

CORPORATION TAX ACT 2009

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 14: Remediation of contaminated land

Overview

2939. This Part allows a company to claim relief for qualifying expenditure it incurs on the remediation of contaminated land. It is based on Schedule 22 to FA 2001.
2940. Relief under the Part is given as a deduction in calculating the company's trade profits or the profits of a UK property business carried on by the company.

Chapter 1: Introduction

Section 1143: Overview of Part

2941. This section gives an overview of the Part. It is new.

Section 1144: "Qualifying land remediation expenditure"

2942. This section sets out the conditions that expenditure on land remediation must satisfy to qualify for relief under this Part. It is based on paragraph 2 of Schedule 22 to FA 2001.

Section 1145: Land "in a contaminated state"

2943. This section sets out when land is "in a contaminated state" for the purposes of this Part. It is based on paragraph 3 of Schedule 22 to FA 2001.

Section 1146: "Relevant land remediation"

2944. This section identifies the activities that make up "relevant land remediation". It is based on paragraph 4 of Schedule 22 to FA 2001.
2945. "Relevant land remediation" can either be the remediation activity itself or activities in preparation for the remediation activity, see *subsection (1)*. "Relevant preparatory activity" comes within the definition of "relevant land remediation" only if it leads to remediation activity being carried out, see *subsection (4)(b)*.

Chapter 2: Reliefs for expenditure on contaminated land

Section 1147: Deduction for capital expenditure

2946. This section gives the company a deduction for capital expenditure included in qualifying land remediation expenditure subject to certain conditions. It is based on paragraph 1 of Schedule 22 to FA 2001.
2947. The company must elect to make the deduction. The procedure for making the election is in section 1148.

2948. Capital expenditure is not defined. It is expenditure for which a deduction would normally be denied by section 53. But this section permits a deduction for capital expenditure in calculating the profits of a trade or UK property business of a company in spite of the rule in section 53.
2949. The existence of section 53 means it is not necessary to rewrite paragraph 1(4)(a) of Schedule 22 to FA 2001. That provision denies relief for expenditure that has already been allowed as a deduction in calculating the profits of a trade or of a UK property business carried on by the company. It is not needed if there is already a specific rule preventing a deduction for such expenditure.
2950. *Subsection (7)* is a similar provision to section 61. It treats capital expenditure incurred on contaminated land that will be used for the purposes of a trade or UK property business as incurred on the day the trade or business starts. Unlike section 61 there is no time limit on how far in advance of the trade or business starting the expenditure must be incurred.

Section 1148: Election under section 1147

2951. This section sets out the requirements for making an election. It is based on paragraph 1 of Schedule 22 to FA 2001.

Section 1149: Additional deduction for qualifying land remediation expenditure

2952. This section entitles a company to make a claim increasing the deduction given in calculating its trade or UK property business profits if certain conditions are met. It is based on paragraphs 12 and 13 of Schedule 22 to FA 2001.
2953. *Subsection (1)* is a further example of *Change 77* in Annex 1 where it is made clear that the additional relief applies only for corporation tax.
2954. This section applies to expenditure that is allowed as a deduction in computing taxable profits either as a normal revenue deduction or through the operation of section 1147. The relief increases the amount of the deduction by 50%.
2955. The additional deduction has to be claimed. There is no special procedure for making the claim. The ordinary rules in Part 7 of Schedule 18 to FA 1998 apply.

Section 1150: No relief if company responsible for contamination

2956. This section denies relief if the company or a person connected with it was responsible for any part of the contamination. It is based on paragraphs 1 and 12 of Schedule 22 to FA 2001.

Chapter 3: Land remediation tax credit

Section 1151: Entitlement to and payment of tax credit

2957. This section allows a company to claim a land remediation tax credit if it has a “qualifying land remediation loss”. It is based on paragraphs 14 and 16 of Schedule 22 to FA 2001.
2958. The section clarifies that a company may make part claims (*subsection (2)*). This is in line with current HMRC policy and is supported by paragraph 17(5)(b) of Schedule 22 to FA 2001.

Section 1152: Meaning of “qualifying land remediation loss”

2959. This section defines “qualifying land remediation loss”. It is based on paragraph 14 of Schedule 22 to FA 2001.

2960. *Subsection (2)* limits the amount of the qualifying land remediation loss to the lesser of two amounts.

Section 1153: Amount of a loss which is “unrelieved”

2961. This section explains what is meant by the amount of a UK property business loss or trading loss that is “unrelieved”. It is based on paragraph 14 of Schedule 22 to FA 2001.

Section 1154: Amount of tax credit

2962. This section gives the amount of the cash payment the company will receive. It is based on paragraph 15 of Schedule 22 to FA 2001.

Section 1155: Payment of tax credit

2963. This section gives a number of administrative rules that affect the payment of a land remediation tax credit. It is based on paragraph 16 of Schedule 22 to FA 2001.

