

**EXPLANATORY MEMORANDUM TO
THE TAX LAW REWRITE ACTS (AMENDMENT) ORDER 2013**

2013 No. 463

1. This explanatory memorandum has been prepared by the Commissioners for Her Majesty's Revenue and Customs on behalf of HM Treasury 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 restores the law on the operation of certain aspects of group relief to its original position before the Corporation Tax Act 2010 (c. 4) ("CTA 2010") was enacted. The instrument corrects unintended errors in the application of sections 148 and 149 of CTA 2010.

- 2.2 The instrument also makes consequential amendments to section 272 of the Inheritance Tax Act 1984 (c. 51) ("IHTA 1984"), section 45A of the Local Government Finance Act 1988 (c. 41) ("LGFA 1988"), Schedule 18 to the Finance Act 1990 (c. 29) ("FA 1990"), section 227B of the Finance Act 1994 (c. 9) ("FA 1994") and section 415 of the Income Tax (Trading and Other Income) Act 2005 (c. 5) ("ITTOIA 2005") arising from the coming into force of CTA 2010 on 3 March 2010.

- 2.3 The instrument also makes consequential amendments to the Taxation of Chargeable Gains Act 1992 (c. 12) ("TCGA 1992") arising from the coming into force of the Taxation (International and Other Provisions) Act 2010 (c. 8) ("TIOPA 2010") on 18 March 2010.

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

- 3.1 This Order is the first exercise of the power to make consequential provision contained in section 1178 of CTA 2010.

4. **Legislative Context**

- 4.1 The Tax Law Rewrite (TLR) project was established in 1996 and came to an end on 31 March 2010. CTA 2010 and TIOPA 2010 were the project's sixth and seventh (and final) Acts. The project's aim was 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).

- 4.2 Following rewriting of the legislation to CTA 2010 and TIOPA 2010, unintentional errors have been identified and a number of consequential amendments fall to be made. As a result, this instrument makes amendments to provisions in IHTA 1984, LGFA 1988, TCGA 1992, FA 1990, FA 1994, and ITTOIA 2005.

Section 272 of IHTA 1984 and Schedule 18 to FA 1990

- 4.3 Section 842A of the Income and Corporation Taxes Act 1988 (c. 1) (“ICTA 1988”) provided a definition of local authorities for England and Wales, Scotland and Northern Ireland. Section 842A was rewritten as section 999 of the Income Tax Act 2007 (c. 3) (“ITA 2007”) for the purposes of Acts relating to income tax, and as section 1130 of CTA 2010 for the purposes of Acts relating to corporation tax. When section 999 of ITA 2007 was enacted, section 842A was not repealed because the definition was still needed for corporation tax purposes. Once the new definition for corporation tax purposes had been incorporated into section 1130 of CTA 2010, section 842A of ICTA 1988 was repealed by Part 1 of Schedule 3 to CTA 2010.
- 4.4 Section 272 of IHTA 1984 contains general interpretation provisions including a definition of a local authority for the purposes of IHTA 1984. This provision defines local authority with reference to the meaning given to that term by section 842A of ICTA 1988.
- 4.5 This amendment to section 272 of IHTA 1984 is needed to update the reference in that provision to section 842A of ICTA 1988 to refer instead to section 1130 of CTA 2010. Section 842A of ICTA 1988 was repealed by CTA 2010 and rewritten by section 1130 of that Act. This consequential amendment to section 272 of IHTA 1984 was inadvertently omitted from CTA 2010.
- 4.6 Paragraph 4 of Schedule 18 to FA 1990 contained an amendment to section 272 of IHTA 1984 which is now redundant. The paragraph is accordingly removed.

Section 45A(3)(a) of LGFA 1988

- 4.7 Section 45A of LGFA 1988 deals with local rating liability for non-domestic unoccupied property. The provision applies a zero-rating in certain prescribed circumstances, one of which, in sub-section (3) is when the ratepayer is a registered community amateur sports club (CASC), and it appears that the relevant unoccupied property will, when next in use, be wholly or mainly used for the purposes of that CASC, or two or more CASCs.
- 4.8 The CASC Scheme, which was introduced in 2002, enables community amateur sports clubs to register with HM Revenue & Customs (HMRC) and benefit from a range of reliefs, including Gift

Aid and mandatory business rates relief, where they meet the registration conditions. The CASC rules were contained in Schedule 18 to the Finance Act 2002. These rules were rewritten in Chapter 9 of Part 13 of CTA 2010.

