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 4: Property income

Overview

Chapter 4: Profits of property businesses: lease premiums etc

Overview

799. This Chapter contains rules under which a company may be treated as receiving property business receipts in relation to certain lease premiums, or certain other amounts, which would otherwise generally be amounts of a capital nature. It also contains rules whereby relief can, in certain cases, be given to companies in relation to an earlier property business receipt that another person was treated as receiving. The Chapter is based on sections 34 to 38 and 42 of ICTA. The corresponding provisions for income tax are in Chapter 4 of Part 3 of ITTOIA.

800. See sections 62 to 67 for cases in which trading expenses are treated as incurred and deductible by reference to an earlier deemed lease receipt. See section 136 for a case in which trading receipts are reduced by property business receipts that are treated as arising under sections 217 to 225.

Section 215: Overview of Chapter

801. This section provides an overview of the Chapter. It is new. The corresponding provision for income tax is in section 276 of ITTOIA.

Section 216: Meaning of "short-term lease"

802. This section defines "short-term lease" as "a lease whose effective duration is 50 years or less". It is new. The corresponding provision for income tax is in section 276 of ITTOIA.

803. The "effective duration" of a lease is its duration for the purpose of this Chapter. This may not be the same as the contractual duration of the lease. See commentary on sections 243 and 244.

Section 217: Lease premiums

804. This section treats a property business receipt as arising if a premium is payable in relation to the grant of a short-term lease. It is based on sections 34(1), (6) and (7A) and 37(2) of ICTA. The corresponding provision for income tax is in section 277 of ITTOIA.

805. *Subsection (2)* treats a company to which the premium is due as receiving an amount as a result of entering into a transaction mentioned in section 205 (UK property business)

or section 206 (overseas property business), depending on the location of the land to which the lease relates. The effect is that the amount will be treated as a receipt of the company's UK or overseas property business.

806. The approach adopted in subsection (2) is also followed in sections 219 to 225.

807. *Subsection (3)* requires the company to which the premium is due to bring the amount into account in calculating the profits of the property business for the accounting period in which the lease is granted. Source legislation is not explicit about the accounting period concerned in the case of a company which is not the landlord. See *Change 43* in Annex 1.

Section 218: Amount treated as lease premium where work required

808. This section treats a lease premium as payable if a lease places an obligation on the tenant to carry out certain works. It is based on section 34(2) and (3) of ICTA. The corresponding provision for income tax is in section 278 of ITTOIA.

809. Such treatment could lead to a property business receipt, or a greater receipt, being treated as arising to the landlord under section 217.

Section 219: Sums payable instead of rent

810. This section treats a property business receipt as arising in certain cases where a payment is made instead of rent for some or all of the duration of a lease. It is based on sections 34(1), (4), (6) and (7A) and 37(2) of ICTA. The corresponding provision for income tax is in section 279 of ITTOIA.

811. *Subsection (1)* makes clear that, irrespective of the length of the lease, the payment of a sum instead of rent for a period of 50 years or less is within the scope of this section. Source legislation is not explicit on this point. See *Change 44* in Annex 1.

812. *Subsection (3)* requires the company to which the sum is due to bring an amount into account in calculating the profits of its property business for the accounting period in which the sum is payable. Source legislation is not explicit about the accounting period concerned in the case of a company which is not the landlord. See *Change 43* in Annex 1.

813. In calculating the amount to be treated as received in respect of a sum in lieu of rent within section 34(4) of ICTA, the duration of the lease for the purposes of the formula in section 34(1) of ICTA must be adjusted in accordance with section 34(4)(a) of ICTA. For this purpose, there is excluded from the duration of the lease any period other than that in respect of which the sum in lieu of rent is paid. *Subsections (4) and (6)* have the same effect as those provisions of section 34(1) and (4)(a) of ICTA.

Section 220: Sums payable for surrender of lease

814. This section treats a property business receipt as arising in certain cases where a sum is payable for the surrender of a short-term lease. It is based on sections 34(1), (4), (6) and (7A) and 37(2) of ICTA. The corresponding provision for income tax is in section 280 of ITTOIA.

