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 9: Intellectual property: know-how and patents

Overview

Chapter 3: Sales of Patent Rights

Section 911: Overview of Chapter

2307. This section introduces the rules in this Chapter about the sales of patent rights. It is new.

Section 912: Charge to tax on profits from sales of patent rights

2308. This section applies the charge to corporation tax on income to capital sums from the sale of patent rights. It is based on sections 524 and 533 of ICTA. The corresponding rule for income tax is in section 587 of ITTOIA.

2309. Section 524(5) of ICTA is not rewritten because it does not appear to add anything to the proposition set out in section 5(3) of this Act (which defines the scope of the charge to corporation tax on a non-UK resident company trading in the UK through a permanent establishment in the UK). Any non-capital proceeds of the sale of patent rights will be amounts of income forming part of a non-UK resident company's chargeable profits by virtue of section 19(3)(b) of this Act (which defines the chargeable profits of a non-UK resident company). So the company will be within the charge to corporation tax in respect of such amounts.

Section 913: Profits charged under section 912

2310. This section sets out the amount charged to tax under section 912. It is based on section 524 of ICTA. The corresponding rule for income tax is in section 588 of ITTOIA.

2311. This section is subject to the spreading rules in sections 914 to 917.

2312. *Subsection (2)* defines deductible costs as the capital cost of the rights sold plus any incidental expenses of sale. This makes it explicit that such expenses may be deducted. The types of expenses which may be allowed under this section are not listed. Incidental expenses which relate to both capital sale proceeds and other sums not chargeable to tax under section 912 are effectively apportioned under the rules about net proceeds of sale in section 929.

2313. *Subsection (5)* is new and includes a signpost to section 926 which deals with contributions to expenditure. This signpost is necessary because section 532 of ICTA treats section 524 of ICTA as if it were contained in CAA.

Section 914: UK resident companies: proceeds of sale not received in instalments

2314. This section sets out the spreading rules if the company chargeable by virtue of section 912 is UK resident and does not receive the proceeds of sale in instalments. It is based on section 524 of ICTA. The corresponding rule for income tax is in section 590(1) to (3) and (6) of ITTOIA.

2315. The approach in this section differs from that in section 590 of ITTOIA. The latter also deals with the case where the taxpayer is UK resident and receives the proceeds of sale in instalments but in this Part that case is dealt with in a separate section (see section 915).

2316. *Subsection (5)* states the time limit for elections under *subsection (4)*. Unlike the source legislation this section does not specify to whom the election must be made. But the general rules about claims and elections in Schedule 18 to FA 1998 require elections to be made in a return or, if that is not possible, to "an officer of Revenue and Customs" in accordance with Schedule 1A to TMA.

Section 915: UK resident companies: proceeds of sale received in instalments

2317. This section sets out the spreading rules if the company chargeable by virtue of section 912 is UK resident and receives the proceeds of sale in instalments. It is based on section 524 of ICTA. The corresponding rule for income tax is in section 590(1) and (4) to (6) of ITTOIA.

2318. *Subsection (5)* states the time limit for elections under *subsection (4)*. Unlike the source legislation this section does not specify to whom the election must be made. But the general rules about claims and elections in Schedule 18 to FA 1998 require elections to be made in a return or, if that is not possible, to "an officer of Revenue and Customs" in accordance with Schedule 1A to TMA.

Section 916: Non-UK resident companies: proceeds of sale not received in instalments

2319. This section sets out how non-UK resident companies are taxed on capital sums from the sale of patent rights if the sale proceeds are not received in instalments. It is based on section 524 of ICTA. The corresponding rule for income tax is in section 591 of ITTOIA.

2320. *Subsection (4)* states the time limit for making an election under *subsection (3)*. The reference in section 524(6) of ICTA to "the Board" has not been reproduced and this section does not specify to whom the election must be made. But the general rules about claims and elections in Schedule 18 to FA 1998 require elections to be made in a return or, if that is not possible, to an "officer of Revenue and Customs" in accordance with Schedule 1A to TMA. This change reproduces Change 149 in ITTOIA and so brings the income and corporation tax codes back into line. See *Change 1* in Annex 1.

