

CORPORATION TAX ACT 2009

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3: Trading income

Overview

Chapter 5: Trade profits: rules allowing deductions

Overview

244. This Chapter contains provisions allowing various deductions in calculating the profits of a trade.

Section 61: Pre-trading expenses

245. This section gives relief for expenses incurred before a trade starts. It is based on section 401 of ICTA. The corresponding rule for income tax is in section 57 of ITTOIA.
246. *Subsection (1)* sets the scene. Consistent with other rules in this Part, it refers to the “date” on which (instead of the “time” when) a company starts to trade.

Section 62: Tenants under taxed leases: introduction

247. This section provides for the following five sections to apply where a tenant, under a taxed lease, uses land for the purposes of a trade. It is based on section 87(1), (2), (8) and (9A) of ICTA. The corresponding provision for income tax is in section 60 of ITTOIA.
248. Chapter 4 of Part 4 (profits of property businesses: lease premiums etc) contains provisions (in sections 217 to 222) treating certain premiums, and other amounts, relating to a lease (“the taxed lease”) as giving rise to receipts of a property business (of amount X). Chapter 4 of Part 4 also provides that in certain cases a tenant under the taxed lease obtains relief in respect of all, or part, of X:
- by reducing the amount of another property business receipt (sections 227 to 230), or
 - by being treated as an expense of a property business (sections 231 to 234).
249. **Sections 62 to 67** provide for certain cases in which a tenant under the taxed lease obtains relief as a trading expense in respect of all, or part, of X.
250. *Subsection (1)* extends relief to cases in which X arose in relation to a lease of land outside the United Kingdom. See *Change 11* in Annex 1. This is in accordance with the policy of treating UK and overseas property businesses in the same way as far as possible.

251. The amount which a tenant can deduct in respect of rent which it is treated as paying under section 87(2) of ICTA is qualified by:
- the general rules as to deductions not allowable in computing the profits of a trade in section 74(1) of ICTA; and
 - rules prohibiting or restricting the deduction of specific expenditure elsewhere in ICTA.
252. In this Act, the rules restricting deductions are in Chapter 4 of this Part and section 74(1) (a) of ICTA is rewritten in that Chapter in section 54. *Subsection (3)* preserves the interaction of section 87(2) of ICTA and the general and specific rules restricting deductions in ICTA by providing that a deduction for an expense which a tenant is treated as incurring under section 63 is subject to the application of any provision of Chapter 4 of this Part.

Section 63: Tenants occupying land for purposes of trade treated as incurring expenses

253. This section treats a tenant under a lease, in respect of which an amount is brought into account by the landlord, (a “taxed lease”) as incurring an expense for each day on which the property held under the lease is occupied for the purposes of the tenant’s trade. It is based on section 87(2), (3) and (9) of ICTA. The corresponding rule for income tax is in section 61 of ITTOIA.
254. **Sections 217 to 222** provide for a company to bring an amount into account as a receipt of a property business in cases where the company has granted a short-term lease at a premium (or in certain other cases).
255. Sections 277 to 282 of ITTOIA make corresponding provision for a person to bring an amount into account as a receipt of a property business for income tax.
256. *Subsection (1)* treats a tenant which, for a qualifying day, occupies land for the purposes of a trade as incurring an expense. This corresponds to the treatment of the landlord who has been, or would have been (see section 227(4)), treated as receiving a receipt (“taxed receipt”) of the landlord’s property business.
257. The formula in *subsection (4)* calculates the expense for each qualifying day by spreading an amount in respect of the taxed receipt evenly over the receipt period of that receipt. Defining “A” in that formula as “the unreduced amount of the taxed receipt” makes clear that the amount of the expense which the tenant is treated as incurring for each qualifying day is calculated by reference to the amount of the taxed receipt *before* any reductions or deductions.
258. *Subsection (5)* modifies that formula for a qualifying day on which the tenant occupies only part of the land subject to the taxed lease for the purposes of a trade. The subsection requires the fraction of the land which is occupied by the tenant for the purposes of the trade to be calculated “on a just and reasonable basis”, where section 87(3) of ICTA requires a “just apportionment”. See *Change 12* in Annex 1.

