



Finance Act 2009

2009 CHAPTER 10

PART 2

INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

Miscellaneous anti-avoidance provisions

61 Financial arrangements avoidance

Schedule 30 contains provision to counter avoidance involving financial arrangements.

^{F1}**62 Transfers of trade to obtain terminal loss relief**

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Textual Amendments

- F1** S. 62 repealed (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), [Sch. 3 Pt. 1](#) (with [Sch. 2](#))

^{F2}**63 Sale of lessor companies etc: anti-avoidance**

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Textual Amendments

- F2** S. 63 repealed (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), [Sch. 3 Pt. 1](#) (with [Sch. 2](#))

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64 Leases of plant or machinery

Schedule 32 contains provision about leases of plant or machinery.

65 Long funding leases of films

Schedule 33 contains provision about long funding leases of films.

^{F3}66 Real Estate Investment Trusts

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Textual Amendments

F3 S. 66 repealed (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), [Sch. 3 Pt. 1](#) (with [Sch. 2](#))

67 Deductions for employee liabilities

(1) ITEPA 2003 is amended as follows.

(2) In section 346 (deduction for employee liabilities), after subsection (2) insert—

“(2A) Nor is a deduction allowed for a payment which falls within paragraph A, B or C if the payment is made in pursuance of arrangements the main purpose, or one of the main purposes, of which is the avoidance of tax.”

(3) After section 556 insert—

“556A Deductible payments made pursuant to tax avoidance arrangements

No deduction may be made under section 555 if the deductible payment is made in pursuance of arrangements the main purpose, or one of the main purposes, of which is the avoidance of tax.”

(4) The amendments made by this section have effect in relation to payments made on or after 12 January 2009 (irrespective of when the arrangements are made).

68 Employment loss relief

(1) In section 128 of ITA 2007 (employment loss relief against general income), after subsection (5) insert—

“(5A) No claim may be made in respect of the loss if and to the extent that it is made as a result of anything done in pursuance of arrangements the main purpose, or one of the main purposes, of which is the avoidance of tax.”

(2) The amendment made by subsection (1)—

(a) has effect in relation to a loss made in the tax year 2009-10 or a subsequent tax year, and

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- (b) has effect in relation to a loss made in the tax year 2008-09 if or to the extent that it is occasioned by an act or omission occurring on or after 12 January 2009.
- (3) Where a person has made a claim under section 128 of ITA 2007 during the relevant period, no penalty is payable by the person on the ground that any return, statement or declaration made in connection with the claim contained an inaccuracy if it would not have done so but for the amendment made by subsection (1).

For this purpose “the relevant period” is the period—

- (a) beginning with 12 January 2009, and
- (b) ending with 1 April 2009.

^{F4}(4)

Textual Amendments

F4 S. 68(4) omitted (1.4.2011) by virtue of [The Finance Act 2009, Schedules 55 and 56 \(Income Tax Self Assessment and Pension Schemes\) \(Appointed Days and Consequential and Savings Provisions\) Order 2011 \(S.I. 2011/702\)](#), arts. 1(1), **15(a)** (with arts. 20, 22)

^{F5}**69 No loss relief for losses from contracts for life insurance etc**

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Textual Amendments

F5 S. 69 omitted (with effect and application in accordance with s. 22(8) of the amending Act) by virtue of [Finance Act 2015 \(c. 11\)](#), s. **22(7)**

70 Intangible fixed assets and goodwill

- (1) Part 8 of CTA 2009 (intangible fixed assets) is amended as follows.
- (2) In section 712(1) (meaning of “intangible asset”), insert at the end “ (and includes an internally-generated intangible asset) ”.
- (3) In section 715 (application of Part 8 to goodwill)—
 - (a) in subsection (3), insert at the end “(and includes internally-generated goodwill)”, and
 - (b) insert at the end—
 - “(4) For the purposes of this Part, goodwill is treated as created in the course of carrying on the business in question.”
- (4) In section 883 (assets treated as created or acquired when expenditure incurred)—
 - (a) in subsection (1), for paragraph (b) substitute—
 - “(b) has effect subject to the provisions specified in subsection (2).”
 - (b) in subsection (2)(a), omit “internally-generated”,
 - (c) in subsection (2)(b), for “certain other internally-generated assets” substitute “ assets representing non-qualifying expenditure ”, and

