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

Overview

3298. This Part contains a number of generally applicable rules. They apply to all income charged to corporation tax.

3299. The rules are included here to save repetition at numerous points in the Act. Some of the rules apply mainly to trading and property income within Parts 3 and 4 of this Act. The approach for income tax in ITTOIA is to put one version of the rule in the trading income Part, with another version of the rule in the general provisions Part. But for corporation tax the rules apply also to expenses of management (see Part 16 of this Act) and expenses of insurance companies (see section 76 of ICTA).

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.

Chapter 2: Other general rules

Section 1306: Losses calculated on same basis as miscellaneous income

3341. This section is based on numerous provisions, including section 827 of ICTA. The corresponding rule for income tax is in section 872 of ITTOIA.

3342. The application of the section is limited to "miscellaneous income", defined in *subsection (3)* by reference to section 834A of ICTA (inserted by Schedule 1 to this Act). The source legislation does not generally limit the scope of the rule. For example, section 827(1) of ICTA says "the payment shall not be allowed as a deduction in computing any income, profits or losses for any corporation tax purposes". But in practice this section affects only the calculation for corporation tax purposes of amounts, other than profits within Part 3 or 4 of this Act, chargeable under a provision listed in the table in section 834A of ICTA.

3343. *Subsection (2)* ensures that this rule does not overturn any rules about the calculation of losses. For example, see section 398 of ICTA (which deals with the calculation of losses for the purposes of a claim under section 396 of ICTA).

3344. See the related commentary on section 47 of this Act.

Section 1307: Apportionment etc of miscellaneous profits and losses to accounting period

3345. This section provides for apportionment of profits and losses when a company's period of account does not coincide with an accounting period. It is based on section 72 of ICTA. The corresponding rule for income tax is in sections 203 and 871 of ITTOIA.

3346. Section 72 of ICTA applies "in the case of any profits or gains chargeable… under Case I, II or VI of Schedule D". Apportionment is therefore not limited to the case of profits or losses of a trade. See the related commentary for section 52.

3347. The section applies where income is chargeable under a provision to which section 834A of ICTA applies. That section is inserted by Schedule 1 to this Act. Section 834A of ICTA does not apply to income to which Chapter 8 of Part 10 (income not otherwise charged) applies which arises from a source outside the United Kingdom (see subsection (3) of that section). *Subsection (2)* of this section qualifies the reference to that section so that the benefit of the apportionment rules extends to such income (that is, to income charged in the source legislation under Schedule D Case V). See *Change 95* in Annex 1.

3348. The only circumstance in which aggregation within *subsection (3)(b)* will occur is when a company is in liquidation and has fixed accounting periods of 12 months in accordance with section 12 of this Act.

3349. This section does not carry over the rewrite change in section 871(5) of ITTOIA whereby apportionment is permitted by a measure of time other than the number of days in the respective periods, as required by section 72(2) of ICTA. HMRC consider that a day cannot fall into more than one accounting period.

3350. See also the paragraph headed "miscellaneous profits and losses: apportionment to accounting periods ending before 1 April 2009" in Part 21 of Schedule 2 to this Act which provides for a period of account that straddles the end of the financial year 2008 and the beginning of the financial year 2009.

Section 1308: Expenditure brought into account in determining value of intangible asset

3351. This section provides that expenditure on research and development, if not of a capital nature, may be taken into account for the purposes of Part 13, even though for accounting purposes it has been brought into account in determining the value of an intangible asset. It is based on section 53 of FA 2004.

Section 1309: Payments treated as made to visiting performers

3352. This section provides that some payments made to a company are not to be included in the company's income. It is based on sections 556 and 558 of ICTA. The corresponding rule for income tax is in sections 13 and 14 of ITTOIA.

3353. Section 966 of ITA requires deduction of tax from certain payments to entertainers and sportsmen and women. The section also applies in some cases to payments made to a person other than the performer. In those cases section 13(5) of ITTOIA treats the payments as made instead to the performer.