These notes refer to the Taxation (International and Other Provisions) Act 2010 (c.8) which received Royal Assent on 18 March 2010

TAXATION (INTERNATIONAL AND OTHER PROVISIONS) ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2: Double taxation relief

Chapter 2: Double taxation relief by way of credit

Overview

75. This Chapter contains the main provisions concerning credit relief.

76. This Chapter has the following structure.

- Sections 18 to 20 set out the effect to be given to credit for foreign tax allowed against United Kingdom tax.
- Section 21 defines some key terms used in the Chapter.
- Sections 22 to 24 concern the credits to be allowed where the same income is charged to income tax in more than one tax year.
- Sections 25 to 27 deal with cases in which credit is not allowed.
- Sections 28 to 30 are exceptions to the rule that relief is only available if the taxpayer is UK resident.
- Sections 31 and 32 are rules for calculating income and gains in respect of which credit is allowed.
- Sections 33 to 35 are general rules about limits on credit.
- Sections 36 to 39 limit and reduce credit against income tax.
- Section 40 limits credit against capital gains tax.
- Section 41 limits credit against income tax and capital gains tax.
- Sections 42 to 49 limit credit against corporation tax.
- Sections 50 and 51 are rules for calculating tax for the purposes of section 42(2).
- Sections 52 to 56 allocate deductions etc to profits for the purposes of section 42.
- Sections 57 to 62 concern foreign tax underlying dividends.
- Section 63 concerns tax underlying dividends which is not foreign tax.
- Sections 64 to 66 concern tax underlying a dividend which is treated as underlying tax paid by the dividend’s recipient.

- Sections 67 to 71 contain further rules about tax underlying dividends. Among other things, they provide for relief to be restricted in certain cases.
- Sections 72 to 78 deal with unrelieved foreign tax on the profits of an overseas permanent establishment.
- Sections 79 and 80 concern the action to be taken after adjustments of amounts payable by way of United Kingdom or foreign tax.
- Sections 81 to 95 are anti-avoidance rules which counter schemes and arrangements designed to increase relief.
- Sections 96 to 104 concern insurance companies.

Section 18: Entitlement to credit for foreign tax reduces UK tax by amount of the credit

77. This section gives credit relief. It is based on sections 788(4), 790(1) and (3), 792(1) and (3) and 793(1) to (3) of ICTA and section 277(1) of TCGA.

78. Section 793(1) of ICTA, in relation to income tax and corporation tax, refers to tax "chargeable in respect of any income or chargeable gain". *Subsection (1)*, in relation to income tax, corporation tax and capital gains tax, also refers to tax "chargeable in respect of any income or chargeable gain". Taken literally, the substitution rule in section 277(1) of TCGA would require subsection (1) to refer to capital gains tax in respect of any "capital" gain.

79. Section 15(2) of TCGA provides: "every gain shall, except as otherwise expressly provided, be a chargeable gain." There is no indication that the gains excepted by section 15(2) of TCGA are not capital gains. It is, therefore, possible for a capital gain not to be a chargeable gain, and "capital" gains and "chargeable" gains are not synonymous.

80. But capital gains tax in respect of a capital gain is tax in respect of a chargeable gain. Subsection (1) therefore refers to any "chargeable" gain in relation to both corporation tax and capital gains tax.

81. *Subsection (6)* is confined to income tax because section 23 of ITA applies only in relation to income tax and so section 793(3) of ICTA can apply only in relation to income tax, notwithstanding section 277(1) of TCGA.

Section 19: Time limits for claims for relief under section 18(2)

82. This section sets the time limits for claims for DTR under section 18(2). It is based on section 806(1) of ICTA and section 277(1) of TCGA.

Section 20: Foreign tax includes tax spared because of international development relief

83. This section concerns tax sparing relief. It is based on section 788(5) of ICTA and paragraph 2(2) of Schedule 30 to FA 2000.

84. Section 4 enables DTAs to make provision for tax sparing relief (as explained in the commentary on that section). This section ensures that credit relief can be given for spared tax.

Section 21: Meaning of "the arrangements", "the non-UK territory", "foreign tax" etc

85. This interpretative section is based on sections 790(3) and 792(1) and (3) of ICTA and section 107(5) of FA 2005.

Section 22: Credit for foreign tax on overlap profit if credit for that tax already allowed

86. This section is the first of a group of three sections which ensure that the DTR rules work consistently with the rules about overlap profits in Chapter 15 of Part 2 of ITTOIA. It is based on section 804(1) to (4) and (8) of ICTA.

87. When a person starts trading, it can happen that the same amount of trading income is subject to income tax in more than one tax year. In such cases, this section gives credit relief twice in respect of the income which is subject to income tax twice.

88. It is relevant that, when section 804(2) of ICTA was enacted, "by virtue of this section" could only mean "by virtue of subsection (1)". *Subsection (3)* reflects the view that "by virtue of this section" in section 804(2) retains that meaning, notwithstanding the insertion in 1994 of what is now section 804(5B)(b).

89. Notwithstanding section 277(1) of TCGA, section 804 of ICTA is specific to income tax. The three sections which are based on it therefore have no application to capital gains tax.

Section 23: Time limits for claims for relief under section 22(2)

90. This section sets the time limits for claims for relief under section 22(2). It is based on section 804(7) of ICTA.

91. *Subsection (1)* expressly requires relief under section 22(2) to be claimed. This requirement is implicit in section 804(7) of ICTA.

Section 24: Claw-back of relief under section 22(2)

92. This section claws back, in certain cases, DTR given under section 22(2). It is based on section 804(5) to (5C) and (8) of ICTA.