Section 1156: Tax credit payment not income of company

2964. This section states that the payment of a land remediation tax credit is not income of the company for any tax purposes. It is based on paragraph 18 of Schedule 22 to FA 2001.

Section 1157: Exclusion for capital gains purposes of certain expenditure

2965. This section prevents any expenditure for which a land remediation tax credit has been claimed from also being deducted in the calculation of any chargeable gain on the disposal of the land. It is based on paragraph 19 of Schedule 22 to FA 2001.

2966. Section 39 of TCGA prevents expenditure that is allowable as a deduction in calculating income tax profits from being deducted again in the calculation of the chargeable gain. Section 8(3) and (4) of TCGA applies this principle to the calculation of a company’s income and chargeable gains.

2967. The ordinary operation of section 39 of TCGA will prevent a double deduction for expenditure which attracts relief under sections 1147 and 1149. Amounts allowed under those sections are deducted in calculating the company’s profits charged to corporation tax. But it is arguable that a loss surrendered in return for the payment of a land remediation tax credit falls outside this rule as the loss is not used in the ordinary calculation of the company’s profits.

2968. This section makes clear that expenditure that contributed to the surrendered qualifying land remediation loss is not deductible in calculating the chargeable gain or allowable loss on the disposal of the land. It is not necessary to apply the rule to the 50% additional deduction itself as it is a notional figure and not an amount of actual expenditure.

Section 1158: Restriction on losses carried forward where tax credit claimed

2969. This section ensures that the amount of any qualifying land remediation loss surrendered in return for the payment of a land remediation tax credit is not available for carry forward for set-off against future profits. It is based on paragraph 17 of Schedule 22 to FA 2001.

Chapter 4: Special provision for life assurance business

Section 1159: Limitation on relief under Chapter 2

2970. This section provides that the deductions allowed in Chapter 2 do not apply to the calculation of the profits of a company’s life assurance business where the calculation is made in accordance with the provisions of Part 3 (trading income). It is based on paragraph 20 of Schedule 22 to FA 2001.

Section 1160: Provision in respect of I minus E basis

2971. This section provides that the provisions of this Chapter apply where the profits of an insurance company are charged to tax under the I minus E basis in respect of its life assurance business. It is based on paragraph 21 to Schedule 22 to FA 2001.

Section 1161: Relief in respect of I minus E basis: enhanced expenses payable

2972. This section sets out the three conditions that companies with life assurance business must satisfy in order to claim relief for expenditure on the remediation of contaminated land. It also sets out the relief that is available (*subsection (6)*). It is based on paragraphs 22 and 23 of Schedule 22 to FA 2001.

2973. The relief takes the form of an enhancement in the expenses payable which the company may bring into account at Step 1 of section 76(7) of ICTA.

Section 1162: Meaning of “qualifying Chapter 4 expenditure”

2974. This section defines a company’s “qualifying Chapter 4 expenditure” as the amount of its qualifying land remediation expenditure reduced by any amount not attributable to basic life assurance and general annuity business (BLAGAB). It is based on paragraph 22 of Schedule 22 to FA 2001.

2975. Qualifying Chapter 4 expenditure may include expenditure of a capital nature.

Section 1163: No relief if company responsible for contamination

2976. This section denies relief if the company or a person connected with it was responsible for any part of the contamination. It is the life assurance company equivalent of section 1150. It is based on paragraph 22 of Schedule 22 to FA 2001.

Section 1164: Entitlement to tax credit

2977. This section allows a company to claim a life assurance company tax credit if it has a “qualifying life assurance business loss”. It is the life assurance company equivalent of section 1151 and is based on paragraph 24 of Schedule 22 to FA 2001.

Section 1165: Meaning of “qualifying life assurance business loss”

2978. This section defines “qualifying life assurance business loss”. It is the life assurance company equivalent of section 1152. It is based on paragraph 24 of Schedule 22 to FA 2001.

Section 1166: Amount of tax credit

2979. This section gives the amount of the cash payment the company carrying on life assurance business will receive. It is the life assurance company equivalent of section 1154 and is based on paragraph 25 of Schedule 22 to FA 2001.

Section 1167: Payment of tax credit etc

2980. This section applies various provisions contained in Chapter 3 (namely sections 1151(4), 1155, 1156 and 1157) with appropriate modifications for companies carrying on life assurance business. Those provisions include provision relating to the payment of a life assurance company tax credit. It is based on paragraphs 26 and 28 of Schedule 22 to FA 2001.

Section 1168: Restriction on carrying forward expenses payable where tax credit claimed

2981. This section ensures that the amount of any qualifying life assurance business loss that is surrendered in return for the payment of a life assurance company tax credit is not available for carry forward. It is the life assurance company equivalent of section 1158. It is based on paragraph 27 of Schedule 22 to FA 2001.

