

# CORPORATION TAX ACT 2010

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## EXPLANATORY NOTES

### INTRODUCTION

#### **Part 14: Change in company ownership**

##### **Overview**

2066. Sections 767A to 769 of, and Schedule 28A to, ICTA have been enacted and amended piecemeal over many years; what is now section 768 of ICTA made its first appearance as section 30(1) to (4) of FA 1969 and paragraphs 8 to 10 of Schedule 15 to that Act. The structure of the legislation is tight and intricate – see, for example, section 768C(5).
2067. The opportunity has been taken to restructure the source legislation to make it easier for users to navigate. In summary, this Part of the Act has the following structure.
2068. **Chapter 1** provides a bird’s eye view of the Part.
2069. **Chapter 2** disallows trading losses in defined situations. It applies both to companies with investment business and to companies without investment business. It is based on sections 768 and 768A of ICTA.
2070. **Chapters 3 and 4** apply to companies with investment business. They impose restrictions on corporation tax relief. Chapter 3 provides the general rules and Chapter 4 deals with special circumstances involving the transfer of an asset within a corporate group. Chapter 3 is chiefly based on sections 768B, 768D and 768E of ICTA and paragraphs 1 to 9A of Schedule 28A to that Act. Chapter 4 is based on sections 768C to 768E of, and paragraphs 10, 10A and 13 to 17 of Schedule 28A to, ICTA.
2071. **Chapter 5** applies to companies without investment business. It disallows property losses. It is based on section 768D of ICTA.
2072. **Chapter 6** is concerned with recovery of unpaid corporation tax. It is based on sections 767A to 767B of ICTA.
2073. **Chapter 7** defines the key expression “change in the ownership of a company” for the purposes of the Part. It is based on section 769 of ICTA.
2074. **Chapter 8** is supplementary.

##### **Chapter 1: Introduction**

##### **Section 672: Overview of Part**

2075. This section introduces the Part. It is new.
2076. *Subsection (6)* signposts the Chapter on recovery of unpaid corporation tax due from non-UK resident companies. It is similar to Chapter 6, but is not located in this Part because it applies whether or not there is a change in company ownership.
2077. *Subsection (7)* signposts three important definitions.

## **Chapter 2: Disallowance of trading losses**

### **Overview**

2078. **Chapter 2** is the first of four Chapters dealing with variations on the theme of “loss buying”.
2079. Companies can obtain corporation tax relief for various expenses and losses in different periods from the periods in which the expenses or losses arise. They can, however, only turn these reliefs into a reduction in tax liability if they have taxable profits against which the expenses or losses can be set. The shareholders of an unsuccessful company might therefore wish to monetise these tax reliefs by selling the company to people who might be able to make use of them. Sections 768 to 768E of, and Schedule 28A to, ICTA are directed against such “loss buying”.
2080. This Part of the Act does not deal with the buying in of group relief. Section 142, which is based on section 403A(9) and (10) of ICTA, prevents companies claiming group relief in relation to expenses and losses arising before a company joined the group.
2081. The loss buying provisions of TCGA are outside the scope of this Act. See, however, the commentary on section 694.

### **Section 673: Introduction to Chapter**

2082. This section introduces the Chapter. It is based on sections 6, 768, 768A and 834 of ICTA.
2083. *Subsections (1) to (3)* lay down the conditions for the Chapter to apply.
2084. Subsection (2) omits as otiose the words “either earlier or later in the period, or at the same time” in sections 768(1) and 768A(1) of ICTA.
2085. Section 767A(4)(b) of ICTA refers to a “significant revival” of activities; sections 768(1)(b) and 768B(1)(c) of ICTA refer to a “considerable revival” of a trade or business. Sections 768(1)(b) and 768B(1)(c) contrast “considerable” with “small or negligible”; in section 767A(4)(b), the contrast is not only with “small or negligible” but also with cessation. The rewrite of these provisions eliminates this variation by consistently using “significant” in subsection (3) and sections 677(2) and (4), 704(3) and 705(3).
2086. *Subsection (4)* defines, non-exhaustively, “major change in the nature or conduct of a trade”. The phrase “major change” has been retained in this definition, because there is case law on it: *Willis v Peeters Picture Frames Ltd* (1982), 56 TC 436 CA(NI)<sup>1</sup> and *Purchase v Tesco Stores Ltd* (1984), 58 TC 46 HC.<sup>2</sup> For the same reason, the phrase “major change” has also been retained in the similar definitions in sections 677(5), 704(10) and 705(9).
2087. *Subsection (5)* defines “the change in ownership”, “the company” and “trade” for the purposes of this Chapter. It defines “trade” to include an office, but does not define “trade” to include “vocation”. This is a minor change in the law. See *Change 4* in Annex 1.

### **Section 674: Disallowance of trading losses**

2088. This section restricts relief for trading losses in cases in which this Chapter applies. It is based on sections 768 and 768A of ICTA.
2089. *Subsection (1)* restricts relief under sections 37 and 42 (relief for trade losses). It is aimed at the abuse known as “profits buying” or “loss capacity buying” whereby a

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<sup>1</sup> [1983] STC 453.

<sup>2</sup> [1984] STC 304.

*These notes refer to the Corporation Tax Act 2010  
(c.4) which received Royal Assent on 3 March 2010*

trading company with large profits is sold to new owners who feed new activities into the trade which result in heavy initial losses for which early relief would not otherwise be available. The price paid to the old owners would reflect the tax benefit expected to accrue to the new owners.