Section 64: Limit on deductions if tenant entitled to mineral extraction allowance

259. This section prevents a double deduction where a tenant is entitled under section 403 of CAA to an allowance in respect of qualifying expenditure on acquiring a mineral asset. It is based on section 87(7) of ICTA. The corresponding rule for income tax is in section 62 of ITTOIA.

Section 65: Tenants dealing with land as property employed for purposes of trade

260. This section applies to a tenant which, while not occupying a property, uses the property for the purposes of a trade – for example a company which lets premises held under a

taxed lease to a person who sells only goods supplied by that company. It is based on section 87(4) and (6) of ICTA. The corresponding rule for income tax is in section 63 of ITTOIA.

261. *Subsection (2)* treats the tenant as if it occupied the property, or part of it, for the purposes of relief under section 63.
262. *Subsection (3)* prevents the tenant obtaining relief under section 63 to the extent that relief for the same day is allowed in calculating the profits of the tenant's property business under section 232.

Section 66: Restrictions on section 63 expenses: lease premium receipts

263. This section restricts the expenses that section 65 treats a tenant as incurring, under section 63, by reference to the unreduced amount of a taxed receipt under a taxed lease if:

- a sublease has been granted out of the taxed lease; and
- in respect of the sublease, the unreduced amount of the taxed receipt reduces an amount which is brought into account as a receipt under Chapter 4 of Part 4 of this Act or the corresponding provisions in ITTOIA (the "lease premium receipt").

This section is based on sections 87(5) and 87A of ICTA. The corresponding rule for income tax is in section 64 of ITTOIA.

264. The restriction in this section extends to cases where the unreduced amount of the taxed receipt reduces a lease premium receipt of an overseas property business. See *Change 11* in Annex 1.

265. **Section 63** treats the tenant as incurring an expense for each qualifying day in the receipt period of the taxed receipt relating to the taxed lease. The expense is calculated by reference to the unreduced amount of the taxed receipt.

266. If, in respect of the sublease, the unreduced amount of the taxed receipt is used to reduce:

- under section 228, the amount brought into account as a lease premium receipt under Chapter 4 of Part 4 of this Act; or
- under section 288 of ITTOIA, the amount brought into account as a lease premium receipt under Chapter 4 of Part 3 of ITTOIA,

this section makes a corresponding reduction to the amount of the expense which section 63 treats as incurred by the tenant for a qualifying day in the receipt period of the lease premium receipt.

267. *Subsections (3) to (5)* treat the tenant as incurring an expense for a qualifying day of the amount, if any, by which the "daily amount" of the taxed receipt exceeds:

- the "daily reduction" of the lease premium receipt; or
- if the qualifying day falls within the receipt period of more than one lease premium receipt, the "total of the daily reductions" of those lease premium receipts.

268. This corresponds to the treatment in section 233 of cases where lease premium receipts, with overlapping receipt periods, are reduced by reference to the unreduced amount of a single taxed receipt. See *Change 13* in Annex 1.

269. *Subsection (6)* contains formulas for calculating the "daily amount" of a taxed receipt and the "daily reduction" of a lease premium receipt. The subsection provides that the "daily reduction" only takes account of the taxed receipt in question. This corresponds to the treatment in section 233 of cases where more than one taxed receipt reduces a single lease premium receipt. See *Change 13* in Annex 1.

Section 67: Restrictions on section 63 expenses: lease of part of premises

270. This section adapts section 63 if section 66 applies but the sublease does not extend to the whole of the premises subject to the taxed lease. It is based on sections 87(5) and 87A of ICTA. The corresponding rule for income tax is in section 65 of ITTOIA.
271. *Subsection (4)* deals with the case where, for a qualifying day, there is more than one lease premium receipt, relating to subleases that do not extend to the whole of the premises, that has been reduced by the taxed receipt. This corresponds to the treatment in section 234(5) of expenses under sections 232 and 233 where more than one lease premium receipt falls to be reduced by reference to the same taxed receipt. See *Change 13* in Annex 1.
272. *Subsection (5)* adapts the formulas in sections 63(4) and 66(6) by multiplying the unreduced amount of the taxed receipt in those formulas (“A”) by the fraction of the premises to which the sublease relates.
273. *Subsection (6)* requires the fraction in subsection (5) to be calculated “on a just and reasonable basis”, where section 87(5) of ICTA, which applies section 37(6) of ICTA, is not explicit about the necessary basis of apportionment. See *Change 12* in Annex 1.