Chapter 5: Tax avoidance

Section 1169: Artificially inflated claims for relief or tax credit

2982. This section restricts the amount of relief or tax credit available under the Part if there are arrangements that artificially increase the amount of that relief or tax credit. It is based on paragraph 29 of Schedule 22 to FA 2001.

Chapter 6: Supplementary

Section 1170: “Staffing costs”

2983. This section gives the meaning of staffing costs. It is based on paragraph 5 of Schedule 22 to FA 2001. That paragraph uses the term “employee costs”, but in rewriting the source legislation it was felt that the term “staffing costs”, which is the term used for the equivalent purpose in Part 13 of the Act, was more appropriate.

2984. Paragraph 5(1)(a) of Schedule 22 to FA 2001 refers to “emoluments paid by the company ... including all salaries, wages, perquisites and profits whatsoever other than benefits in kind”. This is based on the definition of emoluments that section 131 of ICTA applied for Schedule E before that Schedule was rewritten by ITEPA.

2985. ITEPA amended paragraph 5 of Schedule 20 to FA 2000 so that it referred to earnings which constitute employment income. In doing so it inadvertently expanded the definition to include benefits in kind. This change was reversed by paragraph 7 of Schedule 17 to FA 2004, which reinstated the original wording.

2986. In rewriting Schedule 22 to FA 2001 it was decided that the language and format of the definition should be adapted so that the definition applies more clearly from the position of the company making the payment rather than the employee receiving it. Hence the reference to money earnings and reimbursed expenses.

2987. *Subsection (2)* rewrites the reference to salaries and wages by reference to money earnings. *Subsection (3)* rewrites the reference to perquisites and profits by reference to reimbursed expenses. See *Change 79* in Annex 1.

2988. Paragraph 5(1)(c) of Schedule 22 to FA 2001 refers to “contributions paid by the company to any pension fund (within the meaning of section 231A(4) of [ICTA])”. Section 231A of ICTA was repealed by F(No 2)A 1997 with effect for distributions made on or after 6 April 1999. But a consequential amendment was not made to paragraph 5 of Schedule 22 so as to set out in full the definition of “pension fund”.

2989. The parallel definition in paragraph 5(1)(c) of Schedule 20 to FA 2000 also used to refer to section 231A(4) of ICTA. It was amended by paragraph 3 of Schedule 15 to FA 2002. The wording of the definition is the same but it is now free-standing. *Subsection (6)* provides a freestanding definition of “pension fund” that reflects the definition used in paragraph 5(1A) of Schedule 20 to FA 2000.

Section 1171: Staffing costs attributable to relevant land remediation

2990. This section identifies when staffing costs are attributable to relevant land remediation. It is based on paragraph 5 of Schedule 22 to FA 2001.

Section 1172: Expenditure on materials

2991. This section outlines whether expenditure on materials is attributable to land remediation. It is based on paragraph 6 of Schedule 22 to FA 2001.

Section 1173: Expenditure incurred because of contamination

2992. This section identifies two specific circumstances in which condition B in section 1144 – the condition that expenditure on contaminated land would not have been incurred if the land had not been in a contaminated state - is treated as met. It is based on paragraph 7 of Schedule 22 to FA 2001.

Section 1174: Sub-contractor payments

2993. This section defines “sub-contractor payment” and is the first of three sections that deal with such payments. It is based on paragraph 9 of Schedule 22 to FA 2001.

***Section 1175: “Qualifying expenditure on sub-contracted land remediation”:
connected persons***

2994. This section identifies the amount of qualifying expenditure on sub-contracted land remediation if the parties are connected. It is based on paragraph 10 of Schedule 22 to FA 2001.

***Section 1176: “Qualifying expenditure on sub-contracted land remediation”:
other cases***

2995. This section identifies the amount of qualifying expenditure on sub-contracted land remediation if the parties are not connected. It is based on paragraph 11 of Schedule 22 to FA 2001.

Section 1177: “Subsidised expenditure”

2996. This section defines “subsidised expenditure”. It is based on paragraph 8 of Schedule 22 to FA 2001.

Section 1178: Persons having a “relevant connection” to a company

2997. This section sets out when a person has a “relevant connection” to a company for the purposes of the Part. It is based on paragraph 31 of Schedule 22 to FA 2001.

Section 1179: Other definitions

2998. This section provides definitions and is based on paragraph 31 of Schedule 22 to FA 2001.

2999. “National insurance contributions” is defined in section 1319.

3000. This Act does not rewrite paragraph 30 of Schedule 22 to FA 2001. This provision is no longer required, since the rule allowing the Commissioners for HMRC to deduct money for tax credits before paying their receipts into the Consolidated Fund is set out in sufficiently general terms in section 44 of CRCA (see subsections (1) and (3)(d) of that section). Paragraph 26 of Schedule 13 to FA 2002, which made similar provision to that made by paragraph 30 of Schedule 22 to FA 2001, was repealed by paragraph 96 of Schedule 4 to CRCA.