2090. *Subsection (2)* restricts relief under section 45 (carry forward of trade loss against subsequent trade profits).
2091. Section 768(1) of ICTA refers to “relief ... given under section 393 [of that Act] by setting a loss incurred by the company ... against any income or other profits ...”. But section 393 of ICTA only gives relief for losses against “trading income” (as defined in section 393(8) of that Act). The reference to “other profits” is a missed consequential amendment. The words should have been omitted when FA1991 replaced section 393(2) of ICTA with section 393A of ICTA. Subsection (2) of this section therefore omits the reference to “other profits”.
2092. Section 768(3) of ICTA provides:  
“The apportionment under subsection (2) above shall be on a time basis according to the respective lengths of those parts except that if it *appears* that that method would work unreasonably or unjustly such other method shall be used as *appears* just and reasonable. (emphasis added)
2093. *Subsection (5)* omits the first instance of “appears” in section 768(3) of ICTA for the sake of consistency with sections 685(3) and 702, which are based on paragraphs 8 and 17 respectively of Schedule 28A to ICTA, and sections 704(7) and 705(7), which are based on section 768D(4) of ICTA. It also omits the second instance of “appears” in section 768(3) of ICTA to sharpen the drafting.

***Section 675: Disallowance of trading losses: calculation of balancing charges***

2094. This section prevents double taxation in cases in which this Chapter applies. It is based on section 768 of ICTA.
2095. If section 674(2) restricts relief for trading losses carried forward under section 45, the underlying computations of capital allowances are not affected, because the trade itself does not cease. This means that if, at the time of the change of ownership, a company owns assets on which capital allowances have been given, it can be effectively penalised twice by:
- disallowance of any unused capital allowances included in the losses disallowed; and
  - a balancing charge when the assets are disposed of.
2096. *Subsections (2) and (3)* solve this problem. If an extinguished loss includes unallowed capital allowances, those capital allowances are treated as not having been given when calculating the balancing charges on an asset owned at the date of the change in ownership and disposed of later.
2097. *Subsection (4)* sets an identification rule. If, in any period, both losses and capital allowances were available for setting against profits, capital allowances are treated as set off before other losses. As requested by respondents, we have sharpened the drafting of this subsection.
2098. Section 768(6) and (7) of ICTA use the expression “allowance or deduction”. Since “or deduction” adds nothing to “allowance”, subsections (2) to (4) omit “or deduction” as otiose.

***Section 676: Disallowance of trading losses where company reconstruction without change in ownership***

2099. This section deals with the interaction between sections 674(2) and 944(3). It is based on section 768 of ICTA.
2100. When a trade is transferred from a predecessor company to a successor company, and the relevant conditions are met for a company reconstruction without a change in ownership, section 944(3) provides for the successor to be entitled to relief under section 45 for a trading loss made by the predecessor. Section 674(2) restricts relief under section 45 if there is a change in company ownership. If there is both a company reconstruction without a change in ownership (such that section 944(3) applies) and, separately, a change in ownership (such that section 674(2) applies), then this section extends section 674(2) to restrict relief given under section 944(3).
2101. Section 768(5) of ICTA refers to “section 343” of that Act. But section 768(5) only operates on section 768(1) of ICTA, and section 768(1) only restricts relief under section 393 of that Act. The only provision of section 343 of ICTA which gives relief under section 393 of that Act is section 343(3). This section refers precisely to section 944(3), which is based on section 343(3) of ICTA.

***Chapter 3: Company with investment business: restrictions on relief: general provision***

**Overview**

2102. **Chapter 3** is the second of four Chapters dealing with various kinds of loss buying. It has the following structure.
- Section 677 (introduction) lays down the conditions for the Chapter to apply and defines some key terms.
  - If the Chapter applies, section 678 (notional split of accounting period in which change in ownership occurs) sets the stage. It splits the period in which the change in ownership occurs into two notional accounting periods, and indicates that certain amounts need to be apportioned between these two periods.
  - Sections 679 to 684 are a group of six sections restricting various kinds of corporation tax relief. If, having reviewed them, the reader is satisfied that in the case under review these sections make no practical difference, the reader is able to conclude that there is in practice no need to make the apportionments required by section 678.
  - Sections 685 and 686 are the detailed rules for making apportionments of amounts for the purposes of this Chapter.
  - Section 687 provides for the adjustment of balancing charges in certain cases in which corporation tax relief is restricted.
  - Sections 688 to 691 define “significant increase in the amount of a company’s capital”.

***Section 677: Introduction to Chapter***

2103. This section introduces the Chapter. It is based on sections 768B, 768D and 768E of ICTA. If, having read this section, the reader is satisfied that the conditions for this Chapter to apply are not met, the reader need read no further in this Chapter.
2104. *Subsections (1) to (4)* lay down the conditions for the Chapter to apply.
2105. Subsection (1) is based on, among other things, section 768D(1)(a)(i) of ICTA. Unlike section 768D(1) of ICTA, subsection (1) does not refer to a change in the ownership of

a company carrying on a UK property business; it refers to a change in the ownership of a company with investment business. The reason is that, if section 768D(1)(a)(i) of ICTA applies, then:

- There is a change in the ownership of a company carrying on a UK property business (see the opening words of section 768D(1)); and
- The company whose ownership has changed is a company with investment business (see the opening words of section 768D(1)(a)).

2106. Accordingly, if section 768D(1)(a)(i) of ICTA applies, there is by implication a change in the ownership of a company with investment business. There is therefore no need for section 768D(1) of ICTA to pick up the opening words of section 768B of that Act.

2107. *Subsection (5)* defines, non-exhaustively, “major change in the nature or conduct of a business”.

### ***Section 678: Notional split of accounting period in which change in ownership occurs***

2108. This section deems the accounting period in which the change in ownership occurs to be split into two notional accounting periods for the purposes of this Chapter. It is based on sections 768B, 768D and 768E of ICTA.

2109. *Subsection (3)* requires amounts for the actual accounting period to be apportioned between the two notional accounting periods in accordance with section 685.

### ***Section 679: Restriction on debits to be brought into account***

2110. This section restricts debits on the company’s loan relationships in cases in which this Chapter applies. It is based on section 768B of ICTA and paragraph 9 of Schedule 28A to that Act.

2111. This section is the first of a group of six sections (sections 679 to 684) imposing restrictions on corporation tax relief. The first four of these sections restrict reliefs given by CTA 2009, and are arranged in the order in which those reliefs appear in that Act. The fifth and sixth of those sections restrict relief for property business losses, and are arranged in the order in which those reliefs appear in Chapter 4 of Part 4 of this Act.

