These notes refer to the Corporation Tax Act 2010 (c.4) which received Royal Assent on 3 March 2010

CORPORATION TAX ACT 2010

EXPLANATORY NOTES

INTRODUCTION

Part 18: Transactions in land

Overview

2424. This Part rewrites sections 776 to 778 of ICTA for the purposes of corporation tax.

2425. Sections 776 to 778 of ICTA were enacted as a wide-ranging anti-avoidance rule specifically aimed at transactions in land.

2426. Chapter 3 of Part 13 of ITA rewrote sections 776 to 778 of ICTA for the purposes of income tax, and paragraphs 184 to 186 of Schedule 1 to ITA consequentially amended those sections to apply solely for the purposes of corporation tax.

2427. This Part replicates Chapter 3 of Part 13 of ITA as far as possible. It differs from Chapter 3 of Part 13 of ITA in two respects.

2428. First, sections 776 to 778 of ICTA, as amended by ITA, do not include any provisions corresponding to section 759(8) of ITA (person liable: territorial scope), section 767 of that Act (exemption: private residences) or section 768(6) to (8) of that Act (income treated as highest part of individual's total income), because those provisions are income tax specific. Accordingly, no such provisions appear in the corporation tax version of the legislation.

2429. Second, where necessary this Part uses concepts specific to corporation tax where Chapter 3 of Part 13 of ITA uses concepts specific to income tax. For example, since persons other than companies are not liable to corporation tax, this Part uses the word "company" to refer to the taxpayer where Chapter 3 of Part 13 of ITA uses the word "person".

2430. In rewriting sections 776 to 778 of ICTA for the purposes of income tax, Chapter 3 of Part 13 of ITA included some minor changes in the law. Some of the same changes are made in this Part, for the purposes of corporation tax. They are highlighted in the commentary on sections 821, 831 and 832.

2431. The rewrite of this legislation for the purposes of corporation tax raises three new points of detail, which are highlighted in the commentary on sections 817 and 821 and Schedule 1.

Sections 815 and 816: Introduction to Part; meaning of disposing of land

2432. These sections are based on sections 776(1), (2) and (4) of ICTA.

2433. Except as noted in the Overview above, these sections replicate exactly sections 752 and 753 of ITA.

Section 817: Priority of other tax provisions

2434. This section is based on section 777(10) of ICTA. It replicates exactly section 754 of ITA.

2435. *Paragraph (a)* gives Chapter 5 of Part 5 of ITTOIA (which is an income tax provision) priority over this Part (which is a corporation tax provision). This is necessary because without it there might be the possibility of a double charge. The possibility arises because the company liable to corporation tax under this Part is not necessarily the person to whom the gain has accrued; see section 821.

2436. Chapter 5 of Part 5 of ITTOIA treats any capital sum paid directly or indirectly by the trustees of a settlement to the settlor as the settlor's income. If such a capital sum became available for payment because a gain of a capital nature had accrued, and the gain was derived from value provided by a company, then (but for paragraph (a)) the company and the settlor could both be taxed by reference to the same income.

2437. It may well be that such a case would be unlikely to arise in practice. But omitting paragraph (a) would remove a potential safeguard against double taxation and so it has been retained.

2438. Similarly, *paragraph (b)* refers to "the Tax Acts" (ie both the Corporation Tax Acts and the Income Tax Acts) both to ensure that there is no unintended change and for the sake of consistency with section 754(b) of ITA.

Section 818: Charge to tax on gains from transactions in land

2439. This section imposes the charge to corporation tax on income and stipulates when the charge applies. It is based on section 776(3) and (3A) of ICTA, and is similar to section 755 of ITA.

Sections 819 and 820: Gains obtained from land disposals in some circumstances; person obtaining gain

2440. These sections are based on section 776(2) to (5), (13) and (14) of ICTA.

2441. Except as noted in the Overview above, these sections replicate exactly sections 756 and 757 of ITA.

Section 821: Company chargeable

2442. This section is based on section 776(3) and (8) of ICTA. It is very similar to section 759 of ITA.

2443. *Subsection (1)* lays down the general rule for determining the company chargeable to corporation tax under this Chapter. *Subsections (3)* and *(5)*make exceptions to this general rule.

2444. *Subsection (4)* backs up subsection (3). But there is no equivalent of subsection (4) to back up subsection (5), because none is needed. This is a change in the law but not in practice. See *Change 52* in Annex 1.

2445. As a separate matter, there is no equivalent in this section of section 759(8) of ITA, because there is no corporation tax equivalent of section 1015 of that Act, to which section 759(8) of that Act refers.

2446. The table below summarises the territorial scope of the corporation tax legislation on transactions in land.

Residence of company	***Where land is located***	***Application of the legislation***
United Kingdom	Wholly in the United Kingdom	The legislation applies (assuming all the other conditions are met).
United Kingdom	Wholly outside the United Kingdom	The legislation does not apply.
United Kingdom	Partly in the United Kingdom, partly outside the United Kingdom	The legislation applies to the whole of the gain (assuming all the other conditions are met).
Non-UK	Wholly in the United Kingdom	The legislation applies (assuming all the other conditions are met, including Chapter 4 of Part 1 of CTA 2009).
Non-UK	Wholly outside the United Kingdom	The legislation does not apply.
Non-UK	Partly in the United Kingdom, partly outside the United Kingdom	The legislation applies to the whole of the gain (assuming all the other conditions are met, including Chapter 4 of Part 1 of CTA 2009).

2447. This section and section 819 are drafted on this basis.

Sections 822 to 826: Method of calculating gain; transactions, arrangements, sales and realisations relevant for Part; tracing value; meaning of "another person"; valuations and apportionments

2448. These sections are based on sections 776(6) and 777(2), (3) and (5) to (7) of ICTA. Except that section 822 refers to CTA 2009 rather than to ITTOIA, they replicate exactly sections 760 to 764 of ITA.

Section 827 and 828: Gain attributable to period before intention to develop formed and disposals of shares in companies holding land as trading stock

2449. These sections are based on section 776(7) and (10) of ICTA. Apart from differences of the kind described in the Overview and the fact that section 827 refers to CTA 2009 rather than to ITTOIA, they replicate sections 765 and 766 of ITA.

Sections 829 and 830: Cases where consideration receivable by person not assessed; certificates of tax paid etc

2450. These sections are based on section 777(8) of ICTA. They replicate exactly sections 768(1) to (5) and 769(1) and (2) of ITA.

2451. There is no equivalent in these sections of sections 768(6) to (8) and 769(3) of ITA, which are income tax specific.

Section 831: Clearance procedure

2452. This section is based on section 776(11) of ICTA; apart from differences of the kind described in the Overview, it replicates exactly section 770 of ITA.

2453. This section includes a minor change in the law. Section 776(11) of ICTA gives the clearance function to "the inspector to whom [the taxpayer] makes its return of income". In practice, HMRC do not interpret this restrictively. This section gives the

clearance function to the Commissioners for HMRC. See *Change 53* in Annex 1, which corresponds to *Change 118* in Annex 1 to the explanatory notes on ITA.

Section 832: Power to obtain information

2454. This section is based on section 778 of ICTA. It replicates exactly section 771 of ITA.

2455. *Subsection (1)* includes a minor change in the law: it expressly restricts the particulars to be provided to those which an officer of Revenue and Customs may reasonably require. See *Change 54* in Annex 1, which corresponds to *Change 114* in Annex 1 to the explanatory notes on ITA.

Section 833: Interpretation of Part

2456. This section is based on sections 776(13) and 777(13) of ICTA. Except as noted in the Overview above, it replicates exactly section 772 of ITA.