

CORPORATION TAX ACT 2010

EXPLANATORY NOTES

INTRODUCTION

Part 22: Miscellaneous provisions

Overview

- 2770. This Part contains miscellaneous rules about corporation tax liability.
- 2771. [Chapter 1](#) is about transfers of trade without a change of ownership.
- 2772. [Chapter 2](#) is about transfers of trade to obtain balancing allowances.
- 2773. [Chapter 3](#) is about transfer of relief within partnerships.
- 2774. [Chapter 4](#) is about surrenders of tax refunds within groups.
- 2775. [Chapter 5](#) is about the set off of income tax deductions against corporation tax.
- 2776. [Chapter 6](#) is about collection of tax from UK representatives of non-UK resident companies.
- 2777. [Chapter 7](#) is about recovery of unpaid corporation tax due from non-UK resident companies.
- 2778. [Chapter 8](#) contains provisions exempting certain bodies from corporation tax on some or all of their income.
- 2779. [Chapter 9](#) contains provisions about European Economic Interest Groupings, harbour reorganisation schemes and the use of different accounting practices within a group of companies.

Chapter 1: Transfers of trade without a change of ownership

Overview

- 2780. The Chapter rewrites sections 343, 343A and 344 of ICTA (company reconstructions without a change of ownership).
- 2781. It is possible (and common) for the trade, assets and liabilities of one company (“the predecessor”) to be transferred to another (“the successor”). As a rule, on such a transfer the predecessor’s trade ceases. This has two consequences in particular.
- 2782. First, if the predecessor has incurred qualifying expenditure on plant and machinery, a balancing charge is imposed or a balancing allowance is given under Part 2 of CAA (plant and machinery allowances). Also, the successor is entitled to plant and machinery allowances on the amount paid to the predecessor for the plant and machinery. Similar rules apply to the other types of capital allowance.

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

2783. Second, if the predecessor has incurred losses in its trade they cannot be carried forward under section 393 of ICTA. To the extent that they cannot be relieved under section 393A of ICTA or by group relief, they are wasted.
2784. But the predecessor and the successor are not necessarily independent. If they are under common ownership, the owners of the companies may have commercial reasons for transferring the trade and net assets from one to another. Where this is the case, section 343 of ICTA makes it possible for:
- capital allowances to be given to the successor as if the trade was still being carried on by the predecessor; and
 - the predecessor's unrelieved trade losses to be carried forward to the successor.
2785. Sections 343 and 344 of ICTA were based on section 61 of FA 1965, which was itself modelled on section 17 of FA 1954 and Schedule 3 to that Act.
2786. Section 343A of ICTA was inserted by paragraph 1 of Schedule 6 to FA 2007.
2787. The sections rewriting sections 343, 343A and 344 of ICTA are laid out in the following order.
- Sections 938 and 939 are introductory.
 - Sections 940 to 943 specify the transfers to which the Chapter applies.
 - Sections 944 to 950 specify the effect of the Chapter in relation to transfers to which it applies.
 - Sections 951 to 953 are supplementary.

Section 938: Overview of Chapter

2788. This section gives an overview of the Chapter. It is new.

Section 939: Meaning of “transfer of a trade” and related expressions

2789. This interpretative section is based on section 343(1) of ICTA.

Section 940: Transfers to which Chapter applies

2790. This section states that there are two conditions which must be met if the Chapter is to apply to a transfer of a trade: the ownership condition and the tax condition. It is based on section 343(1) of ICTA.

Section 941: The ownership condition

2791. This section lays down the first of the two conditions which need to be met if the Chapter is to apply to a transfer. It is based on sections 343(1) and 344(1), (2) and (4) of ICTA.
2792. The ownership condition works in the following way. First, it is necessary to identify persons having a 75% interest in the transferred trade at the time of the transfer or at any time in the two-year period beginning immediately after the transfer. Then, it is necessary to see whether those same persons have a 75% interest in the transferred trade at any time in the one-year period beginning immediately before the transfer. If they do, the ownership condition is met.
2793. *Subsections (3) and (4)* are based on the second sentence of section 343(1) of ICTA; in that context, “comprise” is non-exhaustive.
2794. *Subsection (5)(a)* is based on section 344(1)(a) of ICTA. Section 344(1)(a) refers to “a trade carried on by two or more persons”, but does not actually need to cover trades

carried on by non-corporates. Subsection (5)(a) therefore says, more precisely, “if two or more companies carry on a trade”.

