

**EXPLANATORY MEMORANDUM TO
THE CORPORATION TAX ACT 2009 (AMENDMENT) ORDER 2010
2010 No. 614**

1. This explanatory memorandum has been prepared by the Commissioners for Her Majesty's Revenue and Customs and is laid before the House of Commons by Command of Her Majesty.

This memorandum contains information for the Select Committee on Statutory Instruments.

2. **Purpose of the instrument**

- 2.1 This instrument makes amendments to the Taxation of Chargeable Gains Act 1992 ("TCGA 1992") and the Corporation Tax Act 2009 ("CTA 2009").
- 2.2 The instrument corrects minor errors concerning one provision of TCGA 1992 and four provisions of CTA 2009.

3. **Matters of special interest to the Select Committee on Statutory Instruments**

The amendments that are contained in the instrument take effect retrospectively from the date on which CTA 2009 came into force. The authority for this is contained in section 1324(4) of CTA 2009.

4. **Legislative Context**

- 4.1 The Tax Law Rewrite project was established in 1996. CTA 2009 was the project's fifth Act and the first rewriting the main provisions relating to corporation tax.
- 4.2 The project's aim is to rewrite the United Kingdom's primary direct tax legislation to make it clearer and easier to use, without changing the law (apart from minor identified changes).
- 4.3 The amendments made by the instrument concern the following.

Paragraph 34 of Schedule 7AC to TCGA 1992

- 4.4 Schedule 7AC to TCGA 1992 sets out the exemptions for companies with substantial shareholdings. Paragraph 34(1) of that Schedule provides that the exemptions in the Schedule do not apply to gains or losses which are deemed to accrue under section 116(10)(b) of TCGA 1992.
- 4.5 But under paragraph 34(2) of Schedule 7AC to TCGA 1992 the rule in paragraph 34(1) was overridden if the relevant earlier transaction

within section 116(10) of TCGA 1992 was a deemed disposal and reacquisition under section 92(7) of the Finance Act 1996 (“FA 1996”). Section 92(7) of FA 1996 was inserted by the Finance Act 1999 and provided that, where a convertible debt security ceased to fall within section 92 of FA 1996 while continuing to be a loan relationship of the company, it was deemed to have been disposed of at the point of cessation for the purposes of TCGA 1992 and immediately reacquired for the same amount. Section 92 of FA 1996 was repealed by the Finance Act 2004 for periods of account beginning on or after 1 January 2005.

- 4.6 Paragraph 34(2) of Schedule 7AC to TCGA 1992 was repealed by CTA 2009 as spent. But it is now clear that paragraph 34(2) could still have effect (had it not been repealed) in a case where the “relevant earlier transaction” was one that was deemed under section 92(7) of FA 1996 to occur in a period of account beginning before 1 January 2005. By repealing it CTA 2009 has inadvertently changed the law. Article 2 of the instrument makes the appropriate amendment to re-instate the provision in paragraph 34 of Schedule 7AC to TCGA 1992.

Section 400(1)(a) of CTA 2009

- 4.7 Section 399(1) of CTA 2009 provides that amounts to be brought into account on loan relationships represented by index-linked gilt-edged securities are to be calculated by making the adjustment specified by section 400 of that Act. Section 400(1) of CTA 2009 states that the section applies if the amounts to be brought into account for the purposes of the Part “in respect of a gilt-edged security” fall to be determined by reference to its value at two different times and there is a change in the retail prices index between the earlier and later time.
- 4.8 Section 94(2) of FA 1996, on which section 400(1) of CTA 2009 is based, referred to “the security” which refers back to “index-linked gilt-edged security” in section 94(1) of FA 1996 on which section 399(1) of CTA 2009 is based. Since amounts to be brought into account on all gilt-edged securities are by reference to the value at two different times which may incidentally coincide with a change in the retail prices index, by not referring explicitly to “gilt-edged security” section 400 has inadvertently changed the law. Article 3(2) of the instrument makes the appropriate amendment to section 400(1)(a) of CTA 2009.

Section 459(1)(a) of CTA 2009

- 4.9 Under section 83(2) of FA 1996, on which section 459 of CTA 2009 is based, non-trading deficits on loan relationships could be set off against “any profits of the company (of whatever description)”. “Any profits of the company (of whatever description)” was rewritten in section 459(1) of CTA 2009 as “total profits of the company” on the basis that this is the usual meaning of the phrase. Paragraph 1 of Schedule 8 to FA 1996 gave details of the claims procedure for set off in the deficit period and referred to a set off against “profits of any description”, which likewise would generally mean “total profits”.

- 4.10 Paragraph 1(2) of Schedule 8 to FA 1996 provided that the amount of the deficit was to be set off against the profits of the company for the deficit period identified in the claim. Since “total profits” are made up of income and chargeable gains, it is not clear how categories of profit could have been identified against which the deficit was to be set. It seems clear that in these instances “profits of any description” or “profits of whatever description” could not have meant total profits in the usual sense of that term.
- 4.11 It follows that in referring to “total profits” the rewrite of section 83(2) of FA 1996 has changed the law. Article 3(3) of the instrument makes the appropriate amendment to section 459(1)(a) of CTA 2009.