815. *Subsection (3)* requires the company to which the sum is due to bring an amount into account in calculating the profits of its property business for the accounting period in which the sum is payable. Source legislation is not explicit about the accounting period concerned in the case of a company which is not the landlord. See *Change 43* in Annex 1.

Section 221: Sums payable for variation or waiver of terms of lease

816. This section treats a property business receipt as arising in certain cases where a payment is made for the variation or waiver of any of the terms of a lease. It is based on section 34(1), (5), (6), (7) and (7A) of ICTA. The corresponding provision for income tax is in section 281 of ITTOIA.

817. *Subsection (1)* makes clear that, irrespective of the length of the lease, the payment of a sum as consideration for the variation or waiver of the terms of a lease for a period of 50 years or less is within the scope of this section. Source legislation is not explicit on this point. See *Change 44* in Annex 1.

818. Subsection (1) also provides that this section applies only if the sum is due to the landlord or to a connected company. Source legislation does not contain this restriction. See *Change 45* in Annex 1.

819. *Subsection (3)* requires the company to which the sum is due to bring an amount into account in calculating the profits of its property business for the accounting period in which the contract providing for the variation or waiver is entered into. Source legislation is not explicit about the accounting period concerned in the case of a company which is not the landlord. See *Change 43* in Annex 1.

820. Section 227(1) extends relief under section 228 (the additional calculation rule) to receipts in respect of sums payable for the variation or waiver of the terms of a lease. This is reflected in *subsection (5)* of this section. See *Change 46* in Annex 1.

821. In calculating the amount to be treated as received in respect of a sum for the variation or waiver within section 34(5) of ICTA, the duration of the lease for the purposes of the formula in section 34(1) of ICTA must be adjusted in accordance with section 34(5)(a) of ICTA. For this purpose, there is excluded from the duration of the lease any period other than that in respect of which the variation or waiver has effect. *Subsections (4) and (6)* have the same effect as those provisions of section 34(1) and (5)(a) of ICTA.

Section 222: Assignments for profit of lease granted at undervalue

822. This section treats a property business receipt as arising in certain cases where a company makes a profit on the assignment of a lease that had been granted at an undervalue. It is based on sections 35(1), (2) and (2A) and 37(2) of ICTA. The corresponding provision for income tax is in section 282 of ITTOIA.

823. The formula in *subsection (4)* for calculating the deemed receipt if there is an assignment at a profit is based on section 35(2) of ICTA (which refers back to the formula in section 34(1) of ICTA).

Section 223: Provisions supplementary to section 222

824. This section supplements section 222. It is based on section 35(1) and (2) of ICTA. The corresponding provision for income tax is in section 283 of ITTOIA.

Section 224: Sales with right to reconveyance

825. This section treats a property business receipt as arising in certain cases where a property is sold on terms which provide for the property to be reconveyed to the seller, or to a connected person, at less than the sale price. It is based on section 36(1) and (4A) of ICTA. The corresponding provision for income tax is in section 284 of ITTOIA.

826. *Subsection (1)(b)* provides that this section applies only if the period between sale and reconveyance is 50 years or less. Source legislation effectively applies if the period is 51 years or less. See *Change 47* in Annex 1.

Section 225: Sale and leaseback transactions

827. This section treats a property business receipt as arising in certain cases where a company sells property on terms which provide for the grant of a lease to the vendor or to a connected person. It is based on section 36(1), (3), (4) and (4A) of ICTA. The corresponding provision for income tax is in section 285 of ITTOIA.

828. *Subsection (1)(b)* provides that this section applies only if the period between sale and leaseback is 50 years or less. Source legislation effectively applies if the period is 51 years or less. See *Change 47* in Annex 1.

Section 226: Provisions supplementary to sections 224 and 225

829. This section supplements sections 224 and 225. It is based on section 36(2), (3) and (4B) of ICTA. The corresponding provision for income tax is in section 286 of ITTOIA.