Section 942: Options that may be applied for the purposes of the ownership condition

2795. This section sets out various options that may be applied to see whether the ownership condition is met. It is based on section 344(2) and (3) of ICTA.
2796. Schedule 1 to the Interpretation Act 1978 defines “person” as including a body of persons corporate or unincorporate. Option 3 in *subsection (1)* therefore compresses “person or body of persons” in the tail words of section 344(2) of ICTA to “person”.
2797. Option 3 in subsection (1) is more focused on the final result than the tail words of section 344(2) of ICTA. But this difference is merely verbal.
2798. It is implicit in section 344(3)(c) of ICTA that ownership includes indirect ownership; *subsection (6)* makes this implication explicit and, therefore, applies to the whole of the section.

Section 943: The tax condition

2799. This section lays down the second of the two conditions which need to be met if the Chapter is to apply to a transfer. It is based on section 343(1) of ICTA.
2800. Briefly, the tax condition is that the trade has been subject to United Kingdom corporate taxation at all material times.
2801. Section 343(1)(b) of ICTA has a cryptic reference to “the period taken for the comparison under paragraph (a) above”. *Subsection (2)* expressly defines this period. *Subsection (2)* refers to section 941(1)(a) and (b) in reverse order. This is deliberate. Section 941 (the ownership condition) starts with the new owners of the transferred trade and moves from there to see whether common ownership can be established. By contrast, section 943 (the tax condition) is seeking to establish whether the trade has been subject to United Kingdom corporate taxation throughout the relevant period and so starts at the beginning of that period and works forwards.

Section 944: Modified application of Chapter 2 of Part 4

2802. This section modifies the application of the Chapter of this Act giving relief for trade losses. It is based on section 343(1), (3) and (4A) of ICTA.
2803. If this Chapter applies to a transfer of a trade, *subsection (2)* disapplies the terminal loss rules and *subsection (3)* entitles the successor to relief for trade losses carried forward.

Section 945: Cases in which predecessor retains more liabilities than assets

2804. This section restricts the relief given to the successor under section 944(3) to the extent that (a) the successor does not take over the predecessor’s liabilities and (b) the predecessor does not have enough assets to meet them in full. It is based on sections 343(4) and 344(5) to (7) of ICTA.
2805. The aim of this section is to stop tax relief being given twice for the same expenditure. It is fairly common, especially in receivership cases, for the liabilities of the business not to be transferred with the trade. Those liabilities are then left stranded in the predecessor company, and the creditors stand little or no chance of being paid. In such a case, the creditors have to write off the debts owed to them by the predecessor. If these creditors have incurred these debts in the course of their trades of (a) supplying goods or services or (b) lending money, the write-offs are tax deductible as trading expenses.
2806. But for this section, the successor could also claim tax relief for the same expenditure under the heading of losses carried forward. Under this section, broadly speaking, the

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losses disallowed in the successor's hands equate to the amount of the debts which the predecessor is unable to pay.

- 2807. *Subsection (1)* states when the section applies, using the terms “L” and “A”.
- 2808. *Subsections (2) and (3)* define “L” and “A” respectively.
- 2809. *Subsections (4) and (5)* use a formula to determine the amount by which the successor's relief is restricted. That formula uses “L” and “A” to define “E”.

Section 946: Rules for determining “L”

- 2810. This section supplements section 945 of this Act. It is based on section 344(6), (8), (9), (11) and (12) of ICTA.
- 2811. This section recasts section 344(9) of ICTA to remove the curious expression “a liability *representing* the predecessor's share capital, share premium account, reserves or relevant loan stock”.
- 2812. In *subsection (6)(a)*, the expression “issued or otherwise originated” is broad enough to cover a transfer to reserves.
- 2813. The wording of section 344(9) of ICTA is broad enough to cover a series of conversions of capital. *Subsection (6)(a)* makes this point explicit. In practice, however, such a series would be unlikely to meet the temporal condition imposed by *subsection (6)(b)*.
- 2814. In section 344(11) of ICTA, the words “(whether secured or unsecured)” block the argument that unsecured loan notes cannot be “relevant loan stock” because if they are not secured they cannot be securities. *Subsection (8)* therefore retains this parenthesis.

Section 947: Rules for determining “A”

- 2815. This section supplements section 945 of this Act. It is based on section 344(5), (7) and (10) of ICTA.
- 2816. Section 344(7)(a) of ICTA defines “the value of assets (other than money)”. *Subsection (3)* omits as unnecessary the reference to money.

Section 948: Modified application of CAA 2001

- 2817. This section modifies the application of CAA. It is based on section 343(1) and (2) of ICTA.
- 2818. Under *subsections (2) to(4)*, for capital allowances purposes, the successor stands in the predecessor's shoes.
- 2819. Section 561A(2)(c) of CAA refers to section 343 of ICTA, whereas section 561(5) of CAA refers to section 343(2). Nothing turns on this distinction, so *subsection (6)* simply refers to sections 561 and 561A of CAA.

