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 3: Trading income

Overview

Chapter 6: Trade profits: receipts

Overview

361. This Chapter contains provisions on how various receipts are to be treated in calculating the profits of a trade.

Section 93: Capital receipts

362. This section is the mirror image of section 53 (capital expenditure). It is new. The corresponding rule for income tax is in section 96 of ITTOIA.

363. *Subsection (1)* sets out the general rule that items of a capital nature are not to be treated as receipts of a trade.

364. It is a long-established principle that capital receipts are ignored in calculating tax on income.

365. *Subsection (2)* disapplies the general rule in subsection (1) where there is statutory provision for a capital sum to be taken into account as a receipt in calculating the profits of a trade. See, for example, section 103 (sums recovered under insurance policies etc) and the rules in Part 5 (loan relationships), Part 7 (derivative contracts) and Part 8 (intangible fixed assets).

Section 94: Debts incurred and later released

366. If an amount owed by a company is released, this section treats the amount released as a trading receipt. The section is based on section 94 of ICTA. The corresponding rule for income tax is in section 97 of ITTOIA.

367. *Subsection (1)(c)* sets out the exception that applies if the debt is released as part of a "statutory insolvency arrangement", which is defined in section 834(1) of ICTA.

368. The source legislation treats the sum as a receipt "in the period in which the release is effected". The section makes it clear that the period in question is an accounting period. If the company is no longer carrying on the trade when the debt is released, the amount released is charged to tax as a post-cessation receipt (see section 193 of this Act).

Section 95: Acquisition of trade: receipts from transferor's trade

369. This section sets out what happens if a successor to a trade receives a sum that arose from the trade when it was carried on by the predecessor. It is based on section 106 of ICTA. The corresponding rule for income tax is in section 98 of ITTOIA.

370. If a sum arises from a trade that has ceased, the usual rule is that the sum is a post-cessation receipt (see Chapter 15 of this Part). But, if the right to receive the sum is transferred with the trade to a company which takes over the trade, this section applies instead.

371. *Subsection (1)* refers to a "person" ceasing to carry on a trade. That person may be one of the partners in a firm. If a firm ceases to carry on a trade, all its partners must also cease. So the section applies in either case.

372. *Subsection (2)* treats the sum as a receipt of the successor's trade. It is not charged on the predecessor. The source legislation treats the sum as a receipt "in the period in which it is received". The section makes it clear that the period in question is an accounting period.

373. Different rules apply if the right to receive sums is transferred to a person who does not take over the trade (see section 194 of this Act).

Section 96: Reverse premiums

374. This is the first of a group of five sections based on section 54 of, and Schedule 6 to, FA 1999. This legislation was introduced following the decision of the Privy Council in Commissioner of Inland Revenue v Wattie and another (1998), 72 TC 639[1]. An inducement (a "reverse premium") paid to a tenant to take a lease of land is taxed as income in the hands of the tenant. The corresponding rules for income tax are in sections 99 to 103 of ITTOIA.

375. *Subsection (2)* introduces the term "the recipient", which is used throughout this group of sections.

376. *Subsection (3)* identifies the transaction which gives rise to a reverse premium.

377. *Subsection (4)* refers to an interest in land being "granted". This distinguishes such a transaction from one in which an interest is assigned. The general rule is that a charge to tax on a reverse premium arises on the grant of an interest in land but not on its assignment. But assignment can give rise to a charge if the assignor is connected with the grantor.

378. The meaning of "reverse premium" in this section is applied for the purpose of section 250 by subsection (6) of that section.

379. Schedule 2 to this Act rewrites the transitional provision in section 54(2) of FA 1999. These sections do not apply to pre-1999 reverse premiums.

Section 97: Excluded cases

380. This section brings together the various exclusions from the charge on reverse premiums. It is based on paragraphs 5 and 7 of Schedule 6 to FA 1999. The corresponding rule for income tax is in section 100 of ITTOIA.

381. *Subsection (2)* rewrites the rule in paragraph 6 of Schedule 6 to FA 1999 as it was before it was repealed by ITTOIA. It is possible for a company to receive a reverse premium in connection with a property transaction entered into by an individual involving the individual's only or main residence. The income tax relief is rewritten in section 100(2) of ITTOIA. It was not intended that ITTOIA should withdraw this relief from a

1 [1998] STC 1160

company. So this subsection restores the position as it was before ITTOIA. See *Change 23* in Annex 1.

Section 98: Tax treatment of reverse premiums

382. This section treats a reverse premium as a revenue receipt, rather than a capital item. It is based on paragraph 2 of Schedule 6 to FA 1999. The corresponding rule for income tax is in section 101 of ITTOIA.

383. If the transaction giving rise to the reverse premium is at arm's length there is no statutory timing rule; the normal accountancy treatment applies. If the transaction is not at arm's length, there is a timing rule in section 99.

Section 99: Arrangements not at arm's length

384. If a property transaction is not at arm's length there is a special timing rule. This section provides that the whole of the reverse premium is taxed when the property transaction is entered into. It is based on paragraph 3 of Schedule 6 to FA 1999. The corresponding rule for income tax is in section 102 of ITTOIA.