2112. Section 574 of CTA 2009 provides that non-trading credits and debits from derivative contracts are to be brought into account as if they were non-trading credits or non-trading debits for the purposes of Part 5 of CTA 2009 in respect of loan relationships of the company. The reference to that section in section 768B(10) of ICTA is otiose. *Subsection (1)* therefore omits it.

2113. *Subsections (2) to (4)* set out the consequences of the apportionment made under section 678.

2114. “Relevant non-trading debits” in subsections (2) and (3) translates “debts falling within paragraph 11 below” in paragraph 9(2) of Schedule 28A to ICTA. *Subsection (5)* tells the reader where this expression is defined.

### ***Section 680: Restriction on the carry forward of non-trading deficit from loan relationships***

2115. This section restricts relief for the company’s non-trading deficit on its loan relationships in cases in which this Chapter applies. It is based on section 768B of, and paragraph 9A of Schedule 28A to, ICTA.

2116. Debits and deficits have different functions in the loan relationships regime, therefore this Chapter imposes different restrictions on them.

2117. Section 574 of CTA 2009 provides that non-trading credits and debits from derivative contracts are to be brought into account as if they were non-trading credits or non-trading debits for the purposes of Part 5 of CTA 2009 in respect of loan relationships of the company. The reference to that section in section 768B(10) of ICTA is otiose. *Subsection (1)* therefore omits it.

***Section 681: Restriction on relief for non-trading loss on intangible fixed assets***

2118. This section restricts relief for the company's non-trading loss on its intangible fixed assets in cases in which this Chapter applies. It is based on section 768E of ICTA.
2119. *Subsection (3)* corrects a drafting error in section 768E(5) of ICTA. This is a minor change in the law. See *Change 49* in Annex 1. A similar correction is made in section 698(4).

***Section 682: Restriction on the deduction of expenses of management***

2120. This section restricts relief for the company's expenses of management in cases in which this Chapter applies. It is based on section 768B of ICTA.
2121. In rewriting section 768B(6), *subsection (2)* inserts "as" before the second occurrence of "expenses of management", to correct a drafting slip in paragraph 3(3)(b) of Schedule 6 to FA 2004.
2122. Section 768B(7) and (9)(b) of ICTA are not rewritten. See the commentary on the amendments made to that section by Schedule 1.

***Section 683: Disallowance of UK property business losses***

2123. This section restricts relief for the company's UK property business loss in cases in which this Chapter applies. It is based on section 768D of ICTA.

***Section 684: Disallowance of overseas property business losses***

2124. This section restricts relief for the company's overseas property business loss in cases in which this Chapter applies. It is based on section 768D of ICTA.
2125. Section 768D(9) of ICTA has to be read as implying that, in a case in which section 768D applies in relation to an overseas property business, references to section 392A of ICTA have to be read as references to the corresponding provisions of section 392B of ICTA. Otherwise section 768D of ICTA applies in such a case but does not actually do anything. This section therefore refers to section 66, which is based on section 392B of ICTA.
2126. Section 768D(5) of ICTA can have no application in relation to an overseas property business, and is therefore not rewritten in this section.

***Section 685: Apportionment of amounts***

2127. This section stipulates how various amounts are to be apportioned for the purposes of this Chapter. It is based on section 768E of, and paragraphs 6, 7 and 8 of Schedule 28A to, ICTA.
2128. The source legislation obliges the reader to tally sub-paragraphs of paragraph 6 of Schedule 28A to ICTA with sub-paragraphs of paragraph 7(1) of that Schedule. This is inconvenient, as the sub-paragraphs are not always in one-to-one correspondence and the legislation has been amended several times. Paragraphs 6 and 7(1) of that Schedule have therefore been rewritten in *subsection (2)* as a two-column table.
2129. Detailed comments on the table are given below.

*These notes refer to the Corporation Tax Act 2010  
(c.4) which received Royal Assent on 3 March 2010*

<i>Row</i>	<i>Origin</i>
1 and 2	Paragraphs 6(da) and 7(1)(c) of Schedule 28A to ICTA. In rows 1 and 2, the opportunity has been taken to deal with profits and deficits separately.
3	Paragraphs 6(db) and 7(1)(d)(i) and (e)(i) of Schedule 28A to ICTA.
4	Paragraphs 6(dc) and 7(1)(b) of Schedule 28A to ICTA.
5	Paragraphs 6(de) and 7(1)(g) of Schedule 28A to ICTA.
6	Paragraphs 6(df) and 7(1)(h) of Schedule 28A to ICTA.
7	Paragraphs 6(a) and 7(1)(a) of Schedule 28A to ICTA.
–	Paragraphs 6(b) and 7(1)(aa) of Schedule 28A to ICTA are repealed as obsolete. See the commentary on the amendments made to section 768B of ICTA by Schedule 1.
8	Paragraphs 6(c) and 7(1)(b) of Schedule 28A to ICTA.
9	Paragraphs 6(d) and 7(1)(c) of Schedule 28A to ICTA.
10	Paragraphs 6(e) and 7(1)(c) of Schedule 28A to ICTA.

2130. In rewriting paragraph 8 of Schedule 28A to ICTA, *subsection (3)* omits both instances of “appears”. See the commentary on section 674.

***Section 686: Meaning of certain expressions in section 685***

2131. This interpretative section is based on paragraphs 6, 6A and 7 of Schedule 28A to ICTA. The subsections of this section are arranged in the order of the rows to which they refer in the table in section 685(2).

***Section 687: Adjustment to balancing charges if relief is restricted***

2132. This section prevents double taxation in certain cases within sections 679, 680 and 682. It is based on sections 768 and 768B of ICTA.

2133. This section has the same function in this Chapter as section 675 has in Chapter 2. See the commentary on that section.