Section 949: Dual resident investing companies

- 2820. This section prevents the successor from benefiting from section 948 if it is a dual resident investing company. It is based on section 343(2) of ICTA.
- 2821. The source legislation refers to section 404 of ICTA. Section 404 of ICTA is rewritten in section 109. As far as possible, this section is conformed to that section.
- 2822. The source legislation defines “dual resident investing company” by reference to section 404 of ICTA but does not spell out how the reference in that section to “the material accounting period” is to be applied in the context of transfers of trade. This section uses the concept of “the transfer accounting period” to bring out the implicit

requirements of the source legislation. This is a drafting clarification which does not change the law.

- 2823. *Subsection (1)* is the main operative provision.
- 2824. *Subsection (2)* specifies when a company is a dual resident investing company.
- 2825. *Subsection (3)* defines the expression “dual resident company”, which is used in subsection (2)(a), and *subsections (4) to (6)* specify the conditions mentioned in subsection (2)(b).
- 2826. *Subsection (7)* defines “non-UK tax”, “trading company” and “the transfer accounting period”.

Section 950: Transfers of trades involving business of leasing plant or machinery

- 2827. This section deals with transfers of trades involving businesses of leasing plant or machinery. It is based on section 343A of ICTA.

Section 951: Part of trade treated as separate trade

- 2828. This section deals with transfers of parts of trade. It is based on section 343(1) and (8) of ICTA.
- 2829. This section refers to “activities” of a trade and “part” of a trade, as these expressions have been the subject of judicial comment: see *Falmer Jeans Ltd v Rodin* (1990), 63 TC 55.¹
- 2830. Section 344(5) and (6) of ICTA do not expressly provide that, if there has been an apportionment, only the assets and liabilities apportioned to the transferred trade are to be taken into account. *Subsection (6)* makes these points explicit.

Section 952: Apportionment if part of trade treated as separate trade

- 2831. This section provides for apportionments to be made if, in accordance with section 951(2) or (4), part of a trade is treated as a separate trade. It is based on section 343(9) and (10) of ICTA.
- 2832. *Subsection (1)* expressly requires apportionments to be reasonable as well as just. This is a minor change in the law: see *Change 33* in Annex 1. The same change has been made in previous rewrite Acts.

Section 953: Application of Chapter to further transfers of a trade

- 2833. This section deals with further transfers of trades. It is based on section 343(7) of ICTA.
- 2834. *Subsection (1)* spells out when the section applies.
- 2835. Under subsection (1)(a), there must be a transfer (the original transfer) which meets the ownership condition and the tax condition. Under section 940 of this Act, this Chapter applies to the original transfer.
- 2836. Under subsection (1)(b), there must be a further transfer (as defined).
- 2837. Under subsection (1)(c), the further transfer must take place at some time before the end of the period specified in *subsection (7)*.
- 2838. It is implicit in section 343(7) that the ownership condition was met in relation to the original transfer only on or after the further transfer. Subsection (1)(d) lays this down as an express condition for this section to apply.

¹ [1990] STC 270.

2839. If section 343(2) to (5) of ICTA already apply in relation to a transfer, there is no need to rely on section 343(7) of that Act. Accordingly, subsection (1)(e) lays down, as an express condition for this section to apply, that, were it not for this section, this Chapter would not apply to the further transfer.
2840. *Subsection (2)* applies the Chapter to the further transfer as well as to the original transfer.
2841. *Subsection (3)* explains how the references to “the successor” and “the predecessor” in this Chapter are to be interpreted in cases where the Chapter applies to a transfer by virtue of this section.
2842. *Subsection (4)* extends the scope of “the successor” in relation to the original transfer.
2843. *Subsection (5)* extends the scope of “the predecessor” in relation to the further transfer.
2844. *Subsection (6)* covers successive further transfers.
2845. *Subsection (7)* defines the period mentioned in subsection (1)(c).

Chapter 2: Transfers of trade to obtain balancing allowances

Overview

2846. This Chapter counters certain schemes for accelerating relief for expenditure qualifying for capital allowances. Such schemes involve a trading company being acquired by a profitable group and, as part of the arrangements, the trading company selling its trade to an unconnected buyer a short time later.
2847. This Chapter is based on section 343ZA of ICTA.