Section 68: Replacement and alteration of trade tools

274. This section allows a deduction for the cost of replacing or altering trade tools if the *only* reason a deduction would not be allowed is that the expenditure is of a capital nature. It is based on that part of section 74(1)(d) of ICTA which relates to deductions in respect of the replacement (“supply”) or alteration of implements, utensils or other articles employed for the purposes of the trade. The corresponding rule for income tax is in section 68 of ITTOIA.
275. Expenditure on repairing trade premises or tools is revenue under the normal rules. And following the Special Commissioners decision in *Jenners Princes Street Edinburgh Ltd v CIR* (1998), SpC000166¹, it is generally accepted that the reference in section 74(1)(d) of ICTA to expenditure “beyond the sum actually expended” does not prohibit the deduction of a provision for repairs if the cost of the repairs would be allowable. So that part of section 74(1)(d) of ICTA which deals with repairs is redundant and is not rewritten.

Section 69: Payments for restrictive undertakings

276. This section allows a company to deduct certain amounts paid to employees for restrictive undertakings. Such amounts might not otherwise be deductible to the extent that they are capital in nature or fall foul of the “wholly and exclusively” rule. The section is based on section 73(2) of FA 1988. The corresponding rule for income tax is in section 69 of ITTOIA.
277. Section 73(2) of FA 1988 applies only to amounts brought into charge on the employee as earnings under section 225 of ITEPA. The former cross-refers to the latter where the definition of the amounts concerned is set out:
- In this section “restrictive undertaking” means an undertaking which restricts the individual’s conduct or activities.
- For this purpose it does not matter whether or not the undertaking is legally enforceable or is qualified.
278. *Subsection (1)* provides for the deduction. In so doing it focuses on the key element for the rule to apply: the fact of payment.

¹ STC [1998] (SCD) 196

279. *Subsection (2)* provides a timing rule. The deduction allowed by section 73 of FA 1988 is taken in the accounting period in which the payment is made and no deduction is allowed in any other period. Similar words are used in sections 77 and 88. This ensures that the timing rules for deductions in this Chapter which depend on payment are explicit and consistent.

Section 70: Employees seconded to charities and educational establishments

280. This section allows a company carrying on a trade to deduct the cost of an employee seconded to a charity or educational establishment in calculating the trade profits. It is based on section 86 of ICTA. The corresponding rule for income tax is in section 70 of ITTOIA.
281. Section 86 of ICTA allows a company which second an employee to a charity or educational establishment to deduct the cost of employing the seconded person *to the extent that* those costs would have been deductible if the employee continued to be employed for the purposes of the employer's trade. 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 71: Educational establishments

282. This section defines "educational establishment" for the purposes of section 70. It is based on section 86 of ICTA. The corresponding rule for income tax is in section 71 of ITTOIA.
283. Section 86(4)(c) of ICTA refers to an independent school registered under section 465 of the Education Act 1996. Section 465 of the Education Act 1996 was repealed by the Education Act 2002. So *subsection (1)(c)* of this section refers instead to an independent school registered under section 161 of the 2002 Act.
284. **Schedule 1** to this Act makes corresponding amendments to section 71 of ITTOIA.

Section 72: Payroll deduction schemes: contributions to agents' expenses

285. This section allows an employer a deduction for expenses incurred in operating a payroll deduction scheme. It is based on section 86A of ICTA. The corresponding rule for income tax is in section 72 of ITTOIA.
286. The main rules for payroll deduction schemes are found in Part 12 of ITEPA. Under such a scheme an employer deducts charitable donations from employees' salaries and pays them to an agent, who distributes them to the employees' chosen charities.
287. The agent's administrative costs may be deducted from the donations. But many employers voluntarily pay the costs themselves so that the employees' full donations can go to the chosen charities.
288. Normally, payments made voluntarily to meet someone else's expenses are not made wholly and exclusively for the purposes of a trade and therefore would not be deductible. Employers might get relief for donations to charitable agencies under the Gift Aid scheme. But there are restrictions on the operation of that scheme and relief would not be available if the agent was not itself a charity.
289. This section gives relief for the expenses as a trading deduction.
290. The section does not rewrite the reference to "profession or vocation" in Schedule D Case II. See *Change 2* in Annex 1.