2134. Section 574 of CTA 2009 provides that non-trading credits and debits from derivative contracts are to be brought into account as if they were non-trading credits or non-trading debits for the purposes of Part 5 of that Act in respect of loan relationships of the company. The reference to that section in section 768B(13) of ICTA is otiose. *Subsection (2)* therefore omits it.

2135. Section 768(6) and (7) of ICTA use the expression “allowance or deduction”. Since “or deduction” adds nothing to “allowance”, *subsections (4) to (6)* omit “or deduction” as otiose.

***Section 688: Meaning of “significant increase in the amount of a company’s capital”***

2136. This section is the first of a group of four sections which together define “significant increase in the amount of a company’s capital” for the purposes of condition A in section 677(2). It is based on paragraphs 1 and 2 of Schedule 28A to ICTA.

***Sections 689 and 690: Amount A; amount B***

2137. These interpretative sections are based on paragraphs 3 and 4 of Schedule 28A to ICTA.

### **Section 691: Meaning of “amount of capital”**

2138. This interpretative section is based on paragraph 5 of Schedule 28A to ICTA.
2139. In paragraph 5(1) of Schedule 28A to ICTA, “the capital of a company” has to be read as “the amount of the capital of a company”. Otherwise, in paragraph 3(1) of that Schedule, “the amount of the company’s capital” has to be read as “the amount of the aggregate of (a) the amount of ...”. *Subsection (2)* makes this clear.
2140. Paragraph 5(3) of Schedule 28A to ICTA provides for amounts of capital to be rounded up to the nearest pound. *Subsection (4)* omits this requirement because it has no practical effect.

### **Chapter 4: Company with investment business: restrictions on relief: asset transferred within group**

#### **Overview**

2141. **Chapter 4** is the third of four Chapters dealing with various kinds of loss buying. It rewrites section 768C of ICTA and the corresponding provisions of sections 768D and 768E of ICTA.
2142. Section 768C of ICTA was inserted by FA 1995 to block the following scheme. A company is about to realise a chargeable gain on an asset. The company purchases a company with excess management expenses. Relief for these is not restricted by section 768B of ICTA, because the conditions in section 768B(1)(a) to (c) are not met. The asset is transferred to the newly purchased company at no gain/no loss under section 171 of TCGA. When the transferee company disposes of the asset and crystallises the chargeable gain, it can use its pre-acquisition management expenses to shelter the gain.
2143. Sections 768D and 768E of ICTA (inserted by FA 1998 and FA 2002 respectively) included provisions corresponding to section 768C to cover pre-acquisition property losses and pre-acquisition non-trading losses on intangible fixed assets: see sections 768D(1)(a)(ii) and 768E(1)(b).
2144. Section 768C(13) (inserted by FA 2002) extended section 768C to cover tax-neutral intra-group transfers of intangible fixed assets.
2145. **Chapter 4** is similar in many respects to Chapter 3, but there are important differences of detail because, unlike Chapter 3, Chapter 4 needs to cater for chargeable gains and realisation gains on intangible fixed assets.
2146. **Chapter 4** has the following structure.
- Sections 692 to 694 lay down the conditions for the Chapter to apply and define some key terms.
  - If the Chapter applies, section 695 (notional split of accounting period in which change in ownership occurs) sets the stage. It splits the period in which the change in ownership occurs into two notional accounting periods, and indicates that certain amounts need to be apportioned between these two periods.
  - Sections 696 to 701 are a group of six sections restricting various kinds of corporation tax relief. If, having reviewed them, the reader is satisfied that in the case under review these sections makes no practical difference, the reader is able to conclude that there is in practice no need to make the apportionments required by section 695.
  - Sections 702 and 703 contain the detailed rules for making apportionments of amounts for the purposes of this Chapter.

***Section 692: Introduction to Chapter***

2147. This section introduces the Chapter. It is based on sections 768C, 768D and 768E of ICTA. If, having read this section, the reader is satisfied that the conditions for this Chapter to apply are not all met, the reader need read no further in this Chapter.
2148. *Subsections (1) to (4)* lay down the conditions for the Chapter to apply.
2149. Subsection (1) is based on, among other things, section 768D(1)(a)(ii) of ICTA. Unlike section 768D(1) of ICTA, subsection (1) does not refer to a change in the ownership of a company carrying on a UK property business; it refers to a change in the ownership of a company with investment business. The reason is that, if section 768D(1)(a)(ii) of ICTA applies, then:
- There is a change in the ownership of a company carrying on a UK property business (see the opening words of section 768D(1)); and
  - The company whose ownership has changed is a company with investment business (see the opening words of section 768D(1)(a)).
2150. Accordingly, if section 768D(1)(a)(ii) of ICTA applies, there is by implication a change in the ownership of a company with investment business. There is therefore no need for section 768D(1) of ICTA to pick up the opening words of section 768B of that Act.
2151. *Subsections (5) and (6)* supplement subsection (4).
2152. *Subsection (7)* defines “the change in ownership”, “the company”, “non-trading chargeable realisation gain” and “the relevant gain” for the purposes of this Chapter.

***Section 693: Meaning of “amount of profits which represents a relevant gain”***

2153. This interpretative section is based on section 768C of ICTA.

***Section 694: Meaning of “the relevant provisions”***

2154. This interpretative section is based on section 768C of, and paragraph 13 of Schedule 28A to, ICTA.
2155. *Paragraph (a)* refers to section 8(1) of TCGA, which provides (in summary) that the chargeable gains included in a company’s total profits are its chargeable gains after deducting allowable losses. Paragraph (a) also refers to Schedule 7A to that Act. That Schedule is directed against another kind of loss buying, namely the purchase of allowable losses for the purposes of corporation tax on chargeable gains. In summary, if that Schedule bites, relief for allowable losses is restricted to the extent that (1) they accrued before the company joined the relevant group and (2) they cannot be deducted from chargeable gains accruing before that date. Defining “the relevant provisions” in this way ensures that Schedule 7A to TCGA is applied before the provisions of this Chapter are applied.
2156. The concept of “the relevant provisions” is used, in particular, in row 1 in the table in section 702(2).
2157. In a case in which section 768C of ICTA applies in relation to an asset to which Part 8 of CTA 2009 (intangible fixed assets) applies, section 768C(13)(d) of ICTA applies not only to section 768C(12) of that Act but also to paragraph 13(2) of Schedule 28A to that Act.