Section 954: Transfer of activities on complete cessation of trade

2848. This section deals with capital allowance schemes involving the transfer of activities on the complete cessation of a trade. It is based on section 343ZA(1), (4), and (5) of ICTA.
2849. *Subsection (1)* states when this section applies.
2850. *Subsection (2)* modifies the application of CAA in cases in which this section applies.
2851. Section 343ZA(4) of ICTA modifies the application of section 343(2) of that Act. Section 343(2) is rewritten in section 948. *Subsections (3) to (5)* are based on section 343ZA(4) of ICTA; for the convenience of the reader, they restate the propositions in section 948(2) to (4) rather than applying those provisions with modifications.
2852. *Subsection (6)* applies if the successor carries on the activities of the trade as part of its trade.

Section 955: Transfer of activities on part cessation of trade

2853. This section deals with capital allowance schemes involving the transfer of activities on the part cessation of a trade. It is based on section 343ZA(2), (4) and (6) of ICTA.
2854. *Subsection (1)* states when this section applies.
2855. *Subsection (2)* modifies the application of CAA in cases in which this section applies.
2856. Section 343ZA(4) of ICTA modifies the application of section 343(2) of that Act. Section 343(2) is rewritten in section 948. *Subsections (4) to (6)* are based on section 343ZA(4); for the convenience of the reader, they restate the propositions in section 948(2) to (4) rather than applying those provisions with modifications.

2857. *Subsection (7)* applies if the successor carries on the activities of the trade as part of its trade.

Section 956: Apportionment if part of trade treated as separate trade

2858. This section requires apportionments to be made if part of a trade is treated as a separate trade under section 954(6) or 955(7). It is based on section 343ZA(7) and (8) of ICTA.

2859. *Subsection (1)* requires apportionments to be made in such cases. In expressly requiring the apportionments to be reasonable as well as just, subsection (8) makes a minor change in the law. See *Change 33* in Annex 1 and the commentary on section 952.

Section 957: Supplementary and interpretative provisions

2860. This section provides that if Chapter 1 of this Part applies then this Chapter does not. It is based on section 343ZA(3) of ICTA.

Chapter 3: Transfer of relief within partnerships

Overview

2861. This Chapter deals with arrangements within firms for transferring relief between partners.

Section 958: Application

2862. This section sets the scope of the Chapter. It is based on section 116 of ICTA.

Section 959: Arrangements for transfer of relief

2863. This section sets out the sorts of arrangements to which the Chapter applies. It is based on section 116 of ICTA.

2864. *Subsection (1)* identifies four effects that the arrangements may have. Effects 1 and 2 correspond to paragraph (b) of section 116(1) of ICTA; Effects 3 and 4 correspond to paragraph (a) of section 116(1) of ICTA.

2865. *Subsection (2)* makes clear that the Chapter operates by reference to *part* of a company's share of the firm's profits or losses as it operates by reference to the whole of the profits or losses. So the Act does not reproduce from section 116(1) of ICTA "any portion of" any of the profits or losses.

2866. *Subsection (4)* is the rule that a payment for group relief (see also section 183) does not trigger the anti-avoidance rules in this Chapter.

Section 960: Restrictions on use of reliefs

2867. This section sets out the results if this Chapter applies. It is based on section 116 of ICTA.

2868. *Subsection (1)* is the rule about the firm's losses. The partner company's share of the firm's trading loss is available only against its share of profits from the same trade. This means that a claim may be made under section 45 (losses carried forward) but not under section 37 (relief against total profits).

2869. *Subsection (3)* is the rule about the firm's profits. It isolates the partner company's share of the profits from reliefs that would otherwise be available (unless they are losses of the firm's trade available in accordance with subsection (1)). So the partner company may not set against its share of the firm's profits either:

- trading losses of another trade (paragraph (a) of the subsection); or

- other reliefs (paragraph (b) of the subsection).

Section 961: Non-trading profits and losses

2870. This section extends the Chapter so that it applies to non-trading activities carried on in partnership as it applies to trades. It is based on section 116 of ICTA.
2871. *Subsection (1)* identifies the non-trading profits to which the Chapter applies. They are the profits from the sources listed in section 1173.
2872. *Subsection (3)* is a rule for “special leasing” allowances within section 259 or 260 of CAA. The partner company’s share of the allowances is not available against the partner company’s other profits.

Section 962: Interpretation of Chapter

2873. This section provides some definitions. It is based on section 116 of ICTA.
2874. *Subsection (2)* is a link to Part 17 of CTA 2009 (partnerships). In particular, “accounting period of a firm” is explained in section 1261 of that Act as meaning the accounting period of the company that is deemed to carry on the firm’s trade.
2875. The definition of “connected person” is in section 1122 of this Act, as applied by section 1176(1).