Section 73: Counselling and other outplacement services

291. This section allows a deduction for certain expenses of counselling provided for employees. It is based on sections 589A and 589B of ICTA. The corresponding rule for income tax is in section 73 of ITTOIA.
292. *Subsection (3)* cross-refers to ITEPA for the conditions that need to be met for the deduction to be allowed (section 310 of ITEPA exempts the employee from tax in respect of counselling received).

Section 74: Retraining courses

293. This section allows a deduction for certain expenses of retraining provided for employees. It is based on section 588 of ICTA. The corresponding rule for income tax is in section 74 of ITTOIA.
294. *Subsection (2)* cross-refers to ITEPA for the conditions that need to be met for the deduction to be allowed (section 311 of ITEPA exempts the employee from tax in respect of qualifying retraining courses).
295. The section does not rewrite section 588(3)(b) of ICTA. That provision makes a deduction in calculating the employer's trade profits 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 rewritten in section 73 and does not serve any material purpose. See *Change 16* in Annex 1.

Section 75: Retraining courses: recovery of tax

296. This section allows the recovery of tax when a deduction under section 74 proves to have been wrongly allowed. It is based on section 588 of ICTA. The corresponding rule for income tax is in section 75 of ITTOIA.
297. *Subsection (2)*, like section 74(2) of this Act, cross-refers to the relevant provisions in ITEPA to refer to the conditions that have not been met.

Sections 76 to 81: Redundancy payments etc

Overview

298. These six sections are based on the trading income rules relating to redundancy payments in sections 90, 579 and 580 of ICTA. The rules that deal with the employee's liability are in section 309 of ITEPA. The corresponding rules for income tax are in sections 76 to 80 of ITTOIA.
299. The trading income rules were introduced to reverse the decisions in *CIR v Anglo Brewing Co Ltd* (1925), 12 TC 803 and *Godden v A Wilson's Stores (Holdings) Ltd* (1962), 40 TC 161. In those cases the courts held that certain payments to employees on the closing down of a trade were not deductible in arriving at trading profits. In neither case was the payment made in accordance with a pre-existing obligation.
300. In 1999 HMRC announced (Tax Bulletin 39G, February 1999) that they would be guided by the decision in *Commissioner of Inland Revenue v Cosmotron Manufacturing Co Ltd* (1997), 70 TC 292².
301. In that Hong Kong case the Privy Council decided that redundancy payments made under a pre-existing obligation are deductible. Although that decision is merely persuasive in the United Kingdom, HMRC do not argue that payments made under a pre-existing obligation (including a statutory obligation) are covered by the *Anglo Brewing* and *Wilson's Stores* decisions. The announcement in Tax Bulletin means

that it may not be necessary to give the employer a statutory right to a deduction in calculating trading profits. But these sections put the matter beyond doubt.

Section 76: Redundancy payments and approved contractual payments

302. This section sets out the circumstances in which the following three sections apply and explains the terms used in the main provisions. It is based on section 579 of ICTA. The corresponding rule for income tax is in section 76 of ITTOIA.
303. The sections retain the label “redundancy payment” (from section 579 of ICTA) and the expression “additional payment” (from section 90 of ICTA). This section also introduces the label “approved contractual payment” to describe the payments that may replace redundancy payments in some cases.

