

CORPORATION TAX ACT 2009

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Schedule 1: Minor and consequential amendments

Part 1: Income and Corporation Taxes Act 1988

The charge to corporation tax

3404. See the commentary on Chapter 1 of Part 2 for an explanation of the charges to corporation tax in this Act. That Chapter deals with the charge to corporation tax on profits.
3405. The charge under section 2 is on amounts of income and on chargeable gains that together form the “profits pot”. The label “the charge to corporation tax on income” is explained in section 2(2). There are examples of consequential amendments expressed in these terms in the amendments to section 761(1) and section 776(3A) of ICTA.
3406. There are also consequential amendments to charges to an amount of corporation tax. These charges do not fall within the “profits pot” and are provisions of an administrative nature mainly recovering excessive relief. Two examples are the amendment to section 399(3) of ICTA and the amendment to paragraph 27(4) of Schedule 16 to FA 2002.
3407. References to Schedule D Case VI are removed in these consequential amendments: see the commentary on the amendment inserting section 834A of ICTA.

Section 15 of ICTA

3408. Section 15(1A) of ICTA is not rewritten because it is no longer necessary. It is part of a framework in which income tax and corporation tax are, broadly, governed by the same provisions. In that context its purpose is to keep the property income of a non-UK resident company chargeable to income tax separate from that company’s property income chargeable to corporation tax. But the provisions governing income tax have been separated from those governing corporation tax in the rewrite. Specifically, Part 3 of ITTOIA deals with property income charged to income tax and Part 4 of this Act deals with property income charged to corporation tax. Section 3(1)(b) prevents the provisions in ITTOIA from applying to income of a non-resident within the charge to corporation tax. Together, this is all that is required to achieve the result of dividing a non-UK resident company’s property income between separate income tax and corporation tax property businesses.

Section 42 of ICTA

3409. **Sections 240 to 242** of this Act rewrite the application of section 42 of ICTA for cases within section 42(1)(a) of ICTA (determination of amounts which may be chargeable to corporation tax). So section 42(1)(a) of ICTA is repealed.

3410. Section 42 of ICTA continues to apply for cases within section 42(1)(b) of ICTA (determination of amounts which may be chargeable to income tax).

Section 74 of ICTA

3411. Section 74(1) of ICTA lists various items in respect of which no deduction is allowed in computing profits charged to corporation tax under Schedule D Case I.
3412. **Section 74(1)(f)** provides that in computing the amount of the profits to be charged to corporation tax under Case I, no sum shall be deducted in respect of:
- ((f) any capital withdrawn from, or any sum employed or intended to be employed as capital in, the trade ..., but so that this paragraph shall not be treated as disallowing the deduction of any interest
3413. The proposition in the second half of section 74(1)(f) of ICTA that the prohibition of any deduction in respect of capital should not be construed as disallowing the deduction of interest has been overtaken by the loan relationships legislation in Chapter 2 of Part 4 of FA 1996.
3414. The tax treatment of returns from corporate debt now follows accountancy treatment in taxing a profit or allowing a loss at the time the return is credited or debited in the company's accounts. And section 100 of FA 1996 extends the corporate debt regime to include interest arising other than in respect of the lending of money, for example interest on trade debts.
3415. So the second half of section 74(1)(f) is redundant and this Act repeals it.
3416. Section 74(1)(h) of ICTA prohibits deductions for interest forgone on capital used in the trade or in improving the trade premises. It is unlikely that any accounts drawn up in accordance with generally accepted accounting practice would include a deduction for notional interest. So section 74(1)(h) of ICTA is redundant and this Act repeals it.
3417. Section 74(1)(k) of ICTA prohibits deductions for "any average loss beyond the actual amount of loss after adjustment".
3418. Generally accepted accountancy practice in such cases is to make a provision in the year of loss and review that provision in subsequent years. Without section 74(1)(k), the tax treatment of the average loss follows generally accepted accountancy practice. See *Change 97* in Annex 1.
3419. Section 74(1)(m) of ICTA prevents a deduction for any annuity and other annual payment "payable out of the profits". Because the rule applies only to amounts payable "out of the profits", it has no application to the calculation of those profits. So section 74(1)(m) of ICTA is redundant and this Act repeals it.

Sections 76ZA to 76ZO of ICTA

3420. A number of rules about calculating profits apply:
- in calculating the profits of a trade (or property business);
 - to the calculation of expenses of management for the purpose of section 75 of ICTA; and
 - to the calculation of expenses of insurance companies under section 76 of ICTA.
3421. This Act rewrites the first set of rules in Part 3 or, in some cases, in Part 20.
3422. This Act rewrites the second set of rules in Part 16 or, in some cases, in Part 20.
3423. This Act does not rewrite section 76 of ICTA. Instead, it inserts sections 76ZA to 76ZO into ICTA, to provide a version of the rules adapted to insurance companies to which

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

section 76 of ICTA applies. The new sections follow the corresponding rules in this Act. So the new sections repeat the changes to the law made by this Act. See (in the order in which they appear in this Schedule) *Changes 14, 16, 82, 12, 17, 82, 15, 18, 68, 10 and 83* in Annex 1.