***Section 695: Notional split of accounting period in which change in ownership occurs***

2158. This section deems the accounting period in which the change in ownership occurs to be split into two notional accounting periods for the purposes of this Chapter. It is based on sections 768C, 768D and 768E of ICTA.
2159. *Subsection (3)* requires amounts for the actual accounting period to be apportioned between the two notional accounting periods in accordance with section 702.

***Section 696: Restriction on debits to be brought into account***

2160. This section restricts debits on the company's loan relationships in cases in which this Chapter applies. It is based on section 768C of, and paragraph 10 of Schedule 28A to, ICTA.
2161. This section is the first of a group of six sections (sections 696 to 701) imposing restrictions on corporation tax relief. The first four of these sections restrict reliefs given by CTA 2009, and are arranged in the order in which those reliefs appear in that Act. The fifth and sixth of these sections restrict relief for property losses, and are arranged in the order in which those reliefs appear in Chapter 4 of Part 4 of this Act.
2162. *Subsection (1)* states the purpose of the section.
2163. Section 574 of CTA 2009 provides that non-trading credits and debits from derivative contracts are to be brought into account as if they were non-trading credits or non-trading debits for the purposes of Part 5 of CTA 2009 in respect of loan relationships of the company. The reference to that section in section 768C(9) of ICTA is therefore otiose. *Subsection (1)* therefore omits it.
2164. *Subsection (2)* limits the scope of the section to cases in which gains arise or accrue as discussed in the 'overview' paragraphs of the commentary on this Chapter. Its inclusion here emphasises the point that the section only makes a difference in practice if there are *both* debits to be restricted *and* a gain to be sheltered by those debits.
2165. *Subsections (3) to (5)* set out the consequences of the apportionment made in accordance with section 702.
2166. The other five sections in this group have a similar structure.

***Section 697: Restriction on the carry forward of non-trading deficit from loan relationships***

2167. This section restricts relief for the company's non-trading deficit on its loan relationships in cases in which this Chapter applies. It is based on section 768C of, and paragraph 10A of Schedule 28A to, ICTA.
2168. Debits and deficits have different functions in the loan relationships regime, therefore this Chapter imposes different restrictions on them.

***Section 698: Restriction on relief for non-trading loss on intangible fixed assets***

2169. This section restricts relief for the company's non-trading loss on its intangible fixed assets in cases in which this Chapter applies. It is based on section 768E of ICTA.
2170. *Subsection (2)* makes it clear that section 768E(5)(b) of ICTA refers to section 768C(6) of that Act by implication. This clarification is a minor change in the law: see *Change 50* in Annex 1.
2171. *Subsections (4) and (5)* include a minor change in the law. See *Change 49* in Annex 1 and the commentary on section 681.

**Section 699: Restrictions on the deduction of expenses of management**

2172. This section restricts relief for the company's expenses of management in cases in which this Chapter applies. It is based on section 768C of ICTA.
2173. *Subsection (4)* only operates on *subsection (5)*. The corresponding provision in the other sections in this group operates, in each case, on the whole section.

**Section 700: Disallowance of UK property business losses**

2174. This section restricts relief for the company's UK property business loss in cases in which this Chapter applies. It is based on section 768D of ICTA.
2175. *Subsection (2)* makes it clear that section 768D(6)(b) of ICTA refers by implication to section 768C(6) of that Act. This clarification is a minor change in the law: see *Change 50* in Annex 1.

**Section 701: Disallowance of overseas property business losses**

2176. This section restricts relief for the company's overseas property business loss in cases in which this Chapter applies. It is based on section 768D of ICTA.
2177. Section 768D(9) of ICTA has to be read as implying that, in a case in which section 768D of ICTA applies in relation to an overseas property business, references to section 392A of ICTA have to be read as references to the corresponding provisions of section 392B of that Act. Otherwise section 768D of that Act applies in such a case but does not actually do anything. *Subsections (1)* and *(3)* therefore refer to section 66, which is based on section 392B of ICTA.
2178. *Subsection (2)* includes a minor change in the law. See *Change 50* in Annex 1 and the commentary on section 700.

**Section 702: Apportionment of amounts**

2179. This section stipulates how various amounts are to be apportioned for the purposes of this Chapter. It is based on sections 768C and 768E of, and paragraphs 13 to 17 of Schedule 28A to, ICTA.
2180. The source legislation obliges the reader to tally sub-paragraphs of paragraph 13(1) of Schedule 28A to ICTA with sub-paragraphs of paragraphs 15 and 16(1) of that Schedule. This is inconvenient, as the sub-paragraphs are not always in one-to-one correspondence and the legislation has been amended several times. Paragraphs 13(1), 15 and 16(1) of that Schedule have therefore been rewritten in *subsection (2)* as a two-column table.
2181. Detailed comments on the table are given below.