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- (d) in subsection (3), omit “to which this section applies”.
- (5) In section 884 (internally-generated goodwill: time of creation)—
 - (a) omit “internally-generated”,
 - (b) for the words from “before” to the end substitute “—
 - (a) before (and not on or after) 1 April 2002 in a case in which the business in question was carried on at any time before that date by the company or a related party, and
 - (b) on or after 1 April 2002 in any other case.”, and
 - (c) in the heading, omit “**Internally-generated**”.
- (6) In section 885 (certain other internally-generated assets: time of creation)—
 - (a) in subsection (1)(b), omit “internally-generated”,
 - (b) in subsection (7), for the words from “before” to the end substitute “—
 - (a) before (and not on or after) 1 April 2002 in a case in which the asset in question was held at any time before that date by the company or a related party, and
 - (b) on or after 1 April 2002 in any other case.”, and
 - (c) in the heading, for “**Certain other internally-generated assets**” substitute “**Assets representing non-qualifying expenditure**”.
- (7) The amendments made by this section have effect in relation to accounting periods beginning on or after 22 April 2009 (and, in relation to those accounting periods, are to be treated as always having had effect).
- (8) For the purposes of subsection (7) an accounting period beginning before, and ending on or after, 22 April 2009 is to be treated as if so much of the period as falls before that date, and so much of the period as falls on or after that date, were separate accounting periods.

71 Taxable benefit of living accommodation: lease premiums

- (1) Chapter 5 of Part 3 of ITEPA 2003 (taxable benefits: living accommodation) is amended as follows.
- (2) In section 105 (cash equivalent: cost of accommodation not over £75,000)—
 - (a) in subsection (3), after “is” insert “(subject to subsections (4) and (4A))”, and
 - (b) for subsection (4) substitute—
 - “(4) Subsection (4A) applies where—
 - (a) a rental amount is payable by the person (“P”) at whose cost the accommodation is provided in respect of the whole or part of the taxable period (“the relevant period”), and
 - (b) the amount so payable is payable at an annual rate greater than the annual value.
 - (4A) Where this subsection applies—
 - (a) subsection (3) does not apply to the relevant period, and
 - (b) instead the “rental value of the accommodation” for the relevant period is the rental amount payable by P in respect of the relevant period.

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(4B) A reference in subsection (4) or (4A) to a rental amount payable by P in respect of the relevant period is to the sum of—

- (a) any rent for the period payable by P, and
- (b) any amount attributed to the period in respect of a lease premium (see sections 105A and 105B)."

(3) After that section insert—

“105A Lease premiums

(1) For the purposes of section 105(4B)(b) an amount is attributed to the relevant period “in respect of a lease premium” if—

- (a) the property consists of premises, or a part of premises, that are subject to a lease,
- (b) the premises are not mainly used by P for a purpose other than the provision of living accommodation to which this Chapter applies,
- (c) the lease is for a term of 10 years or less, and
- (d) the net amount payable by P in relation to the lease by way of lease premium is greater than zero.

(2) The amount so attributed is—

$$\frac{A}{B} \times C$$

where—

A is the relevant period (in days),

B is the term of the lease (in days), and

C is the net amount payable by P in relation to the lease by way of lease premium.

(3) For provision about the application of this section in relation to certain leases with break clauses, see section 105B.

(4) For the purposes of this section the net amount payable by P in relation to a lease by way of lease premium is—

- (a) the total amount (if any) that has been paid, or is or will become payable, by P in relation to the lease by way of lease premium, less
- (b) any amount within paragraph (a) that has been repaid or is or will become repayable.

(5) In this section and section 105B “lease premium” means any premium payable—

- (a) under a lease, or
- (b) otherwise under the terms on which a lease is granted.

(6) In the application of this section to Scotland “premium” includes a grassum.

105B Lease premiums in the case of leases with break clauses

(1) This section applies to a lease (“the original lease”) that contains one or more relevant break clauses.