Section 77: Payments in respect of employment wholly in employer’s trade

304. This section sets out the main rule governing redundancy payments made by an employer. It is based on section 579 of ICTA. The corresponding rule for income tax is in section 77 of ITTOIA.
305. If a payment is otherwise allowable (possibly as a result of the Cosmotron decision – see the overview for this group of sections), this section does not interfere with the accountancy treatment of the payment. In that case, the normal accounting basis applies.
306. The deduction allowed by section 579 of ICTA is for “a redundancy payment ... made”. It is clear that a deduction is allowed only if a payment has been made. It follows that the deduction is to be taken in the accounting period in which the payment is made and that no deduction is allowed in any other period.
307. Section 579(2)(b) of ICTA sets out the rule that applies if a redundancy payment is made after the discontinuance of the employer’s trade. The rule applies if the company ceases to carry on a trade or to be within the charge to corporation tax (see section 41 of this Act).
308. In the case of a trade carried on by a company in partnership, section 114(1)(c) of ICTA deals with a change of membership of a partnership. The profits of the trade are calculated as if there is a transfer of the trade from one deemed company to another, unless a particular company carries on the trade before and after the change. Such a transfer means that the first deemed company ceases to carry on the trade. This brings it within the rule in section 579(2)(b) of ICTA.
309. *Subsection (5)* of the section sets out the partnership rule.
310. *Subsection (6)* has a timing rule expressed in words similar to those used in sections 69 and 88 of this Act. This ensures that the timing rules for deductions in Chapter 5 of Part 3 of this Act which depend on payment are explicit and consistent. This special timing rule applies if the payment is allowable only as a result of this section.

Section 78: Payments in respect of employment in more than one capacity

311. This section deals with the case where the employee is employed in more than one capacity. It is based on section 579 of ICTA. The corresponding rule for income tax is in section 78 of ITTOIA. The section covers the case where there is a non-trade element in the employment and makes clear what part of the payment is allowed as a deduction in calculating trade profits.
312. Section 579(5) of ICTA does not specify the basis on which to apportion the payment. This section adopts the “just and reasonable” apportionment that is used consistently in this Act. See *Change 12* in Annex 1.

Section 79: Additional payments

- 313. This section deals with any voluntary payments that an employer makes in addition to the statutory (or approved) payments dealt with in section 77. It is based on section 90 of ICTA. The corresponding rule for income tax is in section 79 of ITTOIA.
- 314. Unlike the payments in section 77, these additional payments are allowable only if the sole reason for their disallowance is the cessation of the trade.
- 315. The section applies to payments in connection with the cessation of *part* of a trade in the same way as it applies to payments in connection with the cessation of a whole trade. See *Change 17* in Annex 1.

Section 80: Application of section 79 in cases involving partnerships

- 316. This section clarifies what happens on a change of partnership. It is based on sections 90 and 114 of ICTA. The corresponding rule for income tax is in section 79A of ITTOIA (inserted by Schedule 1 to this Act).
- 317. Section 90(3) of ICTA refers to the “discontinuance” of a trade. That word has to be interpreted in the light of sections 114 and 337 of ICTA: the trade is not treated as discontinued unless there is a complete change in the companies carrying it on.
- 318. A redundancy payment is not disallowable solely on account of a partial change of companies carrying on a trade. This section puts it beyond doubt that a partial change of companies carrying on a trade does not count as a cessation.

Section 81: Payments made by the Government

- 319. This section sets out what happens if it is not the employer who makes the redundancy payment to the employee. It is based on section 579 of ICTA. The corresponding rule for income tax is in section 80 of ITTOIA.
- 320. In some cases the Government makes the payment and is reimbursed by the employer. This section ensures that the employer is allowed a trading deduction.
- 321. The references in ICTA to section 166 of the Employment Rights Act 1996 and Article 201 of the [Employment Rights \(Northern Ireland\) Order 1996 \(SI 1996/1919 \(NI 16\)\)](#) are corrected to section 167 and Article 202.
- 322. *Subsection (1)(b)* reflects the effect of the devolution settlements. See *Change 15* in Annex 1.

Section 82: Contributions to local enterprise organisations or urban regeneration companies

- 323. This is the first of five sections that allow deductions for contributions to local enterprise agencies, training and enterprise councils, local enterprise companies in Scotland, business links and urban regeneration companies. The sections are based on sections 79, 79A and 79B of ICTA. The corresponding rules for income tax are in sections 82 to 86 of ITTOIA.
- 324. Contributions to these bodies are generally donations and are likely to be made for benevolent reasons, rather than wholly and exclusively for the purposes of the trade (see section 54 of this Act).
- 325. *Subsection (3)* is an anti-avoidance rule. It prevents a company using the section to obtain a deduction for non-trade 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.