2321. A non-UK resident company is within the charge to corporation tax in respect of sales of patent rights only if it is carrying on a trade in the UK through a UK permanent establishment and the patent is held for that trade (see section 19). *Subsection (5)* of this section (and of section 917) is relevant if such a company, having elected for spreading under *subsection (3)* of this section (or of section 917) ceases within the maximum allowed spreading period of six years to be within the charge to corporation tax in respect of the trade it was carrying on through its UK permanent establishment. If (for example) in year four the company ceased to carry on the trade through a UK permanent establishment then the capital sum would be spread rateably over four years and any earlier spreading based on a presumption that it would continue to carry on the trade in the UK through a UK permanent establishment for the whole six years would be revised in accordance with *subsection (6)* of this section (or of section 917).

Section 917: Non-UK resident companies: proceeds of sale received in instalments

2322. This section sets out how non-UK resident companies are taxed on capital sums from the sale of patent rights if the sale proceeds are received in instalments. It is based on section 524 of ICTA. The corresponding rule for income tax is in section 592 of ITTOIA.

2323. *Subsection (2)* makes explicit what is implicit in the source legislation.

2324. *Subsection (4)* states the time limit for elections under *subsection (3)*. The reference in section 524(6) of ICTA to "the Board" has not been reproduced and this section does not specify to whom the election must be made. But the general rules about claims and elections in Schedule 18 to FA 1998 require elections to be made in a return or, if that is not possible, to "an officer of Revenue and Customs" in accordance with Schedule 1A to TMA. So Change 149 in ITTOIA is reproduced to bring the income and corporation tax codes back into line. See *Change 1* in Annex 1.

2325. The note on section 916(5) is also relevant to *subsection (5)* of this section.

2326. Section 524(10) of ICTA is not rewritten. Section 524 of ICTA prescribes particular tax treatments with alternatives available by election. Section 524(10) of ICTA requires claims for relief under section 524 to be made to the Board. The claim relates to the spreading over six years of capital sums received from the sale of patent rights for the purposes of charging the sum to tax. As spreading is automatic for UK resident companies, the claim can be relevant only to non-UK resident companies. However, section 524(6) of ICTA, which deals with spreading rules for non-UK resident companies, refers to an election the rules for which are fully stated in that subsection and rewritten in sections 916 and 917. Section 524(10) of ICTA is, therefore, superfluous.

Section 918: Winding up of a body corporate

2327. This section deals with a body corporate which is chargeable to corporation tax under section 912 if it commences to be wound up. It is based on section 525 of ICTA. The corresponding rule for income tax is in section 594 of ITTOIA.

Section 919: Deduction of tax from payments to non-UK resident companies

2328. This section provides rules relating to the deduction of tax from payments to non-UK resident companies which are liable for tax under section 912 on profits from the sale of the whole or part of any patent rights. It is based on section 524 of ICTA. The corresponding rules for income tax are in section 595 of ITTOIA.

Section 920: Adjustments where tax has been deducted

2329. This section provides a rule relating to adjustments which may be necessary if tax is deducted from payments to a non-UK resident company under section 919. It is based on section 524 of ICTA. The corresponding rule for income tax is in section 596 of ITTOIA.

Section 921: Licences connected with patents

2330. This section provides that certain matters relating to the acquisition or grant of a licence in respect of patent rights are treated for the purposes of the Chapter as a purchase or (as the case may be) sale of patent rights. The section is based on section 533 of ICTA. The corresponding rule for income tax is in section 597 of ITTOIA.

Section 922: Rights to acquire future patent rights

2331. This section brings rights to acquire future patent rights within the patent rights rules in this Chapter. It is based on section 533 of ICTA. The corresponding rule for income tax is in section 598 of ITTOIA.

Section 923: Sums paid for Crown use etc treated as paid under licence

2332. This section provides that sums paid for Crown use, or by a government of a country outside the United Kingdom are, in certain circumstances, to be treated as paid under a licence. It is based on section 533 of ICTA. The corresponding rule for income tax is in section 599 of ITTOIA.

2333. The reference in section 533(4) of ICTA to “sections 46 to 49 of the Patents Act 1949” has not been reproduced in this section. This is because patents granted under these provisions have ceased to have effect so it is unnecessary to reproduce this reference. The removal of this unnecessary material follows the line adopted in section 482 of CAA and mirrors what was done in section 599 of ITTOIA.

2334. The words “used” and “use” in this section (which correspond with the relieving legislation in section 482 of CAA) are intended to be read widely and cover “make” and “sell”.