385. *Subsection (1)* refers to "connected persons". That expression is defined for the purpose of this section in section 100.

386. *Subsection (5)* deals with the case where the recipient enters into a property transaction for the purposes of a trade but the trade has not yet started. In that case, the reverse premium is brought into account when the trade starts.

Section 100: Connected persons and property arrangements

387. This section sets out the special meaning of "connected persons" that applies for the group of sections on reverse premiums. The basic definition is in section 1316, which imports the definition of "connected persons" in section 839 of ICTA. The section is based on paragraph 8 of Schedule 6 to FA 1999. The corresponding rule for income tax is in section 103 of ITTOIA.

Section 101: Distribution of assets of mutual concerns

388. This section deals with the consequences for a trader of receiving a distribution from a mutual concern that is a corporate body. It is based on section 491 of ICTA. The corresponding rule for income tax is in section 104 of ITTOIA.

389. *Subsection (1)* sets out the circumstances in which a distribution may give rise to a tax charge. It refers to a distribution out of assets that "represent profits" of the concern. This is not quite the same as "assets of a body corporate, other than assets representing capital", as identified in section 491(1) of ICTA. The difference is that the section excludes assets that represent capital gains of the concern. See *Change 24* in Annex 1.

390. *Subsection (2)* is the general rule: the distribution is treated as a receipt of the trade.

391. *Subsection (3)* deals with the case where the distribution is received after the trade has ceased. The section treats the distribution explicitly as a post-cessation receipt. See *Change 19* in Annex 1.

392. In this Part the rules apply to the company carrying on a trade rather than to the trade itself. So section 337(1)(a) of ICTA is not needed to treat a trade as ceasing when there is a change of company carrying it on. Subsection (3) of this section reproduces the combined effect of section 491(3)(b) and (4) of ICTA.

393. *Subsection (5)* is a special rule that applies if the right to receive a distribution is transferred other than at arm's length. Market value is substituted for the actual amount received.

394. The section omits the references to mutual insurance and industrial and provident societies in section 491(9) and (11) of ICTA. Those examples were intended to help readers but there is no comprehensive definition of "mutual business". The subsections were intended to deal with particular doubts which were common when the provision was enacted in 1964. Those doubts do not exist today.

Section 102: Industrial development grants

395. This section deals with the treatment of certain grants under the Industrial Development Act 1982 or the corresponding provision in Northern Ireland. It is based on section 93 of ICTA. The corresponding rule for income tax is in section 105 of ITTOIA.

396. This section does not rewrite the references in section 93(2)(a) of ICTA to section 7 or 8 of the Industry Act 1972 or in section 93(2)(b) to section 1 of the Industries Development Act (Northern Ireland) 1966 and section 4 of the Industries Development Act (Northern Ireland) 1971. These enactments were repealed or replaced in 1982 and there are no outstanding instalments under the old enactments.

397. Section 93(3) of ICTA disapplies section 93(1) of ICTA in the case of grants towards the payment of all or part of a corporation tax liability made under Article 7 of the Industrial Development (Northern Ireland) Order 1982. Grants in respect of corporation tax liabilities cannot be made under any of the enactments listed in *subsection (1)* of this section other than Article 7 of the Industrial Development (Northern Ireland) Order 1982. So *subsection (2)* excludes *all* grants in respect of corporation tax liabilities.

Section 103: Sums recovered under insurance policies etc

398. This section concerns insurance recoveries. It is based on section 74(1)(l) of ICTA. The corresponding rule for income tax is in section 106 of ITTOIA.

399. Section 74(1)(l) of ICTA prohibits the deduction in computing a trader's profits of "any sum recoverable under an insurance or contract of indemnity". This is regardless of whether the sum is revenue or capital in nature.

400. When a sum is recovered under an insurance policy or contract of indemnity in an accounting period *other than* the accounting period in which the event in respect of which it is received occurs, section 74(1)(l) of ICTA requires any deduction made in respect of that event to be adjusted to reflect the recovery.

401. This section provides instead that a capital sum recovered by a trader under an insurance policy or a contract of indemnity is brought into account as a receipt in calculating the profits of the trade to the extent that the loss or expense has been deducted in calculating those profits. This means that the timing of the receipt will follow the accountancy treatment. See *Change 25* in Annex 1.

402. No special provision is needed for sums of a revenue nature.

Section 104: Repayments under FISMA 2000

403. This section provides for the inclusion in a calculation of trading profits of certain receipts arising from FISMA. It is based on section 76A of ICTA. The corresponding rule for income tax is in section 155 of ITTOIA.

404. *Subsection (2)* provides for a repayment under FISMA to be treated as a trade receipt. Most FISMA repayments would be charged to tax under the basic trade profit calculation rules. The purpose of this provision is to deal with the exceptional case where the FISMA repayment would not otherwise be a trade receipt.

405. The receipts chargeable are determined by reference to FISMA. *Subsections (3)* and *(4)* provide the links with FISMA.

406. There is a similar rule about FISMA levies etc in section 92.