<b>Row</b>	<b>Origin</b>
1	<i>Paragraphs 13(1)(a) and 15 of Schedule 28A to ICTA.</i>
2 and 3	<i>Paragraphs 13(1)(ea) and 16(1)(c) of that Schedule. The opportunity has been taken to deal with profits and deficits separately.</i>
4	<i>Paragraphs 13(1)(eb) and 16(1)(d) and (e) of that Schedule.</i>
5	<i>Paragraphs 13(1)(ec) and 16(1)(b) of that Schedule.</i>
6	<i>Paragraphs 13(1)(ee) and 16(1)(g) of that Schedule.</i>
7	<i>Paragraphs 13(1)(ef) and 16(1)(h) of that Schedule.</i>
8	<i>Paragraphs 13(1)(b) and 16(1)(a) of that Schedule.</i>

*These notes refer to the Corporation Tax Act 2010  
(c.4) which received Royal Assent on 3 March 2010*

<b>Row</b>	<b>Origin</b>
–	<i>Paragraphs 13(1)(c) and 16(1)(aa) of that Schedule are repealed as obsolete. See the commentary on the amendments made to section 768B of ICTA by Schedule 1.</i>
9	<i>Paragraphs 13(1)(d) and 16(1)(b) of Schedule 28A.</i>
10	<i>Paragraphs 13(1)(e) and 16(1)(c) of that Schedule.</i>
11	<i>Paragraphs 13(1)(f) and 16(1)(c) of that Schedule.</i>

### **Section 703: Meaning of certain expressions in section 702**

2182. This interpretative section is based on paragraphs 13, 13A and 16 of Schedule 28A to ICTA.

### **Chapter 5: Company without investment business: disallowance of property losses**

#### **Overview**

2183. **Chapter 5** is the fourth of four Chapters dealing with various kinds of loss buying.

#### **Section 704: Company carrying on UK property business**

2184. This section restricts relief for UK property losses in cases in which this Chapter applies. It is based on section 768D of ICTA.

2185. *Subsections (1) to (3)* lay down the conditions for the section to apply.

2186. *Subsection (4)* states the purpose of the section. In subsection (4), “the company” has the meaning given by subsection (1).

2187. *Subsection (5)* deems the accounting period in which the change of ownership occurs to be two separate accounting periods. The profits or losses of the actual accounting period must then be apportioned to the two notional accounting periods in accordance with *subsections (6) and (7)*.

2188. *Subsections (8) and (9)* set out the consequences of this apportionment.

2189. *Subsection (10)* defines “major change in the nature or conduct of a trade or UK property business”.

#### **Section 705: Company carrying on overseas property business**

2190. This section restricts relief for the company’s overseas property business loss in cases in which this Chapter applies. It is based on section 768D of ICTA, and has a similar structure to section 704 of this Act.

2191. Section 768D(9) of ICTA has to be read as implying that, in a case in which section 768D applies in relation to an overseas property business, references to section 392A of ICTA have to be read as references to the corresponding provisions of section 392B of that Act. Otherwise section 768D of that Act applies in such a case but does not actually do anything. *Subsections (4) and (8)* therefore refer to section 66, which is based on section 392B of ICTA.

2192. Section 768D(5) of ICTA can have no application in relation to an overseas property business, and is therefore not rewritten in this section.

## ***Chapter 6: Recovery of unpaid corporation tax***

### **Overview**

2193. This Chapter is based on sections 767A to 767B of ICTA.
2194. Sections 767A and 767B of ICTA were introduced by FA 1994 to counter the use of company purchase schemes to avoid the payment of corporation tax. In a typical case a profitable company is stripped of its trade or business, usually by way of transfer to another member of its group, leaving it only with sufficient cash to settle its outstanding corporation tax. The company is then sold – for a sum equivalent to a proportion of the tax outstanding – to a third party (often non-resident) who arranges for the company to participate in arrangements intended to eliminate the tax liability. On the assumption that the arrangements will be successful, the new owner then arranges for the cash to be withdrawn.
2195. If the avoidance arrangements are effective, the company has no corporation tax to pay. But if they are found to be ineffective, HMRC have little or no prospect of collecting the unpaid tax from the company, because the company is left with no funds. Sections 767A and 767B of ICTA enable HMRC to collect the unpaid corporation tax from a person linked with the company as mentioned in section 767A(2).
2196. Subsequently, alternative schemes were developed that attempted to find ways around sections 767A and 767B of ICTA. For example, as sections 767A and 767B of ICTA only applied to tax liabilities for accounting periods beginning before the change in ownership, the new schemes ensured that the tax liability crystallised in an accounting period beginning after that date. They did this by using provisions such as rollover relief that postponed the tax charge or other provisions that involved income or gains being taxed in periods other than that in which they accrued. Section 767AA of ICTA was introduced by FA 1998 to block such schemes. If it bites, HMRC can collect the unpaid corporation tax from a person linked with the company as mentioned in section 767AA(4).
2197. This Chapter has the following structure.
- Sections 706 to 709 define some key expressions for the purposes of the Chapter.
  - Sections 710 to 712 enable HMRC to recover unpaid corporation tax for an accounting period beginning before the change in ownership. They are based on sections 767A and 767B of ICTA.
  - Sections 713 to 715 enable HMRC to recover unpaid corporation tax for an accounting period ending on or after the change in ownership. They are based on section 767AA of ICTA.
  - Sections 716 to 718 are miscellaneous provisions.

### ***Section 706: Meaning of “linked” person***

2198. This interpretative section explains when a person is “linked” to a company for the purposes of this Chapter. It is based on sections 767A and 767AA of ICTA.
2199. If the statutory conditions are met, such a person may be assessed and charged to an amount of unpaid corporation tax under section 710(2) or, as the case may be, section 713(2).

### ***Section 707: Meaning of “control”***

2200. This interpretative section is based on section 767B of ICTA.

**Section 708: Rights to be attributed for the purposes of section 707**

2201. This section supplements section 707. It is based on section 767B of ICTA.

**Section 709: Meaning of “the relevant period”**

2202. This interpretative section is based on sections 767A and 767AA of ICTA.

2203. *Subsection (3)* makes an exception to the general rule laid down by *subsection (2)*. Suppose A sells a company to B without intending to avoid tax and B enters into a company purchase scheme with C: B may be liable under this Chapter but A may not. The rationale is that A can be expected to ensure, when selling the company to B, that B does not behave in a way which would trigger this Chapter, but A cannot be expected to ensure that B does not enter into arrangements with C whereby C triggers this Chapter. *Subsection (3)* begins “But if ...” to make it clear that *subsection(2)* is subject to *subsection (3)*.

**Section 710: Recovery of unpaid corporation tax for accounting period beginning before change**

2204. This section enables an officer of Revenue and Customs to assess and charge a linked person to an amount of unpaid corporation tax for an accounting period beginning before the change in the ownership of a company. It is based on section 767A of ICTA.

