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 2: Charge to corporation tax: basic provisions

Chapter 1: The charge to corporation tax

Overview

29. The process of separating income tax and corporation tax began with ITTOIA and continued with ITA, which substantially completed the rewrite of income tax legislation for income tax purposes. Following that there were two parallel sets of income tax principles. Those in rewrite style apply only for income tax purposes and, for example, no longer include Schedules such as Schedule D and its Cases.

30. Prior to this Act corporation tax has been dependent on the continuing existence of the income tax rules in unrewritten style so that, for example, those Schedules and Cases continue to be applied for the purposes of corporation tax.

31. This Act continues and finalises the separation process so that the relevant principles apply separately for corporation tax. The adoption of this approach means that section 9 of ICTA (computation of income: application of income tax principles) is repealed by this Act (apart from section 9(5) which theoretically could have a continuing effect). Some of the provisions of section 9 of ICTA are rewritten in section 969 and there is a transitional provision in Schedule 2.

32. This Chapter deals with the charge to corporation tax on profits. The approach retains the principle of a single charge, currently under section 6 of ICTA. The charge under section 2 is on amounts of income and on chargeable gains that together form the "profits pot".

33. This contrasts with the multiple charges to income tax in the Income Tax Acts, primarily ITTOIA, and reflects the different history of the two taxes.

34. The way the charge on profits operates is explained in the commentary on section 2. This section rewrites both section 6(1) and (4) of ICTA and section 9(1) and (4) of that Act. In the light of the separation of corporation tax from income tax it is necessary to find a different way of expressing the relationship between the general charge to corporation tax on income and the provisions that deal with its application.

35. There are also other charges to corporation tax. These are charges to an amount of corporation tax and they do not feature in the "profits pot". There is an example of this kind of charge in this Act – in section 75{j032704}(2) (retraining courses: recovery of tax).

36. These are provisions of an administrative nature mainly recovering excessive relief. In some of the charges of this kind there are references to the assessment being made under Schedule D Case VI. The Case VI label will disappear along with Schedule D and the other Cases with the repeal of section 18 of ICTA. The references are removed by

consequential amendments in Schedule 1. An example is the amendment to paragraph 27(4) of Schedule 16 to FA 2002.

Section 2: Charge to corporation tax

37. This section provides the charge to corporation tax on profits. It is based on section 6(1) and (4) and section 9(1) and (4) of ICTA.

38. *Subsection (1)* states that corporation tax on profits is charged for a financial year for which an Act provides. It is based on the two overlapping propositions in section 6(1) of ICTA.

39. Under *subsection (2)* "profits" in Part 2 means "income and chargeable gains, except in so far as the context otherwise requires". This interpretation derives from section 6(4) of ICTA. This Act amends section 6(4) of ICTA in Schedule 1.

40. Chargeable gains are defined in section 1(1) of TCGA. In *subsection (3)* " the charge to corporation tax on income" is introduced as a label. The expression is defined for corporation tax purposes as a result of an amendment to section 834(1) of ICTA made by Schedule 1 to this Act.

41. *Subsection (4)* provides that the charge to corporation tax on income in effect depends on there being another provision of the Corporation Tax Acts that applies it.

42. This subsection is based on section 9(1) and (4) of ICTA. Section 9(1) in effect controls the meaning of "income" in section 6 of ICTA. As noted in the overview, this Act will complete the split between income tax and corporation tax and the formulation in section 9(1) of ICTA is no longer apposite since its wording is adapted to the circumstances of applying one body of tax law (income tax principles) for the purposes of another tax (corporation tax).

43. The effect of section 9 of ICTA is that the scope of the charge to income tax determines what is income for corporation tax purposes (except as otherwise provided by the Tax Acts). Income tax, although primarily a charge to tax on things which would be regarded as income in its ordinary sense, is not exclusively a charge on such things. Section 9(4) provides that anything that is within the charge to income tax is within the charge to corporation tax on income "whether expressed to be income or not and whether an actual amount or not".

44. So the effect of section 9 of ICTA is that (subject to the provisions of the Corporation Tax Acts) the charge to corporation tax on income is driven by the particular heads of the charge to income tax.

45. The purpose of this section is to achieve an equivalent effect, so that the charge to corporation tax on income is driven by the particular heads of the charge to corporation tax on income. In this way the section substitutes the provisions of the Corporation Tax Acts for the income tax provisions. For example section 35 applies the charge to corporation tax on income to the profits of a trade.

Section 3: Exclusion of charge to income tax

46. This section ensures that income of a company within the charge to corporation tax is not chargeable to income tax as well as corporation tax. It is based on section 6(2) of ICTA.

Section 4: Exclusion of charge to capital gains tax

47. This section ensures that chargeable gains of a company within the charge to corporation tax are not chargeable to capital gains tax as well as corporation tax. It is based on section 6(3) of ICTA.

Section 5: Territorial scope of charge

48. This section sets out the territorial scope for the charge to corporation tax. It is based on section 8(1) and section 11(1) and (2) of ICTA.

49. *Subsection (1)* deals with the position of companies resident in the United Kingdom. It restates section 8(1) of ICTA which, although expressed in general terms, only has effect in relation to UK resident companies (because of the exception under section 11 for non-UK resident companies).

50. Chapter 3 of this Part sets out the statutory rules for company residence. Chapter 4 explains what are chargeable profits in the case of non-UK resident companies.

Section 6: Profits accruing in fiduciary or representative capacity

51. This section deals with profits accruing directly to the company where it is acting in a fiduciary or representative capacity, for example as a nominee. It is based on section 8(2) of ICTA.

52. In this case the charge under section 2 only applies where the company has a beneficial interest in the profits.

53. When a company goes into liquidation it ceases to be the beneficial owner of its assets. The exception in *subsection (2)* means that in this case the company's profits remain within the charge to corporation tax.

Section 7: Profits accruing under trusts

54. This section sets out the treatment of profits that do not accrue to the company directly but in which the company has a beneficial interest under a trust. It is based on section 8(2) of ICTA.

55. The words "in any case in which it would be so chargeable if the profits accrued to it directly" are not reproduced because the treatment for which the section provides makes them unnecessary. Profits which are treated as accruing to a company directly are chargeable to corporation tax in the same circumstances that they would have been had they in fact accrued directly to the company.

56. There is no reference to profits arising under a partnership in contrast to section 8(2) of ICTA. Provisions for the charge to corporation tax on the profits of corporate partners are set out elsewhere in this Act and in particular in Part 17.

Section 8: How tax is charged and assessed

57. This section sets out how corporation tax is charged and assessed. It is based on section 8(3) and section 12(1) of ICTA.

58. The reference to deductions in section 8(3) and section 12(1) of ICTA and the words in brackets in section 12(1) "(whether or not received in or transmitted to the United Kingdom)" have not been rewritten since they do not add anything substantive to these provisions. There are rules elsewhere about what deductions can be made and this section together with section 5 make it clear that the charge is on profits wherever arising.

59. Section 70(1) is not rewritten in this Act but is reflected in *subsection (3)* of this section which contains the general rule about the basis of assessment.