- 4.9 The amendment simply seeks to replace explicitly the reference in section 45A(3)(a) of LGFA 1988 to legislation that was repealed by the CTA 2010 with the correct, updated references to the provision as rewritten in the 2010 Act.

Sections 140C(5) and 140F(4) of TCGA 1992

- 4.10 Sections 140C and 140F of TCGA 1992 give effect to the European Mergers Tax Directive (EMTD). They relate to the tax treatment of scenarios where assets held by a UK company in a non-UK permanent establishment are part of a merger, division or transfer of assets between companies resident in different EU member states.
- 4.11 In such scenarios it could be that the company within the charge to UK tax also suffers a tax charge on the same assets in the member state of the permanent establishment. If that is the case then the company may be entitled to double taxation relief against the charge to UK tax in accordance with the double taxation treaty the UK has with that other member state. However it could be that the other member state in question has implemented the EMTD and as a result there is no charge to tax on the relevant assets.
- 4.12 To ensure no double taxation arises, sections 140C and 140F direct that the company within the charge to UK tax is entitled to notional double taxation relief.
- 4.13 The notional double taxation relief stipulated in sections 140C and 140F was calculated in accordance with what was section 815A of ICTA 1988. CTA 2010 replaced section 815A of ICTA 1988 with section 122 of TIOPA 2010. However, references in sections 140C and 140F of TCGA 1992 to section 815A of ICTA 1988 were not replaced with references to section 122 of TIOPA 2010.
- 4.14 While sections 140C and 140F are already to be read as referring to section 122 TIOPA 2010 by virtue of paragraph 5 of Schedule 9 to that Act, this Order makes the position clear on the face of sections 140C and 140F by replacing references to section 815A of ICTA 1988 with references to section 122 of TIOPA 2010. The amendment makes no substantive change to the law.

Section 227B of FA 1994

- 4.15 Section 227B of FA 1994 is concerned with situations where a corporate member of Lloyd's, in accordance with the rules or practice of Lloyd's, takes up the syndicate capacity of another corporate

member. The provision applies certain rules concerning company reconstructions without a change of ownership to such transfers of syndicate capacity.

- 4.16 The relevant company reconstruction rules were contained in section 343 of ICTA 1988. These rules were rewritten in Chapter 1 of Part 22 to the CTA 2010 and came into force on 3 March 2010.
- 4.17 The amendment simply seeks to replace explicitly the reference in section 227B to legislation that was repealed by CTA 2010 with the correct, updated references to the provision as rewritten in that Act. By virtue of paragraph 5 of Schedule 2 to CTA 2010, section 227B is already to be read as if it contained those updated references; however, this instrument makes the position clear from the face of section 227B.

Section 415 of ITTOIA 2005

- 4.18 As part of the Tax Law Rewrite project, section 419 of ICTA 1988 has been rewritten and repealed. Those parts of it relating to income tax (provisions on the release of a loan to a participator) were rewritten in ITTOIA 2005 at sections 415 to 421A. At that time section 419 of ICTA 1988 still existed and therefore the relevant part of ITTOIA 2005 referred to that legislation for the meaning of the expressions used in that part.
- 4.19 The balance of section 419 of ICTA 1988 was rewritten along with the remainder of the close company provisions into CTA 2010 (sections 455 to 465). Section 419 of ICTA 1988 was repealed.
- 4.20 Whilst various consequential amendments were made to ITTOIA 2005 by CTA 2010, section 415(5) was not so amended and still therefore refers back to the now repealed section.
- 4.21 The amendment replaces the reference in section 415 of ITTOIA 2005 to the repealed section of ICTA 1988 with the correct, updated reference to the provision as rewritten in CTA 10 (s. 455). By virtue of paragraph 5 of Schedule 2 to CTA 10, section 415 is already to be read as if it contained this updated reference, but this amendment ensures that this is clear on the face of the legislation.

Section 148 and 149 of CTA 2010

- 4.22 The error relates to the determination of the amount of group relief available to, and the amount surrenderable by, a consortium company that is also a member of a group.
- 4.23 The relevant legislation was at sections 403C and 405 of ICTA 1988. This legislation has been rewritten to sections 143, 144, 148 and 149 CTA 2010.