3424. In section 76ZN of ICTA subsection (3)(a)(ii) caters for the possibility that the release of a debt for car hire may be a “reversal” within section 76(7) of ICTA. In that case, this rule ensures that the reversal is restricted by the appropriate fraction.

Section 84A of ICTA

3425. Section 84A continues in force for income tax purposes.

Section 86 of ICTA

3426. Section 86 of ICTA allows a company to deduct the cost of an employee seconded to a charity or educational establishment in calculating the profits to be charged to corporation tax.
3427. Section 86(5) of ICTA lists educational establishments in Scotland for the purposes of relief under section 86 of ICTA. Section 86(5)(d) of ICTA refers to “a self-governing school within the meaning of the Self-Governing Schools etc (Scotland) Act 1989”. Self-governing schools were abolished on 1 April 2003. So section 86(5)(d) of ICTA is redundant.

Section 89 of ICTA

3428. Section 89 of ICTA is not rewritten for corporation tax purposes. See the commentary on section 55 and *Change 8* in Annex 1.

Section 92 of ICTA

3429. Section 92 of ICTA applies to regional development grants under Part 2 of the Industrial Development Act 1982. The Industrial Development Act 1982 was repealed by the Statute Law (Repeals) Act 2004 with effect from 22 July 2004. No applications under Part 2 of the 1982 Act could be made after 31 March 1988 and there are no payments outstanding in respect of grants made before that date. So section 92 of ICTA is redundant.

Section 101 of ICTA

3430. The Act does not cater for a company carrying on a profession. So this section is repealed. See *Change 39* in Annex 1.

Section 116(4) of ICTA

3431. The reference to section 834A of ICTA is to the provision inserted by this Schedule.

Section 119(2) of ICTA

3432. Section 119(2) of ICTA is not rewritten because it is otiose. See *Change 53* in Annex 1.

Section 209(6A) of ICTA

3433. Section 209(6A) of ICTA provides that alternative finance return shall not be treated as a distribution for the purposes of the Corporation Tax Acts. It rewrites section 54(1) and (2) of FA 2006.

Section 337A(2)(b) of ICTA

3434. Section 337A(2)(b) of ICTA is not rewritten because it only duplicates other provisions with the same effect.
3435. Section 337A(2)(b) of ICTA provides that no deduction shall be made in computing income for the purposes of corporation tax in respect of losses from intangible fixed assets which come within Schedule 29 of FA 2002 except in accordance with the rules of that Schedule. However section 337A(2)(b) achieves nothing that is not already achieved by the provisions of Schedule 29. Section 337A(2)(b) is expressed to apply in respect of “losses from intangible assets within Schedule 29”. Paragraph 1(2) of Schedule 29 states that the Schedule “also has effect for determining how a company’s losses in respect of intangible fixed assets are brought into account for the purposes of corporation tax”. And paragraph 1(3) of Schedule 29 states that, apart from specified exceptions, “... the amounts to be brought into account in accordance with this Schedule [29] in respect of any matter are the only amounts to be brought into account for the purposes of corporation tax in respect of that matter”.

Section 396 of ICTA

3436. These amendments make the adaptations necessary to this section and its heading as a result of the abolition of Schedule D and its Cases by this Act.
3437. The main reference in section 396(1) of ICTA to tax charged under Schedule D Case VI has been replaced by a reference to tax charged under or by virtue of “a relevant provision”. This ties in with the substituted subsection (2) which, in common with the approach taken generally to replacing references to Schedule D Case VI, refers to the table of provisions in section 834A of ICTA for this purpose but with the exclusion of one provision in that table. The reference to section 761(1)(b)(ii) of ICTA derives from the replaced section 396(2) of ICTA.
3438. Section 834A of ICTA is inserted by this Schedule. It is the equivalent for corporation tax of the income tax provision in section 1016 of ITA. For further information, see the commentary in these notes on section 834A of ICTA.
3439. See also section 436A of ICTA which excludes a loss under that section from relief under section 396 of ICTA and prevents any relief under the latter section being set against profits under section 436A.
3440. The inserted section 396(2A) and (2B) of ICTA preserves relief for losses arising in an accounting period ending on or before 31 March 2009 against any income arising from a relevant provision in later accounting periods. Subsection (2B) reflects the commencement date for the insertion of a reference to Chapter 5 of Part 17 of ICTA in the superseded subsection (2).

Section 399 of ICTA

3441. Section 399(1B) of ICTA is not rewritten for corporation tax purposes. The loss relief provisions it restricts, in particular section 396 of ICTA (losses from miscellaneous transactions), cannot apply. The gains that match the losses in question are not chargeable to tax and so losses are not eligible for relief. This provision is the equivalent for corporation tax purposes of section 399(1) of ICTA. That provision was not rewritten but repealed by ITTOIA for the same reasons.

