

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

CORPORATION TAX ACT 2009

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 16: Companies with investment business

Overview

Chapter 3: Amounts treated as expenses of management

Section 1232: Chapter applies to amounts not otherwise relieved

3122. This section is a priority rule. It is based on section 75 of ICTA.
3123. If an expense falls within the general rule for management expenses in section 1219(1) that section takes priority over the rules in this Chapter. And if an expense is otherwise deductible for tax purposes the rules in this Chapter do not apply to it.

Section 1233: Excess capital allowances

3124. This section gives a deduction for some capital allowances. It is based on section 75 of ICTA.
3125. A company with an investment business carries on a “qualifying activity” (see section 15(1)(g) of CAA). The rule in section 253 of CAA is that capital allowances are to be deducted in calculating the profits of the business. But, if there is an excess of allowances, the excess is treated as management expenses and can be set against profits generally.

Sections 1234 to 1246

Overview

3126. The following 13 sections are equivalent to trading income sections.
3127. Generally there are no timing rules in the sections. So a deduction is made in the accounting period to which it is “referable” in accordance with section 1224. There are two exceptions: sections 1240(4) and 1242(4) require the deduction for a redundancy payment to be made in the final accounting period of the business if the payment is made after the business has ceased.

Section 1234: Payments for restrictive undertakings

3128. This section allows a company to deduct certain amounts paid to employees for restrictive undertakings. It is based on section 73 of FA 1988. The corresponding rule for trading income is in section 69.

Section 1235: Employees seconded to charities and educational establishments

3129. This section allows a company carrying on investment business to deduct the cost of an employee seconded to a charity or educational establishment. It is based on section 86 of ICTA. The corresponding rule for trading income is in section 70.
3130. The rule in section 86 of ICTA is that the cost of the employee “shall continue to be deductible in the manner and to the like extent” as if the employee continued to work in the employer’s business. This section allows the employer to deduct *all* costs attributable to the seconded employee during the period of the secondment, regardless of whether those costs would have been allowed if the employee had not been seconded. See *Change 14* in Annex 1.

Section 1236: Payroll deduction schemes

3131. This section allows an employer a deduction for expenses incurred in operating the payroll deduction scheme. It is based on section 86A of ICTA. The corresponding rule for trading income is in section 72.

Section 1237: Counselling and other outplacement services

3132. This section gives a deduction for certain expenses of counselling provided for employees. It is based on section 589A of ICTA. The corresponding rule for trading income is in section 73.

Section 1238: Retraining courses

3133. This section gives a deduction for certain expenses of retraining provided for employees. It is based on section 588 of ICTA. The corresponding rule for trading income is in section 74.
3134. The section does not rewrite section 588(3)(b) of ICTA. That provision makes a deduction as a management expense conditional on the employee’s exemption under section 311 of ITEPA in respect of the expenditure in question. This condition is not consistent with the similar provision in section 1237 and does not serve any material purpose. See *Change 16* in Annex 1.

Sections 1239 to 1243: Redundancy payments etc

3135. These five sections are based on sections 90, 579 and 580 of ICTA. The parts of the rules that deal with the employee’s liability are in section 309 of ITEPA. The corresponding rules for trading income are in sections 76 to 81.

Timing

3136. In sections 1240(4) and 1242(4) there is a special timing rule for management expenses. For trading income the Act adopts a “person-based” approach. So the corresponding trading income rules refer to a “payment ... made after the employer has permanently ceased to carry on the trade [or part of the trade]”.
3137. In these sections the rules refer to a payment “referable to ... an accounting period beginning after the business [or the part of the business] has [permanently] ceased to be carried on”. This produces the same result as the trading income sections, without the need to explain the rule for businesses carried on in partnership.
3138. If an investment business ceases, the closing words of the second sentence of section 90(1) and section 579(3A) of ICTA make the payments referable to the “accounting period ending on the last day on which the ... business was carried on”. These sections specify instead “the last accounting period in which the business was carried on”. See *Change 82* in Annex 1.

Just and reasonable apportionment

3139. Section 1241(2) requires a “just and reasonable” apportionment. Section 579(5) of ICTA does not specify the basis of apportionment. See *Change 12* in Annex 1.

Part of a business

3140. Section 1242 applies to payments in connection with the cessation of *part* of a business in the same way as it applies to payments in connection with the cessation of a whole business. See *Change 17* in Annex 1.

Devolution

3141. Section 1243(2)(b) reflects the effect of the devolution settlements. See *Change 15* in Annex 1.

Section 1244: Contributions to local enterprise organisations or urban regeneration companies

3142. This section allows deductions for contributions to local enterprise agencies, training and enterprise councils, local enterprise companies in Scotland, business links and urban regeneration companies. It is based on sections 79, 79A and 79B of ICTA. The corresponding rule for trading income is in section 82.

3143. Subsection (3) is an anti-avoidance rule. It prevents a company using the section to obtain a deduction for non-commercial expenditure, such as funding the training of a member of a shareholder’s family, by passing funds through one of these bodies. The source legislation disallows any deduction if there is a benefit to the company (or a connected person). This section merely restricts the deduction by the value of the benefit. See *Change 18* in Annex 1.

3144. Subsection (6) of this section invokes the supporting sections 83 and 86.

3145. If a disqualifying benefit is later received it is charged to tax by section 1253.

Section 1245: Payments to Export Credits Guarantee Department

3146. This section allows a company to deduct the cost of certain payments to the Export Credits Guarantee Department. It is based on section 88 of ICTA. The corresponding rule for trading income is in section 91.

Section 1246: Levies under FISMA 2000

3147. This section allows a deduction for certain payments arising from FISMA. It is based on section 76B of ICTA. The corresponding rule for trading income is in section 92.

3148. A company carrying on investment business may be called upon to make payments in connection with FISMA. The payments are of two sorts:

- a “levy” to meet the running costs of the schemes set up by FISMA; and
- “costs” which may be awarded at the conclusion of a hearing of a complaint.

3149. Section 76B of ICTA allows as a management expense both sorts of payment. But there is a difficulty with one sort of levy. So some changes are made in this section and in the trading income section to ensure that all the payments under FISMA qualify for a deduction. Schedule 1 to this Act makes a corresponding relaxation in section 155 of ITTOIA. See *Change 22* in Annex 1.