326. Subsections (5) and (6) set out what happens if the company (or a connected person) receives a benefit in connection with the contribution. The charge on the benefit applies if the benefit is received by a person “connected with” the company. That expression is explained in section 1316.
327. Subsection (6)(b) deals with the case where the recipient’s trade has ceased before the benefit is received. It treats the benefit explicitly as a post-cessation receipt. See *Change 19* in Annex 1.
328. Subsection (7) makes clear the extent of the disallowance under subsection (3) or charge under subsection (6).
329. The subsection limits the “disqualifying benefit” in accordance with HMRC practice. See *Change 18* in Annex 1.

Section 83: Meaning of “local enterprise organisation”

330. This section lists some of the organisations that qualify for deductions to be allowed under section 82. It is based on the definitions in sections 79(4) and 79A(5) of ICTA. The corresponding rule for income tax is in section 83 of ITTOIA.
331. Subsection (2) deals with local enterprise agencies. These agencies may take a number of forms and do not have an approval procedure for any other purpose. So the tax legislation specifies that they must be approved for this purpose.
332. The subsection introduces the expression “relevant national authority”. The expression is used also in sections 84 and 85.
333. The subsection reflects the effect of the devolution settlements. See *Change 15* in Annex 1. [The National Assembly for Wales \(Transfer of Functions\) Order 1999 \(SI 1999/672\)](#) devolves the functions of the Secretary of State under section 79 of ICTA to the National Assembly for Wales. So the “relevant national authority” may be the Assembly. But the Order does not refer to section 79A of ICTA. So the equivalent functions in subsections (3) and (5) of this section are still exercised only by the Secretary of State.
334. Subsections (3) to (5) deal with other bodies to which section 82 applies. These other bodies have to be set up in a particular way for other reasons and the tax legislation merely follows the existing procedures.

Section 84: Approval of local enterprise agencies

335. This section and section 85 set out the detailed rules that apply for the approval of local enterprise agencies and the withdrawal of such approval. They are based on section 79 of ICTA. The corresponding rule for income tax is in section 84 of ITTOIA.
336. The section sets out the basic procedure for approving a local enterprise agency. The references to “relevant national authority” are explained in section 83(2).

Section 85: Supplementary provisions with respect to approvals

337. This section and section 84 set out the detailed rules that apply for the approval of local enterprise agencies and the withdrawal of such approval. They are based on section 79 of ICTA. The corresponding rule for income tax is in section 85 of ITTOIA.
338. The references to “relevant national authority” in this section are explained in section 83(2).

Section 86: Meaning of “urban regeneration company”

339. This section sets out the detailed rules that apply for the designation of urban regeneration companies. It is based on section 79B of ICTA. The corresponding rule for income tax is in section 86 of ITTOIA.

Section 87: Expenses of research and development

340. This section gives relief for the cost of research and development undertaken by or on behalf of a company carrying on a trade. It is based on section 82A of ICTA. The corresponding rule for income tax is in section 87 of ITTOIA.

Section 88: Payments to research associations, universities etc

341. This section gives relief for payments by a company carrying on a trade to various bodies engaged in scientific research. It is based on section 82B of ICTA. The corresponding rule for income tax is in section 88 of ITTOIA.
342. The amendments to section 82B of ICTA in section 15 of F(No 2)A 2005 have effect in relation to sums paid to an association within *subsection (1)(a)* of this section during any accounting period of the association beginning on or after a day to be appointed by the Treasury under section 13(6) of F(No 2)A 2005.
343. Section 82B(1) of ICTA allows a deduction for “the sum paid”. So *subsection (2)* allows a deduction for the accounting period in which the payment is made. The wording is similar to that used in sections 69 and 77. This ensures that the timing rules for deductions in Chapter 5 of this Part of this Act which depend on payment are explicit and consistent.
344. Section 82B(4) of ICTA provides that “the Board” shall refer any question as to whether, or to what extent, activities constitute scientific research for the purposes of section 82B to the Secretary of State. Section 832(1) of ICTA defines “the Board” as “the Commissioners of Inland Revenue”.
345. In practice, the function in section 82B of ICTA is exercised by an officer of Revenue and Customs. So *subsection (6)* of this section provides that any question as to what constitutes scientific research must be referred to the Secretary of State by “an officer of Revenue and Customs”. This Change corresponds to Part B of Change 149 in ITTOIA (as amended by CRCA) and so brings the income tax and corporation tax codes back into line. See *Change 1* in Annex 1.