Chapter 4: Surrender of tax refund within group

Overview

2876. Section 102 of FA 1989 enables a group of companies to mitigate the differential between the rates of interest on unpaid and overpaid tax. In the absence of section 102, a group which, overall, had paid the correct amount of tax on the correct dates could still suffer a net interest charge if it split those payments incorrectly between members of the group at the time of payment. Section 102 allows the group to mitigate this by applying hindsight to reallocate the tax payments to the right companies with effect from the date of payment.
2877. Regulation 9 of the Corporation Tax (Instalment Payments) Regulations 1998² applies section 102 of FA 1989 with modifications in cases where a tax refund falls to be made to the surrendering company in respect of an amount paid in respect of its total liability for an accounting period and (a) either the surrendering company or the recipient company is a large company (within the meaning of regulation 3 of those Regulations) as respects that accounting period or (b) both the surrendering company and the recipient company are large companies as respects that accounting period. The continuity of the law provisions in Part 1 of Schedule 2 ensure that this regulation continues to apply undisturbed.

Section 963: Power to surrender tax refund

2878. This section lays down the conditions to be met if a tax refund is to be surrendered within a group of companies. It is based on section 102(1) to (3) and (8) of FA 1989.

Section 964: Effects of surrender of tax refund

2879. This section sets out the effects of a surrender of a tax refund for the surrendering company and the recipient company. It is based on section 102(4), (5) and (6) of FA 1989.

2 SI 1998/3175.

Section 965: Interest on tax overpaid or underpaid

2880. This section deals with the consequences of a surrender of a tax refund for interest on unpaid and overpaid tax. It is based on section 102(4A) of FA 1989.
2881. *Subsection (1)(b)* omits as spent the reference in section 102(4A) of FA 1989 to section 826(7) of ICTA, which has been repealed.

Section 966: Payments for surrendered tax refunds

2882. This section concerns the consequences of making payments for the transfer of tax refunds. It is based on section 102(7) of FA 1989.

Chapter 5: Set off of income tax deductions against corporation tax

Section 967: Deductions from payments received by UK resident companies

2883. This section explains how income tax deducted from payments received by UK resident companies is set off against corporation tax. It is based on section 7(2) and (4) of ICTA.
2884. The exception for relevant loan interest in section 7(3) is rewritten by consequential amendment to section 369(6) of ICTA. Section 369 has not been repealed because the relief for certain life annuity payments continues to be in force.

Section 968: Deductions from payments received by non-UK resident companies

2885. This section explains how income tax deducted from payments received by non-UK resident companies is set off against corporation tax. It is based on section 11(3) of ICTA.
2886. As is the case for section 7(3) of ICTA, the exception for relevant loan interest in section 11(4) is rewritten by consequential amendment to section 369(6) of ICTA.

Chapter 6: Collection etc of tax from UK representatives of non-UK resident companies

Overview

2887. This Chapter sets out the obligations and liabilities of a UK representative of a non-UK resident company carrying on a trade through a permanent establishment in the United Kingdom in relation to the assessment, collection and recovery of corporation tax on the chargeable profits of the non-UK resident company attributable to the permanent establishment. As to “chargeable profits” see section 19 of CTA 2009.

Section 969: Introduction to Chapter

2888. This section introduces the Chapter and sets out the rules for determining the extent to which and the period for which a permanent establishment is a UK representative. It is based on section 150(1) and (2) of FA 2003.
2889. A permanent establishment in the United Kingdom through which a non-UK resident company carries on a trade is the UK representative of the non-UK resident company in relation to the chargeable profits attributable to the permanent establishment. See *Rule 1* in *subsection (3)*.
2890. If a permanent establishment in the United Kingdom of a non-UK resident company ceases to be a permanent establishment through which the company carries on a trade, it nevertheless continues thereafter to be the UK representative of the non-UK resident company in relation to the chargeable profits attributable to the permanent establishment. See *Rule 2* in *subsection (3)*.

Section 970: Obligations and liabilities in relation to corporation tax

2891. This section treats the obligations and liabilities of the non-UK resident company in respect of the chargeable profits of the trade carried on through a permanent establishment in the United Kingdom as also being the obligations and liabilities of the UK representative. It is based on section 150(1) and (3) of FA 2003.

Section 971: Exceptions

2892. This section sets out circumstances in which:

- certain obligations or liabilities of a non-UK resident company attach to its UK representative (*subsections (1) and (2)*);
- a non-UK resident company is bound by the mistakes of its UK representative (*subsection (3)*); and
- a UK representative may be proceeded against for a criminal offence (*subsection (4)*).

