthand throughout the commentary on these new sections, but unless specifically mentioned the same rules and considerations apply to gas and other associated products.

Section 225A: Meaning of "oil extraction activities"

701. This section sets out the definition of "oil extraction activities" for the purposes of the Chapter. It is based on section 502(1) and (2) of ICTA.

702. Certain definitions are taken from the PRT legislation in section 12 of OTA 1975.

Section 225B: Meaning of "oil rights"

703. This section sets out the meaning of "oil rights" for the purposes of the Chapter. It is based on section 502(1) of ICTA.

Section 225C: Meaning of "ring fence income"

704. This section sets out the meaning of "ring fence income" for the purposes of the Chapter. It is based on section 502(1) of ICTA and section 62(2) of FA 1991.

Section 225D: Meaning of "ring fence trade"

705. This section sets out the meaning of "ring fence trade" for the purposes of the Chapter. It is based on section 502(1) of ICTA.

Section 225E: Other definitions

706. This section sets out further definitions necessary for the Chapter. It is based on sections 493(1A) and 502(1) and (2) of ICTA and section 62(2) of FA 1991.

Section 225F: Valuation where market value taken into account under section 2 of OTA 1975

707. This section specifies that where the market value of oil is included in the calculation of profits for PRT purposes by OTA 1975 in place of the actual sale price, the same price applies for income tax. It is based on section 493(1) of ICTA.

708. The market value is derived by way of a comprehensive scheme put in place for PRT purposes – see in particular section 2 of and Schedule 3 to OTA 1975.

Section 225G: Valuation where disposal not at arm's length

709. This section applies a market value price where oil is disposed of otherwise than at arm's length, but where the disposal is not covered by the PRT rules. It is based on section 493(3), (5) and (6) of ICTA.

710. A common application of this rule is where oil is extracted from an oil field that is not within the scope of PRT following the reforms in FA 1993, which took fields given development consent on or after 16 March 1993 out of the scope of PRT.

Section 225H: Valuation where excess of nominated proceeds

711. This section ensures that where the "nomination scheme" adds an amount to the disposal value of oil for PRT purposes, that amount is also added for income tax purposes. It is based on section 493(1A) of ICTA.

712. The "nomination scheme" is part of the mechanism to ensure that the full value of oil extracted from the UK sector is reflected in the profits calculated for PRT and for the ring fence trade. A full description of the scheme can be found in HMRC guidance at OTM 5199.

Section 225I: Valuation where relevant appropriation but no disposal

713. This section imposes a market value in a case where an oil producer does not sell the oil to another party but takes it into use in another of its businesses, such as refining. It is based on section 493(2) of ICTA.

714. Where a market value is applied for PRT purposes by OTA 1975, that market value is used in the calculation of profits for income tax purposes – see *subsections (4)* and *(5)*. The market value also applies to the non-ring fence business.

Section 225J: Valuation where appropriation to refining etc

715. This section imposes a market value in a case where an oil producer does not sell the oil to another party but takes it into use in another of its businesses, such as refining, and where the PRT rules do not apply. It is based on section 493(4), (5) and (6) of ICTA.

716. In such a case the same calculation of market value is made using the PRT rules as if the PRT rules had applied to the appropriation.

Section 225K: Reduction of expenditure by reference to regional development grant

717. This section restricts a deduction for expenditure incurred to the extent that the expenditure has been met by a regional development grant. It is based on section 495(1), (2) and (7) of ICTA.

718. The main restriction in respect of a grant is applied by section 534 of CAA. This section applies essentially the same restriction to the purchaser of an asset who buys the asset from a connected party, where that connected party received a regional development grant on the original acquisition or construction of the asset.

719. The source legislation applies to expenditure taken into account under Parts 2, 3 or 6 of CAA. Section 84 of FA 2008 repeals Part 3 of CAA for income tax purposes with respect to expenditure incurred on or after 6 April 2011. The section therefore applies to Parts 2 and 6 of CAA and the reference to Part 3 of CAA has been retained for the interim period by way of a transitional provision in Schedule 9.

Section 225L: Adjustment as a result of regional development grant

720. This section supplements section 225K of ITTOIA and section 534 of CAA where the amount of expenditure involved is redetermined at a later date. It is based on section 495(3) to (7) of ICTA.

721. The most likely application of regional development grants in the oil context is for onshore assets such as initial treatment plants to stabilise the crude oil arriving by pipeline. The eligibility of such assets for PRT relief, or the proportion that is eligible, can take some time to agree. As a result, the PRT position (which determines the amount eligible for capital allowances) may not be finalised for some time.

722. Accordingly, capital allowances could be given on the full amount in the "initial period", disregarding the grant, as section 534(2) of CAA or its predecessors would not

have applied at that stage. *Subsection (5)* ensures that the position can be adjusted in a later period if a change in circumstances occurs.

723. If the change increases the expenditure eligible for capital allowances, *subsection (7)* treats the person as having incurred additional expenditure.

724. If the change reduces the eligible expenditure *subsection (8)* treats the person as receiving a trading receipt.

725. In both cases the adjustment is treated as made in the relevant later period (referred to as the "adjustment period").

726. Section 137 of FA 1982, referred to in the source legislation, was rewritten in section 534 of CAA.

727. The source legislation applies to expenditure taken into account under Parts 2, 3 or 6 of CAA. Section 84 of FA 2008 repeals Part 3 of CAA for income tax purposes with respect to expenditure incurred on or after 6 April 2011. The section therefore applies to Parts 2 and 6 of CAA and the reference to Part 3 of CAA has been retained for the interim period by way of a transitional provision in Schedule 9.

Section 225M: Tariff receipts etc

728. This section brings certain tariff receipts into the calculation of ring fence income if those receipts would not otherwise be included. It is based on section 496 of ICTA.

729. Tariff receipts arise where assets used in the ring fence trade are not used wholly for oil extraction by the owner but are used by other businesses in return for payment of a fee or "tariff". Typical examples include the use of pipelines and treatment plants.

730. Tax-exempt tariffing receipts arise where the oil field to which the assets are attached for PRT purposes is not within the charge to PRT and therefore the tariffs are not chargeable to PRT.

731. Definitions of "tariff receipt" and "tax-exempt tariffing receipts" have been included to aid users of the legislation.

Section 225N: Expenditure on and under abandonment guarantees

732. This section provides relief against income tax where an oil field participator incurs expenditure in obtaining an abandonment guarantee. It is based on sections 62 and 63(8) of FA 1991.

733. The cost of decommissioning oil fields is eligible for relief under the capital allowances code. But as the majority of oil fields are shared between two or more participators there is a risk that one or more of the participators may not meet their share of the cost when the time comes. As a result participators have taken out guarantees with financial institutions to cover their share. This section provides relief for the cost of obtaining the guarantee.

Section 225O: Relief for reimbursement expenditure under abandonment guarantees

734. This section provides relief for a participator against ring fence profits where some or all of a participator's share of decommissioning costs is met by a guarantee and the participator subsequently reimburses the guarantor. It is based on section 63 of FA 1991.

735. Section 63(5) of FA 1991 uses the term "accounting period" and therefore appears to confine the section to corporation tax. A similar point arises in section 65(4) of FA 1991. But sections 62 and 64 of FA 1991 and the remainder of sections 63 and 65 do not suggest that they should be limited to corporation tax. They have, therefore,

been rewritten in full for income tax with necessary adaptation (such as "tax year" for "accounting period") – see *Change 10* in Annex 1.

Section 225P: Payment under abandonment guarantee not immediately applied

736. This section applies where a guarantor makes payments into a fund and the assets of the fund are subsequently used to cover decommissioning costs. It is based on section 62(4) of FA 1991.

737. In such a case the rules for relief under section 225N or section 225O apply to the expenditure when it is eventually met out of the assets of the fund.

Section 225Q: Amounts excluded from section 225O(1)

738. This section restricts relief where amounts are repaid to a guarantor instead of being applied to meet decommissioning costs. It is based on section 63(2) of FA 1991.

739. This provision is rewritten in full for income tax with necessary adaptation (such as "tax year" for "accounting period"). See the commentary on section 225O and *Change 10* in Annex 1.

Section 225R: Introduction to sections 225S and 225T

740. This section sets out the circumstances in which sections 225S and 225T apply, and provides some related definitions. It is based on section 64(1), (2) and (3) and section 65(1) of FA 1991.

Section 225S: Relief for expenditure incurred by a participator in meeting defaulter's abandonment expenditure

741. This section provides for relief to a participator who meets the decommissioning expenditure that should have been met by another participator (the "defaulter"). It is based on section 64(4) and (5) of FA 1991.

Section 225T: Reimbursement by defaulter in respect of certain abandonment expenditure

742. This section applies where a defaulting participator reimburses another participator who has met the defaulter's liability for decommissioning expenditure. It is based on section 65 of FA 1991.

743. Relief against ring fence income is given to the defaulter, and the other participator is treated as receiving additional ring fence income.

744. The time limit in *subsection (5)* was amended from six years to four years by paragraph 27 of Schedule 39 to FA 2008 from a date to be determined by order. This change takes effect from 1 April 2010 by virtue of article 2(2) of the Finance Act 2008, Schedule 39 (Appointed Day, Transitional Provision and Savings) Order 2009 (SI 2009/403) unless article 10 of that order applies. In such circumstances the transitional provision in Schedule 9 provides that the change takes effect from 1 April 2012.

745. This provision is rewritten in full for income tax. See the commentary on section 225O and *Change 10* in Annex 1.

Section 225U: Interest on repayment of APRT

746. This section provides that interest paid to a participator on a repayment of advance PRT is disregarded in calculating profits for income tax purposes. It is based on paragraph 10(7) of Schedule 19 to FA 1982.

Schedule 2: Alternative finance arrangements

Overview

747. This Schedule, introduced by section 365, rewrites the income tax and capital gains tax provisions in Chapter 5 of Part 2 of FA 2005 dealing with alternative finance arrangements. These provisions tax and relieve alternative finance return under certain types of financial arrangement in the same way as interest. This includes financial arrangements that comply with Shari'a law, which prohibits transactions that involve interest. The rules are not limited to Shari'a compliant products but also apply to any finance arrangement that falls within their terms.

748. The overall approach is in line with that used for the corresponding corporation tax provisions in Chapter 6 of Part 6 of CTA 2009. As far as possible the provisions have been kept together so that users can see the overall scheme of the legislation. Signposts have been inserted into appropriate places in other parts of the tax code that are affected by these provisions.

749. The regulatory power in section 98 of FA 2006, rewritten for corporation tax in section 521 of CTA 2009, has proved difficult to rewrite separately in a way that ensures that it continues to operate satisfactorily and in an unchanged way. This Act therefore rewrites the regulatory power as section 366 of this Act and repeals section 521 of CTA 2009.

750. Part 1 of the Schedule inserts a new Part 10A into ITA to deal with the income tax aspects of the legislation. Part 2 of the Schedule inserts a new Chapter 4 into Part 4 of TCGA to deal with the capital gains tax aspects.

751. Part 3 of the Schedule makes a number of amendments to other enactments, including inserting new sections in Chapter 7 of Part 7 of ITA dealing with the interaction between alternative finance arrangements and Community Investment Tax Relief.

Part 1: New Part 10A of ITA 2007

752. Part 1 inserts new Part 10A into ITA containing sections 564A to 564Y.

Section 564A: Introduction

753. This section sets out what is included in the Chapter and provides signposts to the location of certain definitions. It is based on sections 46(1) and 57 of FA 2005.

Section 564B: Meaning of "financial institution"

754. This section provides the meaning of "financial institution" for the purposes of the alternative finance rules. It is based on section 46(2) and (3) of FA 2005. The corresponding rule for corporation tax is section 502 of CTA 2009.

755. It is a requirement that at least one party to the arrangements must be a financial institution.

Section 564C: Purchase and resale arrangements

756. This section deals with an arrangement whereby an asset is purchased by a financial institution and then sold to another person with the payment by that second person left on credit. It is based on section 47(1) to (3) of FA 2005. The corresponding rule for corporation tax is section 503 of CTA 2009.

757. The price paid by that second person exceeds the price paid by the financial institution. The difference between the two prices equates to the return from an investment at interest and is treated as alternative finance return (see new section 564I of ITA).

Section 564D: Diminishing shared ownership arrangements

758. This section deals with a second type of alternative finance arrangement. It is based on section 47A(1) to (4) of FA 2005. The corresponding rule for corporation tax is section 504 of CTA 2009.

759. Two persons, at least one of them a financial institution, acquire an interest in an asset. The financial institution receives payments from the other party for that party's use of the financial institution's share as well as payments to acquire the financial institution's share, with the ownership of the asset passing by degrees to the other party. The other party to the arrangement has full use of the asset being acquired and may grant rights in the asset. Payments made by the other party in excess of the payments for the beneficial interest being acquired are treated as alternative finance return.

Section 564E: Deposit arrangements

760. This section deals with an arrangement whereby deposits are made with a financial institution and payments are made to the depositor out of profits earned by the use of the money. It is based on section 49(1) of FA 2005. The corresponding rule for corporation tax is section 505 of CTA 2009.

761. The payments must equate to a return from an investment at interest. The return is treated as alternative finance return.

Section 564F: Profit share agency arrangements

762. This section deals with an arrangement where the investor appoints an agent to whom a sum of money is given to be invested at a specified return. It is based on section 49A(1) of FA 2005. The corresponding rule for corporation tax is section 506 of CTA 2009.

763. Any additional sum above the specified return is retained by the agent as an incentive fee.

Section 564G: Investment bond arrangements

764. This section sets out the conditions that must be present for arrangements to be treated as an investment bond arrangement. It is based on section 48A(1) and (2) of FA 2005. The corresponding rule for corporation tax is section 507 of CTA 2009.

765. An investment bond arrangement exists where the bond-issuer uses the subscription proceeds to acquire assets, which are specified in the arrangement, and are held for the benefit of the bond-holder. Income generated from the assets is distributed to the bond-holder and, on maturity of the bond, the assets are sold under pre-existing arrangements and the proceeds returned to the bond-holder.

Section 564H: Provision not at arm's length: exclusion of arrangements from sections 564C to 564G

766. This section excludes arrangements from sections 564C to 564G where the parties are connected persons within the transfer pricing legislation in Part 4 of this Act, the arrangements are not at arm's length and the recipient of the alternative finance return is not subject to income tax or corporation tax or a similar non-United Kingdom tax. It is based on section 52(1) to (3) of FA 2005. The corresponding rule for corporation tax is section 508 of CTA 2009.

Section 564I: Purchase and resale arrangements

767. This section explains the meaning of "alternative finance return" in relation to the purchase and resale arrangements in section 564C. It is based on section 47(4), (6), (7) and (8) of FA 2005. The corresponding rule for corporation tax is section 511 of CTA 2009.

768. It provides for circumstances where the second purchase price is paid either immediately or in instalments.

Section 564J: Purchase and resale arrangements where return in foreign currency

769. This section sets out how to deal with purchase and resale arrangements in currencies other than sterling. It is based on section 48(1) of FA 2005. There is no explicit equivalent for corporation tax as currency matters are dealt with as an integral element of Parts 5 and 6 of CTA 2009.

Section 564K: Diminishing shared ownership arrangements

770. This section explains the meaning of "alternative finance return" in relation to the diminishing shared ownership arrangements set out in section 564D. It is based on section 47A(5) of FA 2005. The corresponding rule for corporation tax is section 512 of CTA 2009.

771. The phrase "costs and expenses" in section 47A(5) of FA 2005 has been reduced to "expenses" in *subsection (3)* as the additional words appear to be unnecessary.

Section 564L: Other arrangements

772. This section explains the meaning of "alternative finance return" in relation to deposit arrangements, profit share agency arrangements and investment bond arrangements. It is based on sections 48B(1), 49(2), 49A(2) and 51A(1) and (2) of FA 2005. The corresponding rule for corporation tax is section 513 of CTA 2009.

Section 564M: Treatment of alternative finance return as interest for ITTOIA 2005

773. This section directs that, for all purposes of ITTOIA, alternative finance return is to be taxed and relieved in the same way as interest. It is based on section 51(1) of, and paragraph 10 of Schedule 2 to, FA 2005.

Section 564N: Alternative finance return under arrangements for trade or property business purposes

774. This section directs that, where a person is party to an alternative finance arrangement for the purposes of a trade or property business, then any alternative finance return paid is treated as an expense of that trade or business. It is based on section 51(3) to (5) of FA 2005.

775. Specific provision is made to permit the deductibility of the incidental costs of raising loan finance via alternative finance arrangements under section 58 of ITTOIA.

Section 564O: Relief for some alternative finance return under Chapter 1 of Part 8 etc

776. This section ensures that alternative finance return under purchase and resale arrangements can be relieved in the same way as interest under provisions in ITA. It is based on section 51(2) of FA 2005.

Section 564P: Tax relief schemes and arrangements

777. This section ensures that relief for alternative finance return is subject to possible restriction under section 809ZG of ITA (which rewrites section 787 of ICTA). It is based on paragraph 8 of Schedule 2 to FA 2005.

Section 564Q: Deduction of income tax at source under Part 15

778. This section ensures that the provisions requiring the deduction of income tax at source from payments of interest also apply to payments of alternative finance return in equivalent circumstances. It is based on paragraphs 1, 11, 12 and 13 of Schedule 2 to FA 2005.

Section 564R: Treatment of discount

779. This section ensures that where part of the return equates in substance to a discount, then that part is dealt with in accordance with the rules for discounts in section 381 of ITTOIA, but not where the arrangements equate to a deeply discounted security. It is based on section 51A(1) and (3) of FA 2005.

780. *Subsection (3)* ensures that where any part of the return equates to the return on a deeply discounted security, then that part of the return is dealt with under the rules in ITTOIA that deal with deeply discounted securities.

Section 564S: Treatment of bond-holder and bond-issuer

781. This section sets out a number of consequences for bond-holders and bond-issuers under investment bond arrangements. It is based on section 48B(2) of FA 2005. The corresponding rule for corporation tax is section 517 of CTA 2009.

Section 564T: Treatment as securities

782. This section ensures that investment bond arrangements are treated as securities for income tax purposes. It is based on section 48B(3) of FA 2005. The corresponding rule for corporation tax is section 518 of CTA 2009.

Section 564U: Arrangements not unit trust scheme or offshore fund

783. This section ensures that investment bond arrangements are not treated as a unit trust scheme or an offshore fund. It is based on section 48B(5) of FA 2005.

Section 564V: Exclusion of alternative finance return from consideration for sale of assets

784. This section ensures that where assets are sold under certain types of alternative finance arrangement, the alternative finance return is excluded from the consideration for the sale and purchase. It is based on section 53 of FA 2005. The corresponding provision for corporation tax is section 514 of CTA 2009.

Section 564W: Diminishing shared ownership arrangements not partnerships

785. This section provides that diminishing shared ownership arrangements are not treated as a partnership for income tax purposes. It is based on section 47A(6) of FA 2005. The corresponding rule for corporation tax is section 515 of CTA 2009.

Section 564X: Treatment of principal under profit share agency arrangements

786. This section ensures that in the case of profit sharing arrangements the deposit-taker is taxable in respect of all of the profit resulting from the use of the money – both the depositor's share of profit made under the arrangements and also the amount that the deposit-taker can retain. It is based on section 49A(3) of FA 2005. The corresponding rule for corporation tax is section 516 of CTA 2009.

787. The deposit-taker is entitled to relief for the depositor's share of profit.

Section 564Y: Provision not at arm's length: relevant return

788. This section prevents any deduction in calculating profits for income tax purposes as a result of alternative finance arrangements where the rules about arrangements not at arm's length in section 564H apply. It is based on section 52(4) and (5) of FA 2005. The corresponding rule for corporation tax is section 520 of CTA 2009.

Part 2: New Chapter 4 of Part 4 of TCGA 1992

789. This Part of the Schedule inserts the necessary rules for capital gains tax as Chapter 4 of Part 4 of TCGA.

Sections 151H to 151S: Meaning of alternative finance arrangements etc

790. The inserted sections 151H to 151S of TCGA, containing the definitions of alternative finance arrangements and alternative finance return, perform the same function for the purposes of TCGA as the inserted sections 564A to 564L of ITA do for income tax.

Section 151T: Investment bond arrangements are qualifying corporate bonds

791. This section ensures that investment bond arrangements are treated as qualifying corporate bonds for the purposes of TCGA. It is based on section 48B(4) of FA 2005.

792. CTA 2009 inserted a reference in section 117(6D) of TCGA to add a reference to section 507 of CTA 2009 alongside the reference to section 48A of FA 2005. Part 7 of Schedule 8 rewrites section 117(6D) of TCGA to conform to the new structure.

Sections 151U to 151Y: Rules for investment bond arrangements and other rules

793. The inserted sections 151U to 151Y of TCGA set out a number of consequences for the purposes of TCGA, equivalent to the inserted sections 564S to 564W of ITA for income tax.

Part 3: Other amendments

794. This Part inserts new section 367A into ICTA, new section 173A into ITEPA and new sections 372A to 372D into ITA and amends section 1005 of ITA.

Section 367A of ICTA: Alternative finance arrangements

795. This section brings alternative finance arrangements within the scope of sections 353 and 365 of ICTA, which provide for relief for interest payment in certain limited circumstances. It is based on section 51(2) of FA 2005.

796. The section has been inserted here because the legislation only affects a defined group of people and will eventually be spent when there are no longer any eligible claimants.

Section 173A of ITEPA: Alternative finance arrangements

797. This section brings the effect of the alternative finance provisions into the rules for the taxation of employee benefits. It is based on section 97 of FA 2006.

Sections 372A to 372D of ITA: Community investment tax relief: alternative finance arrangements

798. These new sections modify Part 7 of ITA (community investment tax relief: income tax relief) to enable the range of permitted investments in, and by, community development finance institutions to include various Sharia'a-compliant financial products that in substance, but not in form, are equivalent to interest-bearing loans. Such products are to be treated as loans for the purposes of that Part. They correspond to sections 256 to

259 of CTA 2010 which have effect for the purposes of Part 7 of that Act (community investment tax relief: corporation tax relief).

Section 372A: Meaning of "loan" and "interest"

799. This section extends the meaning of the term "loan" in Part 7 of ITA to include purchase and resale arrangements, deposit arrangements and profit share agency arrangements and the meaning of the term "interest" to include alternative finance return under those alternative finance arrangements. It is based on section 54A(1) and (2) of FA 2005.

Section 372B: Purchase and resale arrangements

800. This section sets out how Part 7 of ITA has effect in relation to purchase and resale arrangements. It is based on section 54A(3) and (4) of FA 2005.

Section 372C: Deposit arrangements

801. This section sets out how Part 7 of ITA has effect in relation to deposit arrangements. It is based on section 54A(5) of FA 2005.

Section 372D: Profit share agency arrangements

802. This section sets out how Part 7 of ITA has effect in relation to profit share agency arrangements. It is based on section 54A(6) of FA 2005.

Schedule 3: Leasing arrangements: finance leases and loans

Overview

803. This Schedule provides for the rewriting of Schedule 12 to FA 1997.

804. Schedule 12 to FA 1997 has effect for both corporation tax purposes and income tax purposes. In accordance with the principle of splitting such provisions into separate income tax provisions in income tax rewrite Acts and corporation tax provisions in corporation tax rewrite Acts, Schedule 12 is rewritten for corporation tax purposes as Part 21 of CTA 2010.

805. Part 1 of this Schedule inserts a new Part 11A of ITA to deal with the income tax aspects of the source legislation and Part 2 inserts a new section 37A of TCGA to deal with its chargeable gains aspects.

806. Schedule 12 to FA 1997 was introduced to deal with two finance leasing arrangements. Schedule 12 achieves its aims by aligning the tax treatment of the return in respect of finance leases and loans more closely with the commercial accounting treatment.

807. Part 1 of Schedule 12 to FA 1997 (rewritten in Chapter 2 of the new Part 11A of ITA) counters tax avoidance by finance lessors trying to turn some of their lease rental income into capital receipts (taxed later and at lower effective rates, if at all). It ensures that any part of the capital receipt which is recognised as return on investment under GAAP is brought into account for tax purposes as income.

808. Part 2 of Schedule 12 to FA 1997 (rewritten in Chapter 3 of the new Part 11A of ITA) deals with a possible deferral of tax liability by means of leases under which rentals are concentrated towards the end of the lease term. But for the provisions of Schedule 12, rental income in the case of such a finance lease could be recognised for tax purposes later than it is recognised in accordance with GAAP.

Part 1: New Part 11A of ITA 2007

Chapter 1: Introduction

Overview

809. This Chapter not only gives an overview of Part 11A but also brings to prominence the definitions of certain terms fundamental to its provisions.

Section 614A: Overview of Part

810. This section describes Part 11A and the contents of each Chapter. It is new.

Section 614AA: Normal rent

811. This section defines "normal rent". It is based on paragraph 20 of Schedule 12 to FA 1997.

812. Normal rent is the amount which but for Part 11A a lessor would bring into account as rent from a lease for the purposes of income tax.

Section 614AB: Accountancy rental earnings

813. This section defines "accountancy rental earnings". It is based on paragraph 21 of Schedule 12 to FA 1997.

814. Part 11A provides that the accountancy rental earnings of a lessor in relation to a lease are, in certain circumstances, to be brought into account for income tax purposes instead of the normal rent from the lease.

815. *Subsections (1)* and *(2)* provide that in relation to a lease "accountancy rental earnings" are the highest of the following three figures for a period of account:

- the rental earnings (see section 614AC), in relation to the lease, of the lessor;
- the rental earnings, in relation to the lease, of a person connected with the lessor; or
- the rental earnings in relation to the lease for the purposes of consolidated accounts of the group of which the lessor is a member.

816. The purpose of taking the highest of the three figures is to ensure that the earnings fully reflecting the economic substance of the transaction are taxed. This is especially important when the capital sum which is an essential part of a leasing arrangement within Chapter 2 of Part 11A may be received not by the lessor but by a related party. In such a case it is only by considering the lessor's position and that of the related party together that the true economic substance of the transaction can be appreciated. In the case of a lessor which is a company, that is likely to be in the consolidated accounts of the group as a whole, or possibly in the accounts of the related party, rather than in those of the lessor company itself.

817. Although most company lessors will be within the charge to corporation tax and thus fall within Part 21 of CTA 2010, these provisions apply to companies which are within the charge to income tax, including in particular non-UK resident companies that are lessors of land and buildings. Accordingly it is necessary for Part 11A of ITA to deal with lease accounting by a non-UK resident company and any group of which it is part.

Section 614AC: Rental earnings

818. This section defines "rental earnings". It is based on paragraph 22 of Schedule 12 to FA 1997.

Chapter 2: Finance leases with return in capital form

Overview

819. This Chapter is concerned with finance leases intended to turn part of the associated rental income into capital receipts.

Section 614B: Arrangements to which this Chapter applies

820. This section describes the leasing arrangements that fall within Chapter 2. It is based on paragraphs 1(1) and 2(1) of Schedule 12 to FA 1997.

821. The arrangements fall within the Chapter if they involve the lease of any property or rights (see *subsection (1)* and the definition of "asset" in section 614DG).

