

CORPORATION TAX ACT 2009

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 18: Unremittable income

Overview

3256. This Part provides relief from corporation tax if income arising in a territory outside the United Kingdom cannot be remitted to the United Kingdom. It also provides for withdrawal of relief if such income ceases to be unremittable. And it explains how unremittable income is to be valued if relief is not in fact claimed. The Part is based on section 584 of ICTA. The corresponding rules for income tax are in Chapter 4 of Part 8 of ITTOIA.
3257. This Part applies to “income arising in a territory outside the United Kingdom”. In the source legislation for this Act, income arising outside the United Kingdom is charged to corporation tax mainly under Schedule D Case V (section 18 of ICTA). But some foreign income is charged under Schedule D Case VI (in circumstances that that Case is applied by a provision other than section 18 of ICTA), or under a non-schedular provision, if the provision covers income arising outside the United Kingdom.
3258. Profits made by the foreign branch of a United Kingdom trade are charged in Part 3. Such profits are not income arising in a territory outside the United Kingdom and this Part does not apply. (But Chapter 12 of Part 3 (deductions from profits: unremittable amounts) provides an equivalent relief in relation to a United Kingdom trade.)
3259. The paragraph headed “unremittable income that arose in an accounting period ending before 1 April 2009” in Part 21 of Schedule 2 to this Act (transitionals and savings), the equivalent for corporation tax purposes of paragraph 153(1) and (2) of Schedule 2 to ITTOIA, ensures that this Part applies for an accounting period ending on or after 1 April 2009 even though the income in question arose in an accounting period ending before that date.

Section 1274: Unremittable income: introduction

3260. This section defines unremittable income and sets out the circumstances in which this Part applies. It is based on section 584(1) of ICTA. The corresponding rule for income tax is in section 841 of ITTOIA.
3261. The source legislation refers to “foreign currency”. This means a currency other than the currency of the territory in question. Since the *local* currency must be obtainable, it is superfluous to add that currency not obtainable is ‘foreign’.
3262. Condition A for unremittable income refers to the impossibility of obtaining currency in the territory in question and makes explicit that this means currency that could be transferred to the United Kingdom (whether the currency of that or another territory). See *Change 90* in Annex 1.

3263. The requirement in the source legislation, that the inability to transfer the income to the United Kingdom is not due to any want of reasonable endeavours on the part of the claimant, is omitted. See again *Change 90* in Annex 1.

Section 1275: Claim for relief for unremittable income

3264. This section deals with claims for relief and sets out how the relief applies. It is based on section 584(1), (2),(5) and (6) of ICTA. The corresponding rule for income tax is in section 842 of ITTOIA.
3265. The effect of *subsection (1)* is that the unremittable income is omitted from the company's taxable income for the accounting period in which it arises.
3266. *Subsection (4)* defines an Export Credits Guarantee Department payment ("ECGD payment"). The statutory references in the source legislation have been updated. As section 13(1) of the Export and Investment Guarantees Act 1991 delegates the functions of the Secretary of State under section 2 of that Act to the Export Credits Guarantee Department, the section refers to the role of that Department (rather than the Secretary of State) in administering this scheme.

Section 1276: Withdrawal of relief

3267. This section brings together the consequences both of unremittable income becoming remittable and of a payment being made by the Export Credits Guarantee Department. It is based on section 584(2A) and (5) of ICTA. The corresponding rule for income tax is in section 843 of ITTOIA.
3268. *Subsections (3) and (5)* set out when, and at what value, income ceasing to be unremittable is treated as arising. Income so treated as arising is charged under the provision appropriate to the income type (or types) that would have applied to the income when it arose but for the relief.
3269. *Subsection (4)* provides that, when an ECGD payment is made, income is treated as arising at that time to the extent of the payment. This reflects the intention of the legislation as originally drafted. Amendments made by FA 1996 obscured the point. See *Change 91* in Annex 1. *Subsection (5)* deals with the value of that income.
3270. *Subsection (6)* prevents a double charge under this section. For example, if relief has already been withdrawn because an ECGD payment has been received, there is no further charge – to the extent of that payment – if the income itself subsequently becomes remittable.

Section 1277: Income charged on withdrawal of relief after source ceases

3271. This section sets out how relief given under this Part is withdrawn when income ceases to be unremittable after the source of the income has ceased. It is based on section 584(4) of ICTA. The corresponding rule for income tax is in section 844 of ITTOIA.
3272. If relief cannot be withdrawn in accordance with section 1276, because the trade or property business in question has permanently ceased, the amount in respect of which relief is withdrawn is dealt with as a post-cessation receipt under Chapter 15 of Part 3 (trading income) or Chapter 9 of Part 4 (property income) of this Act. In both cases, the provision in the relevant Chapter limiting its application is disapplied as unnecessary.
3273. For any other case where relief is withdrawn after the source has ceased, *subsection (4)* provides that the income should be taxed as if the source had not ceased. See *Change 19* in Annex 1.
3274. Income charged by virtue of this section is, in the source legislation, charged under Schedule D Case VI (rather than Schedule D Case V or another charge). The potential relevance of such income to relief under section 396 of ICTA (losses from

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

miscellaneous transactions) is preserved by consequential amendments in Schedule 1 to this Act, which amend that section and insert section 834A of ICTA. See the commentary on Schedule 1 for the insertion of section 834A of ICTA.

Section 1278: Valuing unremittable income

- 3275. This section sets out how unremittable income is valued if relief under this Part is not claimed. It is based on section 584(8) of ICTA. The corresponding rule for income tax is in section 845 of ITTOIA.
- 3276. The section applies if no claim is made under section 1275 for relief under this Part. In such a case, the charge to tax is not deferred. So the income is charged to corporation tax in the accounting period to which it refers. This section determines the sterling value of the amount to be charged.