2893. It is based on section 150(4) to (6) of FA 2003.

Section 972: Interpretation of Chapter

2894. This section defines terms used in the Chapter. It is based on section 150(7) and (7A) of FA 2003.

2895. In the definition of “information” in *subsection (1)*, the words “to the Commissioners for Her Majesty’s Revenue and Customs or to any officer of Revenue and Customs” have been substituted for the words “to the Board or any officer of the Board” in the source legislation. This gives effect to section 50(1) and (2) of CRCA which require references to the terms in the source legislation to be taken as references to the substituted terms.

Chapter 7: Recovery of unpaid corporation tax due from non–UK resident company

Overview

2896. This Chapter enables unpaid corporation tax due from a non-UK resident company to be recovered from a related company.

Section 973: Introduction to Chapter

2897. This section introduces the Chapter and defines “company” for the purposes of sections 973(1) and (4) and 974 to 980. It is based on paragraph 6 of Schedule 28 to FA 2000.

Section 974: Case in which this Chapter applies

2898. This section states when this Chapter applies. It is based on paragraph 1 of Schedule 28 to FA 2000.

2899. *Subsection (2)* defines “the taxpayer company” for the purposes of this Chapter.

Sections 975 and 976: Meaning of “the relevant period”; meaning of “related company”

2900. These interpretative sections are based on paragraph 2 of Schedule 28 to FA 2000.

Section 977: Notice requiring payment of unpaid tax

2901. This section enables an officer of Revenue and Customs to serve notice on a related company requiring it to pay unpaid corporation tax due from the taxpayer company. It is based on paragraph 3 of Schedule 28 to FA 2000.
2902. Paragraph 3(1) of Schedule 28 to FA 2000 gives “the Board” (that is, the Commissioners for HMRC) the power to serve notice to pay unpaid corporation tax due from the taxpayer company. In practice, the Commissioners delegate this function to officers of Revenue and Customs, and *subsection (1)* reflects this. This is a minor change in the law without any practical implications; see *Change 5* in Annex 1.
2903. Like the source legislation, subsection (1) provides that an officer “... may serve a notice ...”. This gives officers the power, but not the obligation, to serve notice on related companies, and therefore allows HMRC to exercise managerial discretion.

Section 978: Time limit for giving notice

2904. This section sets the time limit for giving notice under section 977. It is based on paragraph 4 of Schedule 28 to FA 2000.
2905. Paragraph 4(3)(d) of Schedule 28 to FA 2000 says: “if ... the Inland Revenue amend the return ...”. In this context, “the Inland Revenue” is not expressly defined; however, the reference is to amendment under paragraph 34(2) of Schedule 18 to FA1998. As originally enacted, paragraph 34(2) of that Schedule referred to amendments being made by “the Inland Revenue”, which was defined in paragraph 95(1) of that Schedule to mean any officer of the Board; by implication, therefore, “the Inland Revenue” in paragraph 4(3)(d) of Schedule 28 to FA 2000 had the same meaning.
2906. Paragraph 68(a) and (b) of Schedule 4 to CRCA (a) substituted “an officer of Revenue and Customs” for “the Inland Revenue” in paragraph 34(2) of Schedule 18 to FA 1998 and (b) consequentially repealed paragraph 95 of that Schedule. Also, section 50(2) of CRCA provided that any reference in an enactment (however expressed) to an officer of the Board was to be taken as a reference to an officer of Revenue and Customs. By implication, therefore, CRCA substituted “an officer of Revenue and Customs” for “the Inland Revenue” in paragraph 4(3)(d) of Schedule 28 to FA 2000. In rewriting paragraph 4(3)(d) of that Schedule, *subsection (3)(d)* explicitly refers to “an officer of Revenue and Customs”.

Section 979: Amount payable in consortium case

2907. This section determines for the purposes of section 977(1)(b) the amount payable in a consortium case. It is based on paragraph 5 of Schedule 28 to FA2000.
2908. In paragraph 5(1) of Schedule 28 to FA 2000, the words “limited to” merely repeat the point that the amount to be charged in a consortium case is “the appropriate proportion” in paragraph 3(1)(b) of that Schedule. *Subsection (1)* therefore omits them as otiose.

Section 980: Chapter 7: supplementary

2909. This supplementary section is based on paragraph 6 of Schedule 28 to FA2000.
2910. For the sake of consistency with section 717(1) of this Act, *subsection (2)* refers not only to income and profits but also to losses. This verbal change has no substantive effect.