822. The Chapter is only capable of applying if two conditions are met. First, the arrangements must fall to be treated under GAAP as a finance lease or loan (see *subsection (2)*). Second, it is necessary that some or all of the lessor's return on investment in respect of the finance lease or loan is not in the form of rent and would not, apart from Part 11A of ITA or Part 21 of CTA 2010, be brought into account for tax purposes as rent (see *subsection (3)*).

823. References to Part 21 of CTA 2010 and to tax purposes (rather than only income tax purposes) have been included in subsection (3) to ensure that the division between that Part and Part 11A of ITA works as intended.

824. The Chapter is capable of applying to arrangements entered into before the commencement date of Schedule 12 to FA 1997 (see *subsection (4)(a)* and the commentary on section 614BX).

Section 614BA: Purposes of this Chapter

825. This section sets out the main purposes of Chapter 2. It is based on paragraph 1(2) of Schedule 12 to FA 1997.

826. The first purpose (in *subsections (2)* to *(4)*) is to substitute for the ordinary tax measure of income from the lease the amount recognised in accordance with GAAP where this is larger than the normal measure (see section 614BF).

827. Under GAAP, part of the sum mentioned in section 614B(3) is recognised as annual income over the course of the lease and thus taken into account in computing commercial profits. Income is recognised in this way because in substance the lease is tantamount to a loan, the interest on which needs to be matched with the lessor's own borrowing costs in order properly to reflect the lessor's profit.

828. The income recognised in accordance with GAAP may be that shown in consolidated accounts of the lessor's group or in those of a company which is a "connected person" of the lessor. The reason for looking wider than the lessor (see subsection (4)) is that the full earnings from the lease may only be shown in, say, the accounts of the parent or in the consolidated group results.

829. The second purpose of Chapter 2 (in *subsections (5)* and *(6)*) is to recover appropriately any tax reliefs for capital expenditure already given.

Section 614BB: Application of this Chapter

830. This section, together with section 614BC, determines whether Chapter 2 applies to a particular lease. It is based on paragraph 2 of Schedule 12 to FA 1997.

831. For the Chapter to apply, the conditions in section 614BC must have been met in relation to the lease at some time in a period of account of the current lessor (see *subsection (1)(b)*). But once they have been met in relation to the lessor at the time, they are treated

as continuing to be met as regards any subsequent lessor unless and until the lease is assigned to a wholly unrelated person (see *subsections (3)* to *(5)*).

832. *Subsection (2)* provides that the Chapter does not apply to long funding leases of plant or machinery in relation to which Part 2 of CAA gives capital allowances to the lessee instead of the lessor. Chapter 10A of Part 2 of ITTOIA sets out the basis of taxation of rental earnings under such leases.

833. *Subsection (6)* is a necessary consequence of the split into separate provisions for corporation tax purposes and income tax purposes.

Section 614BC: The conditions referred to in section 614BB(1)

834. This section sets out the five conditions, A to E, all of which must be met if Chapter 2 is to apply to a specific lease. It is based on paragraph 3(1) to (5) of Schedule 12 to FA 1997.

835. Condition A in *subsections (2)* to *(4)* requires the lease to fall to be treated under GAAP as a finance lease or loan.

836. Condition B in *subsection (5)* requires a "major lump sum" which is not rent to be payable and for part of that sum to be treated under GAAP as return on investment in respect of the finance lease or loan.

837. Condition C in *subsection (6)* is that not all of that part of the major lump sum would apart from Chapter 2 be brought into account for income tax purposes as the "normal rent" (see sections 614AA and 614BD(3) and (4)) from the lease for tax years ending with "the relevant tax year" (see section 614BD(1)).

838. Condition D in *subsection (7)* is that for the period of account of the lessor in which "the relevant time" (see section 614BD(1)) falls or for an earlier period of account of the lessor, the "accountancy rental earnings" (see section 614AB) in respect of the lease exceed the normal rent for the period. The point of this condition is that, if a lessor is consistently being taxed on at least as much income as the commercial accounts show, then the terms of the lease are not ones which are designed to turn rental income into a capital receipt.

839. Condition E in *subsection (8)* is that at the relevant time there exist such arrangements or circumstances as are mentioned in section 614BE.

840. The arrangements and circumstances are set out in detail in section 614BE, but essentially there must be some likelihood that the lessee or a person connected with the lessee will buy out the lessor's interest in the leased asset for a major lump sum.

841. Condition E is intended to ensure that a lease does not come within Chapter 2 solely because there is a possibility that the lessor may obtain a major capital sum otherwise than from the lessee or a connected person. This might happen for example on the unplanned sale of the leased asset to a third party or on a claim under an insurance policy on the destruction of the asset.

Section 614BD: Provisions supplementing section 614BC

842. This section provides the meanings of "the relevant tax year" and "the relevant time" and sets out how the normal rent is to be determined, for the purposes of section 614BC. It is based on paragraph 3(7) and (8) of Schedule 12 to FA 1997.

Section 614BE: The arrangements and circumstances referred to in section 614BC(8)

843. This section sets out the arrangements and circumstances which constitute Condition E in section 614BC(8). It is based on paragraph 4 of Schedule 12 to FA 1997.

844. See the commentary on section 614BC.

Section 614BF: Current lessor taxed by reference to accountancy rental earnings

845. This section provides for the lessor to bring into account for income tax purposes the accountancy rental earnings in respect of the lease for a period of account if they exceed the normal rent for the period. It is based on paragraph 5 of Schedule 12 to FA 1997.

Sections 614BG to 614BK: Reduction of taxable rent by cumulative rental excesses

Overview

846. These sections ensure that the rule in section 614BF that the higher of the accountancy rental earnings and the normal rents (ordinary taxable rents) are taxed does not overall cause more rent to be taxed as income than is actually due to the lessor. They are based on paragraph 6 of Schedule 12 to FA 1997.

847. These sections achieve their purpose by requiring running totals to be kept of aggregate differences between accountancy rental earnings and the normal rents. Any aggregate excess of accountancy rental earnings over normal rents arising in past periods can then be set against any current excess of normal rents over accountancy rental earnings. Conversely, any aggregate excess of normal rents over accountancy rental earnings arising in past periods can be set against any current excess of accountancy rental earnings over normal rents.

848. The provisions of paragraph 6 of Schedule 12 to FA 1997 have been unpacked into five sections to provide greater clarity.

Section 614BG: Reduction of taxable rent by cumulative rental excesses: introduction

849. This section introduces sections 614BG to 614BK. It is based on paragraph 6(5) to (9) of Schedule 12 to FA 1997.

Section 614BH: Meaning of "accountancy rental excess" and "cumulative accountancy rental excess"

850. This section defines the terms "accountancy rental excess" and "cumulative accountancy rental excess". It is based on paragraph 6(3), (4) and (8) of Schedule 12 to FA 1997.

Section 614BI: Reduction of taxable rent by the cumulative accountancy rental excess

851. This section applies if in relation to a lease for a period of account the normal rent exceeds the accountancy rental earnings (so it is the normal rent that is taxed) and there is a cumulative accountancy rental excess. It is based on paragraph 6(5) and (6) of Schedule 12 to FA 1997.

852. The rent that is brought into account for income tax purposes is found by reducing normal rent by the cumulative accountancy rental excess but not so as to bring into account an amount less than the accountancy rental earnings for the period.

Section 614BJ: Meaning of "normal rental excess" and "cumulative normal rental excess"

853. This section defines the terms "normal rental excess" and "cumulative normal rental excess". It is based on paragraph 6(1), (2) and (6) of Schedule 12 to FA 1997.

Section 614BK: Reduction of taxable rent by the cumulative normal rental excess

854. This section applies if in relation to a lease for a period of account the taxable rent under section 614BF would be the amount of the accountancy rental earnings and there is a cumulative normal rental excess. It is based on paragraph 6(7) and (8) of Schedule 12 to FA 1997.

855. Section 614BF only applies if the accountancy rental earnings exceed the normal rent. To avoid more rent being taxed as income for the period than is actually due to the lessor where there is a cumulative normal rental excess for the period, the rent that is brought into account for income tax purposes is found by reducing the accountancy rental earnings by the cumulative normal rental excess, but not so as to bring into account an amount less than the normal rent for the period.

Sections 614BL to 614BO: Relief for bad debts by reduction of cumulative rental excesses

Overview

856. These sections are concerned with bad debts. Broadly, the aim is to ensure that any bad debts are sensibly taken into account in calculating taxable profits and accountancy rental excesses and normal rental excesses. If the lease runs its course, the net rents taxed should equal the net rents payable after allowing for any bad debts.

Section 614BL: Relief for bad debts: reduction of cumulative accountancy rental excess

857. This section deals with a bad debt deduction in respect of rent under a lease for a period of account if there is a cumulative accountancy rental excess for the period. It is based on paragraph 9(1) to (4) and (7) of Schedule 12 to FA 1997 and paragraph 5(1) of Schedule 2 to ITTOIA.

858. *Subsection (2)* reduces the cumulative accountancy rental excess for a period where the accountancy rental earnings exceed normal rent by an amount equal to the excess of the bad debt deduction over the accountancy rental earnings.

859. *Subsection (3)* deals with the converse situation if, for a period of account, normal rent is at least equal to accountancy rental earnings (so that it is the normal rent which is taxed). In those circumstances there are two restrictions.

860. *Subsection (4)* provides that relief otherwise available under section 614BI(2) in a period for any cumulative accountancy rental excess brought forward from previous periods is restricted to any excess of the normal rent over any bad debt deduction given in respect of rents from the lease. That is because only the normal rent net of bad debt relief is in effect being brought into account for tax.

861. *Subsection (5)* applies if the bad debt deduction exceeds the normal rent for a period of account. In such a case any cumulative accountancy rental excess brought forward from previous periods is reduced by the amount by which the bad debt deduction exceeds the normal rent. That is because the excess of the bad debt deduction over the normal rent for the period of account already represents relief for rents taxed in previous periods.

862. The definition of "bad debt deduction" in *subsection (6)* corrects a missed consequential in ITTOIA by substituting for the cross-reference to "sub-paragraph (i), (ii) or (iii) of section 74(1)(j) of the Taxes Act 1988" a cross-reference to "section 35(1)(a), (b) or (c) of ITTOIA 2005".

Section 614BM: Recovery of bad debts following reduction under section 614BL

863. This section reinstates any relief for cumulative accountancy rental excess reduced under section 614BL if the bad debt deduction is subsequently reversed (because the

debt is recovered or prospects for its recovery improve). It is based on paragraph 9(5) to (7) of Schedule 12 to FA 1997.

Section 614BN: Relief for bad debts: reduction of cumulative normal rental excess

864. This section deals with the interaction of bad debt deductions and relief for cumulative normal rental excess under section 614BK. It is based on paragraph 10(1) to (4) and (7) of Schedule 12 to FA 1997.

865. As with section 614BL, the rationale is that the relief should only represent an excess of normal rent over accountancy rental earnings which have effectively been brought into account for tax and that the relief should only be given against rents similarly brought into account.

866. The structure of the detailed rules is identical with that in section 614BL.

Section 614BO: Recovery of bad debts following reduction under section 614BN

867. This section reinstates any relief for cumulative normal rental excess reduced under section 614BN if the bad debt deduction is subsequently reversed (because the debt is recovered or prospects for its recovery improve). It is based on paragraph 10(5) to (7) of Schedule 12 to FA 1997.

Section 614BP: Effect of disposals of leases: general

868. This section treats a period of account of the lessor as coming to an end for the purposes of Part 11A immediately before any disposal of the lessor's interest under the lease, the leased asset or an asset representing the leased asset. It is based on paragraph 12(5) to (7) of Schedule 12 to FA 1997.

869. This enables the cumulative accountancy rental excess or the cumulative normal rental excess for the period of account of the lessor that then begins, and in which the disposal takes place, to be calculated.

870. The remaining sub-paragraphs of paragraph 12 of Schedule 12 to FA 1997 are rewritten as section 37A of TCGA by Part 2 of this Schedule. See the commentary on that section. *Subsection (5)* provides a signpost to that section.

Section 614BQ: Assignments on which neither a gain nor a loss accrues

871. This section deals with the assignment of a lease in circumstances which are regarded for the purposes of capital gains tax as giving rise to neither a gain nor a loss. It is based on paragraph 7 of Schedule 12 to FA 1997.

872. Paragraph 7(2) of Schedule 12 to FA 1997, on which *subsection (2)* is based, provides for a period of account of the assignor to end and a period of account of the assignee to begin with the assignment.

873. Paragraph 7(3) of Schedule 12 to FA 1997 provides that the assignee takes over the assignor's "unused cumulative accountancy rental excess" or "unused cumulative normal rental excess".

874. These "unused" cumulative excesses are the aggregate of the cumulative rental excess for the period of the assignor which ends with the assignment and any rental excess for that period.

875. But the combined effect of section 614BP(2) (based on paragraph 12(5) of Schedule 12 to FA 1997) and subsection (2) is that the period of account of the assignor which ends with the assignment is infinitesimally short. There can, therefore, in practice be no accountancy rental excess or normal rental excess for that period.

876. Accordingly, in rewriting paragraph 7(3) of Schedule 12 to FA 1997 in *subsections (3)* and *(4)*, the provision has been simplified by referring only to the cumulative accountancy rental excess or the cumulative normal rental excess for that period.

877. *Subsection (5)* ensures that the division of the income tax provisions in Part 11A of ITA and the corporation tax provisions in Part 21 of CTA 2010 works as intended.

Sections 614BR to 614BW: Capital allowances: claw-back of major lump sum

Overview

878. These sections unpack paragraph 11 of Schedule 12 to FA 1997 to improve its accessibility.

Section 614BR: Effect of capital allowances: introduction

879. This section introduces sections 614BS to 614BW and provides that they apply if a major lump sum (see section 614BC(5)) falls to be paid in relation to a lease. It is based on paragraph 11(1) and (2) of Schedule 12 to FA 1997.

Section 614BS: Cases where expenditure taken into account under Part 2, 5 or 8 of CAA 2001

880. This section deals with capital allowances in respect of plant or machinery, mineral extraction and patent rights. It is based on paragraph 11(3) to (7) of Schedule 12 to FA 1997.

881. *Subsection (2)* brings into account as disposal value for the purposes of CAA an amount equal to the amount or value of the major lump sum. This is subject to adjustment under *subsections (3)* to *(6)* if the disposal value is limited in accordance with CAA.

Section 614BT: Cases where expenditure taken into account under other provisions of CAA 2001

882. This section deals with capital allowances given under any provision of CAA other than those mentioned in section 614BS. It is based on paragraph 11(8) and (14) of Schedule 12 to FA 1997.

883. In these cases, an amount equal to the allowances given or, if less, the amount or value of the major lump sum is treated as a balancing charge.

884. Following the repeal of section 532 of ICTA by CTA 2009, the extended definition of the Capital Allowances Act in paragraph 11(14) of Schedule 12 to FA 1997 is otiose and has not been rewritten.

Section 614BU: Capital allowances deductions: waste disposal and cemeteries

885. This section deals with deductions for capital expenditure allowed under section 165, 168 or 170 of ITTOIA. It is based on paragraph 11(11) and (12) of Schedule 12 to FA 1997.

886. In these cases, an amount equal to the deductions allowed or, if less, the amount or value of the major lump sum is treated as a trading receipt.

Section 614BV: Capital allowances deductions: films and sound recordings

887. This section deals with deductions in respect of films and sound recordings allowed under section 135, 138, 138A, 139 or 140 of ITTOIA. It is based on paragraph 11(9) and (10) of Schedule 12 to FA 1997.

888. In these cases, if the amount or value of the major lump sum exceeds so much of that sum as was treated as a receipt of a revenue nature under section 134(2) of ITTOIA, the excess is also treated as a receipt of a revenue nature.

Section 614BW: Contributors to capital expenditure

889. This section deals with the case where capital allowances have been made to a person making contributions to capital expenditure on the provision of a leased asset under sections 537 to 542 of CAA. It is based on paragraph 11(13) of Schedule 12 to FA 1997.

890. *Subsection (2)* provides that sections 614BS and 614BT have the same effect in relation to the contributor and those allowances as they do in relation to the lessor and allowances given to the lessor for such expenditure by the lessor.

Section 614BX: Pre-26 November 1996 schemes where this Chapter does not at first apply

891. This section makes provision for recognising income from some finance leases which form part of a "pre-26 November 1996 scheme" as defined in section 614D(1)(a). It is based on paragraph 13 of Schedule 12 to FA 1997.

892. A lease which forms part of a pre-26 November 1996 scheme only falls within Part 11A if it meets all the conditions in section 614BC. It does not fall within Chapter 3 as that Chapter only applies to leases which do not form part of a pre-26 November 1996 scheme (see section 614CB(1)(b) and the definition of a post-25 November 1996 scheme in section 614D(1)(b)).

893. If a lease forming part of a pre-26 November 1996 scheme met all the conditions in section 614BC on 26 November 1996, it falls within Chapter 2 for all periods of account beginning, or treated under section 614DB as beginning, on or after that date, subject to section 614BB(3).

894. But such a lease may not meet all those conditions until after 26 November 1996. In that case, this section effects a catching up exercise by taxing under section 614BF in the period when the lease is first subject to the rules in Chapter 2 the accumulated excess (if any) of the accountancy measure of income from the lease over the income actually taxed in earlier periods. No such excess relating to periods prior to 26 November 1996 can be taxed in this way nor are the assessments for earlier periods of account actually re-opened. The catching up is done in the period in which the conditions are met.

895. *Subsection (3)(b)* provides that for the purposes of Part 11A the time when the conditions are satisfied forms its own brief period of account. This ensures that the computational provisions in this section work correctly.

896. *Subsection (10)* provides for the case where for example there has been an assignment within section 614BQ and the lessor at an earlier time was within the charge to corporation tax.

Section 614BY: Post-25 November 1996 schemes to which Chapter 3 applied first

897. This section provides continuity of reliefs when a lease changes status. It is based on paragraph 14 of Schedule 12 to FA 1997.

898. It applies if a lease which is initially subject to the rules of Chapter 3 subsequently comes within those of Chapter 2. Any cumulative accountancy rental excess or any cumulative normal rental excess for the purposes of Chapter 3 counts for the purposes of Chapter 2.

899. *Subsection (4)* provides for the case where for example there has been an assignment within section 614BQ and the lessor at an earlier time was within the charge to corporation tax.

Chapter 3: Other finance leases

Overview

900. This Chapter is concerned with cases outside Chapter 2 where any assets are leased in such a way that the lease is a finance lease or loan in accordance with GAAP.

Section 614C: Introduction to Chapter

901. This section introduces the Chapter. It is based on paragraph 15(1) of Schedule 12 to FA 1997.

Section 614CA: Purpose of this Chapter

902. This section sets out the main purpose of the Chapter. It is based on paragraph 15(2) of Schedule 12 to FA 1997.

903. That purpose is to ensure that the taxable measure of earnings from the lease is not less than the accountancy measure. In effect, the rules take as the taxable earnings the amount which, but for Part 11A, the lessor would bring into account as rent from the lease for the purposes of income tax or the amount of the return on investment from the lease in accordance with GAAP, whichever is the higher. Unlike Chapter 2, this Chapter contains no special rules relating to reliefs for capital expenditure.

Section 614CB: Leases to which this Chapter applies

904. This section determines whether Chapter 3 applies to a particular lease. It is based on paragraph 16 of Schedule 12 to FA 1997.

905. The Chapter only applies to leases granted on or after 26 November 1996 and then only if they form part of a post-25 November 1996 scheme as defined in section 614D(1)(b) (see *subsection (1)(a)* and *(b)*).

906. The lease may be of any property or rights (see subsection (1)(a) and the definition of "asset" in section 614DG).

907. In addition, for the Chapter to apply, condition A, but not all of conditions B to E, in section 614BC must have been met in relation to the lease at some time on or after 26 November 1996 in a period of account of the current lessor (see *subsection (1)(c)* and *(d)*). But once condition A has been met in relation to the lessor at the time, it is treated as continuing to be met as regards any subsequent lessor unless and until the lease is assigned to a wholly unrelated person (see *subsections (4)* to *(6)*).

908. *Subsection (3)* provides that the Chapter does not apply to long funding leases of plant or machinery in relation to which Part 2 of CAA gives capital allowances to the lessee instead of the lessor. Chapter 10A of Part 2 of ITTOIA sets out the basis of taxation of rental earnings under such leases.

909. *Subsection (7)* is a necessary consequence of the split into separate provisions for income tax purposes and corporation tax purposes.

Section 614CC: Current lessor taxed by reference to accountancy rental earnings

910. This section provides for the lessor to bring into account for income tax purposes the accountancy rental earnings in respect of the lease for a period of account if they exceed the normal rent for the period. It is based on paragraph 17 of Schedule 12 to FA 1997.

911. Paragraph 17 applies paragraph 5 of Schedule 12 to FA 1997 for the purposes of Part 2 of that Schedule by cross-reference. This section restates section 614BF (based on paragraph 5 of Schedule 12 to FA 1997) in full for the purposes of Chapter 3.

Section 614CD: Application of provisions of Chapter 2 for purposes of this Chapter

912. This section applies the provisions of sections 614BG to 614BQ for the purposes of this Chapter. It is based on paragraph 17 of Schedule 12 to FA 1997.

Chapter 4: Supplementary provisions

Overview

913. This Chapter contains supplementary and interpretative provisions.

Section 614D: Pre-26 November 1996 schemes and post-25 November 1996 schemes

914. This section defines a "pre-26 November 1996 scheme" and a "post-25 November 1996 scheme". It is based on paragraph 27 of Schedule 12 to FA 1997.

915. For the significance of these terms see the commentary on sections 614BX and 614CB.

Section 614DA: Time apportionment where periods of account do not coincide

916. This section deals with situations where the measure of the accountancy rental earnings taxed under Part 11A on the lessor is that shown in the accounts of a connected person or a group of companies as a whole and the period for which those accounts are drawn up is different from the period for which the lessor's accounts are drawn up. It is based on paragraph 24 of Schedule 12 to FA 1997.

917. In these circumstances the figures are time-apportioned as necessary to arrive at the measure of accountancy rental earnings for the lessor's period of account.

Section 614DB: Periods of account and related periods of account and tax years

918. This section sets out the definition of "period of account". It is based on paragraphs 23 and 30 of Schedule 12 to FA 1997.

Section 614DC: Connected persons

919. This section provides that persons are regarded as connected throughout the period beginning at the time the leasing arrangements are made and ending with the termination of the current lessor's interest if they are connected at some point during that period. It is based on paragraph 25(1) of Schedule 12 to FA 1997.

920. Section 1021(1) of ITA provides that section 993 of that Act (meaning of "connected" persons) applies for the purposes of ITA unless otherwise indicated (whether expressly or by implication). Accordingly it is unnecessary to rewrite paragraph 25(2) of Schedule 12 to FA 1997 here.

Section 614DD: Assets which represent the leased asset

921. This section defines assets which represent leased assets. It is based on paragraph 26 of Schedule 12 to FA 1997.

922. The purpose is to identify assets which in economic terms are essentially the same asset, in whole or in part, as the leased asset. Part 11A provides broadly that transactions in such assets are treated as transactions involving the leased asset itself.

Section 614DE: Parent undertakings and consolidated group accounts

923. This section sets out an assumption about consolidated accounts of companies which would count as "parent undertakings" for the purposes of the Companies Act 2006 but

are not required for accounting purposes to prepare consolidated accounts in accordance with GAAP. It is based on paragraph 28 of Schedule 12 to FA 1997.

924. Such companies are regarded for the purposes of Part 11A as having to draw up consolidated accounts whether or not they are actually required to do so for accounting purposes. So parent companies incorporated outside the United Kingdom are treated, for the purpose of identifying leases within Part 11A and calculating the rental income from them, as having to draw up consolidated accounts if they would not be so required for accounting purposes.

Section 614DF: Assessments and adjustments

925. This section ensures that all assessments and adjustments necessary to give effect to the provisions of Part 11A may be made. It is based on paragraph 29 of Schedule 12 to FA 1997.

Section 614DG: Interpretation

926. This section provides definitions and interpretative rules. It is based on paragraph 30(1) of Schedule 12 to FA 1997.

Part 2: New section 37A of TCGA 1992

Overview

927. This new section moves to TCGA the provisions of paragraph 12 of Schedule 12 to FA 1997 relating to the calculation of the amount of any chargeable gain on a disposal of the lessor's interest in a lease, the leased asset or an asset representing the leased asset.

Section 37A: Consideration on disposal of certain leases

928. This section deals with the calculation of the amount of any chargeable gain on a disposal within section 614BP of ITA (including that section as applied by section 614CD of that Act) or within section 915 of CTA 2010 (including that section as applied by section 929 of CTA 2010) if there is any cumulative accountancy rental excess. It is based on paragraph 12(1) to (4) and (6) of Schedule 12 to FA 1997.

929. In such cases any unused part of the cumulative accountancy rental excess is set against the disposal proceeds in calculating the chargeable gains position on the disposal. This is to ensure that the same sum is not taxed twice, once as income and again as a chargeable gain. The charge to income tax or to corporation tax on income takes priority because the cumulative accountancy rental excess represents that part of the proceeds on the disposal which is in substance of an income nature.

930. Section 614BP(2) of ITA and section 915(2) of CTA 2010 treat a period of account as coming to an end immediately before any disposal. This ensures that the amount of cumulative accountancy rental excess available for set off against the disposal proceeds under this section can be properly calculated.

931. The cumulative accountancy rental excess for any period of account is, in effect, the aggregate accountancy rental excess for periods *before* the current period of account (see section 614BH(5) of ITA and section 907(5) of CTA 2010). By treating a period of account as ending immediately before the disposal, the accountancy rental excess for that period can be included in the cumulative accountancy rental excess available to be used in calculating the chargeable gain.

932. If the disposal mentioned in *subsection (1)* or *(2)* is a part disposal, *subsections (6)* to *(9)* provide that the amount of the cumulative accountancy rental excess to be set against the disposal proceeds in accordance with *subsection (3)* is an apportioned part only of the full amount.

933. If two or more of the disposals mentioned in subsection (1) or (2) are made at the same time, *subsection (10)* provides that a just and reasonable proportion of the full cumulative accountancy rental excess is to be set against the proceeds of each disposal in accordance with subsection (3).

Schedule 4: Sale and lease-back etc: new Part 12A of ITA 2007

Overview

934. This Schedule inserts new Part 12A of ITA, which rewrites sections 779 to 785 of ICTA (sales and lease-backs) for the purposes of income tax.

935. Sections 779 and 781 to 785 of ICTA first appeared as sections 17 to 19 of, and Schedule 7 to, FA 1964. Section 780 of ICTA first appeared as section 80 of FA 1972. There have been numerous changes to the taxation of leasing since 1972, but sections 779 to 785 of ICTA are still capable of applying.

936. The four main operative sections of the source legislation – sections 779, 780, 781 and 782 of ICTA – are rewritten in separate Chapters. Within each Chapter, the detailed provisions are laid out in sections arranged in a rational order. The legislation is also being split between the corporation tax and income tax codes.

937. This Part has the following structure.

- Chapter 1 (payments connected with transferred land) is based on section 779 of ICTA.
- Chapter 2 (new lease of land after assignment or surrender) is based on section 780 of ICTA.
- Chapter 3 (leased trading assets) is based on sections 782 and 785 of ICTA.
- Chapter 4 (leased assets: capital sums) is based on sections 781, 782(1) and 783 to 785 of ICTA.

