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 20: General calculation rules

Chapter 1: Restriction of deductions

Section 1288: Unpaid remuneration

3300. This section defers a deduction for employees' (or an office-holder's) remuneration in a period of account if that remuneration remains unpaid nine months after the period has ended. It is based on section 43 of FA 1989. The corresponding rule for income tax is in section 36 of ITTOIA.

3301. Section 43 of FA 1989 was introduced when the assessment of employment income was put on a receipts basis. A deduction for employees' pay may be linked to the time when the pay is received by the employees.

3302. This section uses "income from any source" rather than "profits or gains", to define the scope of the rule. See the commentary on the omission of "gains" in the overview of Part 3 of this Act. There is a separate rule for expenses of management in section 1249.

3303. Schedule 2 to this Act preserves the commencement rule for the amendment of the source legislation by Schedule 24 to FA 2003.

Section 1289: Unpaid remuneration: supplementary

3304. This section provides definitions and further explanation of the main rule in section 1288. It is based on section 43 of FA 1989. The corresponding rule for income tax is in section 37 of ITTOIA.

3305. *Subsection (1)* applies section 1288 to provisions made in the accounts for amounts that may become employees' remuneration.

3306. *Subsection (3)* deals with the case in which the company submits its tax return before the end of the nine month limit in section 1288(2) and all or any of the remuneration is unpaid. The company must assume the remuneration will remain unpaid. If, subsequently, the remuneration is paid within the time limit the calculation can be adjusted and the return amended. See *Change 68* in Annex 1.

Employee benefit contributions
Overview

3307. The next eight sections deal with the deduction allowed in respect of an employer's contribution to an employee benefit scheme. They are based on Schedule 24 to FA 2003. The corresponding rules for income tax are in sections 38 to 44 of ITTOIA.

3308. The sections give a comprehensive set of rules for determining when deductions can be made for payments made by an employer to a third party to hold or use to provide benefits for the employer's employees.

Section 1290: Employee benefit contributions

3309. This section sets out the conditions under which a deduction may be allowed. It is based on paragraphs 1 and 8 of Schedule 24 to FA 2003. The corresponding rules for income tax are in section 38 of ITTOIA.

3310. The legislation rewritten in this section does not apply to deductions that would otherwise be allowed for periods ending before 27 November 2002, or in respect of employee benefit contributions made before that date. This limitation is preserved in Schedule 2 (transitionals and savings).

Section 1291: Making of "employee benefit contributions"

3311. This section defines the transactional characteristics which must be present if a payment is to qualify for relief as an "employee benefit contribution". It is based on paragraphs 1 and 9 of Schedule 24 to FA 2003. The corresponding rule for income tax is in section 39 of ITTOIA.

Section 1292: Provision of qualifying benefits

3312. This section sets out what is meant by the provision of qualifying benefits. It is based on paragraph 2 of Schedule 24 to FA 2003. The corresponding rules for income tax are in section 40 of ITTOIA.

Section 1293: Timing and amount of certain qualifying benefits

3313. This section sets out:

- when benefits in the form of money are treated as provided; and
- how to calculate the value of benefits provided by the transfer of an asset.

3314. It is based on paragraphs 2 and 5 of Schedule 24 to FA 2003. The corresponding rules for income tax are in section 41 of ITTOIA.

Section 1294: Provision or payment out of employee benefit contributions

3315. This section sets out the rules for allocating the provision of qualifying benefits, or payment of qualifying expenses, by the third party against the employee benefit contributions received. It is based on paragraph 4 of Schedule 24 to FA 2003. The corresponding rules for income tax are in section 42 of ITTOIA.

Section 1295: Profits calculated before end of 9 month period

3316. This section applies if the company makes its corporation tax return before the end of the nine month period. It is based on paragraph 6 of Schedule 24 to FA 2003. The corresponding rule for income tax is in section 43 of ITTOIA.

Section 1296: Interpretation of sections 1290 to 1296

3317. This section interprets and defines terms. It is based on paragraphs 3 and 9 of Schedule 24 to FA 2003. The corresponding rules for income tax are in section 44 of ITTOIA.

Section 1297: Life assurance business

3318. This section modifies the operation of section 1290 where the company in question is charged on the I minus E basis in respect of life assurance business and claims a deduction for expenses under section 76 of ICTA. It is based on paragraph 7 of Schedule 24 to FA 2003.

Section 1298: Business entertainment and gifts

3319. This section and the following two sections deal with expenditure on business entertainment or gifts. It is based on section 577 of ICTA. The corresponding rule for income tax is in sections 45 and 867 of ITTOIA.