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- (2) For the purposes of this section—
- (a) “break clause” means a provision of a lease that gives a person a right to terminate it so that its term is shorter than it otherwise would be, and
 - (b) a break clause contained in the original lease is “relevant” if the right to terminate the lease that it confers is capable of being exercised in such a way that the term of the original lease is 10 years or less.
- (3) For the purposes of section 105A—
- (a) the term of the original lease, and
 - (b) the net amount payable by P in relation to the lease by way of lease premium,
- are to be determined on the assumption that any relevant break clause is exercised in such a way that the term of the lease is as short as possible.
- (4) If a relevant break clause is not in fact exercised in such a way that the term of the original lease is as short as possible, the parties to the lease are treated for the purposes of section 105A as if they were parties to another lease (a “notional lease”) the term of which—
- (a) begins immediately after the time at which the term of the original lease would have ended, if that break clause had been so exercised, and
 - (b) ends at the time mentioned in subsection (5).
- (5) The term of a notional lease ends—
- (a) at the time the term of the original lease would end, on the assumption that any relevant break clause that is exercisable only after the beginning of the term of the notional lease is exercised in such a way that the term of the original lease is as short as possible, or
 - (b) if earlier, the tenth anniversary of the beginning of the term of the original lease.
- (6) For the purposes of section 105A the net amount payable by P in relation to a notional lease by way of lease premium is, in the case of a notional lease the term of which ends under paragraph (a) of subsection (5)—
- (a) the net amount that would be payable by P in relation to the original lease by way of lease premium on the assumption mentioned in that paragraph, less
 - (b) any part of that amount that has already been attributed to a period in respect of a lease premium under section 105(4B)(b).
- (7) For the purposes of section 105A the net amount payable by P in relation to a notional lease by way of lease premium is, in the case of a notional lease the term of which ends under paragraph (b) of subsection (5), the relevant proportion of—
- (a) the net amount that would be payable by P in relation to the original lease by way of lease premium, on the assumption that no break clause is exercised, less
 - (b) any part of that amount that has already been attributed to a period in respect of a lease premium under section 105(4B)(b).
- (8) In subsection (7) “the relevant proportion” means—

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$$\frac{D}{E}$$

where—

D is the term of the notional lease (in days), and

E is the sum of—

(a) the term of the notional lease (in days), and

(b) the number of days by which the term of the original lease would exceed 10 years, on the assumption that no break clause is exercised.”

(4) The amendments made by this section have effect in relation to—

(a) any lease entered into on or after 22 April 2009, and

(b) subject to subsection (5), any lease entered into before that date the term of which is extended on or after that date.

(5) In relation to a lease of the kind mentioned in subsection (4)(b) the amendments made by this section have effect—

(a) as if the additional term of the lease created by the extension were the whole of the term of the lease, and

(b) ignoring any lease premium payable in respect of the unextended term of the lease.

(6) In this section “lease premium” has the same meaning as in sections 105A and 105B of ITEPA 2003.

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 102(4)(za) inserted by [2010 c. 33 Sch. 9 para. 3\(3\)](#)
- Sch. 53 para. 2A-2D and cross-heading inserted by [2010 c. 33 Sch. 9 para. 7](#)
- Sch. 53 para. 6A and cross-heading inserted by [2010 c. 33 Sch. 9 para. 8](#)
- Sch. 53 para. 11A11B and cross-heading inserted by [2010 c. 33 Sch. 9 para. 17](#)
- Sch. 53 para. 14A and cross-heading inserted by [2010 c. 33 Sch. 9 para. 18](#)
- Sch. 54 para. 9B9C and cross-heading inserted by [2010 c. 33 Sch. 9 para. 11](#) (Sch. 54 para. 9B is amended before it comes into force by [2016 c. 24, Sch. 1 para. 66\(5\)](#))
- Sch. 54 para. 12A12B and cross-heading inserted by [2010 c. 33 Sch. 9 para. 19](#)
- Sch. 54 Pt. A1 inserted by [2010 c. 33 Sch. 9 para. 10](#) (Sch. 9 para. 10 is amended before it comes into force by [2017 c. 32, Sch. 4 para. 182](#))
- Sch. 55 para. 6(3A)(za) inserted by [2015 c. 11 Sch. 20 para. 15\(2\)\(a\)](#)
- Sch. 55 para. 6(4A)(za) inserted by [2015 c. 11 Sch. 20 para. 15\(3\)\(a\)](#)
- Sch. 55 para. 17(4)(ba) inserted by [2015 c. 11 Sch. 20 para. 19](#)
- Sch. 56 para. 3(1)(d) omitted by [2021 c. 26 Sch. 27 para. 40\(4\)\(c\)](#)