938. Chapters 1 and 2 apply to certain transactions in land. Chapters 3 and 4 apply to certain transactions in assets other than land.

939. If Chapter 1 or Chapter 3 applies, tax relief for lease rental (or similar) expenditure is deferred (and may in certain circumstances be denied).

940. If Chapter 2 or Chapter 4 applies, a capital sum is taxed as income.

941. This Part largely replicates Part 19 of CTA 2010, which makes similar provision for the purposes of corporation tax. See the commentary on that Part.

942. As far as possible, the income tax provisions and the corporation tax provisions are drafted in the same terms. The drafting differs in the following respects.

- Part 19 of CTA 2010 refers to corporation tax; Part 12A of ITA refers to income tax.
- Companies may in certain circumstances be liable to income tax, but persons other than companies are not liable to corporation tax. Accordingly, the corporation tax provisions use “company” to denote the person liable where the corresponding income tax provisions use “person”.
- Part 19 of CTA 2010 refers to provisions which are specific to corporation tax; Part 12A of ITA refers to provisions which are specific to income tax.
- Part 19 of CTA 2010 does not refer to companies carrying on professions or vocations; Part 12A of ITA refers to persons carrying on professions and vocations. See section 837 of CTA 2010, with the commentary thereon, and section 681CA.

Chapter 1: Payments connected with transferred land

Overview

943. This Chapter is based on section 779 of ICTA. It counters certain avoidance devices based on arrangements for the sale and lease-back of land or on analogous arrangements, such as arrangements for sale of land with reservation of a rentcharge. It restricts tax relief for lease rental expenditure.

944. This Chapter corresponds to Chapter 1 of Part 19 of CTA 2010, which makes similar provision for the purposes of corporation tax. It has the following structure.

- Section 681A summarises the Chapter.
- Sections 681AA to 681AC say when the Chapter applies and define "relevant income tax relief" and "relevant deduction from earnings".
- Section 681AD restricts relevant income tax relief and carries forward relief which has been denied.
- Sections 681AE to 681AH restrict income tax relief for certain deductions from earnings and carry forward relief which has been denied.
- Sections 681AI to 681AN are interpretative.

Section 681A: Overview

945. This section summarises this Chapter. It is new.

Section 681AA: Transferor or associate becomes liable for payment of rent

946. This section sets out the conditions for section 681AD or, as the case may be, section 681AE to apply in a case involving the payment of rent. It is based on section 779(1), (3), (13) and (14) of ICTA.

947. *Subsection (1)* lists the conditions which must be met if section 681AD (relevant income tax relief: deduction not to exceed commercial rent) is to apply.

948. The words "rent" and "lease" appear for the first time in this Chapter in subsection (1)(b). They are defined in section 681AL.

949. *Subsection (2)* lists the conditions which must be met if section 681AE (deduction from earnings not to exceed commercial rent) is to apply.

950. *Subsection (3)* explains what is meant in subsections (1)(a) and (2)(a) by "transferring" an estate or interest in land.

951. *Subsection (4)* explains what is meant in this Chapter by the "transferor".

952. *Subsections (5)* and *(6)* explain what is meant in subsections (1)(b) and (2)(b) by becoming "liable" to make a payment.

953. *Subsection (7)* preserves the rule that, if the transfer was made before the legislation was first introduced, a lease-back after that date will not activate the legislation.

Section 681AB: Transferor or associate becomes liable for payment other than rent

954. This section sets out the conditions for the Chapter to apply in a case involving a payment other than rent. It is based on section 779(2), (3), (13) and (14) of ICTA. It is very similar in structure to section 681AA. See the commentary on that section.

955. If, in a given case, the reader is satisfied that at least one of the conditions in section 681AA is not met and at least one of the conditions in this section is not met, the reader can conclude that, as this Chapter does not have effect, there is no need to read any further in it.

Section 681AC: Relevant income tax relief and relevant deduction from earnings

956. This section lists, for the purposes of this Chapter, the deductions by way of "relevant income tax relief" and defines "relevant deduction from earnings". It is based on section 779(13) of ICTA.

Section 681AD: Relevant income tax relief: deduction not to exceed commercial rent

957. This section restricts income tax relief for payments falling within section 681AA or 681AB and, in certain cases, provides for such relief to be carried forward. It is based on section 779(1), (2) and (4) to (6) of ICTA.

958. *Subsection (3)* puts on a clear statutory footing the practice of spreading lease rental expenditure in accordance with GAAP before applying section 779 of ICTA. This is a minor change in the law. See *Change 11* in Annex 1.

959. Section 681CC makes the same change in rewriting section 782 of ICTA.

Section 681AE: Deduction from earnings not to exceed commercial rent

960. This section is a special rule restricting relevant deductions from earnings in relation to payments falling within section 681AA(2) or 681AB(2). It is based on section 779(1), (2), (4) and (6) of ICTA.

961. The rules for calculating relevant deductions from earnings do not use GAAP. Accordingly, cases involving relevant deductions from earnings are excluded from the main rule in section 681AD, and sections 681AF to 681AH supplement this section.

Section 681AF: Carrying forward parts of payments

962. This section permits amounts which have been disallowed under section 681AE to be carried forward to a later period (and thus, potentially, relieved). It is based on section 779(5) and (6) of ICTA, and is the first of three sections supplementing section 681AE.

963. *Subsections (1)* to *(3)* specify the conditions which must be met if this section is to apply.

964. *Subsection (4)* is the main operative provision.

965. *Subsection (5)* permits the section to be applied repeatedly.

Section 681AG: Aggregation and apportionment of payments

966. This section is concerned with the aggregation and apportionment of payments under the lease or rentcharge etc. It is based on section 779(6) of ICTA.

Section 681AH: Payments made for later periods

967. This section prevents the taxpayer escaping this Chapter by labelling the bunched-up payments as payments *for* later periods. It is based on section 779(7) of ICTA.

Section 681AI: Exclusion of service charges etc

968. This section is concerned with service charges and the like. It is based on section 779(6) and (12) of ICTA.

969. Leases commonly provide for the tenant to pay the landlord not only rent but also service charges and the like, and these may be paid in a single sum; the definitions of "commercial rent" in sections 681AJ and 681AK do not include service charges etc and so this section correspondingly excludes them from the amount with which the commercial rent is compared.

970. *Subsections (3)* and *(4)* prevent the taxpayer escaping this Chapter by agreeing to pay an excessive amount by way of service charge. They include a minor change in the law to bring it into line with Self Assessment. See *Change 12* in Annex 1.

971. The source legislation uses the term "asset", which is defined to exclude land and interests in land. Since many readers may find this counter-intuitive, *subsection (2)(b)* refers to "relevant assets". The term "relevant asset" is defined in *subsection (5)*. Chapters 3 and 4 of this Part also use the term "relevant asset", for the same reason. See sections 681CG and 681DO.

Section 681AJ: Commercial rent: comparison with rent under a lease

972. This section defines "commercial rent" for the purpose of comparison with rent under a lease. It is based on section 779(8) of ICTA.

973. Commercial rent is the rent payable under a hypothetical lease. Under *subsection (3)(d)*, the hypothetical lease provides for rent to be payable "at an appropriate rate". This expression is defined in *subsection (4)*.

Section 681AK: Commercial rent: comparison with payments other than rent

974. This section defines "commercial rent" for the purpose of comparison with payments other than rent. It is based on section 779(9) and (12) of ICTA.

975. Commercial rent is the rent payable under a hypothetical lease. Under *subsection (2)(b)*, the hypothetical lease is "a tenant's repairing lease". This expression is defined in *subsection (3)*.

976. Under *subsection (2)(c)*, the hypothetical lease is "of an appropriate duration". The rules for determining whether a lease is of an appropriate duration are laid down in *subsection (4)*.

Section 681AL: Lease and rent

977. This section defines "lease" and "rent" for the purposes of this Chapter. It is based on section 779(10) and (12) of ICTA.

Section 681AM: Associated persons

978. This section defines "associated persons" for the purposes of this Chapter. It is based on section 779(11) of ICTA.

Section 681AN: Land outside the UK

979. This section explains how expressions in this Chapter relating to interests in land in the United Kingdom and their disposition are to be interpreted in cases involving land outside the United Kingdom. It is based on section 779(12) of ICTA.

Chapter 2: New lease of land after assignment or surrender

Overview

980. This Chapter is based on section 780 of ICTA. It deals with the situation where the existing occupier of premises incurs additional rental liability in return for the payment of a lump sum.

981. In form, the lump sum is the consideration received for assigning the lease, usually to a charity or a pension fund, and the lease-back is at an increased rent.

982. In substance, however, the lump sum is a loan and the additional rent represents the repayment of principal and interest.

983. Where the Chapter applies, a proportion of the lump sum is to be treated as income of the recipient.

984. The Chapter corresponds to Chapter 2 of Part 19 of CTA 2010, which makes similar provision for the purposes of corporation tax. It has the following structure.

- Section 681B summarises the Chapter.
- Section 681BA states when the Chapter applies.
- Sections 681BB and 681BC tax some or all of the consideration as income.
- Section 681BD concerns relief for rent under the new lease.
- Sections 681BE to 681BI deal with cases in which the new lease is deemed to end.

- Section 681BJ deals with a case in which a lease is varied to provide for increased rent.
- Sections 681BK to 681BM are interpretative.

Section 681B: Overview

985. This section summarises this Chapter. It is new.

986. The word "lease" appears in *subsection (1)* for the first time in this Chapter. On the meaning of "lease" in this Chapter, see section 681BM.

Section 681BA: New lease after assignment or surrender

987. This section states when this Chapter applies. It is based on section 780(1), (7) and (9) of ICTA.

988. *Subsection (1)* provides that five conditions must be met if the Chapter is to apply. If, in a given case, the reader is satisfied that at least one of these conditions is not met, the reader need read no further in this Chapter.

989. *Subsection (2)* specifies condition A, concerning the original lease.

990. The word "lessee" appears in subsection (2)(a) for the first time in this Chapter. On the meaning of "lessee" in this Chapter, see section 681BM.

991. The expression "a deduction by way of relevant income tax relief" appears in subsection (2)(b) for the first time in this Chapter. It is defined in section 681BK.

992. *Subsection (3)* specifies condition B, concerning the assignment or surrender of the original lease. Section 1008 of ITA provides that in Scotland "assignment" means assignation, and thus gives effect to the application of section 24(5) of ICTA by section 780(8) of that Act. Section 1008 of ITA also provides that in Scotland "surrender" includes renunciation.

993. *Subsection (4)* specifies condition C, concerning the new lease.

994. The expression "a person linked to L" appears for the first time in this Chapter in subsection (4). It is defined in section 681BL.

995. *Subsection (5)* specifies condition D, concerning the relationship between the new lease and the original lease.

996. Condition E in *subsection (6)* preserves the rule that, if, before the legislation was introduced, there was a legal or equitable right to the grant of a new lease, then the grant of the new lease will not activate the legislation.

997. *Subsection (7)* signposts the transitional provision based on the second limb of section 780(9) of ICTA. The "relevant provisions" are the paragraphs headed "New lease of land after assignment or surrender: right to new lease existed pre-22 June 1971" in the "Sale and lease-back etc" Parts of Schedule 2 to CTA 2010 and Schedule 9 to this Act.

Section 681BB: Taxation of consideration

998. This section taxes, as if it were income, some or all of the consideration received by the lessee. It is based on section 780(1), (3), (3A), (3B), (3C), (7) and (8) of ICTA.

999. *Subsection (1)* requires an "appropriate amount" of the consideration to be found.

1000. Subsection (1)(a) refers to the assignment of the original lease. Section 1008 of ITA provides that in Scotland "assignment" means assignation, and thus gives effect to the application of section 24(5) of ICTA by section 780(8) of that Act. Section 1008 of ITA also provides that in Scotland "surrender" includes renunciation.

1001. *Subsection (2)* provides that the appropriate amount is not to be treated as a capital receipt.

1002. *Subsection (3)* defines the appropriate amount if the term of the new lease is not more than one year. *Subsection (4)* defines the appropriate amount if the term of the new lease is more than one year.

1003. In a case in which the term of the new lease (a) exceeds one year and (b) is not for a whole number of years, the formula in section 780(3) of ICTA does not expressly say how to deal with parts of years. *Subsection (5)* makes it clear that, in such a case, a part of a year is to be taken as an appropriate proportion of a year.

1004. *Subsection (6)* provides that the way in which the appropriate amount is treated depends on whether certain specified conditions are met.

1005. If these conditions are met, *subsection (7)* treats the appropriate amount as a receipt of the trade, profession or vocation mentioned in subsection (6)(a).

1006. If the conditions in subsection (6) are not met, *subsection (8)* treats the appropriate amount as chargeable to income tax.

1007. *Subsection (9)* quantifies the amount charged, specifies the person liable and treats the amount charged as income.

Section 681BC: Position where new lease does not include all original property

1008. This section deals with the position where the new lease does not include all the original property. It is based on section 780(4) of ICTA.

Section 681BD: Relief for rent under new lease

1009. This section makes it clear that the normal rules for tax relief apply to rent under the new lease. It is based on section 780(1) of ICTA and paragraph 5 of Schedule 2 to ITTOIA.

Section 681BE: New lease treated as ending

1010. This section introduces three sections which treat the new lease as ending in certain circumstances. It is based on section 780(2) of ICTA.

1011. *Subsection (2)* is a tie-breaker rule. Section 780(2) of ICTA indicates that if section 780(2)(a) and (2)(b) could both apply then only one of them applies, namely the one that produces the earlier date. Section 780(2)(b) might on its own, however, produce different dates, and it seems to take section 780(2)(b)(i) and (ii) separately (see "as the case may be") without expressly providing which prevails. But it would be anomalous if section 780(2) included a tie-breaker rule for some but not all of the possible cases, or if it had different tie-breaker rules for different cases. Subsection (2) therefore makes it clear that the earliest date prevails in all cases.

Section 681BF: Position where rent reduces

1012. This section deals with the position where the rent is reduced. It is based on section 780(2) and (8) of ICTA.

1013. *Subsection (1)* uses the expressions "rent for a relevant period" and "following comparable period". *Subsection (2)(a), (b)* and *(c)* define "relevant period", "following comparable period" and "rent for a period" respectively.

1014. Subsection (2)(a) uses the expressions "rental period" and "fifteenth anniversary [of the new lease]". These expressions are defined in *subsection (2)(d)* and *(e)* respectively.

1015. *Subsection (3)* supplements the definition of "rental period" in subsection (2)(d).

Section 681BG: Position where lease may be ended

1016. This section deals with the position where the lease makes provision for early termination. It is based on section 780(2) and (7) of ICTA.

Section 681BH: Position where lease may be varied

1017. This section deals with the position where the lessee has the power to vary the terms of the lease in the lessee's favour (for example, by reducing the rent which the lessee would otherwise have to pay). It is based on section 780(2) and (7) of ICTA.

Section 681BI: Lease treated as ending: rentcharge

1018. This section supplements the previous three; it deals with rentcharges. It is based on section 780(2) and (7) of ICTA.

Section 681BJ: Lease varied to provide for increased rent

1019. This section deals with a case in which a lease is varied to provide for increased rent. It is based on section 780(6) of ICTA.

1020. *Subsection (1)* provides that four conditions must all be met if this section is to apply.

1021. *Subsection (2)* specifies condition A, concerning the original lease.

1022. *Subsection (3)* specifies condition B, concerning the variation of the lease.

1023. *Subsection (4)* specifies condition C, concerning the increase in the rent.

1024. *Subsection (5)* specifies condition D, concerning the period within which the increased rent is to be paid.

1025. *Subsection (6)* is the main operative provision. Condition A in subsection (2) is the same as condition A in section 681BA. In consequence of subsection (6)(a), condition B in that section is met. In consequence of subsection (6)(b), conditions C and D in that section are met. Accordingly, if conditions A to D in this section are met, conditions A to D in that section are met and this Chapter therefore has effect.

Section 681BK: Relevant income tax relief

1026. This section defines deductions by way of relevant income tax relief. It is based on sections 779(13) and 780(1) of ICTA.

Section 681BL: Linked persons

1027. This section defines "a person linked to L" in this Chapter. It is based on section 780(7) of ICTA.

Section 681BM: Lease, lessee, lessor and rent

1028. This section concerns the meaning of "lease", "lessee", "lessor" and "rent". It is based on sections 24(1) and (6) and 780(8) of ICTA.

1029. *Subsection (3)* says that "lease" does not include a mortgage. This is based on section 24(1) of ICTA as applied by section 780(8) of ICTA. In fact, section 24(1) of ICTA says that a lease includes neither a mortgage nor a heritable security. A "heritable security" is the Scottish equivalent of a mortgage, although post-1970 heritable securities take the form of a standard security. *Subsection (6)*, which is new, states that in the application of the section to Scotland, "mortgage" includes the Scottish equivalents.

1030. Accordingly, subsection (3) has to be read as if it said that a lease includes neither a mortgage nor the Scottish equivalents. Subsection (3) therefore achieves the same effect as the source legislation, even though subsection (6) is a definition of the Scottish equivalents that contains more detail than the words "mortgage or heritable security" in section 24(1) of ICTA. The approach is the same as that already taken for income tax purposes when the definition of "lease" in section 24(1) of ICTA was rewritten in sections 364(1) and 879(1) of ITTOIA.

Chapter 3: Leased trading assets

Overview

1031. This Chapter is based on sections 782 and 785 of ICTA.

1032. This Chapter applies where a person carrying on a trade, profession or vocation pays rent under a lease of an asset other than land or buildings and at any time before the lease was created the asset was used either (a) in that trade, profession or vocation or (b) in another trade, profession or vocation carried on by the person who then or later was carrying on the first trade, profession or vocation and, in either case, when so used was owned by the person carrying on the trade, profession or vocation in which it was used.

1033. If this Chapter applies, it provides that in computing the profits and gains of the trade, profession or vocation the deduction in respect of a payment under the lease must not exceed the commercial rent of the asset for the period for which the payment was made.

1034. This Chapter corresponds to Chapter 3 of Part 19 of CTA 2010, which makes similar provision for the purposes of corporation tax. It has the following structure.

- Section 681C summarises the Chapter.
- Sections 681CA and 681CB state when the Chapter applies.
- Section 681CC restricts income tax relief and carries forward relief which has been denied.
- Sections 681CD and 681CE supplement section 681CC.
- Sections 681CF and 681CG are interpretative.

Section 681C: Overview

1035. This section summarises this Chapter. It is new.

1036. The word "lease" appears in this section for the first time in this Chapter. It is defined in section 681CF.

Section 681CA: Professions and vocations

1037. This section applies the Chapter not only to trades but also to professions and vocations. It is based on section 782(10) of ICTA. There is no corresponding provision in Chapter 3 of Part 19 of CTA 2010, which omits all references to companies carrying on professions or vocations. See the commentary on section 837 of CTA 2010 and Change 4 in Annex 1 to the explanatory notes on that Act.

Section 681CB: Leased trading assets

1038. This section states when this Chapter applies. It is based on section 782(1), (8) and (9) of ICTA.

1039. *Subsection (1)* introduces the three conditions relating to the application of this Chapter and explains their logical relationship.

1040. *Subsection (2)* specifies condition A, concerning the payment.

1041. In particular, under subsection (2)(a) the payment must be made under the lease of a "relevant asset". The expression "relevant asset" appears in subsection (2)(a) for the first time in this Chapter. It is defined in section 681CG.

1042. *Subsections (3)* and *(4)* specify conditions B and C. These are two alternative conditions concerning the use to which the leased asset was put before it was leased.

1043. *Subsection (5)* preserves the rule that, if the lease was created before the legislation was first introduced, a lease-back after that date will not activate the legislation.

Section 681CC: Tax deduction not to exceed commercial rent

1044. This section restricts income tax relief. It is based on section 782(1) to (4) of ICTA.

1045. *Subsection (3)* brings the law into line with practice. See the commentary on section 681AA and *Change 11* in Annex 1.

Section 681CD: Long funding finance leases

1046. This section makes an exception for long funding finance leases. It is based on section 782(1A) of ICTA.

Sections 681CE and 681CF: Commercial rent; lease

1047. These interpretative sections are based on sections 782(6) and (7) and 785 of ICTA.

Section 681CG: Relevant asset

1048. This section defines "relevant asset" for the purpose of this Chapter. It is based on the definition of "asset" in section 785 of ICTA.

1049. The source legislation uses the term "asset", which is defined to exclude land and interests in land. Since many readers may find this counter-intuitive, this section uses the new term "relevant asset".

Chapter 4: Leased assets: capital sums

Overview

1050. This Chapter is based on sections 781 and 783 to 785 of ICTA.

1051. It deals with cases such as that of a taxpayer who, having had tax relief in respect of a payment under a lease of an asset other than land or buildings, receives or has received at any time a capital sum in respect of the lessee's interest in the lease.

1052. If the Chapter applies, income tax is charged on (broadly speaking) the amount on which relief has been obtained or, if less, on the capital sum.

1053. This Chapter corresponds to Chapter 4 of Part 19 of CTA 2010, which makes similar provision for the purposes of corporation tax. It has the following structure.

- Section 681D summarises the Chapter.
- Sections 681DA to 681DC state when the Chapter applies.
- Sections 681DD to 681DF concern the charge to income tax.
- Sections 681DG to 681DI deal with obtaining the capital sum.
- Sections 681DJ and 681DK are about apportionment.
- Sections 681DL to 681DP are interpretative.

Section 681D: Overview

1054. This section summarises this Chapter. It is new.

1055. The expressions "capital sum" and "lease" appear in this section for the first time in this Chapter. They are defined in sections 681DM and 681DN respectively.

Section 681DA: Application of the Chapter

1056. This section introduces the five conditions relating to the application of this Chapter and explains their logical relationship. It is based on section 781(1) of ICTA.

Section 681DB: Payment under lease

1057. This section specifies a necessary condition for the Chapter to apply, namely that a tax-deductible payment is made under a lease of a relevant asset. It is based on sections 781(1) and (3) and 782(1) of ICTA.

1058. The expressions "relevant asset" and "relevant tax relief" appear in *subsection (1)(a)* and *(b)* respectively for the first time in this Chapter. They are defined in sections 681DO and 681DP respectively.

1059. The person entitled to a deduction by way of tax relief under section 781(1)(a) of ICTA is not necessarily the person obtaining the capital sum and charged to tax under that subsection. It follows that, if the person obtaining the capital sum is charged to income tax, the person entitled to a deduction by way of tax relief is not necessarily an income

tax payer. Subsection (1)(b) of this section therefore refers to "relevant tax relief", rather than "relevant income tax relief".

1060. *Subsection (2)* stipulates that if Chapter 3 of this Part applies to the payment then condition A is not met (and, therefore, this Chapter does not apply to the payment). For that reason, Chapter 3 appears in this Part before this Chapter, reversing the order of the source legislation.

1061. *Subsection (3)* similarly stipulates that if Chapter 3 of Part 19 of CTA 2010 applies to the payment then condition A is not met (and, therefore, this Chapter does not apply to the payment). Subsection (3) is unlikely to apply in practice, but omitting it would change the law to the taxpayer's disadvantage.

1062. *Subsection (4)* preserves the rule that, if the lease was created before the legislation was first introduced, receiving a capital sum after that date will not activate the legislation.

Section 681DC: Sum obtained

1063. This section specifies four alternative additional conditions for the Chapter to apply. It is based on sections 781(1) and (9) and 783(3) of ICTA.

1064. All four of the conditions concern the obtaining of a capital sum by a person of the description specified in the condition. In particular, the person obtaining the capital sum need not be the person making the tax-deductible payment.

1065. In conditions B and C in *subsections (1)* and *(2)*, the capital sum is obtained in respect of the lessee's interest in the lease. In condition B, the capital sum is obtained by the person making the payment. In condition C, the capital sum is obtained by an associate of that person.

1066. Subsection (1)(a) is the first provision in this Chapter which refers to obtaining a sum in respect of an interest in a lease and, specifically, to obtaining a sum in respect of the lessee's interest in a lease. The former expression is defined in section 681DG. The latter expression is defined in section 681DH.

1067. The word "associate" appears in subsection (2) for the first time in this Chapter. It is defined in section 681DL.

1068. In conditions D and E in *subsections (3)* and *(4)*, the capital sum is obtained in respect of the lessor's interest in the lease, or of any other interest in the asset. In condition D, the capital sum is obtained by an associate of the person making the payment. In condition E, the interest belongs to an associate of that person and the capital sum is obtained by an associate of that associate.

1069. *Subsection (5)* makes it clear that, for the purposes of this section, it is irrelevant when the payment is made.

1070. *Subsections (6)* and *(7)* relate to hire-purchase agreements for plant or machinery. Subsection (6) makes an exception to conditions B and C. Subsection (7) makes an exception to conditions D and E.

Section 681DD: Charge to income tax

1071. This section imposes the charge to income tax on the person obtaining the capital sum. It is based on section 781(1), (1A), (2) and (6) of ICTA.

1072. Under *subsection (1)* there is a charge to income tax for the tax year in which the sum is obtained.

1073. *Subsection (2)* measures the income thus charged.

1074. *Subsection (3)* introduces four subsections limiting the effect of subsections (1) and (2).

1075. *Subsection (4)* caps the amount charged.

1076. To prevent double taxation, *subsections (5)* and *(6)* ensure that once a payment (or part of a payment) has been taken into account in making a charge under this Chapter it cannot be taken into account in making a further charge in respect of another sum.

1077. *Subsection (7)* is a timing rule supplementing subsections (5) and (6).

Section 681DE: Hire-purchase agreements

1078. This section concerns hire-purchase agreements. It is based on section 784 of ICTA.

1079. This section may be in point if section 681DC(6) and (7) (sum obtained: exceptions for hire-purchase agreements) do not prevent this Chapter from applying. If this Chapter applies, *subsection (1)* states the conditions for this section to apply.

1080. *Subsection (2)* requires the total to be found of:

- non-tax-deductible payments under the lease; and
- if the lessee's interest in the lease was assigned to the person before it obtained the capital sum in respect of that interest, any capital payment made by the person as consideration for the assignment.

1081. Under section 1008 of ITA, the references to assignment in section 681DE(2) are to be read in relation to Scotland as references to assignation, thus making explicit what is merely implicit in section 784(2)(b).

1082. The total found in subsection (2) is then compared with the capital sum. If it is equal to or greater than the capital sum, then under *subsection (3)* the capital sum is treated for the purposes of section 681DD(4) as £nil. If the total found under subsection (2) is less than the capital sum, then under *subsection (4)* it is deducted from the capital sum in applying section 681DD(4).

1083. *Subsection (5)* covers the special case in which the capital sum is the consideration for part only of the lessee's interest in the lease.

1084. Section 784(4) of ICTA provides that:

"the amount to be deducted … shall be such proportion of the capital expenditure which is still unallowed *as is reasonable* (emphasis added).

1085. Rewriting this, subsection (5)(a) requires the unallowed amount to be reduced to a proportion which is not only reasonable but also just. This is a minor change in the law: see *Change 5* in Annex 1.