Section 227: Circumstances in which additional calculation rule applies

830. This section sets out cases where a deemed business property receipt is to be reduced, under section 228, by reference to an earlier taxed receipt. It is based on section 37(1), (2), (3) and (9) of ICTA. The corresponding provision for income tax is in section 287 of ITTOIA.

831. *Subsection (1)* provides that those cases include a deemed business property receipt arising in relation to payments for a variation or waiver of terms of a lease. See *Change 46* in Annex 1.

832. Amounts within section 218 (amount treated as lease premium where work required) are not specified separately in subsection (1), or in section 228(2), because section 218(2) treats such amounts as premiums within section 217.

833. *Subsection (3)* sets out the connection that must exist between the lease in relation to which the taxed receipt arises and the lease in relation to which the later deemed business property receipt arises.

834. *Subsection (4)'s* definitions of "taxed lease" and "taxed receipt" are based on the definitions of "head lease" and "amount chargeable on the superior interest" in section 37(1) of ICTA. The definition of a taxed lease, and taxed receipt, includes leases of land, and associated receipts, outside the UK. This restores a relief that was incorrectly removed by ITTOIA. See *Change 48* in Annex 1.

835. *Subsection (5)* stipulates that for section 228 to apply there must be at least one taxed receipt with an "unused amount". That is because section 235 (limit on reductions and deductions) prevents relief being given under section 228 by reference to a taxed receipt if that taxed receipt does not have an unused amount. Source legislation is not as explicit about the way in which relief in relation to a taxed receipt must not exceed the amount of the taxed receipt. See *Change 49* in Annex 1.

Section 228: The additional calculation rule

836. This section provides for the amount of a deemed business property receipt to be reduced, in cases within section 227, by reference to an earlier taxed receipt. It is based on section 37(2), (3), (7) and (9) of ICTA. The corresponding provision for income tax is in section 288 of ITTOIA.

837. The amount to be reduced is referred to in this section, and in section 229, as "the receipt under calculation".

838. Section 227 extends relief to deemed business property receipts arising in relation to the variation or waiver of the terms of a lease. *Subsection (2)* reflects this by referring to section 221. See *Change 46* in Annex 1.

839. This section introduces the label “basic relieving amount” for the amount by which the receipt under calculation is to be reduced.

840. *Subsection (3)* requires the basic relieving amount to be restricted under section 229(5) so that it does not exceed the amount of the receipt under calculation. Source legislation is not as explicit about what happens if relief is given in relation to more than one earlier taxed receipt. If there is more than one taxed receipt by reference to which the receipt under calculation may be reduced, it is for the company entitled to the relief to decide the order in which relief is to be taken by reference to those taxed receipts.

841. For subsection (3) to apply there must be at least one taxed receipt with an “unused amount”. That is because section 235 (limit on reductions and deductions) prevents relief under this section being given by reference to a taxed receipt if that taxed receipt does not have an unused amount. Source legislation is not as explicit about the way in which relief in relation to a taxed receipt must not exceed the amount of the taxed receipt. See *Change 49* in Annex 1.

842. *Subsection (4)*’s use of the “unreduced amount” of the taxed receipt (defined in section 230(2)) in the formula makes clear that the basic relieving amount by reference to a taxed receipt is to be calculated according to the amount of that receipt *before* any reductions or deductions.

843. The definition in *subsection (6)* of “receipt period” in relation to a receipt under sections 217 and 219 to 222 is based on the definition of “the period in respect of which an amount arose” in section 37(7)(b) of ICTA.

Section 229: The additional calculation rule: special cases

844. This section:

- modifies the rule in section 228 if the receipt under calculation arises in respect of part only of the premises subject to the taxed lease; and
- sets limits on the reduction under that section in two cases.

It is based on section 37(2), (3) and (9) of ICTA. The corresponding provision for income tax is in section 289 of ITTOIA.

845. Section 227 extends relief under section 228 to business property receipts treated as arising in relation to the variation or waiver of the terms of a lease. This is reflected in the reference in *subsection (2)* to section 221. See *Change 46* in Annex 1.