2205. Section 767A(1) of ICTA gives this assessment function to “the Board”, ie 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 5* in Annex1. In practice, the administration of sections 767A and 767AA of ICTA and the provisions which supplement them is restricted to a specialist group of officers. *Change 5* has no effect on this practice.

2206. Like the source legislation, *subsection (2)* provides that “[a person]... may be assessed ...”. This gives officers the power, but not the obligation, to assess linked persons, and therefore allows HMRC to exercise managerial discretion.

**Section 711: Conditions relating to company’s trade or business**

2207. This section lists three conditions which relate to the company’s trade or business; if none of these conditions is met, section 710 does not apply. This section is based on sections 767A and 767B of ICTA.

2208. The meaning of “connected” in *subsection (5)* is given by section 1176(1). Section 767B(9) of ICTA is therefore not rewritten as a separate proposition.

**Section 712: Meaning of “a major change in the nature or conduct of a trade or business”**

2209. This interpretative section is based on section 767B of ICTA.

2210. Section 767B(7) of ICTA refers to section 245 of that Act. In repealing section 245 of ICTA, FA 1998 inadvertently omitted to make the necessary consequential amendment to section 767B(7) of ICTA.

2211. As it stood before its repeal, section 245(4)(a) of ICTA read:

“In subsection (1) above “a major change in the nature or conduct of a trade or business” includes –

- (a) a major change in the type of property dealt in, or services or facilities provided, in the trade or business; or
- (b) a major change in customers, outlets or markets of the trade or business; or

*These notes refer to the Corporation Tax Act 2010  
(c.4) which received Royal Assent on 3 March 2010*

- (c) a change whereby the company ceases to be a trading company and becomes an investment company or vice versa; or
  - (d) where the company is an investment company, a major change in the nature of the investments held by the company.
2212. Before its repeal, section 245(5) of ICTA defined “trading company” and “investment company” for the purposes of that section:
- “trading company” means a company whose business consists wholly or mainly of the carrying on of a trade or trades and
  - “investment company” means a company (other than a holding company) whose business consists wholly or mainly in the making of investments and the principal part of whose income is derived therefrom;
  - “holding company” means a company whose business consists wholly or mainly in the holding of shares or securities of companies which are its 90 per cent subsidiaries and which are trading companies.
2213. Departmental practice in applying section 767B(7) of ICTA has not changed since 1998.
2214. If the repeal of section 245(4) of ICTA repealed section 767B(7) of that Act by implication, then it enabled the taxpayer to argue that a change which used to be mentioned in section 245(4) was not necessarily a major change in the nature or conduct of a trade or business.
2215. Section 245 of ICTA was one of a number of provisions repealed by Schedule 3 to FA 1998 as part of the abolition of advance corporation tax (ACT). It would be anomalous if, as part of the abolition of ACT, Parliament implicitly repealed section 767B(7) of ICTA and thereby weakened section 767A of that Act. It would be particularly anomalous if Parliament did this in FA 1998, since FA 1998 inserted section 767AA of ICTA to catch schemes which section 767A of that Act did not. In statutory interpretation, there is a presumption that Parliament wishes to avoid an anomalous result. Accordingly, the repeal of section 245 of ICTA did not by implication repeal section 767B(7) of that Act.
2216. Accordingly, this section draws on section 245 of ICTA (repealed) to rewrite section 767B(7) of ICTA.

***Section 713: Recovery of unpaid corporation tax for accounting period ending on or after change***

2217. This section enables an officer of Revenue and Customs to assess and charge a linked person to an amount of unpaid corporation tax for an accounting period ending on or after the change in the ownership of a company. It is based on section 767AA of ICTA.
2218. Section 767AA(1) of ICTA gives this assessment function to “the Board”, ie 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 5* in Annex 1. In practice, the administration of sections 767A and 767AA of ICTA and the provisions which supplement them is restricted to a specialist group of officers. *Change 5* has no effect on this practice.
2219. Like the source legislation, subsection (2) provides that “[a person]... *may* be assessed ...”. This gives officers the power, but not the obligation, to assess linked persons, and therefore allows HMRC to exercise managerial discretion.
2220. For the sake of consistency, subsection (1)(b) has been brought into line with section 710(1)(b).

**Section 714: The expectation condition**

2221. This section spells out the expectation condition mentioned in section 713(1)(d). It is based on section 767AA of ICTA.
2222. *Subsection (2)* omits as otiose “either or both of” in section 767AA(2) of ICTA.
2223. In *subsection (4)(a)*, the words in brackets warn the reader that “an associated company” is not necessarily the “associated company” mentioned in section 713(1)(b). Which company in a group has a corporation tax liability may depend on (for example) how the group allocates its group relief.

**Section 715: Meaning of “transaction entered into in connection with change in ownership”**

2224. This interpretative section is based on section 767AA of ICTA.

**Section 716: Interest**

2225. This section imposes interest on tax which has been assessed under section 710 or section 713 and is overdue. It is based on section 767B of ICTA.

**Section 717: Effect of payment in pursuance of assessment under section 710 or 713**

2226. This section is about payments in pursuance of an assessment under section 710 or 713. It is based on section 767B of ICTA.
2227. *Subsection (1)* disallows such a payment. *Subsection (2)* gives the maker of such a payment a right of recovery.

**Section 718: Meaning of “associated company”**

2228. This interpretative section is based on section 767AA of ICTA.

**Chapter 7: Meaning of “change in the ownership of a company”**

**Overview**

2229. This Chapter defines “change in the ownership of a company” for the purposes of this Part. It applies both for the purposes of Chapters 2 to 5 (restriction of corporation tax reliefs) and for the purposes of Chapter 6 (recovery of unpaid corporation tax).
2230. This Chapter is based on section 769 of ICTA. Section 769 of ICTA does not expressly mention section 768E of that Act, but the references in section 769 of ICTA to sections 768B and 768C of that Act include by implication references to section 768E of that Act.