1086. To prevent double relief, *subsections (6)* and *(7)* ensure that if a payment has been taken into account under subsection (2) in respect of a capital sum it cannot be taken into account in respect of another capital sum.

1087. *Subsection (8)* is a timing rule supplementing subsections (6) and (7).

Section 681DF: Adjustments where sum obtained before payment made

1088. This section provides for adjustments to be made if a capital sum is obtained as mentioned in section 681DC and later a payment is made as mentioned in section 681DB. It is based on section 781(7) to (8A) of ICTA.

Section 681DG: Sum obtained in respect of interest

1089. This section is concerned with the meaning, in this Chapter, of "a sum obtained in respect of an interest in an asset". It is based on section 783(1) and (2) of ICTA.

Section 681DH: Sum obtained in respect of lessee's interest

1090. This section is concerned with the meaning, in this Chapter, of "a sum obtained in respect of the lessee's interest in a lease of an asset". It is based on section 783(1) and (2) of ICTA.

Section 681DI: Disposal of interest to associate

1091. This section determines the amount which a company is deemed to obtain if it disposes of an interest in an asset to a person who is the company's associate. It is based on sections 781(1) and 783(4) and (5) of ICTA.

Section 681DJ: Apportionment of payments made and of sums obtained

1092. This section provides for apportionments to be made of payments made and sums obtained. It is based on section 783(6) to (8) of ICTA.

1093. *Subsection (3)* requires apportionments to be not only just but also reasonable. This is a minor change in the law. See *Change 5* in Annex 1.

1094. Although section 783(6) and (8) of ICTA refer to vocations carried on in partnership (as well as to trades and professions carried on in partnership), it is considered that vocations cannot be carried on in partnership: see, for example, Change 4 in Annex 1 to the explanatory notes on CTA 2010. Accordingly, *subsections (2), (4)* and *(5)* do not refer to vocations.

Section 681DK: Manner of apportionment

1095. This section provides for apportionments to be made by the tribunal in certain circumstances. It is based on section 783(9) of ICTA.

Section 681DL: Associates

1096. This section defines "associates" for the purposes of this Chapter. It is based on section 783(10) and (11) of ICTA.

Section 681DM: Capital sum

1097. This section defines "capital sum" for the purposes of this Chapter. It is based on the definition of "capital sum" in section 785 of ICTA.

Section 681DN: Lease

1098. This section defines "lease" for the purposes of this Chapter. It is based on the definition of "lease" in section 785 of ICTA.

Section 681DO: Relevant asset

1099. This section defines "relevant asset" for the purposes of this Chapter. It is based on the definition of "asset" in section 785 of ICTA.

1100. The source legislation uses the term "asset", which is defined to exclude land and interests in land. Since many readers may find this counter-intuitive, this section uses the new term "relevant asset".

Section 681DP: Relevant tax relief

1101. This section defines "relevant tax relief" for the purposes of this Chapter. It is based on section 781(4) of ICTA.

1102. *Paragraph (a)* omits references to a profession and to a vocation where the source legislation refers to the carrying on by a company of a trade, profession or vocation. This is a minor change in the law. See *Change 13* in Annex 1.

Schedule 5: Factoring of income etc: new Chapters 5B and 5C of Part 13 of ITA 2007

Overview

1103. This Schedule inserts new Chapters 5B and 5C of Part 13 of ITA, which rewrite sections 774A to 774G and 786 of ICTA for the purposes of income tax.

1104. Chapter 5B of Part 13 of ITA (finance arrangements) is based on sections 774A to 774G of ICTA. Chapter 5C of that Part (loan or credit transactions) is based on section 786 of ICTA.

1105. Paragraph 7 of Schedule 25 to FA 2009 inserted Chapter 5A of Part 13 of ITA (transfers of income streams), which makes provision for income tax purposes corresponding to the provision for corporation tax purposes rewritten in Chapter 1 of Part 16 of CTA 2010. Chapters 5B and 5C of Part 13 of ITA inserted by this Act make provision for income tax purposes corresponding to the provision for corporation tax purposes rewritten in Chapters 2 and 3 of Part 16 of CTA 2010.

Chapter 5B: Finance arrangements

Overview

1106. This Chapter is based on sections 774A to 774G to ICTA, the rules on structured finance arrangements introduced by FA 2006. It stops a number of schemes which are intended to enable taxpayers to borrow money and obtain effective tax relief for both interest and repayment of principal.

1107. A "finance arrangement", within this Chapter, is an arrangement where in accordance with GAAP a person ("the borrower") records in its accounts a financial liability in respect of a sum ("advance") paid by "the lender", and that sum is paid to acquire assets (including an income stream), which will be used to repay the advance.

1108. Where there is a finance arrangement which would have had the effect that either:

- income or receipts that would have been brought into account by the borrower for tax purposes are not brought into account; or
- the borrower would have become entitled to a deduction in computing its income or profits for tax purposes,

then

- the finance arrangement does not have that effect, with the result that the income from the transferred asset continues to be taxed on the borrower; and
- any disposal or reacquisition of the asset is disregarded for the purposes of TCGA.

1109. Income tax relief is allowed for the amount of any interest or "finance charge" in respect of the finance agreement shown in the borrower's accounts.

1110. This Chapter corresponds to Chapter 2 of Part 16 of CTA 2010, which makes similar provision for corporation tax. It has the following structure.

- Sections 809BZA to 809BZE deal with "type 1 finance arrangements": the simple case, not necessarily involving a partnership.
- Sections 809BZF to 809BZI deal with "type 2 finance arrangements": the first of two complex partnership cases.
- Sections 809BZJ to 809BZL deal with "type 3 finance arrangements": the second of two complex partnership cases.
- Sections 809BZM to 809BZP make exceptions to these rules.
- Sections 809BZQ to 809BZS are interpretative.

Section 809BZA: Type 1 finance arrangement defined

1111. This section defines a form of arrangement, labelled a "type 1 finance arrangement", which falls within this legislation. It is based on section 774A of ICTA.

1112. *Subsection (1)* provides that two conditions must be met if an arrangement is to be a type 1 finance arrangement.

1113. The word "arrangement" appears in subsection (1) for the first time in this Chapter. See section 809BZR.

1114. *Subsection (2)* specifies condition A, which concerns the terms of the arrangement. There are three tests in condition A, all of which must be passed if the condition is to be met. To summarise:

- a borrower must "receive" an advance from a lender (see subsection (2)(a));
- the borrower (or a person "connected" with the borrower) must "dispose" of an asset (the security) to, or for the benefit of, the lender (or a person "connected" with the lender) (see subsection (2)(b)); and
- the lender (or a person "connected" with the lender) must be entitled to "payments in respect of" the security (see subsection (2)(c)).

1115. An ordinary secured loan would not be a type 1 finance arrangement, because it would not satisfy subsection (2)(b) or, if it did, it would not satisfy subsection (2)(c).

1116. The first reference in this Chapter to a person receiving an asset is in subsection (2)(a). See section 809BZS(2).

1117. Subsection (2)(b) is the first of a number of provisions in this Chapter which refer to persons being "connected". In the source legislation, section 774G(4) of ICTA gives that expression the meaning given by section 839 of that Act. The provisions in question are rewritten as new sections of ITA, inserted by this Act. Section 1021(1) of ITA applies the definition of "connected" persons in section 993 of that Act. Section 774G(4) of ICTA is not being rewritten as a separate proposition.

1118. The first reference in this Chapter to a disposal of an asset is in subsection (2)(b). See section 809BZS(3).

1119. The first reference in this Chapter to payments in respect of an asset is in subsection (2)(c). See section 809BZS(4).

1120. *Subsection (3)* specifies condition B, which is about accounting. To summarise, the payments mentioned in subsection (2)(c) must be, for accounting purposes, payments of principal rather than interest.

1121. The first reference in this Chapter to a person's accounts is in subsection (3)(a). See section 809BZQ(2) and (4).

1122. The first reference in this Chapter to an amount being recorded in accounts as a financial liability is in subsection (3)(a). See section 809BZQ(3).

Section 809BZB: Certain tax consequences not to have effect

1123. This section disapplies certain tax consequences of a type 1 finance arrangement if certain conditions are met. It is based on sections 774A(4), 774B(1), (1A), (2) and (3) and 774G(2) of ICTA.

1124. Under *subsections (1)* and *(2)*, if – but for this section – a type 1 finance arrangement would have the "relevant effect", then it does not.

1125. *Subsection (3)* defines the "relevant effect", and *subsection (4)* defines the "relevant effect" if the borrower is a partnership. Each of those subsections specifies three alternative effects.

Section 809BZC: Payments treated as borrower's income

1126. This section treats the payments mentioned in section 809BZA(2)(c) as income of the borrower. It is based on sections 774A(4), 774B(1) and (1B) to (3) and 774G(2) of ICTA.

1127. Under *subsection (1)*, this section only applies if:

- there is a type 1 finance arrangement;

- section 809BZB(2) and the corresponding corporation tax provision do not stop this arrangement having the relevant effect; and
- the borrower is either (a) within the charge to income tax or (b) a partnership at least one member of which is within the charge to income tax.

Section 809BZD: Deemed interest if borrower is not a partnership

1128. This section allows income tax relief to be given if there is a type 1 finance arrangement and the borrower is not a partnership. It is based on section 774B(4), (7) and (8) of ICTA.

1129. As well as specifying the conditions for this section to apply, *subsection (1)* introduces the person (namely, the borrower) eligible for income tax relief.

1130. *Subsection (2)* permits the borrower mentioned in subsection (1) to treat the amount as interest payable on a loan. If the relevant statutory conditions are met, the deemed interest qualifies for income tax relief under Chapter 1 of Part 8 of ITA.

1131. If subsection (2) deems there to be interest payable, *subsection (3)* determines when it is deemed to be paid.

Section 809BZE: Deemed interest if borrower is a partnership

1132. This section allows income tax relief to be given if there is a type 1 finance arrangement and the borrower is a partnership. It is based on section 774B(4) and (6) to (8) of ICTA. It has a similar structure to section 809BZD; see the commentary on that section.

Section 809BZF: Type 2 finance arrangement defined

1133. This section defines a form of arrangement, labelled a "type 2 finance arrangement", which falls within this legislation. It is based on section 774C(1) to (3) of ICTA.

1134. A type 2 finance arrangement works like this.

- Under the arrangement, a transferor disposes of an asset to a partnership.
- This partnership is one of which the transferor is a member immediately after that disposal – it does not matter whether it was a partner before the disposal.
- The partnership receives an advance from a lender.
- The accounts of the partnership record in accordance with GAAP for that period a financial liability in respect of the advance.
- There is a "relevant change" in relation to the partnership. Broadly speaking, a "relevant change" affects the lender. Either the lender (or a person connected with the lender) becomes a member of the partnership, or else there is a change in the profit share of the lender (or of a person connected with the lender). See section 809BZG.
- The share of the lender (or other person involved in the relevant change) in the profits of the partnership is determined (wholly or partly) by reference to payments in respect of the asset disposed of.
- In accordance with GAAP the payments reduce the amount of the financial liability.

1135. The lender's advance is thus made in the form of a contribution to the partnership and its profit share is such that payments are made to it which repay that contribution together with interest. Once the repayment with interest has been made it is likely that there are arrangements under which the lender ceases to be a member of the partnership or to share in the profits of it.

1136. If the relevant change would (but for section 809BZH) have the "relevant effect" (as defined in subsection (3) of that section), then that section negates the relevant effect.

1137. *Subsection (1)* provides that two conditions must be met if an arrangement is to be a type 2 finance arrangement.

1138. *Subsection (2)* specifies condition A, which concerns the terms of the arrangement. There are five tests in condition A, all of which must be passed if the condition is to be met.

1139. *Subsection (3)* specifies condition B, which is about accounting. To summarise, the payments mentioned in subsection (2)(e) must be, for accounting purposes, payments of principal rather than interest.

Section 809BZG: Relevant change in relation to partnership

1140. This section defines "relevant change". It is based on section 774C(2), (4), (6) and (7) of ICTA.

1141. This section applies for the purposes of this Chapter and, therefore, is used in defining both "type 2 finance arrangement" and "type 3 finance arrangement". See sections 809BZF(2)(d) and 809BZJ(2)(c).

1142. *Subsection (5)* defines "person involved in a relevant change" for the purposes of this Chapter.

Section 809BZH: Certain tax consequences not to have effect

1143. This section disapplies certain tax consequences of a type 2 finance arrangement if certain conditions are met. It is based on sections 774D(1) to (4) and 774G(2) of ICTA.

1144. Under *subsections (1)* and *(2)*, if – but for this section – a relevant change in relation to the partnership would have the "relevant effect", then it does not.

1145. *Subsection (3)* defines the "relevant effect". It specifies three alternative effects.

Section 809BZI: Deemed interest

1146. This section allows income tax relief to be given if there is a type 2 finance arrangement. It is based on section 774D(6), (8), (12) and (13) of ICTA.

1147. *Subsection (1)* lays down the conditions for this section to apply and introduces the person (namely, the transferor) eligible for income tax relief.

1148. *Subsection (2)* permits the transferor to treat the amount mentioned in subsection (1)(c) as interest payable on a loan. If the relevant statutory conditions are met, the deemed interest qualifies for income tax relief under Chapter 1 of Part 8 of ITA.

1149. *Subsection (3)* extends subsection (1)(c) to cover the case in which the transferor prepares accounts which, in accordance with GAAP, record an amount as a finance charge in respect of the advance (even though the partnership does not).

1150. If subsection (2) deems there to be interest payable, *subsection (4)* determines when it is deemed to be paid.

Section 809BZJ: Type 3 finance arrangement defined

1151. This section defines a form of arrangement, labelled a "type 3 finance arrangement", which falls within this legislation. It is based on section 774C(1), (4) and (5) of ICTA.

1152. A type 3 finance arrangement is similar to a type 2 finance arrangement. See the commentary on section 809BZF. But a type 3 finance arrangement deals with a case where an existing partnership enters into an arrangement under which the lender becomes a partner and shares in the profits to an extent sufficient to repay its contribution with interest. It differs from a type 2 finance arrangement in that (a) the partnership cannot be one formed for the purposes of the arrangement and (b) there is no reference to a transfer of an asset or a transferor.

1153. *Subsection (1)* provides that two conditions must be met if an arrangement is to be a type 3 finance arrangement.

1154. *Subsection (2)* specifies condition A, which concerns the terms of the arrangement. There are four tests in condition A, all of which must be passed if the condition is to be met.

1155. *Subsection (3)* specifies condition B, which is about accounting. To summarise, the payments mentioned in subsection (2)(d) must be, for accounting purposes, payments of principal rather than interest.

1156. Conditions A and B in this section are very similar to conditions A and B in section 809BZF (type 2 finance arrangement defined). For the provisions which differ, see sections 809BZF(2)(a) and (b) and 809BZJ(2)(a).

Section 809BZK: Certain tax consequences not to have effect

1157. This section disapplies certain tax consequences of a type 3 finance arrangement if certain conditions are met. It is based on sections 774D(1) to (4) and 774G(2) of ICTA.

1158. Under *subsections (1)* and *(4)*, if – but for this section – a relevant change in relation to the partnership would have the "relevant effect", then it does not.

1159. *Subsection (2)* defines the "relevant effect". It specifies three alternative effects. The "relevant effect" in subsection (2) is very similar to the "relevant effect" in section 809BZH(3), which makes corresponding provision for type 2 finance arrangements. But the "relevant effect" in subsection (2) is an effect on a "relevant member" (as defined in *subsection (3)*), whereas the "relevant effect" in section 809BZH(3) is an effect in relation to the transferor.

Section 809BZL: Deemed interest

1160. This section allows income tax relief to be given if there is a type 3 finance arrangement. It is based on section 774D(3), (9) and (11) to (13) of ICTA.

1161. *Subsection (1)* lays down the conditions for this section to apply and introduces the person (namely, a relevant member, as defined in *subsection (5)*) eligible for income tax relief.

1162. *Subsection (2)* permits the relevant member to treat the amount mentioned in subsection (1)(c) as interest payable on a loan. If the relevant statutory conditions are met, the deemed interest qualifies for income tax relief under Chapter 1 of Part 8 of ITA.

1163. *Subsection (3)* extends subsection (1)(c) to cover the case in which a relevant member prepares accounts which, in accordance with GAAP, record an amount as a finance charge in respect of the advance (even though the partnership does not). This relevant member need not be the relevant member mentioned in subsection (2).

1164. If subsection (2) deems there to be interest payable, *subsection (4)* determines when it is deemed to be paid.

Section 809BZM: Exceptions: preliminary

1165. This section introduces a group of sections which make exceptions to sections 809BZA to 809BZL. It is new.

Section 809BZN: Exceptions

1166. This section specifies exceptions to sections 809BZA to 809BZL. It is based on section 774E(1) to (6) of ICTA.

1167. *Subsection (6)* refers to Part 10A of ITA (alternative finance arrangements), which is inserted by Schedule 2 to this Act and is based on Chapter 5 of Part 2 of FA 2005.

Section 809BZO: Exceptions: relevant person

1168. This section defines "relevant person" for the purposes of section 809BZN. It is based on section 774E(7) of ICTA.

1169. Section 774E of ICTA contains priority rules which prevent sections 774B and 774D of ICTA applying if other tax enactments apply. The definition of "relevant

person" in section 774E(7) of ICTA interprets the references to a relevant person in section 774E(1) and (3) of ICTA. The wider the meaning of "relevant person", the more likely it is that section 774E(1) and (3) of ICTA disapply the anti-avoidance rules in sections 774B and 774D of ICTA.

1170. The only possibly uncertain element of the meaning of "relevant person" is the reference to a person connected with the borrower. Section 774G(4) of ICTA provides that the definition of "connected" in section 839 of ICTA applies "for the purposes of sections 774A to 774D". It is not clear whether the use of "connected" in section 774E(7) of ICTA can be said to be "for the purposes of sections 774A to 774D". But it is at any rate clear that section 774E only operates effectively as a priority rule if, at the very least, the reference in section 774E(7) of ICTA to persons connected with the borrower includes all persons who as a result of section 839 of ICTA would be treated as connected to the borrower.

1171. Whether the reference goes (or needs to go) wider than that group is open to argument. The inclusive definition in *subsection (5)* preserves the scope for making that argument while giving the maximum possible certainty.

Section 809BZP: Power to make further exceptions

1172. This section enables the Treasury to make further exceptions to sections 809BZA to 809BZL. It is based on section 774F of ICTA.

Sections 809BZQ to 809BZS: Accounts; arrangements; assets

1173. These interpretative sections are based on section 774G(1), (3) and (5) to (6) of ICTA.

Chapter 5C: Loan or credit transactions

Overview

1174. This Chapter is based on section 786 of ICTA. It corresponds to Chapter 3 of Part 16 of CTA 2010, which makes similar provision for corporation tax. It deals with certain loan or credit transactions.

Section 809CZA: Loan or credit transaction defined

1175. This section defines "loan or credit transaction" for the purposes of sections 809CZB and 809CZC. It is based on section 786(1) and (2) of ICTA.

1176. What is now section 786 of ICTA originally appeared as paragraph 12 of Schedule 13 to FA 1969. It is aimed at artificial arrangements for dressing up payments of interest in another form – for example, arrangements whereby X grants Y an interest-free loan and:

- Y grants X an annuity while the loan is outstanding; or
- Y transfers income-bearing assets to X on the understanding that X will return them when the loan is paid off.

1177. *Subsection (1)* states the scope of the definition.

1178. *Subsections (2)* and *(3)* focus on, respectively, the lending of money and the giving of credit.

1179. *Subsections (4)* and *(5)* supplement subsections (2) and (3) respectively.

Section 809CZB: Certain payments treated as yearly interest

1180. This section deems annual payments under loan or credit transactions to be yearly interest. It is based on section 786(3) and (3A) of ICTA.

Section 809CZC: Tax charged on income transferred

1181. This section imposes a charge to income tax in certain cases in which, under a loan or credit transaction, a person transfers income arising from property without a sale or transfer of the property. It is based on section 786(5) to (7) of ICTA.

1182. *Subsection (1)* states when this section applies.

1183. *Subsection (2)* imposes the charge to income tax, quantifies the amount taxable, and specifies the person liable.

1184. *Subsections (3)* to *(7)* are supplementary.

Schedule 6: UK representatives of non-UK residents

Overview

1185. This Schedule inserts new Chapters 2B and 2C in Part 14 of ITA and new Part 7A in TCGA, rewriting sections 126 and 127 of, and Schedule 23 to, FA 1995. Those provisions determine who is a UK representative of a non-UK resident and set out the liabilities and obligations of a UK representative in respect of the assessment, collection and recovery of income tax and capital gains tax chargeable on the non-UK resident.

1186. The new Chapter 2B of Part 14 of ITA rewrites sections 126 and 127 of FA 1995, so far as those sections determine whether a branch or agency in the United Kingdom through which a non-UK resident carries on a trade, profession or vocation is the UK representative of that non-UK resident in relation to the non-UK resident's income from the trade, profession or vocation so carried on.

1187. The new Chapter 2C of Part 14 of ITA rewrites Schedule 23 to FA 1995 so far as that Schedule imposes obligations on the UK representative in respect of the assessment, collection and recovery of income tax chargeable on the non-UK resident.

1188. Chapter 1 of the new Part 7A of TCGA is concerned with a person who, in accordance with Chapter 2B of Part 14 of ITA, is the UK representative of a non-UK resident in relation to the income of the non-UK resident from a trade, profession or vocation carried on through a branch or agency in the United Kingdom. It provides that the same person is also the UK representative of the non-UK resident in relation to chargeable gains accruing to the non-UK resident on the disposal of such assets referred to in section 10 of TCGA as relate to the trade, profession or vocation so carried on or to the branch or agency.

1189. Chapter 2 of the new Part 7A of TCGA rewrites Schedule 23 to FA 1995 so far as that Schedule imposes obligations on the UK representative in respect of the assessment, collection and recovery of capital gains tax chargeable on the non-UK resident under section 10 of TCGA.

Part 1: New Chapters 2B and 2C of Part 14 of ITA 2007

Chapter 2B: UK representative of non-UK resident

Overview

1190. This new Chapter of Part 14 of ITA determines the extent to which and the period for which a branch or agency in the United Kingdom through which a non-UK resident carries on a trade, profession or vocation is the UK representative of the non-UK resident in relation to the non-UK resident's income from the trade, profession or vocation.

1191. The Chapter does not apply if the non-UK resident is a company, except to the extent that the income accrues to the non-UK resident company in the capacity of trustee.

Section 835C: Overview of Chapter

1192. This section introduces the Chapter and provides a signpost to Chapter 2C. It is new.

Section 835D: Income tax chargeable on company's income: application

1193. This section provides that the Chapter does not apply to income tax chargeable on a company otherwise than as a trustee. It is based on section 126(10) of FA 1995.

1194. If a non-UK resident company trades in the United Kingdom through a permanent establishment here, it is chargeable to corporation tax on its "chargeable profits". Section 19 of CTA 2009 defines "chargeable profits" as the trading income arising directly or indirectly through or from the permanent establishment and the other income and chargeable gains referred to in section 19(3) attributable to the permanent establishment in accordance with sections 20 to 32 of that Act.

1195. Section 148 of, and Schedule 26 to, FA 2003, which determine what constitutes a permanent establishment of a company, are rewritten in Chapter 2 of Part 24 of CTA 2010. Section 150 of FA 2003, which imposes obligations and liabilities on a permanent establishment in the United Kingdom as the UK representative of the non-UK resident company in relation to the chargeable profits attributable to the permanent establishment, is rewritten in Chapter 6 of Part 22 of CTA 2010.

1196. If a non-UK resident company is chargeable to tax in respect of any other income from a United Kingdom source, it is charged to income tax and its liability is limited in accordance with Chapter 1 of Part 14 of ITA. The extent to which the non-UK resident company is chargeable to tax in respect of such income may be limited by the terms of any applicable DTA. But in any event the non-UK resident company will not have a UK representative in relation to any of that income to which it is beneficially entitled.

Section 835E: Branch or agency treated as UK representative

1197. This section provides that a branch or agency in the United Kingdom through which a non-UK resident carries on a trade, profession or vocation is the non-UK resident's UK representative in relation to the amount of any income of the non-UK resident from the trade, profession or vocation arising through or from the branch or agency. It is based on section 126(2), (3), (4) and (5) of FA 1995.

1198. *Subsection (2)* sets out the amounts of income of a non-UK resident in relation to which a branch or agent in the United Kingdom through which the non-UK resident carries on a trade, profession or vocation is the UK representative of the non-UK resident.

1199. If a branch or agency in the United Kingdom of a non-UK resident ceases to be the non-UK resident's branch or agency, the branch or agency nevertheless continues thereafter to be the UK representative of the non-UK resident in relation to the amounts of income of the non-UK resident mentioned in subsection (2). See *Rule 2* in *subsection (3)*.

1200. *Subsection (5)* introduces sections 835G to 835K which provide exceptions to the general rule in subsection (2) that a branch or agency in the United Kingdom through which a non-UK resident carries on a trade, profession or vocation is the UK representative of the non-UK resident in relation to the amounts of income mentioned in subsection (2).

Section 835F: Trade or profession carried on in partnership

1201. This section contains special rules to deal with the case where the non-UK resident carries on a trade or profession in partnership. It is based on section 126(6), (7) and (7A) of FA 1995.

1202. *Subsections (1)* and *(2)* provide that, if a partnership carries on a trade or profession in the United Kingdom through a branch or agency, the branch or agency is treated as the UK representative of any non-UK resident partner in relation to that partner's share of the United Kingdom profits.

1203. *Subsections (3)* and *(4)* provide that section 835E also applies if a partnership which includes both UK resident and non-UK resident members carries on a trade or profession in the United Kingdom, whether it does so itself or through a branch or agency.

1204. In this case, the partnership itself is treated as the UK representative of the non-UK resident partner in relation to that partner's share of the United Kingdom profits, notwithstanding that there may also be a branch or agency which is the non-UK resident partner's UK representative in respect of those profits. All the partners are as a consequence jointly liable for tax on the non-UK resident partner's share of the United Kingdom profits.

Section 835G: Agents

1205. This section provides that an agent in the United Kingdom who, when carrying out a transaction on behalf of a non-UK resident, does not act in the course of a regular agency for the non-UK resident is not the UK representative of the non-UK resident in respect of income of the non-UK resident arising from or as a result of the transaction. It is based on section 127(1) and (15) of FA 1995.

Section 835H: Brokers

1206. This section sets out the circumstances in which and the extent to which a broker in the United Kingdom through whom a non-UK resident carries on business is not the UK representative of the non-UK resident in respect of income of the non-UK resident arising from or as a result of transactions carried out through the broker. It is based on section 127(1), (2) and (15) of FA 1995.

1207. *Subsection (2)(b)* provides that the only circumstances in which the broker will not be a UK representative in respect of the income arising from or as a result of such a transaction is if the independent broker conditions in section 835L are met in relation to the transaction. See the commentary on section 835L.

Section 835I: Investment managers

1208. This section sets out the circumstances in which and the extent to which an investment manager in the United Kingdom through whom a non-UK resident carries on business is not the UK representative of the non-UK resident in respect of income of the non-UK resident arising from or as a result of transactions carried out through the investment manager. It is based on section 127(1), (3) and (15) of FA 1995.