Chapter 8: Exemptions

Overview

2911. This Chapter provides exemption from corporation tax for certain bodies.

2912. This Chapter rewrites some, but not all, of the provisions in Chapter 6 of Part 12 of ICTA. The sections dealing with exemptions for charities, and for bodies that are treated as charities, which form part of Chapter 6 have been included with the rules for charitable companies etc in Part 11 of this Act.
2913. A number of sections of Part 12 of ICTA are obsolete and this Act repeals these redundant sections.

Section 981: Exemption for trade unions and eligible employers' associations

2914. This section provides a limited relief for trade unions and employers' associations. It is based on section 467(1), (3) and (3A) of ICTA.
2915. [Section 467](#) is drafted in terms of "a trade union" and provides a definition of the meaning of "trade union". This definition includes specified employers' associations. The inclusion of employers' associations in the definition of "trade union" reflects the old system under which there was a single system of registration for trade unions and employers' associations. Following the Industrial Relations Act 1971 - or, in Northern Ireland, the [Industrial Relations \(Northern Ireland\) Order 1992 \(SI 1992/807 \(N.I.5\)\)](#), - there are separate systems of registration for the two kinds of organisation, which are accordingly separately defined.
2916. The approach in section 981 reflects this change in the arrangements for registration and includes references to both "trade union" and "eligible employers' association". The use of "eligible" is intended to flag at the outset that not all employers' associations qualify for the exemption. Only those employers' associations that were in existence and qualified for the exemption in 1971 (1992 for Northern Ireland employers' associations) qualify.

Section 982: Qualifying income or gains

2917. This section defines the types of income subject to relief and provides a partial definition of what provident benefits are. It is based on section 467(1) and (2) of ICTA.

Section 983: Meaning of "trade union" and "eligible employers' association"

2918. This section defines trade union and eligible employer's association. It is based on section 467(4) of ICTA.

Section 984: Local authorities and local authority associations

2919. This section exempts United Kingdom local authorities and local authority associations from corporation tax. It is based on section 519 of ICTA.
2920. The definitions of "local authority" and "local authority association" are in section 1130 and section 1131 respectively.

Section 985: Health service bodies

2921. This section exempts health service bodies from corporation tax. It is based on section 519A(1) of ICTA.
2922. It is the first of three sections that deal with the exemption from corporation tax of health service bodies. The exemption is straightforward except in the case of NHS foundation trusts where under certain circumstances the exemption does not apply. The sections are based on section 519A of ICTA.

Section 986: Meaning of "health service body"

2923. This section provides a definition of "health service body". It is based on section 519A(2).

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

2924. Section 519A(2) of ICTA states that the definition of “health service body” included a National Health Service trust constituted under section 12A of the National Health Service (Scotland) Act 1978. However, there are no longer any “National Health Service trusts” in Scotland (they were abolished as at 1 April 2004) and the NHS Reform (Scotland) Act 2004 repealed section 12A of the 1978 Act. The reference to section 12A is therefore not reproduced in this provision.
2925. Section 519A(2) of ICTA also states that the definition of “health service body” included a Health and Social Services trust established under the Health and Personal Social Services (Northern Ireland) Order 1991. However such trusts were renamed by section 1 of the Health and Social Care (Reform) Act (Northern Ireland) 2009. The table accordingly refers to Health and Social Care trusts.
2926. The table includes references to Health and Social Services Boards and the Northern Ireland Central Services Agency for the Health and Social Services. These bodies were dissolved from 1 April 2009 by the Health and Social Care (Reform) Act (Northern Ireland) 2009.
2927. The 2009 Act makes provision about the transfer of functions of Health and Social Services Boards and of the Northern Ireland Central Services Agency for the Health and Social Services to other bodies. Section 27 of that Act makes provision about the translation of legislative references to the old bodies into references to bodies to whom functions of the old bodies have been transferred. Subsections (2) and (4) of that section deal with the transfers of functions of the bodies referred to in section 519A(2) of ICTA. The translations of the references do not operate generally, but only “in relation to” functions that have been transferred from the old bodies to the new bodies.
2928. Legislative references to the old bodies do not therefore include references to functions which were not carried on previously by those bodies.
2929. In order to preserve the current law this Act retains the references to the old bodies.

Section 987: NHS foundation trusts

2930. This section removes some classes of activity carried on by NHS foundation trusts from the exemption to corporation tax in section 985. It is based on section 519A(3), (4), (5), (6), (7), and (8) of ICTA.
2931. The exception from the exemption broadly applies to commercial activities.
2932. *Subsection (1)* provides that an order must be made by the Treasury for the exception to apply.
2933. Under the terms of Health and Social Care (Community Health and Standards) Act 2003 an NHS foundation trust is not obliged to carry on commercial activity through a separate company. Such activity may be subject to corporation tax if the conditions set out in *subsections (2) and (3)* are met.
2934. The taxation treatment of NHS foundation trusts may be contrasted with that for local authorities and local authority associations (see section 984). Using powers under section 99(4) of the Local Government Act 2003, the Government issued the [Local Government \(Best Value Authorities\) \(Power to Trade\) \(England\) Order 2004 \(SI 2004/1705\)](#). This order allows local authorities to trade but provides that the trade must be carried on by a company.