- 4.24 In ICTA 1988 the amount of group relief that a consortium company could surrender or claim was first reduced by any potential group relief claim or surrender within its own group (section 405): the resultant amount was then further restricted by the ownership restriction at section 403C.
- 4.25 Under the rewritten legislation, sections 148 and 149 of CTA 2010 apply the potential group relief restriction previously at section 405 of ICTA 1988, and sections 143 and 144 of CTA 2010 apply the ownership restrictions previously at section 403C. However, these restrictions are applied independently. Whereas in ICTA 1988, the ownership restriction was applied to an amount that had already been subjected to the potential group relief restriction, in CTA 2010 these two restrictions are not linked. This results in a different and higher amount of group relief available for surrender to, and claim by, a consortium company in the rewritten legislation at CTA 2010 than would have been the case in ICTA 1988.
- 4.26 The amendments in sections 148 and 149 restore the previous effect of the law and make it clear that the ownership restriction at sections 143 and 144 of CTA 2010 should be applied after the application of the potential group relief restriction at sections 148 and 149 of CTA 2010. The amendment is not to be applied retrospectively and therefore no claimant should be disadvantaged.
- 4.27 Section 144(2), like section 149 of CTA 2010 as enacted, contained an error in the terminology used to refer to “available total profits”, referring to “total profits”. While it is clear in these sections that “total profits” means “available total profits” as used in section 140 CTA 2010, rather than reproduce the error in the amendment to s.149 made by this Order, the solution is to use the term “available total profits” in that amendment and at the same time, to take the opportunity to align the wording in section 144(2) as incidental to the amendment to section 149.

5. Territorial Extent and Application

- 5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

- 6.1 The Exchequer Secretary to the Treasury, David Gauke MP has made the following statement regarding Human Rights:

“In my view the provisions of the Tax Law Rewrite Acts (Amendment) Order 2013 are compatible with the Convention rights”.

7. Policy background

- *What is being done and why*

- 7.1 This instrument makes amendment to group relief provisions in CTA 2010. They are necessary as minor errors contained within CTA 2010 inadvertently changed the law.
- 7.2 This instrument restores the law to its original position before the enactment of CTA 2010. The power in section 1179 (to undo changes) was included to ensure that unintentional minor errors could be easily corrected without recourse to a Finance Bill.
- 7.3 This instrument also makes consequential amendments to the provisions of ITTOIA 2005, IHTA 1984, LGFA 1988, FA 1990, and FA 1994 which update references to legislation rewritten in CTA 2010. The power in section 1178 (to make consequential provision) was included to ensure that consequential amendments could be made easily without recourse to a Finance Bill.
- 7.4 This order makes consequential amendments to the provisions of TCGA 1992 similarly to update references to legislation rewritten in TIOPA 2010. The power in section 375 (to make consequential provision) was included to ensure that consequential amendments to clarify the position could be made easily without recourse to a Finance Bill.

8. Consultation outcome

- 8.1 In the Second Reading Committee on 15 December 2009 and Third Reading Committee on 4 February 2010 respectively the Financial Secretary to the Treasury gave an assurance that the powers in sections 375 of TIOPA 2010 and in 1178 and 1179 of CTA 2010 would not be used without the agreement of the Tax Law Rewrite Consultative and Steering Committees. These Committees continue in existence for this purpose despite the Tax Law Rewrite project having come to an end.
- 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 exercise of these powers.

9. Guidance

- 9.1 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 business, charities or voluntary bodies is foreseen.
- 10.2 There is no impact on the public sector.

10.3 A Tax Information and Impact Note (TIIN) has not been prepared for this instrument as it contains no substantive changes to tax policy.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 The Tax Law Rewrite Consultative Committee has agreed that the legislation is drafted in such a way as to minimise its impact on small business. The membership of the committee includes representatives of a number of organisations and professional bodies which represent, or whose members' clients include, small businesses.

12. Monitoring & review

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

13. Contact

13.1 Andrew Jackson at HM Revenue and Customs Tel: 020 7147 0331 or email: tap@hmrc.gsi.gov.uk can answer any queries regarding this instrument.