1209. *Subsection (2)* provides that the only circumstances in which the investment manager will not be a UK representative in respect of the income arising from or as a result of such a transaction is if the transaction is an investment transaction and the independent investment manager conditions in section 835M are met in relation to the transaction. See the commentary on section 835M.

1210. "Investment manager" and "investment transaction" are defined in section 835S.

Section 835J: Persons acting under alternative finance arrangements

1211. This section provides that, if a non-UK resident is party to certain alternative finance arrangements, neither the counter-party to the arrangements nor any other person acting for the non-UK resident in relation to the arrangements is the UK representative in respect of amounts within section 835E(2) which consist of the non-UK resident's alternative finance return. It is based on section 127(1) of FA 1995.

Section 835K: Lloyd's agents

1212. This section provides that a person in the United Kingdom who has acted as the members' agent of a non-UK resident member of Lloyd's or as the managing agent of

the syndicate of which the non-UK resident was a member is not a UK representative of the non-UK resident in relation to income of the non-UK resident from the non-UK resident's underwriting business at Lloyd's. It is based on section 127(1) and (16) of FA 1995.

1213. The reference in section 127(16)(a) of FA 1995 to a corporate member of Lloyd's within the meaning of Chapter 5 of Part 4 of FA 1994 has been omitted. Corporate members of Lloyd's are chargeable to corporation tax. Following the amendment of section 126 of FA 1995 by FA 2003 so that it ceased to apply for corporation tax purposes, the reference is unnecessary. Similarly the provision in section 127(16)(b) of FA 1995 construing members' agent and managing agent (in relation to corporate members of Lloyd's) in accordance with section 230 of FA 1994 has been omitted.

Section 835L: The independent broker conditions

1214. This section sets out the conditions to be met if, in accordance with section 835H, a broker in the United Kingdom is not to be the UK representative of a non-UK resident in relation to a transaction carried out on behalf of the non-UK resident by the broker. It is based on section 127(2) of FA 1995.

Section 835M: The independent investment manager conditions

1215. This section sets out the conditions to be met if, in accordance with section 835I, an investment manager in the United Kingdom is not to be the UK representative of a non-UK resident in relation to an investment transaction carried out on behalf of the non-UK resident by the investment manager. It is based on section 127(3) and (18) of FA 1995.

Section 835N: Investment managers: the 20% rule

1216. This section sets out the "20% rule" for investment managers. It is based on section 127(4) of FA 1995.

1217. The 20% rule has two requirements. The first requirement is that the investment manager and connected persons must intend that any interest that they may have in the non-UK resident's "relevant disregarded income" will not exceed 20% of that income. The second requirement applies if that intention is not fulfilled. The 20% rule will continue to be met if the only reason why it is not fulfilled is because of matters outside the control of the investment manager or connected persons despite their having taken reasonable steps to mitigate the effect of those matters.

1218. In *subsection (2)* the term "relevant disregarded income" has been substituted for the term "relevant excluded income" which appears in section 127(4) of FA 1995. The same substitution was made in section 819(2) of ITA which is also based on section 127(4) of FA 1995.

Section 835O: Meaning of "qualifying period", "relevant disregarded income" and "beneficial entitlement"

1219. This section defines three terms used in section 835N (and also in sections 835P and 835Q, which modify the effect of section 835N in certain cases). It is based on section 127(5), (6) and (7) of FA 1995.

1220. *Subsection (3)* adopts the term "relevant disregarded income" in preference to the term "relevant excluded income" in section 127(5) of FA 1995. Section 821 of ITA, which is also based on section 127(5) of FA 1995, similarly adopts the term "relevant disregarded income".

1221. In subsection (3), a reference to "the total of the non-UK resident's income" has been substituted for the reference in section 127(5) of FA 1995 to "the aggregate of such of the profits and gains of the non-resident". As section 127(5)(b) of FA 1995 requires that this aggregate falls to be treated (apart from the 20% rule) as excluded income, the

reference to "such of the profits and gains" is limited by the source legislation to so much of the profits and gains as is income.

1222. In *subsection (3)(b)* the words:

"in relation to which the independent investment manager conditions are met, ignoring the requirements of the 20% rule

are the same as appear in section 821(4)(b) of ITA. They have the same effect as the words cross-referring to Chapter 1 of Part 14 of ITA which were substituted in section 127(5)(b) of FA 1995 by ITA.

Section 835P: Treatment of transactions where 20% rule not met

1223. This section provides that, if the 20% rule is not met but all the other independent investment manager conditions are met, only the income in relation to which the 20% rule is not met is not relevant disregarded income. It is based on section 127(8) of FA 1995.

Section 835Q: Application of 20% rule to collective investment schemes

1224. This section modifies the 20% rule where the non-UK resident is a participant in a collective investment scheme. It is based on section 127(9) to (11) and (17) of FA 1995.

1225. This section applies at the level of the scheme itself, treating it as if it were a non-UK resident company, see *subsection (3)*.

1226. A minor drafting change has been made in subsection (3) by substituting reference to a non-UK resident company for the reference in section 127(10)(a) of FA 1995 to a company resident outside the United Kingdom. This has been done to clarify the assumption and in this context does not change the effect of the law. The same minor drafting change was made in section 824(3) of ITA.

1227. *Subsection (4)* applies to a scheme which, if it was assumed to be a non-UK resident company, would *not* be regarded as carrying on a trade in the United Kingdom. The 20% rule is treated as satisfied in relation to such a scheme.

1228. *Subsection (5)* applies to a scheme which, if it was assumed to be a non-UK resident company, would be regarded as carrying on a trade in the United Kingdom. The 20% rule applies to such a scheme with the modifications in *subsection (6)*.

Section 835R: Supplementary provision

1229. This section explains when a person is to be regarded as carrying out a transaction on behalf of another and makes provision for a person part only of whose business is as a broker or investment manager. It is based on section 127(14) and (15) of FA 1995.

Section 835S: Interpretation of Chapter

1230. This section defines terms used in the Chapter. It is based on sections 126(8) and 127(12) and (13) of FA 1995.

1231. "Investment manager" is defined by cross-reference to section 827 of ITA in which the definition of that term is itself based on section 127(12) of FA 1995.

1232. The transactions currently specified as "investment transactions" are set out in the Investment Manager (Specified Transactions) Regulations 2009 made under the powers in section 127(12) and (13) of FA 1995 and which came into force on 12 May 2009.

1233. The provision of section 127(17) of FA 1995 that section 993 of ITA (connected persons) applies for the purposes of section 127 of FA 1995 has not been rewritten. It is not required, as section 1021(1) of ITA applies section 993 for the purposes of ITA unless otherwise indicated.

Chapter 2C: Income tax obligations and liabilities imposed on UK representatives

Overview

1234. This new Chapter of Part 14 of ITA sets out the obligations and liabilities of a UK representative of a non-UK resident carrying on a trade, profession or vocation through a branch or agency in the United Kingdom in relation to the assessment, collection and recovery of income tax on amounts in respect of which the branch or agency is treated as the UK representative of the non-UK resident under Chapter 2B.

Section 835T: Introduction to Chapter

1235. This section introduces the Chapter. It is based on paragraph 1(1) and (2) of Schedule 23 to FA 1995.

1236. *Subsection (1)* refers to the Chapter applying to "the enactments relating to income tax" and *subsection (3)* provides that "enactments" includes subordinate legislation. This is intended to have the same effect as the references in the source legislation to the Tax Acts and subordinate legislation under the Tax Acts, but is focussed more clearly on the income tax context of the Chapter.

Section 835U: Obligations and liabilities of UK representative

1237. This section treats the obligations and liabilities of the non-UK resident in respect of the income of the trade, profession or vocation carried on through the branch or agency in the United Kingdom as also being the obligations and liabilities of the UK representative. It is based on paragraphs 1(1) and 2 of Schedule 23 to FA 1995.

Section 835V: Exceptions: notices and information

1238. This section provides:

- for the circumstances in which an obligation or liability of a non-UK resident does not attach to the non-UK resident's UK representative (*subsections (1)* and *(2)*);
- that a UK representative which is an independent agent is only required to do what is practicable for the representative to do in discharging the representative's obligations to provide information (*subsections (3)* to *(5)*);
- that, if the UK representative has only provided so much information as it is practicable for the representative to provide, the non-UK resident is not discharged from the non-UK resident's obligations to provide the whole of the information (*subsection (6)*); and
- for the circumstances in which a non-UK resident is not bound by the mistakes of the UK representative (*subsection (7)*).

It is based on paragraphs 3 and 4 of Schedule 23 to FA 1995.

1239. In the definition of "information" in *subsection (8)*, the words "to the Commissioners for Her Majesty's Revenue and Customs or to any officer of Revenue and Customs" have been substituted for the words "to the Board or any officer of the Board" in the source legislation. This gives effect to section 50(1) and (2) of CRCA which require references to the terms in the source legislation to be taken as references to the substituted terms.

Section 835W: Exceptions: criminal offences and penalties etc

1240. This section sets out the circumstances in which the UK representative is not liable to be proceeded against for a criminal offence. It is based on paragraph 5 of Schedule 23 to FA 1995.

Section 835X: Indemnities

1241. This section sets out the circumstances in which an "independent agent" is entitled to be indemnified by the non-UK resident and to retain sums otherwise payable or accountable by the UK representative to the non-UK resident to meet the UK representative's liabilities under the Chapter. It is based on paragraph 6 of Schedule 23 to FA 1995.

Section 835Y: Meaning of "independent agent"

1242. This section defines "independent agent". It is based on paragraph 7 of Schedule 23 to FA 1995.

Part 2: New Part 7A of TCGA 1992

Part 7A: UK representatives of non-UK residents

Overview

1243. This new Part of TCGA provides, in Chapter 1, for determining who is a UK representative of a non-UK resident for the purposes of capital gains tax and, in Chapter 2, for the obligations and liabilities of such a UK representative.

Chapter 1: Treatment of branch or agency as UK representative of non-UK resident

Overview

1244. This Chapter determines the extent to which and the period for which a branch or agency in the United Kingdom through which a non-UK resident carries on a trade, profession or vocation is the UK representative of the non-UK resident in relation to gains in respect of which the non-UK resident is chargeable to capital gains tax under section 10 of TCGA.

Section 271A: Overview of Chapter

1245. This section introduces the Chapter and provides a signpost to Chapter 2. It is new.

Section 271B: Branch or agency treated as UK representative

1246. This section determines who is a UK representative of a non-UK resident in relation to amounts to which the non-UK resident is chargeable to capital gains tax under section 10. It is based on section 126(2), (3), (4) and (5) of FA 1995.

1247. The amounts are those chargeable by reference to a branch or agency in the United Kingdom through which the non-UK resident carries on a trade, profession or vocation. The person who is the UK representative in relation to those amounts is the branch or agency that, in accordance with Chapter 2B of Part 14 of ITA, is the UK representative of the non-UK resident in relation to income of the non-UK resident from the trade, profession or vocation arising through the branch or agency. See *subsections (1)* and *(2)*.

1248. As it is a condition of chargeability to capital gains tax under section 10 of TCGA that the non-UK resident is carrying on a trade, profession or vocation through a branch or agency in the United Kingdom, it must always be the case (if the non-UK resident is to incur chargeability under that section) that there is a person who, under Chapter 2B of Part 14 of ITA, is the non-UK resident's UK representative in relation to the non-UK resident's liabilities and obligations in respect of tax on income arising through the branch or agency. When considering whether a person is to be treated as a UK representative in relation to amounts of income for income tax purposes, it is immaterial whether or not there are in fact any amounts of income which are chargeable to income tax.

1249. If a branch or agency in the United Kingdom of a non-UK resident ceases to be the non-UK resident's branch or agency, the branch or agency nevertheless continues thereafter to be the UK representative of the non-UK resident in relation to the amounts for which the non-UK resident is chargeable mentioned in subsection (2). See *Rule 2* in *subsection (3)*.

Section 271C: Trade or profession carried on in partnership

1250. This section contains special rules to deal with the case where the non-UK resident carries on a trade or profession in partnership. It is based on section 126(6), (7) and (7A) of FA 1995.

1251. *Subsections (1)* and *(2)* provide that, if a partnership carries on a trade or profession in the United Kingdom through a branch or agency, the branch or agency is treated as the UK representative of any non-UK resident partner in relation to the share of the gains in respect of which that partner is chargeable under section 10 of TCGA.

1252. *Subsections (3)* and *(4)* provide that section 271B also applies if a partnership which includes both UK resident and non-UK resident members carries on a trade or profession in the United Kingdom, whether it does so itself or through a branch or agency.

1253. In this case, the partnership itself is treated as the UK representative of the non-UK resident partner in relation to the share of the gains in respect of which that partner is chargeable under section 10 of TCGA. This is so notwithstanding that there may also be a branch or agency which is the non-UK resident partner's UK representative in relation to those chargeable gains. All the partners are as a consequence jointly liable for capital gains tax on the gains of the non-UK resident partner.

Section 271D: Interpretation of Chapter

1254. This section defines two terms for the purposes of the Chapter. It is based on section 126(1) and (8) of FA 1995.

Chapter 2: Capital gains tax obligations and liabilities imposed on UK representatives

Overview

1255. This Chapter sets out the obligations and liabilities of a UK representative of a non-UK resident carrying on a trade, profession or vocation through a branch or agency in the United Kingdom in relation to the assessment, collection and recovery of capital gains tax in respect of amounts which are chargeable to tax under section 10 of TCGA by reference to that branch or agency.

Section 271E: Introduction to Chapter

1256. This section introduces the Chapter. It is based on paragraph 1(1) and (2) of Schedule 23 to FA 1995.

Section 271F: Obligations and liabilities of UK representative

1257. This section treats the obligations and liabilities of the non-UK resident in respect of amounts chargeable under section 10 of TCGA as also being the obligations and liabilities of the non-UK resident's UK representative in respect of the branch or agency to which those amounts relate. It is based on paragraphs 1(1) and 2 of Schedule 23 to FA 1995.

Section 271G: Exceptions: notices and information

1258. This section provides:

- for the circumstances in which an obligation or liability of a non-UK resident does not attach to the non-UK resident's UK representative (*subsections (1)* and *(2)*);
- that a UK representative which is an independent agent is only required to do what is practicable for the representative to do in discharging the representative's obligations to provide information (*subsections (3)* to *(5)*);
- that, if the UK representative has only provided so much information as it is practicable for the representative to provide, the non-UK resident is not discharged from the non-UK resident's obligations to provide the whole of the information (*subsection (6)*); and
- for the circumstances in which a non-UK resident is not bound by the mistakes of the UK representative (*subsection (7)*).

It is based on paragraphs 3 and 4 of Schedule 23 to FA 1995.

1259. In the definition of "information" in *subsection (8)*, the words "to the Commissioners for Her Majesty's Revenue and Customs or to any officer of Revenue and Customs" have been substituted for the words "to the Board or any officer of the Board" in the source legislation. This gives effect to section 50(1) and (2) of CRCA which require references to the terms in the source legislation to be taken as references to the substituted terms.

Section 271H: Exceptions: criminal offences and penalties etc

1260. This section sets out the circumstances in which the UK representative is not liable to be proceeded against for a criminal offence. It is based on paragraph 5 of Schedule 23 to FA 1995.

Section 271I: Indemnities

1261. This section sets out the circumstances in which an "independent agent" is entitled to be indemnified by the non-UK resident and to retain sums otherwise payable or accountable by the UK representative to the non-UK resident to meet the UK representative's liabilities under the Chapter. It is based on paragraph 6 of Schedule 23 to FA 1995.

Section 271J: Meaning of "non-UK resident" and "independent agent"

1262. This section defines "non-UK resident" and "independent agent". It is based on section 126(1) of, and paragraph 7 of Schedule 23 to, FA 1995.

Schedule 7: Miscellaneous relocations

Overview

1263. This Schedule relocates a number of provisions which have not been dealt with as part of the rewrite of income tax and corporation tax in earlier rewrite Acts, or of international matters in this Act. In the absence of any action to relocate them, these provisions would for the foreseeable future be left where they are currently located and this may not be helpful to users.

Part 1: Relocation of section 38 of, and Schedule 15 to, FA 1973

Overview

1264. This Part inserts sections 77B to 77K inclusive of TMA as Part 7A of that Act. The inserted sections rewrite provisions in section 38 of, and Schedule 15 to, FA 1973, which provide an information power and a power to assess a licensee in respect of activities carried on by non-UK resident sub-contractors on the UK continental shelf.

1265. A licensee is a person or company who has been granted a licence by the United Kingdom government to search for and exploit the oil reserves in Great Britain, under the United Kingdom territorial sea and on the United Kingdom continental shelf. An oil field may have more than one licensee. The licensees will in turn use the services of other businesses to assist in the development and exploitation of the oil reserves but those other businesses will not themselves be licensees.

1266. Where any of those other businesses is not resident in the United Kingdom, these provisions give HMRC the power to seek information from the licensee about payments made to those businesses, and to seek payment of tax due from those other businesses that is unpaid after 30 days.

Section 77B of TMA: Pre-conditions for serving secondary-liability notice

1267. This section sets out the conditions that must exist before HMRC can seek tax from a licensee that should have been paid by a person not resident in the United Kingdom. It is based on paragraphs 4(1) and 5 of Schedule 15 to FA 1973 and paragraph 5(1) of Schedule 2 to CTA 2009.

1268. Paragraph 5 of Schedule 4 to the Petroleum Act 1998 updated the reference to the Petroleum (Production) Act 1934 in paragraph 4(1) of Schedule 15 to FA 1973.

Section 77C of TMA: Secondary-liability notices

1269. This section sets out how a notice must be served on the licensee and how the amount due is to be calculated. It is based on paragraphs 4, 4A, 7A and 8A of Schedule 15 to FA 1973 and section 86(3) of F(No 2)A 1987.

1270. *Subsection (2)* sets out the basic calculation, but this may be modified in cases where an exemption certificate has been issued – see sections 77F and 77G of TMA, inserted by this Schedule.

1271. The source legislation refers to interest under section 86 of TMA. Interest under section 87A of TMA was added by section 86(3)(b) of F(No 2)A 1987.

1272. Certain cases involving contracts made before 23 March 1973 are excluded – see section 77E of TMA.

1273. References to the Board have been changed to references to an officer of Revenue and Customs in line with practice. See *Change 2* in Annex 1.

Section 77D of TMA: Payments under secondary-liability notices

1274. This section specifies that the tax that a licensee may be required to pay under these rules is subject to all the same provisions as if it were tax due and payable by them. It is based on paragraph 4(2) and (3) of Schedule 15 to FA 1973.

1275. *Subsection (2)* permits the licensee to recover any amounts paid from the person whose tax was unpaid. *Subsection (3)* prohibits a deduction in computing profits for any tax paid by the licensee under these provisions.

Section 77E of TMA: Exception for certain pre-1974 cases

1276. This section sets out an exception in respect of contracts made before 23 March 1973, subject to certain conditions. It is based on paragraph 6 of Schedule 15 to FA 1973.

Section 77F of TMA: Issue, cancellation and effect of exemption certificates

1277. This section sets out the circumstances under which HMRC can issue an exemption certificate to a licensee in respect of a named non-UK resident person. It is based on paragraphs 7, 8 and 8A of Schedule 15 to FA 1973.

1278. While the certificate is in force, the licensee is relieved of any liability in respect of tax unpaid by the named person.

1279. References to the Board have been changed to an officer of Revenue and Customs in line with practice. See *Change 2* in Annex 1.

Section 77G of TMA: Liabilities for assessments made after exemption certificate cancelled

1280. This section determines how the liability of the licensee is calculated where a certificate issued under section 77F has been in force and then cancelled. It is based on paragraphs 4(1), 5, 7, 7A and 8A of Schedule 15 to FA 1973, section 86(3) of F(No 2)A 1987 and paragraph 5(1) of Schedule 2 to CTA 2009.

1281. The essence of the calculation is that where tax is due for a period which is partly covered by an exemption certificate under section 77F, the tax is apportioned between the period when the certificate was in force and the period after it was revoked in proportion to the profits, gains and chargeable gains of the respective periods.

Section 77H of TMA: Calculations under sections 77C(3) and 77G(7)

1282. This section sets out further rules to cover situations where apportionments are required in calculating the tax due from the licensee. It is based on paragraph 8A of Schedule 15 to FA 1973.

1283. The reference to the Board has been changed to an officer of Revenue and Customs in line with practice. See *Change 2* in Annex 1.

Section 77I of TMA: Information

1284. This section sets out the power under which HMRC may seek information from a licensee in respect of transactions with and payments made to a non-UK resident person. It is based on paragraph 2 of Schedule 15 to FA 1973.

1285. The reference to "an inspector" has been revised to an officer of Revenue and Customs in line with changes made by CRCA.

Section 77J of TMA: Meaning of "related to a licence" as respects tax, or profits or gains

1286. This section provides a number of definitions that are necessary for these provisions. It is based on section 38(2) of, and paragraph 4(1) of Schedule 15 to, FA 1973.

Section 77K of TMA: Other definitions in Part 7A

1287. This section provides further interpretation. It is new.

Part 2: Relocation of section 24 of FA 1974

Overview

1288. This Part inserts sections 8(4A) and (4B), 8ZA and 15A of TMA. The inserted provisions are based on section 24 of FA 1974 (returns of persons treated as employees).

1289. Section 24 of FA 1974 contains provisions enabling information to be obtained about the foreign earnings of individuals working in the United Kingdom. The section covers both employers and employees.

Section 8(4A) and (4B) of TMA: Personal return

1290. Section 8(4A) and (4B) provide that a notice under section 8 of TMA may require certain employees to provide details of their general earnings.

1291. Section 8(4B) includes the reference to "general earnings" that was inserted in section 24 of FA 1974 by ITEPA. Section 7(3) of ITEPA defines "general earnings" for the purposes of the Income Tax Acts and the Corporation Tax Acts.

Section 8ZA of TMA: Interpretation of section 8(4A)

1292. Section 8ZA lists the conditions that must be met if a person is to be subject to section 8(4A).

1293. The section sets out a series of conditions to be met. This approach differs from the source which simply referred to the conditions in turn.

1294. *Subsection (4)* refers to a person who carries on a trade. The definition of trade for the purposes of TMA is to be found in section 118 of that Act. The definition of trade for the purposes of section 24 of FA 1974 is to be found in section 989 of ITA. The definitions differ in form but not in substance. It is therefore not considered that the change in definition constitutes a change in the law.

Section 15A of TMA: Non-resident's staff are UK client's employees for section 15 purposes

1295. Section 15A provides that any person for whose benefit certain employees perform duties may be required to provide details of those employees in response to a notice issued under section 15 of TMA.

1296. The format follows that established by section 8ZA and uses similar wording.

1297. The origin for the section is shown in part to be "drafting". This refers to *subsection (5)* which states that section 15 applies "only so as to enable P to be required to make a return …". The source stated that section 15 applied "only so as to require him to make a return …". The intention is to make clear that a return under section 15 is not mandatory simply because the conditions in *subsections (2)* to *(4)* of section 15A are met. A notice to make a return under section 15 asking for the names and addresses of the employees must first be issued.

Part 3: Relocation of section 42 of ICTA

Overview

1298. This Part inserts sections 302A, 302B and 302C into Chapter 4 of Part 3 of ITTOIA (profits of property businesses: lease premiums etc), which deal with determinations of amounts treated as receipts by that Chapter. They are based on section 42 of ICTA and take account of amendments to that section by paragraph 133 of Schedule 1 to the Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (SI 2009/56) which came into force on 1 April 2009.

Section 302A of ITTOIA: Appeals against proposed determinations

1299. Section 302A provides for determinations of amounts that may affect the liability of more than one person and for appeals against proposed determinations.

Section 302B of ITTOIA: Section 302A: supplementary

1300. Section 302B> supplements section 302A.

Section 302C of ITTOIA: Determination by tribunal

1301. Section 302C provides for objections to provisional determinations under section 302A to be determined by an independent tribunal.

Section 242 of CTA 2009: Determination by tribunal

1302. Wording in section 242(2) of CTA 2009 is aligned with that in section 302C(2) of ITTOIA.

Part 4: Relocation of section 84A of ICTA

Overview

1303. This Part inserts section 94A of ITTOIA and amends section 272 of that Act. Section 94A is based on section 84A of ICTA.

1304. Section 84A of ICTA (costs of establishing share option or profit sharing schemes) is rewritten for corporation tax purposes in section 999 of CTA 2009. It remains in force for income tax purposes as amended by Schedule 1 to CTA 2009.

1305. Section 84A(5) of ICTA is repealed without replacement as it is a spent commencement provision.

Section 94A of ITTOIA: Costs of setting up SAYE option scheme or CSOP scheme

1306. Section 94A allows a company a deduction for the costs of setting up an approved "save as you earn" (SAYE) option scheme or an approved "company share option plan" (CSOP) scheme. The deduction is allowed in calculating for income tax purposes the profits of a trade carried on by the company and, by virtue of section 272 of ITTOIA, of a property business carried on by it.

1307. Only a company may establish an SAYE option scheme or a CSOP scheme. In most cases the profits of the trade or property business carried on by the establishing company will be within the charge to corporation tax and section 999 of CTA 2009 will apply. But a scheme may be established by a non-UK resident company. The profits of a trade or property business carried on by such a company may be within the charge to income tax.

Section 272 of ITTOIA: Profits of a property business: application of trading income rules

1308. The amendment of section 272(2) to include reference to section 94A ensures that the deduction which was available under section 84A of ICTA (as applied by section 272(1) of ITTOIA) when calculating the profits of a property business is instead available under section 94A of ITTOIA (as applied by section 272(1) and (2) of that Act).

Part 5: Relocation of section 152 of ICTA

Overview

1309. This Part inserts sections 54A, 54B and 54C of TMA, which deal with taxable amounts of unemployment benefits. They are based on section 152 of ICTA.

1310. The new wording clarifies the relationship between an application to make a late objection and the making of the late objection itself. See *Change 14* in Annex 1.

Section 54A of TMA: No questioning in appeal of amounts of certain social security income

1311. Section 54A sets out the consequences of a notice being given of a taxable amount of jobseeker's allowance or income support.

Section 54B of TMA: Notifications of taxable amounts of certain social security income

1312. Section 54B sets out the process for notification and objection.

Section 54C of TMA: Interpretation of sections 54A and 54B: "appropriate officer" etc

1313. Section 54C provides definitions.

1314. The benefit known as "unemployment benefit" has been superseded by jobseeker's allowance, but the term has been retained in the rewritten legislation as it could be argued that it was used more generally to cover any form of unemployment benefit.

1315. Social security functions in Northern Ireland were transferred to the Department for Social Development by the Departments (Transfer and Assignment of Functions) Order (Northern Ireland) 1999 (SR(NI) 1999/481).

Part 6: Relocation of section 337A(2) of ICTA

Overview

1316. This Part inserts section 1301A of CTA 2009.

Section 1301A of CTA 2009: Restriction of deductions for interest

1317. This new section rewrites section 337A(2)(a) of ICTA, which allows no deduction for interest other than under the loan relationships provisions. Section 337A(2)(a) of ICTA was originally proposed to be repealed by CTA 2009, but was retained as it was considered necessary for any cases where "interest" might not fall within the loan relationships provisions. It is now rewritten within Chapter 1 of Part 20 (restriction of deductions) of CTA 2009 as the more appropriate location for such a provision.