Section 431 of ICTA

3442. A new label “life assurance trade profits provisions” is inserted into section 431(2) of ICTA. It is used in various consequential amendments to the life assurance provisions of the Corporation Tax Acts. They include the use of the label, instead of “provisions applicable to Case I of Schedule D” (or some variant), in places such as section 434(1) of ICTA, section 83YC(10) of FA 1989 and section 210A(10A) of TCGA.

Sections 586 and 587 of ICTA

3443. These amendments repeal sections 586 and 587 of ICTA. See *Change 99* in Annex 1.

Section 695 of ICTA

3444. This amendment repeals section 695 of ICTA. Subsection (6) has not been rewritten. See *Change 100* in Annex 1.

Section 779 of ICTA

3445. The reference to section 834A of ICTA is to the provision inserted by this Schedule.

Section 781 of ICTA

3446. The reference to section 834A of ICTA is to the provision inserted by this Schedule.

Section 782 of ICTA

3447. Subsection (9) is concerned with successions. Section 337(1)(b) of ICTA and section 18 of ITTOIA are not concerned with successions. And section 337(1)(a) is not rewritten in this Act. So the closing words of subsection (9) are no longer needed and this Act omits them.

Section 785 of ICTA

3448. The reference to section 834A of ICTA is to the provision inserted by this Schedule.

Section 798A of ICTA

3449. Subsection (4)(a) of this section applies to all income chargeable to tax under Schedule D Case V. But the rule in subsection (3) applies only if there are deductions or expenses allowable in the calculation of the income. So the amendments by this Act identify such foreign income as comprising only:

- foreign trading income (the new subsection (4)(a));
- income from an overseas property business (the new subsection (4)(b)); and
- foreign miscellaneous income (the new subsection (4)(c)).

3450. The new subsection (5) preserves the distinction between post-cessation receipts charged to tax by section 103 of ICTA (to which section 798A does not apply) and those charged to tax by section 104 of ICTA (to which section 798A does apply).

Sections 807B to 807G of ICTA

3451. These amendments insert sections 807B to 807G into ICTA. These sections rewrite double taxation relief provisions in Schedule 9 (loan relationships) to FA 1996 and Schedules 26 (derivative contracts) and 29 (intangible fixed assets) to FA 2002. Those provisions were inserted in those Schedules by [The Corporation Tax \(Implementation of the Mergers Directive\) Regulations \(SI 2007/3186\)](#) and amended by [The Corporation Tax \(Implementation of the Mergers Directive\) Regulations 2008 \(SI 2008/1579\)](#).

3452. Because of the similarity of the provisions for each regime (loan relationships, derivative contracts and intangible fixed assets) each section deals with all three regimes.

Section 817 of ICTA

3453. This amendment repeals section 817 of ICTA. See *Change 101* in Annex 1.

Section 826(5A) of ICTA

3454. Section 749A of ITTOIA rewrites the exemption from income tax in section 826(5) of ICTA. Section 826(5A) of ICTA, which states that the exemption from tax does not extend to corporation tax, is repealed with this subsection.

Section 834(1) of ICTA

3455. The partial definition of income inserted into section 834(1) of ICTA provides that income includes anything to which the charge to corporation tax on income applies. It reflects the fact that, where something that is not income by nature is made subject to the charge on income, it is impliedly treated as income for corporation tax purposes.
3456. The terms of the partial definition assume you know what the charge on income applies to. Therefore, its relevance is confined to contexts other than defining the application of the charge. As with the other definitions in section 834(1), the partial definition does not apply if the context otherwise requires.

Section 834A of ICTA

3457. This amendment provides for the purposes of corporation tax the equivalent of section 1016 of ITA.
3458. This Act omits the Schedules and the cases of Schedule D under which most income has been charged. There are various places in the Corporation Tax Acts, notably section 396 of ICTA, where there is a need to refer generically to the charging scope of Schedule D Case VI.
3459. This amendment inserts section 834A of ICTA. The section provides a list that replicates the scope of Schedule D Case VI so far as relevant to those generic references in the Corporation Tax Acts to Case VI. As in the income tax equivalent, the list omits those purely administrative uses of Case VI to recover excess relief, over-repayments of tax and the like, to which the generic references of Case VI have no application.
3460. Section 834A(3) of ICTA excludes from the list certain foreign income charged under Chapter 8 of Part 10 of this Act (which deals with income not otherwise charged, whether the source is in or outside the United Kingdom), as such income is not within Schedule D Case VI.

Section 842 of ICTA

3461. This amendment includes the insertion of subsections (2D) and (2E) in section 842 of ICTA. It is based on paragraph 39 of Schedule 26 to FA 2002.

Section 843C of ICTA

3462. This amendment inserts a new section into ICTA. The explanation of “total profits” follows the use of the expression in section 9(3) of ICTA.

Paragraph 5 of Schedule 30 to ICTA

3463. This amendment repeals paragraph 5 of Schedule 30 to ICTA. See *Change 102* in Annex 1.