

CORPORATION TAX ACT 2009

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 10: Miscellaneous income

Chapter 8: Income not otherwise charged

Overview

2491. This Chapter applies the charge to corporation tax on income to any income that is not so charged by any other corporation tax provision. The corresponding income tax charge is in Chapter 8 of Part 5 of ITTOIA.
2492. The Chapter also includes exemptions from the charge applied under this Chapter.
2493. In the source legislation, Schedule D is the residual Schedule into which income falls for corporation tax purposes if neither ITEPA nor Schedule A applies to it. The Schedule is set out in section 18 of ICTA. Section 18(1)(a) of ICTA charges “annual profits or gains arising or accruing... from any kind of property whatever...”. Section 18(1)(b) of ICTA charges “...other annual profits or gains not charged under Schedule A or under ITEPA 2003 as employment income, pension income or social security income, and not specially exempted from tax”.
2494. Schedule D Case VI is itself the residual Case under that Schedule. Tax is charged under Case VI “in respect of annual profits or gains not falling under any other Case of Schedule D and not charged by virtue of Schedule A or by virtue of ITEPA 2003 as employment income, pension income or social security income”. Schedule D Case V includes an identical function for the income to which that Case applies. The scope of Case V is (subject to the override in section 18(3A) of ICTA giving priority to Schedule D Case III in respect of anything chargeable under Chapter 2 of Part 4 of FA 1996 as profits or gains from loan relationships) “income arising from possessions out of the United Kingdom not being employment income, pension income or social security income on which tax is charged under ITEPA 2003”. Case law has established the comprehensive scope of Case V in relation to “income from possessions out of the United Kingdom”. So far as any amount is “income from possessions out of the United Kingdom”, Case V is the “last resort” charging provision, not Case VI. And a corollary to that rule is that income charged by Case VI (other than deemed income which is directed by provisions other than section 18 of ICTA to be taxed under Case VI) can only derive from a source in the United Kingdom.
2495. This Chapter brings together the “sweep up” functions of Schedule D Cases V and VI.
2496. The charge under this Chapter is restricted to amounts that are “income” on first principles. That is, in terms of the source legislation they are “annual profits or gains” under section 18(1) of ICTA, as that phrase has been interpreted by case law, and do not include profits or gains of a capital nature even if such profits are directed to be charged to tax as income.

2497. Under section 396 of ICTA, Schedule D Case VI losses may be set against Case VI profits or gains. Although that relief is not rewritten in this Act, consequential amendments of ICTA in Schedule 1 to this Act ensure that the relief continues to work as before in respect of income within this Chapter despite the abolition by this Act of the Schedules and the Cases of Schedule D.

Section 979: Charge to tax on income not otherwise charged

2498. This section applies the charge to corporation tax on income to income not so charged elsewhere. It is based on sections 9(1), (2), (2B), (2C), (3) and (4) and 18(1) and (3) of ICTA. The corresponding rule for income tax is in section 687 of ITTOIA.
2499. Schedule D Case V charges tax in respect of *income* from possessions out of the United Kingdom. Schedule D Case VI charges tax in respect of *annual profits or gains*. The scope of both Cases is derived from section 18(1) of ICTA, which refers to “annual profits or gains”. Case law does not indicate a difference, in the context of section 18 of ICTA, in the meaning of “annual profits or gains” and “income”. The choice of term appears to be dictated (although not consistently) by the degree to which a calculation of profit or loss is relevant to the calculation of the income charged. The section uses *income* rather than *(annual) profits or gains*.
2500. *Subsection (2)* protects the effect of any exemption, whether provided by this Chapter or by Part 19 (general exemptions) of this Act or by other legislation.
2501. That subsection disapplies the charge to “deemed income”. This term refers to amounts that are treated as income by a provision of the Corporation Tax Acts, so that the charge to corporation tax on income applies to that amount. The disapplication applies in the event that such deemed income would not fall within any other application of the charge to corporation tax on income.

Section 980: Exemption for commercial occupation of woodlands in UK

2502. This section exempts income arising from the occupation of commercial woodlands from any charge under this Chapter. It is based on paragraphs 2 and 3 of Schedule 6 to FA 1988. The corresponding rule for income tax is in section 768 of ITTOIA.
2503. A consequence of this exemption is that no loss relief is available under section 396 of ICTA (losses from miscellaneous transactions). A requirement of that section is that any profit on the transaction would be liable to corporation tax.
2504. This section is complemented by sections 37 and 208 of this Act. The combined effect of these three sections is that income from the occupation of commercial woodlands is ignored for corporation tax purposes.
2505. The interpretation of commercial occupation of woodlands in *subsection (2)* is supplemented by the definition of “woodlands” in section 1317(4) of this Act.

Section 981: Exemption for gains on financial futures

2506. This section removes gains on financial futures, traded options and financial options from the charge to corporation tax on income under this Chapter. It is based on section 128 of ICTA. The corresponding rule for income tax is in section 779 of ITTOIA.
2507. Because of this exemption, the gains in question (which do not include any gains falling within Part 3 (trading income)) are not charged to corporation tax as income but as chargeable gains (see section 143 of TCGA).
2508. In contrast to the equivalent income tax exemption (section 779 of ITTOIA), this exemption does not cover commodity futures. Commodity futures come within the scope of the derivative contracts regime rather than the chargeable gains rules (see Part

*These notes refer to the Corporation Tax Act 2009
(c.4) which received Royal Assent on 26 March 2009*

7 of this Act). To the extent that any of the futures or options to which this exemption would otherwise apply are also within the scope of that Part, this exemption will not apply. See the definition of a “derivative contract” in section 576.

2509. The section imports the definitions provided by section 143 of TCGA. The definition of “recognised futures exchange” is provided because, unlike the position in ITTOIA (see section 558(3) of that Act), there is no definition of the term elsewhere in this Act that applies here.