Part 7: Relocation of section 475 of ICTA

Overview

1318. This Part inserts section 154A of ITTOIA, which deals with the restriction of a debit for borrowing costs if a non-UK resident holds 3½% War Loan for use in a business of banking, insurance or dealing in securities. It is based on section 475 of ICTA.

Section 154A of ITTOIA: Certain non-UK residents with interest on 3½% War Loan 1952 Or After

1319. Section 154A rewrites (for income tax) section 475 of ICTA which was overlooked in the preparation of ITTOIA. The corresponding corporation tax rule is in section 405 of CTA 2009.

1320. Interest on 3½% War Loan is paid without deduction of tax and is exempt in the hands of a non-UK resident. Because a person may borrow to acquire these securities a deduction may be made for the cost of the borrowing but without any taxable income. This section disallows the appropriate proportion of the costs of borrowing as a trade deduction.

1321. *Subsections (1), (3)* and *(4)* rewrite "3½% War Loan 1952 or after" as "3½% War Loan 1952 Or After" to prevent the reader attaching the words "or after" to any following words, thereby adopting the solution used in section 154(8)(b) of FA 1996.

Part 8: Relocation of section 700 of ICTA

Overview

1322. This Part inserts section 682A of ITTOIA, which deals with the power to obtain information from personal representatives and from beneficiaries in estates. It is based on section 700 of ICTA.

Section 682A of ITTOIA: Statements relating to estate income

1323. Section 682A enables a person to request statements relating to a deceased person's estate. It is based on section 700(5) and (6) of ICTA. The corresponding corporation tax provision is section 967 of CTA 2009.

1324. The last part of section 700(5) of ICTA that requires the statement to set out the matters in section 700(5)(a) to (b) separately for each part of estate income, in cases where different applicable rates apply, has not been rewritten. This requirement is considered unnecessary because the requirement to show amounts separately must occur in order for section 682A(1)(b) to be satisfied.

Part 9: Relocation of section 787 of ICTA

Chapter 7 of Part 13 of ITA: Avoidance involving obtaining tax relief for interest

1325. This Part inserts Chapter 7 in Part 13 of ITA consisting of section 809ZG (tax relief schemes and arrangements), which is based on section 787 of ICTA.

1326. Section 787 of ICTA originally appeared as section 38 of FA 1976. It is an anti-avoidance provision directed against schemes designed to generate tax relief for interest.

1327. Section 443 of CTA 2009 rewrote section 787 of ICTA for the purposes of corporation tax, and Schedule 1 to that Act confined section 787 to income tax.

1328. Most of the income tax provisions in Part 17 of ICTA (tax avoidance) have been rewritten in ITA or are rewritten in that Act by Schedules 4 and 5 to this Act. For the convenience of the user, section 787 of ICTA is rewritten as a new section in Part 13 of ITA (tax avoidance).

Part 10: Relocation of sections 130 to 132 of FA 1988

Overview

1329. This Part inserts sections 109B to 109F of TMA which are based on sections 130 to 132 of FA 1988. The sections provide for securing payment of outstanding tax when a company ceases to be resident in the United Kingdom.

Section 109B of TMA: Provisions for securing payment by company of outstanding tax

1330. This section sets out the conditions respecting payment of outstanding tax that must be met before a company ceases to be resident in the United Kingdom. It is based on section 130(1) to (5) of FA 1988.

1331. The reference to "Treasury consent" in section 130(1) of FA 1988 (and hence also the definition in section 130(6)) has not been rewritten as it is obsolete.

Section 109C of TMA: Penalty for company's failure to comply with section 109B

1332. This section charges a penalty if a company ceases to be resident in the United Kingdom before each of the conditions in section 109B of TMA is met. It is based on section 131(1) of FA 1988.

Section 109D of TMA: Penalty for other persons if company fails to comply with section 109B

1333. This section charges a penalty on persons other than the company in certain circumstances where a company ceases to be resident in the United Kingdom before each of the conditions in section 109B of TMA is met. It is based on section 131(2) to (5) of FA 1988.

Section 109E of TMA: Liability of other persons for unpaid tax

1334. This section provides for persons other than the migrating company to be liable for unpaid tax where tax payable by that company is not paid within a specified time. It is based on section 132 of FA 1988.

Section 109F of TMA: Interpretation of sections 109B to 109E

1335. This section is based on sections 130(7) and (8) and 131(6) of FA 1988 and paragraph 5 of Schedule 7 to ITEPA.

Part 11: Relocation of section 151 of FA 1989

Section 30AA of TMA: Assessing income tax on trustees and personal representatives

1336. This Part inserts section 30AA of TMA which is based on section 151 of FA 1989.

1337. Section 151 of FA 1989 is the only one of a number of management provisions introduced by that Act which did not take effect by way of amendment of TMA. For the convenience of users, it is now relocated in TMA.

1338. As a consequence of the amendments made to section 151(2) of FA 1989 by paragraph 281(2) and (3) of Schedule 1 to ITA, paragraph 91 of Schedule 2 to ITTOIA is spent, and is accordingly omitted. Those amendments removed from section 151(2) of FA 1989 the two references to gains whose interpretation was the subject-matter of paragraph 91 of Schedule 2 to ITTOIA.

Part 12: Relocation of Schedule 12 to F(No 2)A 1992 so far as applying for income tax purposes

Overview

1339. This Part inserts Chapter 3A of Part 14 of ITA (Banks etc in compulsory liquidation). It is based on Schedule 12 to F(No 2)A 1992.

1340. The source provisions applied for both income tax and corporation tax purposes. The corporation tax aspects are rewritten in Chapter 6 of Part 13 of CTA 2010. The income tax aspects are rewritten in ITA.

1341. The pattern of sections in ITA closely follows that in CTA 2010.

Section 837A of ITA: Overview of Chapter

1342. This section gives an overview of the Chapter. It is new.

Section 837B of ITA: Application of Chapter

1343. This section sets out the conditions that a company must meet in order for the Chapter to apply. It is based on paragraph 1 of Schedule 12 to F(No 2)A 1992.

1344. *Subsection (6)* refers to an EEA firm with permission under paragraph 15 of Schedule 3 to the Financial Services and Markets Act 2000. The source qualified this by adding "(as a result of qualifying for authorisation by virtue of paragraph 12 of that Schedule)". This qualification is considered unnecessary as the only way in which permission under paragraph 15 may be given is by virtue of paragraph 12. These words are therefore repealed without replacement.

Section 837C of ITA: Charge to income tax on winding up receipts

1345. This section charges amounts received during the winding up period. It is based on paragraph 3(1), (2) and (3) of Schedule 12 to F(No 2)A 1992.

Section 837D of ITA: Transfer of rights to payment

1346. This section charges sums received in respect of transfers of rights as if those sums were winding up receipts. It is based on paragraph 5 of Schedule 12 to F(No 2)A 1992.

1347. In the case of a non-arm's length transaction the source provides that market value is to be substituted for the consideration received. However, the tax charge is based on amounts received. In relation to the deemed amounts arising from non-arm's length transactions the source, therefore, states that "references … to sums received shall be construed accordingly."

1348. Although the meaning is not in doubt the source is not as clear as it might have been. In the rewritten section a slightly different approach is adopted by explicitly treating the value of transferred rights as winding up receipts.

Section 837E of ITA: Allowable deductions

1349. This section provides rules for setting allowable deductions against winding up receipts. It is based on paragraph 4 of Schedule 12 to F(No 2)A 1992.

Section 837F of ITA: Election to carry back

1350. This section gives a company the right to elect to carry back a winding up receipt to the date that the business ceased. It is based on paragraph 6 of Schedule 12 to F(No 2)A 1992.

Section 837G of ITA: Relationship of Chapter with other income tax provisions

1351. This section gives priority to a charge under this Chapter over potential charges arising under other provisions. It is based on paragraph 3(4) and (5) of Schedule 12 to F(No 2)A 1992.

Section 837H of ITA: Interpretation of Chapter

1352. This section sets out a number of definitions and interpretations relevant to the Chapter. It is based on paragraph 2 of Schedule 12 to F(No 2)A 1992.

Part 13: Relocation of section 200 of FA 1996 so far as applying for income tax purposes

Overview

1353. This Part inserts section 835B of ITA. It is based on section 200 of FA 1996.

Section 835B of ITA: Domicile for income tax purposes of overseas electors

1354. Section 835B specifies that action taken by an individual to register for or vote in United Kingdom elections shall not affect the question of the individual's domicile for the purposes of income tax unless the individual chooses that it should affect the question.

1355. Section 200 of FA 1996 continues to apply for capital gains tax and inheritance tax purposes.

Part 14: Relocation of section 36 of FA 1998 and section 111 of FA 2009

Overview

1356. This Part inserts new sections 59F to 59H of TMA. It is based on section 36 of FA 1998 and section 111 of FA 2009.

Section 59F of TMA: Arrangements for paying tax on behalf of group members

1357. This section provides for arrangements to be made between members of a group for one of the members to discharge one or more of the other members' corporation tax liabilities. The reference to "the Board" is replaced with a reference to "an officer of Revenue and Customs". See *Change 2* in Annex 1.

Sections 59G and 59H of TMA: Managed payment plans

1358. These sections make provision for taxpayers to enter into managed payment plans. Under managed payment plans, taxpayers agree to pay income tax, capital gains tax or corporation tax due by instalments balanced equally before and after the normal due dates. While in the plan, taxpayers are protected from the interest and penalty consequences on payments made after the normal due date.

Part 15: Relocation of section 118 of FA 1998

Overview

1359. This Part inserts sections 43E and 43F of TMA, which cover the making of claims for income tax purposes by means of electronic communications. It is based on section 118 of FA 1998 and paragraph 1(1) of Schedule 17 to the Communications Act 2003.

Section 43E of TMA: Making of income tax claims by electronic communications etc

1360. Section 43E of TMA gives the Commissioners for HMRC the power to specify that certain claims made by individuals for income tax purposes may be made by an electronic communications service. It sets out the scope of the Commissioners' authority and certain restrictions.

Section 43F of TMA: Effect of directions under section 43E

1361. Section 43F of TMA sets out the effect of directions under section 43E.

Part 16: Relocation of section 144 of FA 2000

Overview

1362. This Part inserts section 106A of TMA. It is based on section 144 of FA 2000, sections 281(7) and 282(2) and (3) of the Criminal Justice Act 2003 and section 45(1), (2), (6) and (7) of the Criminal Proceedings etc (Reform) (Scotland) Act 2007.

1363. Section 144 of FA 2000 is one of a number of similar sections that create an offence of fraudulent evasion in relation to taxes and duties for which HMRC has responsibility. Section 144 relates to the fraudulent evasion of income tax.

1364. The offence under section 144 is a so-called "either way" offence. That is, it can be tried on indictment in the Crown Court or summarily in the Magistrates Court.

Section 106A of TMA: Offence of fraudulent evasion of income tax

1365. The section defines the offence of fraudulent evasion of income tax and sets out the possible penalties for such an offence.

1366. *Subsection (3)* provides that the penalty under summary conviction may be different in England and Wales, Northern Ireland and Scotland. The maximum period of imprisonment in England and Wales is currently six months. This will, however, increase to 12 months when a commencement order in relation to section 282(3) of the Criminal Justice Act 2003 is passed. The maximum penalty in Northern Ireland is six months as in the source legislation as enacted. The Criminal Justice Act 2003 does not apply in Northern Ireland. The maximum penalty in Scotland is 12 months. It was originally six months in line with the source legislation as enacted. Section 45 of the Criminal Proceedings etc (Reform) (Scotland) Act 2007 has, however, extended the maximum penalty for such offences to 12 months.

Part 17: Relocation of section 199 of FA 2003

Overview

1367. This Part inserts sections 18B to 18E of TMA. They are based on section 199 of FA 2003.

1368. Section 199 of FA 2003 enables the Treasury to make regulations to counter cross-border tax evasion by individuals on their savings income.

1369. Regulations have been made under the source legislation by the Reporting of Savings Income Information Regulations 2003 (SI 2003/3297). The regulations have been subsequently amended by the Reporting of Savings Income Information (Amendment) Regulations 2005 and 2006 (SIs 2005/1539 and 2006/3286).

1370. This Part also provides for the omission from the Table in section 98 of TMA of the entry for regulations under section 199 of FA 2003. That entry is not rewritten elsewhere in the Table since regulations under the new section 18B are covered by the existing entry in the Table for Part 3 of TMA.

Section 18B of TMA: Savings income; regulations about European and international aspects

1371. This section sets out the circumstances under which the Treasury may make regulations to ensure the effective taxation of savings income. It is based on section 199(1), (9), (12) and (13) of FA 2003.

Section 18C of TMA: Regulations under section 18B: provision about "paying agents"

1372. This section enlarges on the scope of regulations under section 18B insofar as they may relate to paying agents. It is based on section 199(2), (3) and (7) to (10) of FA 2003.

Section 18D of TMA: Content of regulations under section 18B: supplementary provision

1373. This section specifies a number of additional provisions that are within the scope of regulations under section 18B. It is based on section 199(4) to (6) and (11) of FA 2003.

Section 18E of TMA: Interpretation of sections 18B to 18D: "prescribed" etc

1374. This section provides definitions of terms used in sections 18B to 18D. It is based on section 199(14) of FA 2003.

Part 18: Relocation of section 61 of F(No 2)A 2005

Overview

1375. This Part inserts paragraphs 87A, 87B and 87C of Schedule 18 to FA 1998. They are based on section 61 of F(No 2)A 2005.

1376. These provisions ensure continuity of application of the corporation tax administrative and collection provisions in Schedule 18 to FA 1998 in the case of a Societas Europaea (SE).

Paragraph 87A of Schedule 18 to FA 1998: Company ceasing to be UK resident on formation of SE by merger

1377. Paragraph 87A applies where a company ceases to be UK resident as a result of the formation of an SE by merger. It ensures that all matters dealt with by Schedule 18 to FA 1998 in respect of the company before the merger can still be dealt with.

Paragraph 87B of Schedule 18 to FA 1998: SE ceasing to be UK resident

1378. Paragraph 87B applies where an existing SE transfers its registered office out of the UK – the SE is treated as still being UK resident for the purposes of dealing with matters under Schedule 18 to FA 1998 that arose or accrued before the change of registered office.

Paragraph 87C of Schedule 18 to FA 1998: Meaning of SE

1379. Paragraph 87C provides a definition.

Part 19: Relocation of paragraph 13 of Schedule 13 to FA 2007

Overview

1380. This Part inserts sections 925A to 925F of ITA, which are based on paragraphs 13 to 15 of Schedule 13 to FA 2007, and consequentially amends section 926 of ITA.

1381. Schedule 13 to FA 2007 made provision for the taxation of sale and repurchase of securities, and Schedule 14 to that Act repealed many of the corporation tax provisions for such transactions in Part 17 of ICTA. Chapter 10 of Part 6 of CTA 2009 (relationships treated as loan relationships etc: repos) rewrote the provisions of Schedule 13 to FA 2007 which applied to corporation tax on income.

1382. Paragraph 13 of Schedule 13 to FA 2007 provides for income tax to be deducted at source in certain cases involving the sale and repurchase of securities. It applies provisions of Chapter 9 of Part 15 of ITA, which requires income tax to be deducted at source in certain cases involving manufactured payments.

1383. Part 15 of ITA rewrote all the primary legislation on the deduction of income tax at source which had been enacted before FA 2007. For the convenience of the user, paragraph 13 of Schedule 13 to FA 2007 and the relevant supplementary provisions of paragraphs 14 and 15 of that Schedule are rewritten as a sequence of new sections in Chapter 9 of Part 15 of ITA, and paragraph 13 of that Schedule is repealed.

Section 925A of ITA: Creditor repos

1384. This section deems a company which has a creditor repo to make manufactured payments. It is based on paragraphs 13(1) and 14(6) and (7) of Schedule 13 to FA 2007.

1385. In paragraph 13(1)(a) of Schedule 13 to FA 2007, "the lender" refers to "a company" in the opening words of paragraph 13(1). Section 925A(1) brings this out.

Section 925B of ITA: Debtor repos

1386. This section deems a company which has a debtor repo to receive manufactured payments. It is based on paragraphs 13(2) and (4) and 14(6) and (7) of Schedule 13 to FA 2007.

1387. In paragraph 13(2)(a) of Schedule 13 to FA 2007, "the borrower" refers to "a company" in the opening words of paragraph 13(2). Section 925B(1) brings this out.

Section 925C of ITA: Actual payments ignored if section 925A or 925B applies

1388. This section is a priority rule. It is based on paragraph 13(3) of Schedule 13 to FA 2007.

1389. In a case in which a repo involves an actual manufactured payment (which would be within Chapter 9 of Part 15 of ITA anyway), the actual manufactured payment is deemed not to have been made, and section 925A or 925B applies.

Section 925D of ITA: Power to modify repo sections

1390. This section gives the Treasury the power to modify sections 925A to 925F of ITA in relation to (a) "non-standard" repo cases (see section 925E), (b) cases involving redemption arrangements or (c) both. It is based on paragraph 15(1), (6), (7) and (9) of Schedule 13 to FA 2007.

1391. The effect of paragraph 15(7)(a) of Schedule 13 to FA 2007 is replicated by the existing section 927 of ITA, which applies to this section.

Section 925E of ITA: Cases where section 925D applies: non-standard repos

1392. This section supplements section 925D. It is based on paragraph 15(2) to (5) and (9) of Schedule 13 to FA 2007.

1393. *Subsection (1)* does not rewrite "in relation to the repo" in paragraph 15(2)(c) of Schedule 13 to FA 2007. Those words are otiose, because the wording of the conditions in subsection (1) ties them fully to the factual situation.

Section 925F of ITA: Interpretation of the repo sections

1394. This section is interpretative. It is based on paragraph 14(1), (3), (4) and (5) of Schedule 13 to FA 2007.

Section 926 of ITA: Interpretation of Chapter

1395. *Subsection (1A)* is interpretative. It is new. In the Chapter into which sections 925A to 925F are inserted, words and phrases have the same meaning as in Chapter 2 of Part 11 of ITA: see section 926(1) of ITA. The source legislation rewritten by those new sections is not subject to that interpretative rule. It therefore follows that the rule would need to be disapplied in relation to the new sections if it affected how they were to be read. As it seems possible to argue that the rule may have some limited effect on how the new sections are to be read, subsection (1A) is inserted to clarify the position.

Schedule 8: Minor and consequential amendments

Overview

1396. This Schedule makes minor and consequential amendments.

1397. The commentary on this Schedule makes specific points about certain of the amendments made.

Part 1: Double taxation relief

Section 12B of TMA: Records to be kept for purposes of returns

1398. Section 12B(4A)(c)(ii) of TMA refers to "a relief to which section 788(5) of [ICTA] applies". This is rewritten in new section 12B(4B) of TMA, which reflects the interpretation of that expression adopted in the rewrite of section 790(10A)(d) of ICTA. See the commentary on section 17.

Section 24 of TMA: Power to obtain information as to income from securities

1399. This Schedule inserts section 24(3ZA) and (3ZB) of TMA. These subsections restrict the right of banks under section 24(3) not to disclose certain information about income from securities, when the beneficial owner of the income is non-UK resident and protected by a DTA. They are based on section 816(3) of ICTA. Section 816(3) of ICTA is not relevant to capital gains tax or to PRT.

Section 43D of TMA: Claims for double taxation relief in relation to petroleum revenue tax

1400. This section concerns claims for DTR in relation to PRT. It is based on section 194(4) of FA 1993, which refers to sections 42 and 43 of TMA. But the effect of section 194(4) of FA 1993 is to apply only certain elements of sections 42 and 43 of TMA. It is those elements, as applied by section 194(4) of FA 1993, which are rewritten to the new section 43D of TMA.

1401. The first limb of section 42(8) of TMA says that a claim may be made on behalf of an incapacitated person by the person's trustee, guardian, tutor or curator. Yet it may be the case that the terms under which the trustee etc is appointed confer power on the trustee etc to make a claim on the incapacitated person's behalf. If they do, section 42(8) is merely declaratory. If they do not, section 42(8) would not be interpreted as overriding the limitations on their powers, given that those powers arise under carefully constructed statutory codes for the protection of persons without capacity.

1402. It is in any case extremely unlikely that a claim for DTR in relation to PRT would fall to be made by or on behalf of an individual, even if the individual had legal capacity. In addition, with the exception of guardians in Scotland, statutory representatives of incapacitated persons no longer include trustees, guardians, tutors or curators. The first limb of section 42(8) of TMA is therefore not rewritten in this section.

1403. The second limb of section 42(8) of TMA is also not rewritten in this section. It has no application to claims under section 194(4) of FA 1993, because it is about persons charged under Part 8 of TMA. Part 8 of TMA did not extend to PRT and has been repealed.

1404. *Subsection (4)* modifies the application of paragraph 2A(4) of Schedule 1A to TMA.

Section 790 of ICTA: Unilateral relief

1405. Section 790(5)(c)(iii) of ICTA is spent, because it refers to section 802(1) of that Act, which has been repealed. It is repealed without replacement.

Sections 806A to 806K of ICTA: Foreign dividends: onshore pooling, utilisation of eligible unrelieved foreign tax and branches or agencies in the United Kingdom of persons resident elsewhere

1406. Paragraph 9 of Schedule 14 to FA 2009 repealed sections 806A to 806K of ICTA with effect in relation to distributions paid on or after 1 July 2009. Sections 806A to 806J of ICTA apply solely for corporation tax purposes. Sections 806A to 806J apply in relation to distributions paid before 1 July 2009 in accounting periods which begin before that date and end on or after 1 April 2010. This Act has effect, for corporation tax purposes, for such accounting periods. Accordingly, this Schedule amends sections 806A to 806J of ICTA as appropriate.

1407. Section 806K of ICTA applies for income tax purposes and (if section 277(1) of TCGA had any practical application to section 806K) for capital gains tax purposes, and section 806K(1) also applies for corporation tax purposes. Section 806K therefore does not apply for income tax purposes or capital gains tax purposes to any tax years for which this Act has effect. Although, as explained in the previous paragraph, section 806K(1) of ICTA applies for corporation tax purposes for certain accounting periods for which this Act has effect, there is no need for this Schedule to amend that subsection. Accordingly, this Schedule does not amend section 806K of ICTA.

Section 807 of ICTA: Sale of securities with or without accrued interest

1408. Following section 679(3) of ITA, section 807(3) of ICTA is redundant. It is repealed without replacement.

Sections 812 to 814 of ICTA: Withdrawal of right to tax credit of certain non-resident companies connected with unitary states

1409. Sections 812 to 814 of ICTA are not rewritten, as they are obsolete. This Schedule consequentially amends them, because their repeal would be outside the scope of this Act. HMRC will refer sections 812 to 814 of ICTA to the Law Commission for inclusion in a future Statute Law (Repeals) Bill.

Section 816 of ICTA: Disclosure of information

1410. Section 816(4) of ICTA is repealed without replacement, as it is spent.

Schedule 26 to ICTA: Controlled foreign companies: reliefs against liability for tax in respect of chargeable profits

1411. Paragraph 4 of Schedule 26 to ICTA is concerned with the charge on UK resident companies under section 747(4)(a) of ICTA. This Schedule substitutes, in paragraph 4(4) of that Schedule, references to sections 36, 40 and 42 of this Act. These sections limit DTR by way of credit against, respectively, income tax, capital gains tax and corporation tax.

1412. The reference to section 36 (which is based on section 796 of ICTA) is needed because the calculations under paragraph 4 of Schedule 26 to ICTA take account of participators in the controlled foreign company who are income tax payers.

1413. The reference to section 40 reflects the application of section 277(1) of TCGA to section 796 of ICTA. If this reference is needed, its omission would change the law to the taxpayer's disadvantage. This reference is therefore included out of caution.

Section 194 of FA 1993: DTR in relation to PRT

1414. Section 194(2) of FA 1993 is a spent transitional. It is repealed without replacement.

Schedule 18 to FA 1998: Company tax returns, assessments and related matters

1415. Paragraph 22(3)(c)(ii) of Schedule 18 to FA 1998 refers to "a relief to which section 788(5) of [ICTA] applies". This is rewritten in new paragraph 22(4) of that Schedule, which reflects the interpretation of that expression adopted in the rewrite of section 790(10A)(d) of ICTA. See the commentary on section 17.

Section 115 of FA 2004: Supplementary

1416. This Act repeals section 115(4) of FA 2004 without replacement. This provision is redundant since paragraph 3 of Schedule 4 to CRCA removed from section 10 of the Exchequer and Audit Department Act 1866 the rule that allowed HMRC to deduct money for tax repayments etc before paying their receipts into the Consolidated Fund. That rule is now to be found in section 44 of CRCA and is in sufficiently general terms to cover repayments under Part 3 of this Act (double taxation relief for special withholding tax).

Section 527 of ITA: charitable trusts: exemption from charges under provisions to which section 1016 of ITA applies

1417. Section 527(2)(b) of ITA refers to section 804 of ICTA. It is drafted on the basis that section 804(5B)(a) of ICTA refers to an amount which is chargeable to income tax. But, following its amendment by ITA, section 804(5B)(a) of ICTA does not refer to an amount which is chargeable to income tax.

1418. Section 527(2)(b) of ITA purports to remove section 804 of ICTA from the scope of section 527(1) of ITA. But section 804 of ICTA is no longer within the scope of section 527(1) in the first place. Section 527(2)(b) is therefore otiose. It is repealed without replacement.

Section 1026 of ITA: meaning of "non-qualifying income" for the purposes of section 1025 of ITA (meaning of "modified net income")

1419. Section 1026(g) of ITA refers to section 804 of ICTA. It is drafted on the basis that section 804(5B)(a) of ICTA deems a person to receive an amount. But, following its amendment by ITA, section 804(5B)(a) does not deem a person to receive an amount.

1420. Also, section 1026(g) of ITA is drafted on the basis that the income tax liability calculated under section 23 of ITA includes the income tax liability under section 804(5B)(a) of ICTA. But that is not the case. The liability under section 804(5B)(a) is mentioned in section 32 of ITA and is therefore (by virtue of section 22(2) of that Act) outside section 23 of that Act.

1421. Section 1026(g) is therefore otiose. It is repealed without replacement.

Section 793 of CTA 2009: Intangible fixed assets: reallocation of degrouping charge within group and recovery: further requirements about elections under section 793

1422. Section 793(3) of CTA 2009 stipulates that an election under section 792 of that Act can only be made if at the relevant time (a) company B carried on a trade in the United Kingdom through a permanent establishment, and (b) it was not exempt from corporation tax in respect of the income or chargeable gains of that permanent establishment because of arrangements under Part 18 of ICTA (DTR).

1423. Section 790(3) of ICTA (unilateral relief), in Part 18 of that Act, hypothesises notional arrangements for DTR. But section 790(3) of ICTA refers specifically to relief by way of credit under Chapter 2 of Part 18 of that Act, and section 793(3) of CTA 2009 refers specifically to exemption from corporation tax. Accordingly, section 793(3) of CTA 2009 does not refer by implication to section 790(3) of ICTA. For the sake of precision, therefore, this Schedule, in amending section 793(3) of CTA 2009,

substitutes a reference to arrangements that have effect under section 2(1) (double taxation arrangements).