**Section 719: Meaning of “change in the ownership of a company”**

2231. This section gives the basic definition of “change in the ownership of a company” for the purposes of this Part of the Act. It is based on section 769 of ICTA.
2232. Section 769(1)(a) of ICTA is satisfied “if a single person acquires more than half the ordinary share capital of the company”. This raises the question: is this a reference to acquiring:
- An additional holding (A);
  - The existing holding (X);
  - The total holding after the acquisition ( $T = A + X$ ); or
  - T, but only if  $X < 50\%$ ?

2233. Section 769(1)(a) of ICTA cannot be read as referring to the acquisition of X. Otherwise, a person who held more than 50% of the ordinary share capital and did not acquire any more shares would “acquire more than half the ordinary share capital”. As a matter of normal English usage, “acquires” cannot imply that.
2234. Section 769(1)(a) of ICTA cannot be read as referring to the acquisition of T, whether or not  $X < 50\%$ . According to Bramwell et al.<sup>3</sup>:
- “If one person owns 50 per cent. of a company’s shares and then buys 1 per cent. more, he does not thereby “acquire more than half” of the shares – he acquires 1 per cent. [Section 769(1)(b) and (c) of ICTA] refers to any number of persons acquiring holdings of shares that together amount to more than half of the ordinary shares in a company, but [section 769 (1)(c)] makes it clear that acquired holdings must be distinguished from existing holdings.
2235. Bramwell et al. are correct on this point, because:
- There is no indication that “acquire” has to have a different scope in section 769(1) (a) and (c) of ICTA;
  - Since Parliament has not said “acquires *a total of* more than half the ordinary share capital” it is not legitimate for any such words to be read in; and
  - Section 769(2)(b) of ICTA says “... may be regarded as having acquired a percentage holding *equal to the increase*” (emphasis added).
2236. The acquisition of “more than half the ordinary share capital” in section 769(1)(a) of ICTA is therefore a reference to the acquisition of the additional holding, A. Accordingly, to sharpen the drafting, *subsection (2)* expressly refers to the acquisition of “a holding of more than half the ordinary share capital”.
2237. Section 769(1)(c) of ICTA says “less than 5 per cent”. *Subsection (5)* corrects this typo.

### ***Section 720: Section 719: supplementary***

2238. This interpretative section is based on section 769 of ICTA.
2239. The meaning of “connected” in *subsection (4)* is given by section 1122, which is applied “for the purposes of this Act” by section 1176(1). Unlike section 769(2)(c) of ICTA, therefore, *subsection (4)* does not specifically apply the definition of “connected persons” in section 839 of that Act.
2240. Section 769(2)(d) of ICTA has the expression “under the will or on the intestacy of a deceased person”. The words “of a deceased person” add nothing and so *subsection (5)* compresses that expression to “under a will or on intestacy”.

### ***Section 721: When things other than ordinary share capital may be taken into account: Chapters 2 to 5***

2241. This section allows other interests in a company, such as voting power attaching to shares, to be taken into account in determining whether there has been a change in ownership. It applies in cases when applying the “ordinary share capital” test in section 719 would give anomalous results. It is based on section 769 of ICTA.
2242. Section 769(3) of ICTA uses the expression “under the articles of association or under any other document regulating the company”. *Subsection (2)* compresses this to “under any document regulating the company”.
2243. Section 769(3) of ICTA uses the old-fashioned term “enure”. In response to representations, the term “enure” was retained in section 723(1) of ITA (transfer of

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<sup>3</sup> Bramwell et al. *Taxation of Companies and Company Reconstructions* (Thomson, Sweet & Maxwell, November 2002) paragraph A 9.2.7 footnote 3.

*These notes refer to the Corporation Tax Act 2010  
(c.4) which received Royal Assent on 3 March 2010*

assets abroad: charge where power to enjoy income: enjoyment conditions). It has therefore also been retained in *subsection (3)*.

2244. Section 769(3) of ICTA uses the expression “all kinds of share capital, including preference shares”. *Subsection (4)(a)* compresses this to “all kinds of share capital”.

***Section 722: When things other than ordinary share capital may be taken into account: Chapter 6***

2245. In cases when applying the “ordinary share capital” test in section 719 would give anomalous results, this section allows other interests in a company, such as voting power attaching to shares, to be taken into account in determining whether there has been a change in ownership. It is based on section 769 of ICTA.

***Section 723: Changes in indirect ownership***

2246. This section extends the basic rule about changes in company ownership in section 719. It is based on section 769 of ICTA.

2247. The basic rule in section 719 only relates to the direct ownership of a company. It does not capture a change in the ultimate ownership of a company, so this section contains additional rules for groups of companies.

***Section 724: Disregard of change in company ownership***

2248. This section excludes certain changes in company ownership from the scope of Chapters 2 to 6. It is based on section 769 of ICTA.

***Section 725: Provision applying for the purposes of Chapters 2 to 5***

2249. This supplementary section is based on section 769 of ICTA.
2250. *Subsection (2)* is a “tie-breaker” provision, to deal with shareholdings being acquired piecemeal.
2251. *Subsections (3) to (6)* explain how the three-year maximum in section 720(2) is to be applied in cases involving (for example) options or contracts for future delivery.

***Section 726: Interpretation of Chapter***

2252. This interpretative section is based on section 769 of ICTA.

***Chapter 8: Supplementary provision***

***Sections 727 to 730: Extended time limit for assessment; provision of information about ownership of shares etc; meaning of “company with investment business”; meaning of “relevant non-trading debit”***

2253. These sections extend the time limit for assessments giving effect to the provisions of Chapters 2 to 6 of this Part of the Act, enable officers of Revenue and Customs to obtain information about the ownership of shares, stock and securities for the purposes of this Part, and define “company with investment business” and “relevant non-trading debit”. They are based on sections 767B and 768 to 768E of, and paragraphs 11 and 12 of Schedule 28A to, ICTA.