Section 89: Expenses connected with patents

346. This section allows a deduction for expenses connected with patents. It is based on section 83 of ICTA. The corresponding rule for income tax is in section 89 of ITTOIA.
347. The section sets out the expenses that are allowable. The deduction is on the basis of expenses incurred. This relaxes any requirement in the source legislation that fees have to be paid before a deduction can be made. See *Change 20* in Annex 1.
348. For most expenses connected with patents this rule is overridden by the rules of the intangible fixed assets regime (rewritten in Part 8 of this Act) which provide relief for trades as well as other commercial activities (see Chapter 6 of that Part). But, for a minority of cases, this section remains relevant and allows a deduction.

Section 90: Expenses connected with designs or trade marks

349. This section allows a deduction for expenses connected with designs or trade marks. It is based on section 83 of ICTA. The corresponding rule for income tax is in section 90 of ITTOIA.
350. The section sets out the expenses that are allowable. The deduction is on the basis of expenses incurred. This relaxes any requirement in the source legislation that fees have to be paid before a deduction can be made. See *Change 20* in Annex 1.
351. For most expenses connected with designs or trade marks this rule is overridden by the rules of the intangible fixed assets regime (rewritten in Part 8 of this Act) which provide

relief for trades as well as other commercial activities (see Chapter 6 of that Part). But, for a minority of cases, this section remains relevant and allows a deduction.

Section 91: Payments to Export Credits Guarantee Department

352. This section allows a company carrying on a trade to deduct the cost of certain payments to the Export Credits Guarantee Department (“ECGD”). It is based on section 88 of ICTA. The corresponding rule for income tax is in section 91 of ITTOIA.
353. Section 88 of ICTA refers to payments made under arrangements made by the Secretary of State in pursuance of section 11 of the Export Guarantees and Overseas Investment Act 1978. This section refers instead to arrangements made under section 2 of the Export and Investment Guarantees Act 1991 which replaced the 1978 Act.
354. Section 13(1) of the Export and Investment Guarantees Act 1991 delegates the functions of the Secretary of State under section 2 of the 1991 Act to the ECGD. So the reference to the Secretary of State in section 88 of ICTA is not rewritten in this section.
355. Section 88 of ICTA allows a trader to deduct “sums paid” to the ECGD. This section instead allows a deduction for any “sum payable” by the trader. See *Change 21* in Annex 1.

Section 92: Levies etc under FISMA 2000

356. This section provides for the inclusion, in a calculation of trading profits, of certain payments arising from FISMA. It is based on section 76A of ICTA. The corresponding rule for income tax is in section 155 of ITTOIA.
357. *Subsection (1)* applies the section to any company that pays a “levy” and removes three minor restrictions.
- Section 76A of ICTA applies only to an “authorised person”. This section removes that restriction.
 - The section does not reproduce the restriction in section 76A(2)(e) of ICTA for some “costs”.
 - A trading company that also has investment business may qualify for a deduction under this section which is denied by section 76A(1)(b) of ICTA.

See *Change 22* in Annex 1.

358. *Subsection (1)* provides for a deduction. Most FISMA levies would be allowable expenses under the basic trade profit calculation rules. The purpose of this provision is to deal with the exceptional case where deduction of a levy would otherwise be prevented by a prohibitive rule.
359. The expenses allowable are determined by reference to FISMA. *Subsections (2)* and *(3)* provide the links with FISMA.
360. There is a similar rule about FISMA repayments in section 104.