Section 931H of CTA 2009: Dividends derived from transactions not designed to reduce tax

Section 931J of CTA 2009: Schemes involving manipulation of controlled company rules

1424. This Schedule amends sections 931H(5) and 931J(7) of CTA 2009 by replacing the reference to Part 18 of ICTA with a reference to Part 2 of this Act. Sections 812 to 814 in Part 18 of ICTA have never been brought into force and are neither rewritten nor repealed. If those sections were in force, it is possible that dividends to which they would apply might have been deemed by section 931H(5) or 931J(7) of CTA 2009 to have been split into two separate dividends. As sections 812 to 814 of ICTA would, if in force, operate by restricting the benefits of tax credits given in respect of dividends, it makes no difference whether they would operate on the actual dividend or the two deemed dividends: either way, the total tax credit affected would be the same. Accordingly, no change results from sections 931H(5) and 931J(7) of CTA 2009 no longer potentially applying for the purposes of the uncommenced sections 812 to 814 of ICTA.

Part 9: Sale and lease-back etc

Sections 779(13)(f), 781(4)(e), 781(5)(a) and 785 of ICTA: References to "woodlands"

1425. Following the repeal of Schedule B in 1988, the references to woodlands in sections 779(13)(f), 781(4)(e), 781(5)(a) and 785 of ICTA are obsolete. They are repealed without replacement.

Section 781(5) of ICTA: Assets leased to traders and others: cessation of trade

1426. Following the introduction of Income Tax Self Assessment, section 781(5) of ICTA is spent. It catered for cases in which, under the superseded rules about a trade ceasing, there could be periods whose profits were not brought into account in assessing the amounts on which income tax was charged. It is repealed without replacement.

Broadcasting Act 1996, Greater London Authority Act 1999 and Transport Act 2000

1427. Schedule 7 to the Broadcasting Act 1996 contains taxation provisions relating to transfer schemes under section 131 of that Act. Paragraphs 22 to 24 of that Schedule relate to the sale and lease-back provisions of ICTA which are rewritten for corporation tax purposes in Part 19 of CTA 2010 and for income tax purposes in Part 12A of ITA by Schedule 4 to this Act. Although it appears that paragraphs 22 to 24 primarily relate to the sale and lease-back provisions as applying for corporation tax purposes, they are not expressly limited to corporation tax.

1428. As a result, and because Schedule 6 to the Broadcasting Act 1996 authorises the inclusion in a transfer scheme of a range of provision so wide as to make it difficult to conclude that paragraphs 22 to 24 could never be relevant for income tax purposes, this Part of this Schedule inserts into paragraphs 22 to 24 references to the sale and lease-back provisions as rewritten for income tax purposes in Part 12A of ITA by Schedule 4 to this Act. This complements the insertion of references to Part 19 of CTA 2010 by Schedule 1 to that Act and, although it may represent an unnecessarily cautious approach, has the merit of ensuring that taxpayers within the charge to income tax are not unintentionally disadvantaged.

1429. The position may be similar for the amendments made by this Part of this Schedule in the Greater London Authority Act 1999 and the Transport 2000, but those amendments give rise to no initial surprise since there is nothing in the statutory text to suggest that the provisions being amended may be limited to corporation tax.

Part 10: Factoring of income etc

Section 281A of ITTOIA: Sums to which sections 277 to 281 do not apply

1430. Section 774G(7) of ICTA provides, to summarise, that if section 774A or 774C of that Act applies then sections 277 to 281 of ITTOIA and sections 217 to 221 of CTA 2009 (lease premiums) do not. In consequence of the rewrite of sections 774A to 774G of ICTA for income tax purposes in this Act, section 774G(7) of ICTA is rewritten for income tax purposes as new section 281A of ITTOIA, which disapplies sections 277 to 281 of that Act.

Part 11: UK representatives of non-UK residents

Section 817 of ITA: The independent broker conditions

1431. The words "by the broker" in subsection (3) are omitted as otiose. This amendment conforms the wording of section 817(3) with that of section 835L(3). Like section 835L (inserted in ITA by Part 1 of Schedule 6 to this Act), section 817 is based on section 127(2) of FA 1995.

Section 824 of ITA: Application of 20% rule to collective investment schemes

1432. This amendment adds words at the end of subsection (2) to provide clarification that the amounts in subsection (1) arise or accrue from the transaction referred to in subsection (2). These are the same words as are included in section 835Q(2) of ITA inserted by Part 1 of Schedule 6 to this Act (see the commentary on that Schedule).

Part 12: Amendments for purposes connected with other tax law rewrite Acts

Section 59(3) of ICTA: Persons chargeable: markets, fairs, fisheries, tolls etc

1433. Section 59(3) of ICTA has been repealed and not rewritten as it is unnecessary. See *Change 15* in Annex 1.

Greater London Authority Act 1999

1434. This Part of this Schedule amends paragraph 7 of Schedule 33 to the Greater London Authority Act 1999 by replacing references to Case I of Schedule D with references to Part 3 of CTA 2009. Schedule D, which was set out in section 18 of ICTA, was repealed and rewritten for corporation tax purposes by CTA 2009. Paragraph 7 could have been, but was not, amended consequentially by CTA 2009. These references to provisions of Schedule D have in the meantime been translated, by paragraph 5 of Schedule 2 to CTA 2009, so as to be references to the corresponding provisions of CTA 2009.

1435. The amendments substitute references to Part 3 of CTA 2009 even though that Part applies to all trades and Case I of Schedule D did not apply to wholly-foreign trades. Wholly foreign trades were taxed under Case V of Schedule D, but profits of such trades were calculated in accordance with Case I principles. As the references to Case I of Schedule D that are contained in paragraph 7 are about what is to be deducted or brought into account in calculating profits, there is nothing to suggest that paragraph 7 is intended to produce anything but the same result in the somewhat unlikely event of the trade concerned being wholly foreign.

Section 48B(6) to (8) of FA 2005: Alternative finance arrangements: alternative finance investment bond: effects

1436. Section 48B(6) to (8) of FA 2005 were rewritten for corporation tax purposes by section 519 of CTA 2009. It has subsequently been realised that they do not need to be rewritten for income tax and, accordingly, they are repealed by this Act.

Paragraph 75 of Schedule 2 to CTA 2009: Investment bond arrangements entered into before 1 April 2007

1437. Sections 48A and 48B of FA 2005 apply for corporation tax purposes to alternative finance investment bond arrangements entered into on or after 1 April 2007 and apply for income tax purposes to alternative finance investment bond arrangements entered into on or after 6 April 2007; and apply to alternative finance return paid on or after those dates in respect of existing arrangements. If, however, an arrangement is disposed of after 6 April 2007, the alternative finance rules are treated as having applied throughout the life of the arrangement for the purposes of income tax and capital gains tax in relation to the disposal.

1438. This additional provision would normally have no effect on the alternative finance provisions rewritten for corporation tax in Chapter 6 of Part 6 of CTA 2009. However, section 48B(7) of FA 2005, rewritten in section 519(2) of CTA 2009, affects the close company rules, which in turn could affect an individual's tax position. Section 519(2) of CTA 2009 does not need to be repeated for income tax or capital gains tax, but the special commencement rule in section 53(14)(a) of FA 2007 does need to be applied to it.

Schedule 9: Transitionals and savings etc

Overview

1439. This Schedule contains transitional and saving provisions.

Part 3: Double taxation relief

1440. Paragraph 9 of Schedule 14 to FA 2009 repealed sections 806A to 806K of ICTA with effect in relation to distributions paid on or after 1 July 2009. As explained in the commentary on the amendments made by Schedule 8 to those sections, they apply for corporation tax purposes to certain accounting periods for which this Act has effect. Accordingly, this Schedule makes transitional provision ensuring that:

- those amendments do not override the repeal of those sections;
- the interpretative rules of ICTA which are repealed by this Act are saved to the extent that they are needed for the purposes of those sections; and
- outlying references to Part 18 of ICTA which are converted into references to Part 2 of this Act continue, if they are relevant to those sections, to refer to those sections.

Part 10: Alternative finance arrangements

1441. The legislation concerning alternative finance arrangements was introduced in FA 2005. The legislation introduced at that time covers purchase and resale arrangements and deposit arrangements. The legislation applies to arrangements entered into on or after 6 April 2005 (the date on which FA 2005 became law) and also to alternative finance return payable under existing deposit arrangements where the return is paid on or after 6 April 2005 (section 56 of FA 2005).

1442. Sections 95 and 96 of FA 2006 introduced legislation relating to profit share agency and diminishing shared ownership arrangements. The legislation for profit share agency applies for income tax to arrangements entered into on or after 6 April 2006 and to

payments made under existing arrangements on or after 6 April 2006 (section 95(11) of FA 2006). The legislation for diminishing shared ownership applies for income tax only to arrangements entered into on or after 6 April 2006 (section 96(11) of FA 2006).

1443. Section 53 of FA 2007 introduced legislation relating to investment bond arrangements. The legislation applies for income tax to arrangements entered into on or after 6 April 2007 and to payments made under existing arrangements on or after 6 April 2007 (section 53(13) of FA 2007).

1444. Transitional provisions in this Schedule preserve the effect of those commencement provisions.

1445. The Alternative Finance Arrangements (Amendment) Order 2009 (SI 2009/2568) amended the definition of "financial institution" with effect for alternative finance arrangements (of all types) entered into on or after 15 October 2009. A transitional provision preserves the former definition for arrangements entered into before that date.

Part 12: Factoring of income etc

Application of section 809BZN of ITA 2007 (finance arrangements: exceptions)

1446. Section 809BZN of ITA is inserted by Schedule 5. It is based on section 774E of ICTA 1988.

1447. *Sub-paragraph (1)* of this paragraph is a saving for the second sentence of section 774E(1) of ICTA 1988, which was repealed by paragraph 9(3)(b) of Schedule 25 to FA 2009. This saving applies in relation to transfers before 22 April 2009 in accounting periods which begin before that date and end on or after 1 April 2010.

1448. Section 774E(4)(b) of ICTA originally read as follows:

"(4) Section 774B or 774D does not apply so far as the structured finance arrangement is an arrangement in relation to which –

(b) paragraph 15 of Schedule 9 to the Finance Act 1996 (repo transactions and stock-lending) applies, or …

1449. Paragraph 9 of Schedule 14 to FA 2007 substituted a new section 774E(4)(b) reading as follows:

"(b) Schedule 13 to the Finance Act 2007 (sale and repurchase of securities) applies, …

1450. In that substituted version, CTA 2009 inserted before "applies" the words "or Chapter 10 of Part 6 of CTA 2009 (repos)."

1451. The amendment made by paragraph 9 of Schedule 14 to FA 2007 applies with effect in relation to an arrangement that comes into force on or after 1 October 2007: see article 3 of the Finance Act 2007 (Schedules 13 and 14) Order 2007 (SI 2007/2483).

1452. Furthermore, because of article 5 of that instrument, the pre-FA 2007 version of paragraph 15 of Schedule 9 to FA 1996 is still in force in relation to arrangements which would have been within Schedule 13 to FA 2007 but for having come into force before 1 October 2007.

1453. Section 774E(4)(b) of ICTA, as amended by FA 2007 and CTA 2009, is rewritten to new section 809BZN(5)(b) of ITA and section 771(5)(b) of CTA 2010. *Sub-paragraph (2)* of this paragraph accordingly makes transitional provision for arrangements which came into force before 1 October 2007. See also paragraph 78 of Schedule 2 to CTA 2009 for modifications with which paragraph 15 of Schedule 9 to FA 1996 (as it stood before the substitution made by paragraph 18 of Schedule 14 to FA 2007) has effect.

Application of section 809CZC of ITA 2007 (income-transfer under loan or credit transaction)

1454. This paragraph is a saving for the words in section 786 of ICTA 1988 omitted by paragraph 9(1)(d) of Schedule 25 to FA 2009. This saving applies in relation to transfers before 22 April 2009 in accounting periods which begin before that date and end on or after 1 April 2010.

Schedule 10: Repeals and revocations

Overview

1455. This Schedule contains repeals and revocations of enactments, including some spent enactments.

Schedule 11: Index of defined expressions used in Parts 2 to 8

Overview

1456. This Schedule provides indexes of defined expressions used in Parts 2 and 3 (double taxation relief), Part 4 (transfer pricing), Part 5 (advance pricing agreements), Part 6 (tax arbitrage), Part 7 (tax treatment of financing costs and income) and Part 8 (offshore funds).

COMMENCEMENT

1457. The substantive provisions of this Act come into force on 1 April 2010. Section 381 provides for this Act to have effect:

- for corporation tax purposes, for accounting periods ending on or after that day,
- for income tax and capital gains tax purposes, for the tax year 2010-11 and subsequent tax years, and
- for petroleum revenue tax purposes, for chargeable periods beginning on or after 1 July 2010.

HANSARD REFERENCES

1458. The following table sets out the dates and Hansard references for each stage of this Act's passage through Parliament.

Stage	*Date*	*Hansard or other Parliamentary reference*
House of Commons		
Introduction	19 November 2009	Vol 501 Col 141
Second Reading Committee	15 December 2009	
Second Reading (formal)	5 January 2010	Vol 503 Col 138
Joint Committee on Tax Law Rewrite Bills		
First Report of Session 2009-10	11 January 2010	HL 31 2009-10
		HC 232 2009-10
House of Commons		
Third Reading	4 February 2010	Vol 505 Cols 500 to 503

Stage	***Date***	***Hansard or other Parliamentary reference***
House of Lords		
Introduction	4 February 2010	Vol 717 Col 381
Second Reading	24 February 2010	Vol 717 Cols 1073 to 1080
Committee stage (discharged)	10 March 2010	Vol 718 Col 245
Third Reading	17 March 2010	Vol 718 Col 603

Royal Assent – 18 March 2010	House of Lords Hansard Vol 718 Col 657
	House of Commons Hansard Vol 507 Col 989

ANNEX 1:: MINOR CHANGES IN THE LAW

CHANGE 1: DOUBLE TAXATION RELIEF: CAPITAL GAINS TAX RELIEF UNDER DOUBLE TAXATION ARRANGEMENTS: SECTION 3

This change clarifies the extension of section 788(8) of ICTA (double taxation relief: provision as to income which is not subject to double taxation) to capital gains tax by section 277(1) of TCGA.

Section 788(8) of ICTA ensures that DTAs can be given statutory effect even if they contain "provision as to income or chargeable gains which is or are not subject to double taxation". These words, however, are in a subsection that, taken by itself, operates only in relation to income tax, corporation tax and similar taxes in territories outside the United Kingdom. Two issues arise in rewriting those words as extended in relation to capital gains tax by section 277(1) of TCGA.

The first issue is whether to give effect to the substitution provided for by section 277(1) of TCGA and as a result to refer not to income or chargeable gains but to capital gains. In this regard, it is considered that capital gains include:

- chargeable gains; and
- gains (referred to in this note as "non-chargeable gains") that would be chargeable gains but for some provision of TCGA, or of another UK enactment, that provides that the gains are not chargeable gains.

The second issue is whether the purpose stated in section 277(1) of TCGA – namely, the purpose of giving relief from double taxation in relation to capital gains tax and tax on chargeable gains charged under the law of any territory outside the United Kingdom – means that section 277(1) does not extend to capital gains the power to include provision as to items which are not subject to double taxation. This interpretation would be on the basis that making provision about items not subject to double taxation could not be said to be giving relief from double taxation.

The cited words from section 788(8) of ICTA, as extended by section 277(1) of TCGA, are rewritten, in section 3(2), so as to refer to:

"(a) provision as to income that is not subject to double taxation, or

(b) provision as to chargeable gains that are not subject to double taxation.

Viewed in the light of the first issue discussed in this note, referring to chargeable gains rather than capital gains means that, if any DTAs made provision as to non-chargeable gains that are not subject to double taxation, such provision would not have statutory effect. In principle, this is a change in the law. But it has no effect in practice, since no existing arrangements rely on section 788(8) of ICTA as extended by section 277(1) of TCGA in order to make provision as to non-chargeable gains that are not subject to double taxation.

Viewed in the light of the second issue discussed in this note, extending the reference to chargeable gains so that it applies in the context of capital gains tax, and similar taxes in territories outside the United Kingdom, would give statutory effect to provision in DTAs that (a), in the context of capital gains tax and such similar taxes, is provision as to chargeable gains that are not subject to double taxation and (b) is currently inoperative. In principle, this is a change in the law. But it has no effect in practice, since no existing arrangements make such provision.

As regards possible future DTAs, changing the scope of the power given by section 788(8) of ICTA, as extended by section 277(1) of TCGA, could be adverse or favourable to taxpayers, depending on the precise details of the provision which might be made by the future arrangements.

This change is in principle adverse to some taxpayers and favourable to others. But it is expected to have no practical effect as it is in line with generally accepted practice.

CHANGE 2: REFERENCES TO "OFFICER OF REVENUE AND CUSTOMS": SECTIONS 6, 81, 89, 91, 92, 134, 232, 235, 249, 252, 255, 256 AND SCHEDULE 7 (SECTIONS 59F, 77C, 77F AND 77H OF TMA)

This change replaces references to "the Board" and "the Commissioners for Her Majesty's Revenue and Customs" ("the Commissioners") in the source legislation with references to "an officer of Revenue and Customs".

References in the source legislation to the "Board" are treated by section 50(1) of CRCA as references to the Commissioners for HMRC. The rest of this note accordingly refers to the Commissioners rather than to the Board.

The provisions affected by this change authorise or require things to be done by or in relation to an officer of Revenue and Customs rather than by or in relation to the Commissioners. This reflects the way in which HMRC is organised and operates in practice. Section 13 of CRCA allows nearly all functions conferred on the Commissioners to be exercised by any officer. All of the functions affected by this change, which are in the main concerned with administrative processes, are in fact exercised by officers of the Commissioners, and the Commissioners themselves are not personally involved in their exercise.

Section 788(6) of ICTA requires a claim for relief under section 788(3)(a) of that Act to be made to the Commissioners if the claim is not for an allowance by way of credit in accordance with Chapter 2 of Part 18 of that Act. Section 6(6), which is based on section 788(6), does not expressly state to whom the claim should be made. Where a notice to deliver a tax return has been issued, section 42(2) of TMA or paragraphs 57 and 58 of Schedule 18 to FA 1998 require the claim to be made in the return or by amendment of the return if possible. A return must be made to the officer who issued it. A notice amending a return must be made to an officer. Similarly, where the claim is made outside a return or amendment, paragraph 2(1) of Schedule 1A to TMA requires the claim to be made to an officer.

This change has no implications for the amount of tax due, who pays it or when. It affects (in principle and in practice) only administrative matters.

CHANGE 3: DOUBLE TAXATION RELIEF: UNILATERAL RELIEF FOR TAX ON PROFITS OF UK BRANCH, AGENCY OR PERMANENT ESTABLISHMENT: LIMIT: SECTION 30

This change brings into line with practice the law concerning unilateral relief for overseas tax on the income or gains of UK branches, agencies and permanent establishments of non-UK residents.

In certain circumstances in which DTR under a tax treaty is not available, section 794(2)(bb) of ICTA allows credit by way of unilateral relief for overseas tax in respect of the income or gains of a branch or agency of a non-UK resident person who is not a company or of a permanent establishment of a non-UK resident company.

One of the conditions which must be met is imposed by section 794(2)(bb)(ii) of ICTA, namely:

"that the amount of relief claimed does not exceed (or is by the claim expressly limited to) that which would have been available if the branch or agency had been a person resident in the United Kingdom and the income or gains in question had been income or gains of that person.

On a strict interpretation, this could be taken as meaning that if the taxpayer's claim was excessive no unilateral relief would be allowed at all. In practice, however, HMRC do not adopt this strict interpretation – which would, in any case, not sit easily with Self Assessment.

Section 30(4), which is based on section 794(2)(bb)(ii) of ICTA, therefore rewrites the provision as a limit on the amount of relief which may be allowed, rather than as a condition which must be met if relief is to be allowed at all.

This change is in taxpayers' favour in principle. But it is expected to have no practical effect as it is in line with generally accepted practice.

CHANGE 4: DOUBLE TAXATION RELIEF: INCOME TAX AND CAPITAL GAINS TAX: ORDER IN WHICH CREDIT RELIEF IS ALLOWED: SECTIONS 36 AND 40

This change puts on a clear statutory footing the practice that, where relief by way of credit is allowed against income tax in respect of income from more than one source or against capital gains tax in respect of more than one capital gain, the sources of income or capital gains are to be taken in the order which provides the greatest reduction in the liability to income tax or capital gains tax for the tax year.

Section 796 of ICTA ensures that a foreign tax credit is only deducted from income tax on the income to which the foreign tax credit relates, and cannot be used to shelter any other income from income tax.

Section 796(2) deals with the case where the taxpayer is to be allowed credit for foreign tax in respect of income from more than one source. It requires such income to be dealt with separately, source by source.

Section 796(2) requires income from each source to be dealt with successively. But it does not specify the order in which such items of income are to be taken. HMRC's practice, as published in the *International Manual* paragraph 165040, is to take such items of income in the order most favourable to the taxpayer's claim for DTR.

Section 36 puts this practice on a clear statutory footing.

Section 277(1) of TCGA extends section 796 of ICTA to capital gains tax. HMRC's practice in applying section 796 of ICTA to capital gains tax, as published in the *International Manual* paragraphs 169120 and 169130, is to deal with capital gains in the order which provides the greatest reduction in the taxpayer's capital gains tax liability for the year.

Section 40 puts this practice on a clear statutory footing.

This change is in taxpayers' favour in principle. But it is expected to have no practical effect as it is in line with generally accepted practice.

CHANGE 5: REQUIRING AN APPORTIONMENT, OR A REDUCTION, TO BE JUST AND REASONABLE: SECTIONS 37 AND 44 AND SCHEDULE 4 (SECTIONS 681DE AND 681DJ OF ITA)

This change requires any apportionment or reduction that is not required by the source legislation to be made on a just and reasonable basis to be made on such a basis.

In some cases where there is an apportionment under legislation rewritten in this Act, the apportionment is required by the source legislation to be made on a just and reasonable basis. In other cases, it is required to be made only on a just basis or only on a reasonable basis. In new tax legislation it is now the practice to require an apportionment to be just and reasonable. For example, before it was replaced by ITEPA, section 140B(4) of ICTA (inserted by FA 1998) required a just and reasonable apportionment to be made of any consideration given partly in respect of one thing and partly in respect of another. There is no reason why an apportionment should not be on a just and reasonable basis. And it is desirable that all apportionments should be made on the same basis.

Similarly, section 784(4) of ICTA provides that "the amount to be deducted … shall be such proportion of the capital expenditure which is still unallowed as is reasonable" (rather than such proportion as is just and reasonable).

Accordingly, where an apportionment under legislation rewritten in this Act is not required to be made on a just and reasonable basis, the rewritten provision requires the apportionment to be made on a just and reasonable basis. The changes are as follows.

- Section 783(8) of ICTA (leased assets: capital sums) requires apportionments to be just. As rewritten in new section 681DJ of ITA (inserted by Schedule 4), it requires apportionments to be not only just but also reasonable.

- Sections 798(3) and 798A(3)(b) of ICTA (double taxation relief: limitations on credit against income tax and corporation tax) require apportionments to be reasonable. As rewritten in sections 37 and 44 respectively, they require apportionments to be not only reasonable but also just.

Similarly, new section 681DE(5)(a) of ITA (inserted by Schedule 4), which is based on section 784(4) of ICTA, requires the unallowed amount to be reduced to a proportion which is not only reasonable but also just.

The same change has been made in previous rewrite Acts to provide a uniform expression of the basis on which apportionments are to be made.

This change makes minor amendments to a number of existing rules, but is expected to have no practical effect as it is in line with generally accepted practice.

CHANGE 6: DOUBLE TAXATION RELIEF: LIMIT ON TOTAL CREDIT AGAINST INCOME TAX AND CAPITAL GAINS TAX: INTERACTION WITH GIFT AID: SECTION 41

This change relates to section 796(3) of ICTA, which restricts DTR by way of credit relief in order to ensure that tax refunded to charities on gift aid donations is covered by tax paid by the donor. The change gives statutory effect to the practice of taking the donor's income tax and capital gains tax liabilities together in applying the limit set by section 796(3).

Before ITA, section 796(3) of ICTA read:

"Without prejudice to subsections (1) and (2) above, the total credit for foreign tax to be allowed to a person against income tax for any year of assessment under all arrangements having effect by virtue of section 788 shall not exceed the total income tax payable by him for that year of assessment, less any income tax which he is entitled to charge against any other person.

Section 796(3) of ICTA was initially repealed by ITA, without being rewritten, on the basis that its effect was replicated in Chapter 3 of Part 2 of ITA (calculation of income tax liability).

It was then realised that section 796(3) of ICTA, as applied for capital gains tax purposes by section 277(1) of TCGA, should not have been repealed. Accordingly, section 796(3) of ICTA was restored (without break in continuity) for capital gains tax purposes by article 3(5) and (6) of the Income Tax Act 2007 (Amendment) (No. 3) Order 2007 (SI 2007/3506). The wording restored was unchanged from the pre-ITA wording, so the final phrase of the restored section 796(3) continued to refer to charges on income (despite their having become deductions in the income tax calculation). Prior to ITA, that final phrase had been extended by section 25(6)(b) and (7)(b) of FA 1990 so as to include a reference to tax treated as deducted from gift aid donations. Section 25(6) and (7) of FA 1990 were also repealed by ITA, and SI 2007/3506 did not restore the effect of section 25(6)(b) and (7)(b) of FA 1990.

Subsequently, the Income Tax Act 2007 (Amendment) (No. 2) Order 2009 (SI 2009/2859) has caused section 796(3) of ICTA to be restored as if it had never been repealed by ITA but as if ITA had from the outset amended the final phrase so as to rewrite the effect of section 25(6)(b) and (7)(b) of FA 1990. It is this restored version of section 796(3) of ICTA that is now rewritten in section 41. This order also amends section 424 of ITA to restore the effect for capital gains tax purposes of section 25(9)(d)(ii) and (iii) of FA 1990 (which, like section 796(3) of ICTA, concern DTR).

Section 796(3) of ICTA provides that the total credit for foreign tax allowed against a person's income tax for a year of assessment is given by - –

- the amount of the person's total income tax for the year, less
- the amount of tax (i.e. income tax at basic rate) treated as deducted under section 414 of ITA from gift aid donations made by the person in the year.

This rule operates without prejudice to (ie in addition to) the rules in section 796(1) and (2) about the amount of credit against income tax on income from individual sources.

Section 796(3) of ICTA also has effect for capital gains tax purposes as applied by section 277(1) of TCGA. Section 277(1) of TCGA operates on Chapters 1 and 2 of Part 18 of ICTA (DTR) by, in particular, turning references to income tax into references to capital gains tax. Under section 796(3) as so applied, the starting point for the total credit for foreign tax allowed against a person's capital gains tax for a year of assessment is the total amount of the person's capital gains tax for the year. Section 796(3) suggests that although the total amount of capital gains tax for the year is the starting point for the limit on credit, the actual limit is given by reducing that total amount by tax treated as deducted under section 414 of ITA from gift aid donations.