846. But subsection (2) does not apply to receipts under section 222 (assignments for profit of lease granted at undervalue) because it is not possible for a lease to be assigned other than in respect of the whole of the premises subject to the lease.

847. *Subsection (3)* requires the fraction in subsection (2) to be calculated on a “just and reasonable basis”, where section 37(3) of ICTA requires a “just apportionment”. See *Change 12* in Annex 1.

848. *Subsection (4)* restricts the reduction calculated under section 228(4) or subsection (2) of this section to the “unused amount” of the taxed receipt by reference to which it is calculated. That is because giving greater relief would create a conflict with section 235 (limit on reductions and deductions). Source legislation is not as explicit about the way in which relief in relation to a taxed receipt must not exceed the amount of the taxed receipt. See *Change 49* in Annex 1.

Section 230: Meaning of “unused amount” and “unreduced amount”

849. This section is based on section 37(1), (8) and (9) of ICTA. The corresponding provision for income tax is in section 290 of ITTOIA.

850. The "unused amount" of a taxed receipt is defined in *subsections (1)* and *(5)*. That label is used by sections 228 and 229 to ensure that relief given by reference to a taxed receipt under those sections does not conflict with section 235 (limit on reductions and deductions). Source legislation is not as explicit about the way in which relief in relation to a taxed receipt must not exceed the amount of the taxed receipt. See *Change 49* in Annex 1.

Section 231: Deductions for expenses under section 232

851. This section provides business property deductions to a company for expenses that it is treated as incurring in respect of an earlier taxed receipt. This section is based on section 37(4) and (9) of ICTA. The corresponding provision for income tax is in section 291 of ITTOIA.

852. *Subsection (2)* provides that a deduction for an expense which the tenant is treated as incurring under section 232 is allowed for each "qualifying day" on which all or part of the premises subject to the taxed lease is either occupied for the purposes of the tenant's property business or is sublet. A "qualifying day" is defined in section 232(3) as a day which falls within the receipt period of the taxed receipt.

853. *Subsection (3)* provides that a deduction for an expense which a tenant is treated as incurring under section 232 is subject to the application of any provision of Chapter 4 of Part 3 (rules restricting deductions). This is based on the source legislation providing that the amounts, corresponding to those in subsection (2), are treated as rent, whose deductibility is therefore subject to rules corresponding to those in Chapter 4 of Part 3.

854. *Subsection (4)* provides that the deduction allowed in respect of an expense under section 232 may be restricted to prevent the cap in section 235, on the total relief which can be given by reference to a taxed receipt, being exceeded. See *Change 49* in Annex 1.

Section 232: Tenants under taxed leases treated as incurring expenses

855. This section sets out the method of calculating the expense for which a deduction may be allowed under section 231. It is based on section 37(4) of ICTA. The corresponding provision for income tax is in section 292 of ITTOIA.

856. The formula in *subsection (4)* calculates the expense for each qualifying day by spreading the amount 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.

Section 233: Restrictions on section 232 expenses: the additional calculation rule

857. This section supplements section 232's application to a taxed receipt where a lease premium receipt is also reduced by reference to that taxed receipt. It is based on sections 37(5) and (7) and 37A of ICTA. The corresponding provision for income tax is in section 293 of ITTOIA.

858. *Subsections (2)* and *(3)* provide for a tenant to be treated as incurring an expense for a qualifying day under section 232 only to the extent that the "daily amount of the taxed receipt" exceeds the "daily reduction of the lease premium receipt". This prevents relief being lost in certain cases where more than one taxed receipt has been used to reduce the lease premium receipt to nil. See *Change 13* in Annex 1.

859. The daily amount of the taxed receipt and the daily reduction of the lease premium receipt are calculated according to the formulas in *subsection (6)*:

- the formula for calculating the daily amount of the taxed receipt is the same formula used in section 232(4) to calculate the amount of the expense which the tenant is treated as incurring for each qualifying day; and

- the formula for calculating the daily reduction of the lease premium receipt spreads the reduction calculated under section 228 or the corresponding section in ITTOIA evenly over the receipt period of the lease premium receipt.