Section 566(2) of CTA 2009

- 4.12 Section 566(2) of CTA 2009 rewrites the transitional rule in paragraph 6(1) of Schedule 13 to the Finance Act 2008 (“FA 2008”). That Schedule brought investment life assurance contracts into the loan relationships régime. These contracts were previously dealt with under Chapter 2 of Part 13 of ICTA 1988.
- 4.13 An investment life assurance contract held immediately before an accounting period beginning on or after 1 April 2008 was brought into the loan relationships régime by treating the contract as if all rights under it had been surrendered. The gain which would have arisen under Chapter 2 of Part 13 of ICTA 1988 was then calculated. That gain on the deemed surrender was frozen and brought into account as a non-trading credit on a loan relationship only when the contract was finally redeemed or surrendered.
- 4.14 Paragraph 6(1) of Schedule 13 to FA 2008, in which this commencement rule is found, was ambiguous. Paragraph 5 of Schedule 13 stated that the Schedule had effect for accounting periods beginning on or after 1 April 2008. Paragraph 6(1) then referred to a company being party to a life assurance contract immediately before the beginning of the first accounting period of the company “beginning on or after that date”. That date must have been 1 April 2008, being the last date mentioned. Paragraph 6(1) then continued to the effect that the company was to be treated as having surrendered all its rights under the contract immediately before “that date” for an amount equal to the carrying value of the contract at that time.
- 4.15 Section 556(2) of CTA 2009 takes the second “that date” in paragraph 6(1) of Schedule 13 to FA 2008 to refer to 1 April 2008. HMRC’s Insurance Policyholder Taxation Manual at IPTM3930 interprets the second “that date” in paragraph 6(1) as the beginning of the first accounting period after 1 April 2008.
- 4.16 As drafted, section 566(2) of CTA 2009 resolves the arguments about the interpretation of the second “that date” in paragraph 6(1) of Schedule 13 to FA 2008 in one particular way. In removing the scope for argument, it has changed the law. To restore the law to what it was by preserving the ambiguity in the source legislation, article 3(4) of the

instrument makes the appropriate amendments to section 566(2) of CTA 2009.

Transitional provision in relation to section 480 of CTA 2009

- 4.17 Section 480 of CTA 2009 rewrites section 100(1A) and (1B) of FA 1996. Section 100 of FA 1996 brought into the loan relationships régime debts which did not arise from the lending of money. Section 100(1A) included “discounts” within such debts, but as originally enacted provided that all discounts on the disposal of assets representing loan relationships and derivative contracts were excluded, because such discounts were already brought into account for tax purposes under those two régimes. Paragraph 17 of Schedule 6 to the Finance Act 2006 amended section 100 of FA 1996 to apply section 100 (see section 100(1A)(e)) to money debts on disposals of assets representing loan relationships and derivatives if certain conditions were met.
- 4.18 The amendment made by the Finance Act 2006 took effect in relation to disposals on or after 22 March 2006. It was not considered necessary for CTA 2009 to rewrite this transitional provision as most of the discounts to which section 100(1A) applied are realised within a year of the date of the disposal of property. After further review in the light of representations received, it is now considered that, for completeness, the transitional provision should be rewritten in case there are discounts still outstanding on disposals predating 22 March 2006. Article 3(5) of the instrument inserts the appropriate transitional provision in Schedule 2 to CTA 2009

5. Territorial Extent and Application

The instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

The Financial Secretary to The Treasury has made the following statement regarding Human Rights:

In my view the provisions of the Corporation Tax Act 2009 (Amendment) Order 2010 are compatible with the Convention rights.

7. Policy background

- 7.1 CTA 2009 is the first Act prepared by the Tax Law Rewrite project rewriting the main provisions relating to corporation tax. The power in section 1324 was included to ensure that amendments to correct errors could be made quickly and easily and without recourse to a Finance Bill.

- 7.2 The amendments that are contained in the instrument take effect retrospectively from the date on which CTA 2009 came into force. The correction of the errors restores the generally understood meaning of the provisions. Making the instrument retrospective ensures that there will be no period of time during which the law is unclear.

8. Consultation outcome

- 8.1 In the Second Reading Committee on 15 January 2009 the Financial Secretary to the Treasury gave an assurance that the power in section 1324 of CTA 2009 would not be used without the agreement of the Tax Law Rewrite Consultative and Steering Committees.
- 8.2 Papers explaining the reasons for the amendments made by this instrument have been considered by those Committees and their agreement has been obtained to the exercise of this power.

9. Guidance

A copy of the instrument and this explanatory memorandum will be placed on the Tax Law Rewrite section of the HMRC website.

10. Impact

- 10.1 No impact on the private or voluntary sectors is foreseen.
- 10.2 There is no impact on the public sector.
- 10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

- 11.1 The legislation applies to small business.
- 11.2 To minimise the impact of the requirements on firms employing up to 20 people, the approach taken is to introduce these amendments with retrospective effect, so that there is no uncertainty at any time about the effect of the rewritten legislation. This fulfils the aim of the TLR project which is to make the legislation clearer and easier to use, without changing the law (apart from minor, identified changes).
- 11.3 The basis for the final decision on what action to take to assist small business is the consultation with the Tax Law Rewrite Consultative Committee. The membership of this committee includes representatives of a number of organisations and professional bodies which represent, or whose members' clients include, small businesses.

12. Monitoring & review

No monitoring or review is required as a result of this instrument.

13. Contact

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