The application of section 277(1) of TCGA to the reference to the tax treated as deducted under section 414 of ITA is not completely straightforward. In particular, the deemed deduction under section 414 of ITA is treated as a deduction of income tax at the basic rate. Given that the deemed deduction is of income tax, it might be thought that it makes no sense for that reference to income tax to be converted by section 277(1) of TCGA so as to become a reference to capital gains tax treated as deducted under section 414 of ITA. After all, section 414 of ITA makes no provision for capital gains tax to be treated as deducted.

In practice, it will rarely be the case that a person's entitlement to DTR will be affected by whether the person's capital gains tax liability is, or is not, reduced by tax treated as deducted under section 414 of ITA from gift aid donations made by the person. Yet the result of leaving the final phrase as a reference to the income tax treated as deducted under section 414 means that, in a case where a person has foreign income and foreign capital gains, the amount of the person's entitlement to DTR by way of credit is reduced by up to twice the amount of the deemed deduction under section 414 of ITA. This clearly goes beyond the purpose of the deemed deduction, which is to ensure that tax reclaimed by a charity under the gift aid scheme is covered by tax paid by donors.

Despite that, reading the final phrase as an unconverted reference to the income tax treated as deducted under section 414 of ITA does mean that the words of the final phrase are given some effect. This is a strong argument for reading the phrase in this way.

Alternatively, it could be said that, to avoid the double reduction of entitlement to credit relief, it must have been intended that the final phrase of section 796(3) of ICTA should be omitted in its application for capital gains tax purposes. Or again, it could be said that there is no reason why section 277(1) of TCGA should not convert the reference to income tax treated as deducted under section 414 of ITA into a reference to capital gains tax treated as deducted under section 414 of ITA, despite that conversion having the result that the final phrase of section 796(3) of ICTA would have no effect for capital gains tax purposes.

The difficulty with these alternative approaches, which for capital gains tax purposes in effect strip out the final phrase of section 796(3) of ICTA, is their arbitrariness. If the gift aid tax reclaim by a charity is to be covered by income tax on the donor's foreign income, that income tax (so far as needed to cover the reclaim) cannot be reduced by DTR. Yet under these approaches, if the reclaim is to be covered by capital gains tax on the donor's foreign capital gains, there would be nothing to stop that capital gains tax being reduced or wiped out by credit relief for foreign tax on the gains. This would run counter to the clear intention behind gift aid relief, which is that gift aid tax reclaims by charities are to be covered by income tax and capital gains tax paid by donors.

In practice, section 796(3) of ICTA is applied as if it provided for total credit relief against a person's income tax and capital gains tax for a tax year to be –

- the person's total income tax and capital gains tax for the year, less
- the total of the tax treated as deducted under section 414 of ITA on gift aid donations made by the person in the year.

Section 796(3) of ICTA is being rewritten, in section 41, in a way which gives effect to this practice. In the light of the discussion above, this is a change in the law. Of course, this single disallowance of the amount treated as deducted under section 414 of ITA is clearly more advantageous for taxpayers than the double disallowance of that amount that could arise under what appears to be the most likely reading of section 796(3) of ICTA. But section 41 could also be to the taxpayer's disadvantage, as it will prevent the taxpayer arguing that credit for foreign tax charged on capital gains should be allowed against any part of the taxpayer's capital gains tax liability which covers tax reclaims by charities on gift aid donations made by the taxpayer.

This change is in principle adverse to some taxpayers and favourable to others. But it is expected to have no practical effect as it is in line with generally accepted practice.

CHANGE 7: DOUBLE TAXATION RELIEF: CORPORATION TAX: CREDIT RELIEF: ROYALTY INCOME: SECTION 47

This change brings into line with practice the law concerning DTR on royalty income by way of credit against corporation tax.

Section 798B(3)(a) of ICTA provides that for the purposes of DTR by way of corporation tax, royalty income arising in more than one jurisdiction (other than the United Kingdom) in a year of assessment in respect of an asset is to be treated as income arising from a single transaction, arrangement or asset for the purposes of section 798A(2) of that Act.

But unlike income tax, corporation tax is not charged for years of assessment. Corporation tax is charged on profits which have been calculated for an accounting period of a company: see section 8 of CTA 2009.

Section 47 therefore refers to an accounting period rather than a year of assessment.

This change has no implications for the amount of tax paid, who pays it or when. It affects (in principle but not in practice) only administrative matters.

CHANGE 8: DOUBLE TAXATION RELIEF: CASES ABOUT BEING TAXED OTHERWISE THAN IN ACCORDANCE WITH DTAS: CAPITAL GAINS TAX AND PRT: SECTIONS 124 AND 125

This change extends the scope of section 815AA of ICTA (DTR: mutual agreement procedure and presentation of cases under DTAs) by extending references in the section to "the Tax Acts" to include the enactments relating to capital gains tax and the enactments relating to PRT.

Taxpayers may maintain that they are being taxed otherwise than in accordance with the relevant DTA. The case may be resolved by the Commissioners for HMRC either unilaterally or else bilaterally by mutual agreement with an authority in the territory to which the DTA relates. Section 815AA of ICTA provides for such solutions and mutual agreement to be given effect.

In such cases, it will often be necessary to consider matters relating to the other territory. This can take time. Accordingly, section 815AA(3) of ICTA extends the deadline for making a claim for relief under any provision of the Tax Acts and section 815AA(5) provides that presenting a case under and in accordance with the relevant DTA is not a claim for relief under the Tax Acts. As a result, the deadlines set by section 815AA override the normal statutory deadlines set by the Tax Acts.

Section 815AA(3) and (5) of ICTA refer to "the Tax Acts" without qualification. Section 815AA of ICTA was inserted into ICTA by FA 2000. It is considered that the references in section 815AA of ICTA to section 788 of ICTA are, in reliance on section 20(2) of the Interpretation Act 1978, to be read as including references to section 788 of ICTA as applied (a) for capital gains tax purposes by section 277(1) of TCGA and (b) for PRT purposes by section 194(1) of FA 1993. In other words, section 815AA of ICTA applies across the four taxes to which DTAs under Part 2 of this Act can apply.

Section 815AA of ICTA contains references to tax (and to being taxed). Section 832(3) of ICTA, which says that "tax" in the Tax Acts means income tax or corporation tax if neither is specified, does not apply if the context otherwise requires. Although section 815AA of ICTA is part of the Tax Acts (as defined for the purposes of ICTA by section 831(2) of that Act), section 815AA of ICTA is considered to extend to any capital gains tax elements, and any PRT elements, of DTAs. This is considered to give rise to a context in which "tax" is required to mean something other (in fact, something more) than income tax or corporation tax. The sections which rewrite section 815AA of ICTA are not, so far as they relate to capital gains tax and PRT, part of the Tax Acts. Accordingly, those sections, so far as they relate to capital gains tax and PRT, are not governed by section 832(3) of ICTA. As a result, it is considered that the unqualified use of "tax" (and "taxed") in those sections results in those expressions having the same meaning in those sections as in section 815AA of ICTA.

Section 815AA of ICTA refers to "the Tax Acts". Whether and how section 20(2) of the Interpretation Act 1978 applies to those references is not beyond argument. Even though section 815AA of ICTA is legislation made in the year 2000, it is considered that the section's references to the Tax Acts are not limited to those Acts as they stood in 2000 (which would be the result of applying the first limb of section 20(2) of the Interpretation Act 1978). Rather, those references are considered to be references to the Tax Acts as in force from time to time.

The second limb of section 20(2) of the Interpretation Act 1978 would, in the absence of contrary intention disapplying it or modifying its application, mean that the references in section 815AA of ICTA to "the Tax Acts" would include those Acts as applied or extended by legislation predating FA 2000. And applying the second limb to sections 124 and 125 of this Act, which are based on section 815AA of ICTA, would mean that the references in those sections to "the Tax Acts" would include those Acts as applied or extended by legislation predating the enactment of this Act.

All of this is relevant because, in particular, administrative provisions in TMA that are part of the Tax Acts are applied for PRT purposes by Schedule 2 to OTA 1975. Although it is arguable that the second limb does apply, the outcome of its unmodified application would be too arbitrary to be likely to have been the legislative intention. Accordingly, the references to the Tax Acts either (a) include no such applications or extensions or (b) include all such applications and extensions.

FA 2000 inserted section 815AA of ICTA to elucidate an aspect of section 788(3)(a) of that Act, which had previously been relied on for giving effect to solutions and mutual agreements. Since section 194(1) of FA 1993 applies section 788(3)(a) of ICTA for PRT purposes, the references to the Tax Acts in section 815AA of ICTA include the administrative provisions in TMA relating to PRT (and any other extensions and applications of the Tax Acts to PRT).

But any PRT administrative provisions which do not fall within the Tax Acts, as extended for the purposes of PRT, are outside the scope of section 815AA(3) and (5) of ICTA. Accordingly, section 815AA will not override any time limits set by such provisions. This is anomalous.

Furthermore, the provisions of TMA applying for capital gains tax purposes apply directly, and not by application or extension of the Tax Acts. It follows that these provisions (and any other capital gains tax administrative provisions falling outside the Tax Acts, as extended for the purposes of capital gains tax) are outside the scope of section 815AA(3) and (5) of ICTA. Accordingly, section 815AA does not override, for example, section 43 of TMA (time limit for making claims) in its application to capital gains tax.

In practice, the scope of section 815AA of ICTA is not given such a narrow interpretation.

For example, the United Kingdom's DTA with the United States of America (SI 2002/2848) covers income tax, capital gains tax, corporation tax and PRT. Commenting on article 26 of this DTA (mutual agreement procedure), paragraph 19887 of HMRC's *Double Taxation Relief Manual* (a) states that, as a result of section 815AA of ICTA, the time limits laid down by the DTA override the normal time limits set by UK domestic tax law and (b) does not suggest that this only applies in relation to income tax and corporation tax.

Accordingly, sections 124 and 125 give this practice a clear statutory basis by referring not only to the Tax Acts but also to the enactments relating to capital gains tax and the enactments relating to PRT.

This change is in taxpayers' favour in principle. But it is expected to have no practical effect as it is in line with generally accepted practice.

CHANGE 9: AVOIDANCE: TAX ARBITRAGE: CASES WHERE PAYEE NOT TREATED AS NOT LIABLE AS A RESULT OF SCHEME: SECTION 245

This change clarifies the exception (in section 25(8) of F(No 2)A 2005) to one of the conditions which may cause the tax arbitrage legislation to apply.

Chapter 4 of Part 2 of F(No 2)A 2005 addresses avoidance involving tax arbitrage. If the statutory conditions are met in a deduction case, the company in question must calculate (or recalculate) its income and chargeable gains for the purposes of corporation tax, or its liability to corporation tax, in accordance with rule A in section 25(3) of that Act and rule B in section 25(6) of that Act. Under section 25(6)(c) of that Act, one of the conditions for rule B to apply is that:

"in respect of the payment or payments that the payee receives or is entitled to receive as a result of the transaction or series of transactions [mentioned in section 25(6)(a) of that Act], or part of such payment or payments, the payee is not liable to tax or, if liable, his liability to tax is reduced as a result of provision made or imposed by the scheme [mentioned in section 25(6)(a) of that Act].

Section 25(8) of F(No 2)A 2005 makes an exception to section 25(6)(c) of that Act. It provides:

"The requirement in subsection (6)(c) is not satisfied if the payee is not liable to tax because he is not liable to tax on any income or gains received by him or for his benefit under the tax law of any territory.

It is arguable that section 25(8) of F(No 2)A 2005 leaves it open for section 25(6)(c) of that Act to be satisfied if:

- the payee is in principle liable to tax in respect of the payment or payments; but
- this liability is extinguished by some form of tax relief which is not connected with the scheme.

But in practice HMRC do not interpret section 25(8) of F(No 2)A 2005 so narrowly.

In section 25(6)(c) of F(No 2)A 2005, it is not clear how far the phrase "as a result of provision made or imposed by the scheme" applies to "the payee is not liable to tax" as well as to "his liability to tax is reduced". Section 245(4) clarifies this by moving the phrase under review forward before the paragraphing and thus excluding the narrow interpretation.

This change is in taxpayers' favour in principle. But it is expected to have no practical effect as it is in line with generally accepted practice.

CHANGE 10: OIL TAXATION: ABANDONMENT GUARANTEES AND EXPENDITURE UNDER SECTIONS 63 AND 65 OF FA 1991: SCHEDULE 1 (SECTIONS 225O, 225Q, 225R AND 225T OF ITTOIA)

This change clarifies that sections 63 and 65 of FA 1991 apply for income tax as well as for corporation tax.

Sections 62 to 65 of FA 1991 contain a scheme for relieving certain costs involved with the abandonment of oil installations. Section 62 provides relief for the costs of obtaining an abandonment guarantee and is not limited to corporation tax. Section 64 provides relief where an oil field participator meets expenditure that should have been met by another participator, but where that participator has defaulted in their obligation. Again, this is not limited to corporation tax.

Section 63 of FA 1991 deals with a situation where a guarantee has been set up and the guarantor meets certain expenditure, but the participator is then required to reimburse some or all of those costs to the guarantor. Section 63(5) uses the term "accounting period" which suggests that it applies only to corporation tax. But there appears to be no indication in the remainder of section 63 that it should only apply to corporation tax. A similar point arises in connection with the wording of section 65(4) and (5).

Section 63(4) of FA 1991 provides relief for an oil field participator against their income from the oil ring fence trade for certain expenditure incurred under the terms of an abandonment guarantee. If that provision does not apply for income tax purposes then that relief might not be available to a participator that is liable to income tax. Section 65(3) of FA 1991 provides relief when a defaulter reimburses expenditure met by another participator, while section 65(4) provides for a charge to tax on the participator who is reimbursed. In this case, both the relief and the charge might not apply if the provision does not apply for income tax purposes.

Schedule 1 contains the rewritten material for income tax, and it includes full rewrites of sections 63 and 65 of FA 1991, suitably adapted for income tax to refer to a tax year rather than an accounting period.

This change is in principle adverse to some taxpayers and favourable to others. But it is expected to have no practical effect as it is in line with generally accepted practice.

CHANGE 11: SALE AND LEASE-BACK ETC: RESTRICTION OF EXCESSIVE LEASE RENTALS: RELATIONSHIP WITH ACCOUNTING PRACTICE: SCHEDULE 4 (SECTIONS 681AD AND 681CC OF ITA)

This change puts on a statutory basis HMRC's published practice on the interaction between section 779 of ICTA (sale and lease-back: limitation on tax reliefs) and the accounting treatment for finance lease rentals.

The Inland Revenue set out in Statement of Practice 3/91 (SP3/91) its view on the timing of deductions for rentals payable by lessees under finance leases. The Inland Revenue also published an article supplementing SP3/91 in the *Tax Bulletin*, February 1995 (TB15). The material in SP3/91 and TB15 is substantially reproduced in paragraphs 61105 to 61185 of HMRC's Business Income Manual (BIM 61105 to 61185).

Generally speaking, the effect of SP3/91 is that tax relief is given for finance lease rentals in the period in which they are charged in calculating the lessee's accounting profit or loss. If a lessee makes a payment under a lease, and the economic benefit of the payment extends over several periods of account, then (broadly speaking) the accounting treatment will be to charge the payment as expenditure in the periods of account to which the payment in economic substance relates. Thus under SP3/91 tax relief is not necessarily given in the period in which the finance lease rental payment is made; tax relief may be deferred to later periods.

Section 779 of ICTA is an anti-avoidance provision restricting tax relief for excessive rentals paid under sales and lease-backs of land. If it applies to a payment, tax relief for that payment is deferred (and may in certain circumstances be denied altogether). Section 782 of that Act (leased assets: special cases) is a similar provision applying to transactions involving assets other than land. Sections 779 and 782 of that Act apply for the purposes of both income tax and corporation tax.

HMRC's practice, as published in TB15 and BIM 61105, is to apply SP3/91 before making any adjustments under section 779 of ICTA (see BIM 61105). Depending on the facts, this may mean that there is no need for any adjustments to be made under section 779 of ICTA.

FA 1998 introduced specific legislation which (broadly speaking) is to the same effect as SP3/91, but goes further. Section 42 of FA 1998 has been rewritten for the purposes of income tax and corporation tax in, respectively, section 25 of ITTOIA and section 46 of CTA 2009 (use of generally accepted accounting practice in calculating trade profits). Section 272 of ITTOIA and section 210 of CTA 2009 apply, respectively, section 25 of ITTOIA and section 46 of CTA 2009 in calculating profits of a property business.

Under section 25 of ITTOIA and section 46 of CTA 2009, trade profits are calculated in accordance with GAAP, subject to adjustments required or authorised by law. These provisions operate by reference to receipts and expenses to be brought into account, not by reference to payments made. But sections 779 and 782 of ICTA do not acknowledge GAAP. And they assume that tax relief is given for payments made rather than expenses brought into account. So there is a conflict. Schedule 4, inserting new sections 681AD and 681CC of ITA, resolves this conflict in this way.

First, it acknowledges that a calculation for tax purposes is made in accordance with GAAP.

Second, it provides that, if deductions for tax purposes are allowed, for example for the rental payments under a lease, the first step is to calculate –

(a) the total expenses to date brought into account, in accordance with GAAP, in respect of the payments, less

(b) the total deductions allowed in previous periods for the payments.

Third, it then provides for the rules currently contained in section 779 or 782 of ICTA to be applied to the figure given by that calculation, so that the deduction allowed for the period will be that figure as reduced by those rules (but will be the unreduced figure if those rules do not require a reduction to be made).

Resolving the conflict in this way – rather than making the adjustments required by sections 779 and 782 of ICTA first and then applying GAAP to give relief for lease rental expenditure – could, in principle, affect the periods in which relief is given. This could be favourable to the taxpayer, adverse to the taxpayer or favourable to the taxpayer in some respects and adverse to the taxpayer in other respects. The extent to which it would be favourable or adverse would depend on the facts and, in particular, on the rental profile of the lease under review.

This change is in principle adverse to some taxpayers and favourable to others. But it is expected to have no practical effect as it is in line with generally accepted practice.

CHANGE 12: SALE AND LEASE-BACK ETC: EXCLUSION OF SERVICE CHARGES ETC TO BE ON JUST AND REASONABLE BASIS: SCHEDULE 4 (SECTION 681AI OF ITA)

This change requires that, in calculating the amount of a payment for which income tax relief is restricted under section 779 of ICTA, a just and reasonable amount must be excluded from the rent or other payment in respect of services or the use of relevant assets or rates usually borne by the tenant.

Section 779 of ICTA is an anti-avoidance provision which restricts tax relief for excessive payments of rent (and similar charges) in respect of land. Section 779(6)(d) provides that:

- in calculating the amount subject to restriction it is necessary to exclude so much of any payment as is in respect of services or the use of assets or rates usually borne by the tenant; and
- in determining the amount to be so excluded provisions in any lease or agreement fixing the payments or parts of payments which are in respect of services or the use of services may be overridden.

But section 779 of ICTA does not indicate either what considerations would justify such an override or what criterion should be used instead. In 1964, when this anti-avoidance provision was first introduced, it was natural to envisage that the decision to override the lease or agreement would be taken by the Inland Revenue. But that does not sit easily with Self Assessment.

Section 681AI of ITA, inserted by Schedule 4, therefore replaces the overriding provision of section 779(6)(d) of ICTA with a requirement to exclude so much of the payment as is just and reasonable.

This change has no implications for the amount of tax paid, who pays it, or when. It affects (in principle but not in practice) only administrative matters.

CHANGE 13: TRADING INCOME: OMISSION OF REFERENCES TO A COMPANY CARRYING ON A PROFESSION OR A VOCATION: SCHEDULE 4 (SECTION 681DP OF ITA)

This change omits references to a profession and to a vocation where the source legislation refers to the carrying on by a company of a trade, profession or vocation.

The change is reflected in numerous sections in Part 3 of CTA 2009 (trading income). It is included in the origins of the main provisions affected, where it is acknowledged as Change 2. It is carried through into new section 681DP of ITA (inserted by Schedule 4).

There are strong grounds for believing that for the purposes of the charge to corporation tax there are no activities that should be taken to constitute the carrying on of a profession or vocation by a corporate body or unincorporated association. There is a full discussion of the issues involved in Change 2 in Annex 1 to the explanatory notes on CTA 2009.

It is theoretically possible that the application of trading income rules to activities that a company could argue is a profession or a vocation could lead to a change in the measure of taxable profits.

This change is in principle adverse to some taxpayers and favourable to others. But it is expected to have no practical effect as it is in line with generally accepted practice.

CHANGE 14: RELOCATION OF SECTION 152 OF ICTA: SCHEDULE 7

This change clarifies how an application to make a late objection to a notified amount of taxable benefit is handled in section 152 of ICTA.

Section 152 of ICTA deals with circumstances where an officer of the Department for Work and Pensions (DWP) notifies a benefit claimant of the amount of unemployment benefit, jobseeker's allowance or income support that is part of the claimant's income for tax purposes. The term "unemployment benefit" is retained as the wording of the legislation suggests that it may have a broader scope than the statutory name for the benefit, replaced by jobseeker's allowance.

The claimant has 60 days in which to object to the notice. In addition, a claimant may make an objection after 60 days by making an "application for the purpose". An officer of DWP must then consider the circumstances, and in particular whether the claimant had a reasonable excuse for the delay and took the necessary action without further unreasonable delay. If the officer is not satisfied the matter is referred to the tribunal.

But it is not clear if it is the application to make a late objection or the objection itself that must be made without further unreasonable delay. Section 152(5)(b) suggests that it is the objection, but that would mean that the objection would have to be made while the application to make the late objection was still under consideration.

Similar legislation can be found in section 49 of TMA concerning an application to make a late appeal. That provision is clear – it is the application that must be made without further unreasonable delay.

The rewritten provision in section 54B(4) of TMA makes it clear that it is the application to make a late objection that must be made without further unreasonable delay, and not the objection itself.

This change is in principle adverse to some taxpayers and favourable to others. But it is expected to have no practical effect as it is in line with generally accepted practice.

CHANGE 15: OMISSION OF SECTION 59(3) OF ICTA: SCHEDULE 8

Section 59(3) of ICTA provides that owners, occupiers or receivers of profits from markets, fairs, tolls, fisheries, etc are answerable for income tax charged and can retain and deduct the tax from the profits.

Section 59(1) of ICTA was rewritten in section 8 of ITTOIA and repealed. Section 59(2) of ICTA was repealed by ITTOIA without being rewritten as it did not appear to add anything to section 59(1), and if it did there was no justification (see the commentary on section 8 of ITTOIA in the explanatory notes on that Act). Section 59(3) of ICTA (along with section 59(4) of ICTA) was, at that time, considered as a candidate for relocation; but since then it has been determined to be unnecessary.

The differences between section 8 of ITTOIA and section 59(3) are (in part at least) a result of consolidations having preserved, in section 59(3), wording from the Income Tax Act 1806 which appears to have been derived from a taxation Act of 1763/4 (4 Geo.3 c.2).

If section 59(3) of ICTA applies in addition to section 8 of ITTOIA, the effect of repealing section 59(3) without rewriting it would be to remove the answerability to tax of owners or occupiers who are neither in receipt of, nor entitled to, the profits.

Repealing section 59(3) would reflect the fact that there is no longer any justification for a person to be liable to tax on profits from markets, fairs, tolls, fisheries etc when the person would not be liable to tax in respect of any other business. (Section 59(3) only applies to profits of markets, fairs, tolls, fisheries etc.)

If, however, section 59(3) applies instead of section 8 of ITTOIA, the effect of repealing section 59(3) without rewriting it would be to impose liability on people entitled to the profits but who are not owners or occupiers and are not in receipt of the profits. It is difficult to formulate a set of circumstances in which a person might be within this description otherwise than by avoidable choice. That, coupled with the fact that there is no recent known reliance on section 59(3), suggests that its disappearance would be unlikely in practice to give rise to new liabilities to tax.

The final element of section 59(3) entitles the recipient of profits to deduct and retain the tax on them before passing them to the entitled person. If a business is not covered by section 59(3), there is no corresponding rule. It is not easy to identify what the rule adds to the general law. Equally, it is not easy to be sure that it has no application. So although this element of section 59(3) of ICTA is also considered unnecessary in practice, its repeal may in theory amount to a change in the law.

This change is in principle adverse to some taxpayers and favourable to others. But it is expected to have no practical effect as it is in line with generally accepted practice.

ANNEX 2:: EXTRA-STATUTORY CONCESSIONS, CASE LAW, AND LIST OF REDUNDANT MATERIAL NOT REWRITTEN

This Act rewrites no Extra-statutory Concessions or Statements of Practice nor does it include any changes in the law which involve giving statutory effect to principles derived, wholly or mainly, from case law.

The omission of provisions which are redundant in whole or in part is an integral part of the rewrite process. In some cases provisions have become redundant with the passage of time; in others they have become unnecessary as a result of the approach taken to the rewriting of related provisions. For ease of reference, those omissions worthy of specific explanation are listed in the table below. The table also sets out where those explanations can be found.

Redundant provision	***Topic***	***See commentary on section etc***
ICTA s.59(3)	Persons chargeable: markets, fairs, fisheries, tolls etc	Part 12 of Schedule 8
ICTA s.779(13)(f)	Sale and lease-back etc	Part 9 of Schedule 8
ICTA s.781(4)(e)	Sale and lease-back etc	Part 9 of Schedule 8
ICTA s.781(5)	Sale and lease-back etc	Part 9 of Schedule 8
ICTA s.785 (part)	Sale and lease-back etc	Part 9 of Schedule 8
ICTA s.790(5)(c)(iii)	DTR	Part 1 of Schedule 8
ICTA s.790(11) (part)	DTR	section 134
ICTA s.798(5)(c)	DTR	section 37
ICTA s.798A(2) (part) and (3) (part)	DTR	section 44
ICTA s.807(3)	DTR	Part 1 of Schedule 8
ICTA s.816(4)	DTR	Part 1 of Schedule 8
TMA s.98: entry for regulations under s.199 of FA 2003	Penalties	Part 17 of Schedule 7
FA 1988 s.130(part)	Miscellaneous relocations: company migration	Part 10 of Schedule 7: section 109B of TMA
FA 1993 s.194(2)	DTR	Part 1 of Schedule 8
FA 1997 Sch.12 para.11(14) (part)	Extended definition of Capital Allowances Act	Part 1 of Schedule 3: section 614BT of ITA
FA 2004 s.115(4)	DTR	Part 1 of Schedule 8
ITTOIA Sch.2, para. 91	Saving in relation to section 151(2) of FA 1989	Part 11 of Schedule 7
F(No 2)A 2005 s.26(4) (part)	Tax arbitrage	section 250
F(No 2)A 2005 s.28(7) (part)	Tax arbitrage	section 256
F(No 2)A 2005 s.26(9)(a) (part)	Tax arbitrage	section 251

Redundant provision	***Topic***	***See commentary on section etc***
F(No 2)A 2005 s.30(2) (part)	Tax arbitrage	section 234
ITA s.527(2)(b)	DTR	Part 1 of Schedule 8
ITA s.1026(g)	DTR	Part 1 of Schedule 8