860. *Subsection (5)* deals with the case where for a qualifying day a taxed receipt reduces more than one lease premium receipt. In such a case, the tenant is treated as incurring an expense for that day under section 232 only to the extent that the daily amount of the taxed receipt exceeds the *total* of the daily reductions of each of the lease premium receipts. See *Change 13* in Annex 1.

Section 234: Restrictions on section 232 expenses: lease of part of premises

861. This section adapts sections 232 and 233 for cases where the lease premium receipt arises in relation to only a part of the premises in respect of which the taxed receipt arose. It is based on sections 37(6) and 37A of ICTA. The corresponding provision for income tax is in section 294 of ITTOIA.

862. Section 227 extends relief under section 228 to business property receipts treated as arising in relation to the variation or waiver of the terms of a lease. This is reflected in the reference in *subsection (2)* to section 221. See *Change 46* in Annex 1.

863. *Subsection (4)* applies sections 232 and 233 separately to that part of the premises in relation to which the lease premium receipt arises and to the remainder of the premises. And *subsection (5)* deals with the case where there is more than one sublease which does not extend to the whole of the landlord's premises. See *Change 13* in Annex 1.

864. *Subsection (6)* adapts sections 232 and 233 by multiplying the unreduced amount of the taxed receipt ("A") by the fraction of the premises to which the lease premium relates in the formulas for calculating:

- the expense for a qualifying day in section 232(4); and

- the daily amount of the taxed receipt in section 233(6).

865. *Subsection (7)* requires the fraction in subsection (6) to be calculated on a "just and reasonable basis", where section 37(6) of ICTA is not explicit about the necessary basis of apportionment. See *Change 12* in Annex 1.

Section 235: Limit on reductions and deductions

866. This section places a limit on the relief that can be given under this Chapter in relation to a taxed receipt. It is based on section 37(9) of ICTA. The corresponding provision for income tax is in section 295 of ITTOIA.

867. The section restricts total relief in respect of a taxed receipt by way of:

- reductions under the additional calculation rule in section 228; and

- deductions under section 232.

868. The total relief is restricted to the amount of the taxed receipt after the following (so far as given by reference to the taxed receipt):

- any reductions or deductions under sections 288 or 292 of ITTOIA (which correspond to sections 228 and 232 respectively); and

- any deductions under section 63 (trading expense), or under section 61 of ITTOIA (which corresponds to section 63).

See *Change 49* in Annex 1.

Section 236: Payment of tax by instalments

869. This section provides for corporation tax, attributable to lease premium receipts, to be paid by instalments in certain cases. It is based on section 34(8) of ICTA. The corresponding provision for income tax is in section 299 of ITTOIA.

870. *Subsection (2)* attributes the power to determine the amount and timing of instalments to an officer of Revenue and Customs where the source legislation refers to "the Board" (defined by source legislation to mean "the Commissioners of Inland Revenue"). See *Change 1* in Annex 1.

Section 237: Statement of accuracy for purposes of section 222

871. This section provides for an officer of Revenue and Customs to certify a statement, made in cases where assignment of a lease does or may give rise to a taxed receipt, if satisfied that that the statement is accurate. It is based on section 35(3) of ICTA. The corresponding provision for income tax is in section 300 of ITTOIA.

Section 238: Claim for repayment of tax payable by virtue of section 224

872. This section provides for corporation tax, paid in respect of a receipt under section 224 (sales with right to reconveyance), to be repaid in certain cases. It is based on section 36(2) of ICTA. The corresponding provision for income tax is in section 301 of ITTOIA.

873. *Subsection (3)* refers to a period of four years where the source legislation provides for six years. Schedule 2 preserves the six year period in the source legislation until an order is made by the Treasury reducing the period to four years.

Section 239: Claim for repayment of tax payable by virtue of section 225

874. This section provides for corporation tax, paid in respect of a receipt under section 225 (sale and leaseback transactions), to be repaid in certain cases. It is based on section 36(2) and (3) of ICTA. The corresponding provision for income tax is in section 302 of ITTOIA.