Section 988: Issue departments of the Reserve Bank of India and the State Bank of Pakistan

2935. This section exempts from corporation tax the income of the issue departments of the central banks of India and Pakistan. It is based on section 517 of ICTA.

Section 989: Agricultural societies

2936. This section exempts profits made by an agricultural society from exhibitions or shows where those profits are applied solely to the purposes of the society. It is based on section 510 of ICTA.
2937. The section gives statutory effect to the decision in *Peterborough Royal Foxhound Show Society v CIR* (1936), 20 TC 249 HC, by replacing the reference in section 510 ICTA to livestock breeding with a reference to the breeding of any kind of animal.
2938. **Section 510** ICTA includes “livestock breeding” among the activities that define an agricultural society for the purpose of the exemption under that section. In the case mentioned above it was held that “livestock breeding” in section 23 FA 1924 (which became section 510 ICTA) includes foxhound breeding. The judge in that case said that, The words “live stock” are ordinarily and properly used in contrast with dead stock and include all live animals and birds the breeding of which is regulated by man.
2939. The decision in that case was applied in *CIR v Glasgow (City) Ornithological Association* (1938), 21 TC 445 Court of Session, in which it was held that “livestock” in section 23 of FA 1924 included caged birds.

Chapter 9: Other miscellaneous provisions

Overview

2940. This Chapter amends in certain cases the way in which the normal corporation tax rules apply.

Section 990: European Economic Interest Groupings

2941. This section sets out the basic rules that determine how corporation tax is to be charged on the members of a European Economic Interest Grouping (EEIG). It is based on section 510A of ICTA.
2942. Members of a grouping may be companies, individuals or partnerships. See section 842 of ITA for the income tax rules that apply to the non-corporate members of an EEIG.

Section 991: Harbour reorganisation schemes: corporation tax

2943. This section provides that if certain conditions are met, a trade transferred to a harbour authority as a result of a harbour reorganisation scheme is certified as not having ceased; and losses which would have been available to the transferor for relief may be used by the transferee. It is based on section 518(1), (2) and (3) of ICTA.
2944. The section is the first of five sections that deal with the corporation tax consequences of the transfer of a trade under a harbour reorganisation scheme.
2945. One of the conditions set out in *subsection (1)* is that the section applies only if the trade is transferred from a body corporate that is not a limited liability company. It is therefore clear that the section and those that follow can apply only in very limited circumstances.

Section 992: Harbour reorganisation schemes: capital allowances etc

2946. This section sets out the rules relating to capital allowances that apply when a trade is transferred to a harbour authority under a harbour reorganisation scheme. It is based on section 518(4) and (5) of ICTA.

Section 993: Harbour reorganisation schemes: chargeable gains

2947. This section sets out the rules relating to loss relief against chargeable gains that apply when a trade is transferred to a harbour authority under a harbour reorganisation scheme. It is based on section 518(7) of ICTA.

Section 994: Transfer of part of trade

2948. This section modifies the rules in section 991 if only part of a trade is transferred to a harbour authority under a certified harbour reorganisation scheme. It is based on section 518(8) and (9) of ICTA.

2949. *Subsection (4)(b)* refers to the need to make “just and reasonable apportionments” in certain circumstances and includes a minor change in the law. The change is made to bring the corporation tax code into line with that for income tax. See *Change 33* in Annex 1.

Section 995: Interpretation of sections 991 to 994

2950. This section provides a number of definitions for sections 991 to 994. It is based on section 518(10) of ICTA.

Section 996: Use of different accounting practices within a group of companies

2951. This section deals with the use of different accounting practices within a group of companies. It is based on section 51 of FA 2004.

2952. If the accounting treatments for a transaction under international accounting standards and UK GAAP are different, this could give rise to a tax mismatch: for example, one company might recognise a (deductible) loss before the other company recognised the corresponding (taxable) gain. If the two companies were members of the same group, the intra-group gain and loss would be cancelled out in arriving at the group’s consolidated profit before tax – but the group would still have the tax advantage of obtaining the deduction before having to recognise the taxable income.

2953. Accordingly, a tie-breaker provision is needed to deal with such cases. This section of the Act gives UK GAAP the priority, whether the tax advantage arises by accident or design.