3320. Section 577 of ICTA denies a deduction for certain expenses "in computing profits chargeable to corporation tax under Schedule D". Profits chargeable to corporation tax under Schedule D include profits of a business which is neither a trade nor a property business. And section 577(7)(b) of ICTA indicates that references to a trade, for the purposes of the section, include references to a business.

3321. The exceptions to the general rules are not limited to trades. See *Change 93* in Annex 1.

Section 1299: Business entertainment: exceptions

3322. This section provides exceptions to the prohibition in section 1298 relating to business entertainment in certain circumstances. It is based on section 577 of ICTA. The corresponding rules for income tax are in section 46 of ITTOIA.

Section 1300: Business gifts: exceptions

3323. This section provides exceptions to the prohibition in section 1298 relating to business gifts in certain circumstances. It is based on section 577 of ICTA. The corresponding rules for income tax are in section 47 of ITTOIA.

3324. *Subsection (3)* allows the Treasury to increase the monetary limit in paragraph (b). See *Change 94* in Annex 1.

3325. *Subsection* (5) makes an exception for gifts to charities and named bodies. Section 577(9) of ICTA limits this exception to the computation of profits under Schedule D Cases I and II, that is, to income calculated under rules rewritten in Part 3 of this Act. It was not intended that the exception should be applied narrowly to the disadvantage of a business other than a trade or property business. This section extends the exception to such businesses. See *Change 93* in Annex 1.

Section 1301: Restriction of deductions for annual payments

3326. This section prevents annual payments for which the consideration is either a dividend or not taxable from being deducted in calculating a company's income from any source. It is based on section 125 of ICTA. The corresponding income tax rule is in sections 843 and 904 of ITA.

3327. *Subsections (4)* to *(6)* together set out the conditions that must be met by an annual payment in order for the rule in *subsection (1)* to apply to the payment.

3328. The source legislation specifies that the payment must not be interest (section 125(2)(a) of ICTA). Annual payments within *subsection (2)* do not include interest, so this does not need to be stated explicitly. In addition, no specific reference is made to annuities (also mentioned in the source legislation) as these are simply one type of annual payment.

3329. This section does not rewrite the exclusion in section 125(3)(a) of ICTA for payments which in the hands of the recipient are income falling within section 627(2)(a) of ITTOIA. Such payments cannot be relevant for corporation tax purposes since such payments can only be made by an individual. Nor does this section rewrite the commencement provision in section 125(5) of ICTA, which is spent.

Section 1302: Social security contributions

3330. This section prevents a deduction for most social security contributions for any corporation tax purpose. It is based on section 617 of ICTA. The corresponding rule for income tax is in section 868 of ITTOIA.

Section 1303: Penalties, interest and VAT surcharges

3331. This section contains the general rule that tax penalties and interest are not to be deducted. It is based on section 827 of ICTA. The corresponding rule for income tax is in section 869 of ITTOIA.

3332. This section refers to "profits" because the rule covers both the calculation of income and deductions (such as expenses of management within Part 16) from total profits.

3333. Section 90(1)(b) of TMA prohibits a deduction for interest payable "under this Part" of TMA. Section 90(2) cancels the prohibition for interest under sections 87 and 87A of TMA. This is because interest under those sections may be taken into account as a loan relationship debit (see Parts 5 and 6 of this Act). But the prohibition does apply to interest under section 86 of TMA, which applies for corporation tax purposes only for accounting periods ending before 1 October 1993. So that rule is "saved" by Schedule 2 to this Act and not rewritten in this section.

3334. The table in *subsection (2)* sets out the specific statutory references because a general description of the penalties etc would not be precise enough. But the second column of the table is a description of the tax to indicate what is involved.

Section 1304: Crime-related payments

3335. This section prohibits any deduction for expenses incurred in making a payment:

- the making of which is a criminal offence, or which would be a criminal offence if the payment were made in the United Kingdom; or
- which is made in response to a demand, the making of which is a criminal offence.

3336. The section is based on section 577A of ICTA. The corresponding rule for income tax is in section 870 of ITTOIA.

3337. The source legislation denies a deduction for certain crime-related payments "in computing profits chargeable to corporation tax under Schedule D". Profits chargeable to tax under Schedule D include profits of a business which is neither a trade nor a property business.

3338. The section applies to income charged to corporation tax. Some kinds of income are not charged under Schedule D in the source legislation. But the prohibition of a deduction is not thought to have any practical effect on income that is not charged under Schedule D. So the scope of the prohibition is unchanged.

3339. The section overrides any provision which otherwise allows a deduction to be made in calculating the profits of a trade. See section 51(1)(b) of this Act.

Section 1305: Dividends and other distributions

3340. This section sets out the prohibition on deducting dividends or other distributions made by a company in computing that company's profits chargeable to corporation tax. It is based on section 337A(1)(a) of ICTA.