875. *Subsection (3)* refers to a period of four years where the source legislation provides for six years. Schedule 2 preserves the six year period in the source legislation until an order is made by the Treasury reducing the period to four years.

Section 240: Appeals against proposed determinations

876. This section provides for determinations of amounts under this Chapter that may affect the tax liability of more than one person and for appeals against proposed determinations. It is based on section 42(1), (2) and (3) of ICTA.

Section 241: Section 240: supplementary

877. This section supplements section 240. It is based on section 42(6) and (7) of ICTA.

Section 242: Determination by tribunal

878. This section provides for objections to provisional determinations under section 240 to be determined by an independent tribunal. It is based on section 42(4) and (5) of ICTA.

Section 243: Rules for determining effective duration of lease

879. This section contains rules for determining the effective duration of a lease. It is based on section 38(1) and (6) of ICTA. The corresponding provisions for income tax are in section 303 of ITTOIA.

880. *Subsection (1)* sets out various circumstances in which a lease may be treated as ceasing other than on the date specified in the lease. Rules 1, 2 and 3 are based on paragraphs (a), (b) and (c) respectively of section 38(1) of ICTA.

881. Rule 1 provides that the lease is treated as ending on the date beyond which it is unlikely that the lease will continue. See *Change 50* in Annex 1.

882. *Subsection (3)* is new. It ensures that all amounts that may give rise to a charge to tax by reason of sections 218 to 221 are treated as premiums in applying Rule 1 in subsection (1). See *Change 50* in Annex 1.

883. Schedule 1 to this Act amends section 303 of ITTOIA (rules for determining effective duration of lease) so that the changes also apply for income tax. See *Change 50* in Annex 1.

Section 244: Applying the rules in section 243

884. This section supplements the rules in section 243. It is based on section 38(2), (3) and (4) of ICTA. The corresponding provisions for income tax are in section 304 of ITTOIA.

885. Section 38(4) of ICTA refers to benefits conferred and payments made for the purposes of securing a corporation tax advantage in the application of Part 2 of ICTA (provisions relating to the Schedule A charge) or an income tax advantage in the application of Chapter 4 of Part 3 of ITTOIA (profits of property businesses: lease premiums etc).

886. Part 2 of ICTA consists of sections 21A to 42 of ICTA. Other than the lease premiums rules in sections 34 to 39, the sections of Part 2 of ICTA which are in force are sections 21A to 21C (calculation of the profits of a Schedule A business), section 24 (construction of Part 2), section 30 (sea walls), sections 31ZA to 31ZC (energy-saving items), section 40 (receipts and outgoings on sale of land) and section 42 (appeals against determinations under sections 34 to 36 of ICTA or Chapter 4 of Part 3 of ITTOIA).

887. Sections 43A to 43G of ICTA were also in Part 2 of ICTA and could have applied to leases granted before 6 June 2006. But where those sections applied they gave rise to taxable receipts, rather than deductions from taxable income.

888. It is considered that the only tax advantage that could be secured in the context of section 38(4) of ICTA would be under sections 34 to 37 of ICTA. So *subsection (4)* refers to a corporation tax advantage under this Chapter or an income tax advantage in the application of Chapter 4 of Part 3 of ITTOIA.

Section 245: Information about effective duration of lease

889. This section provides for an officer of Revenue and Customs to require, by notice, information relevant to determining the effective duration of a lease. It is based on section 38(5) of ICTA. The corresponding provision for income tax is in section 305 of ITTOIA.

Section 246: Provisions about premiums

890. This section contains rules about sums that may be treated as premiums and the lease to which a premium may be attributed. It is based on section 24(2) to (4) of ICTA. The corresponding provision for income tax is in section 306 of ITTOIA.

Section 247: Interpretation

891. This section provides rules about the interpretation of "premium" and the application of the Chapter to Scotland. It is based on sections 24(1), (4) and (5), 37(10) and 37A(9) of ICTA. The corresponding provision for income tax is in section 307 of ITTOIA.