93. If a person's income has been subject to income tax in more than one tax year when the person starts trading, then, when the trade ceases, the rules about overlap profits give a measure of relief for the income which has been taxed twice. In such cases, this section claws back DTR which has been given in respect of the income for which this relief is being given.

Section 25: Credit not allowed if relief allowed against overseas tax

94. This section is a priority rule. It is based on section 793A(1) of ICTA.

95. If tax is payable in a non-UK territory but, as a result of a DTA (or of the law of the territory giving effect to a DTA), relief is available in the territory against the tax then, whether or not the relief is in fact used, credit relief is not allowed under section 18(2) in respect of the tax.

Section 26: Credit not allowed under arrangements unless taxpayer is UK resident

96. This section lays down the general rule that relief under section 18(2) is restricted to UK residents. It is based on sections 792(1), 794(1) and 831(5) of ICTA and section 277(1) of TCGA.

97. In relation to income tax and corporation tax, section 794(1) of ICTA refers to "income or chargeable gains" in respect of which the tax is chargeable. On a literal interpretation, the substitution rule in section 277(1) of TCGA would require *subsection (1)* to refer to "capital" gains in relation to capital gains tax. But if capital gains tax is chargeable in respect of a gain, it must be a "chargeable" gain. Subsection (1) therefore refers to "chargeable gains" in relation both to corporation tax and to capital gains tax.

Section 27: Credit not allowed if person elects against credit

98. This section allows the taxpayer to elect against credit. It is based on sections 792(1) and 805 of ICTA and section 277(1) of TCGA.

99. In relation to income tax and corporation tax, section 805 of ICTA refers to "the United Kingdom taxes chargeable in respect of any income or chargeable gains". On a literal interpretation, section 277(1) of TCGA could be taken as requiring this section to refer to "capital" gains in relation to capital gains tax. But, if capital gains tax is chargeable in respect of gains, the gains are "chargeable" gains. This section therefore refers to "chargeable" gains, in relation both to corporation tax and to capital gains tax.

Section 28: Unilateral relief for Isle of Man or Channel Islands tax

100. This section is an exception to the rule that relief under section 18(2) is restricted to UK residents. It is based on sections 792(1), 794(2) and 831(5) of ICTA and section 277(1) of TCGA.

101. Section 18(3) makes it clear that section 18(2) only gives credit for tax paid under the law of the territory to which the arrangements relate. Accordingly, the credit mentioned in *subsection (1)* has to be credit for Manx tax within section 9 in relation to the Isle of Man, and the credit mentioned in *subsection (3)* has to be credit for tax payable under the law of the Channel island or islands concerned and within section 9 in relation to that island or those islands.

102. In section 794(2) of ICTA, "the person in question" harks back to "the person in respect of whose income or chargeable gains the United Kingdom tax is chargeable" in section 794(1), in relation to income tax and corporation tax. On a literal interpretation, section 277(1) of TCGA could be taken as requiring subsections (1) and (2) to refer to "capital" gains in relation to capital gains tax. But, if capital gains tax is chargeable in respect of gains, the gains are "chargeable" gains. Subsections (1) and (2) therefore refer to "chargeable" gains, in relation both to corporation tax and to capital gains tax.

Section 29: Unilateral relief for tax on income from employment or office

103. This section is another exception to the rule that relief under section 18(2) is restricted to UK residents. It is based on sections 790(12) and 794(2) of ICTA.

104. Section 794(2)(b) of ICTA refers to "income tax on employment income". This expression was substituted by ITEPA for "income tax chargeable under Schedule E". Section 277(1) of TCGA would not have been taken as requiring that expression to be read, in relation to capital gains tax, as "capital gains tax chargeable under Schedule E". Accordingly, section 277(1) of TCGA does not apply to section 794(2)(b) of ICTA and this section does not extend to capital gains tax.

Section 30: Unilateral relief for non-UK tax on non-resident's UK branch or agency etc

105. This section is concerned with unilateral relief for tax imposed on non-UK residents with branches, agencies or permanent establishments in the United Kingdom. It is based on sections 790(12), 792(1), 794(2) and 831(5) of ICTA, section 277(1) of TCGA and section 153(2) of FA 2003.

106. *Subsection (5)* imposes a limit on relief rather than a condition for relief. This is a minor change in the law. See *Change 3* in Annex 1.

Section 31: Calculation of income or gain where remittance basis does not apply

107. This section lays down the general rule for the calculation of income or gains in respect of which credit is allowed. It is based on section 795(2) to (5) of ICTA, section 277(1) of TCGA and paragraph 1(4) of Schedule 27 to FA 2001.

Section 32: Calculation of amount received where UK tax charged on remittance basis

108. This section is a special rule for the calculation of income or gains in respect of which credit is allowed. It applies if United Kingdom tax is charged on the remittance basis. It is based on section 795(1), (3) and (5) of ICTA and section 277(1) to (1C) of TCGA.

Section 33: Limit on credit: minimisation of the foreign tax

109. This section requires the taxpayer desiring credit relief for foreign tax to take reasonable steps to minimise the amount of that tax. It is based on section 795A of ICTA.

Section 34: Reduction in credit: payment by reference to foreign tax

110. This section reduces credit relief to the extent that the taxpayer (or a person connected with the taxpayer) receives a payment calculated by reference to the foreign tax. It is based on section 804G of ICTA.

Section 35: Disallowed credit: use as a deduction

111. This section gives a deduction for a foreign tax credit which cannot be set against the taxpayer's United Kingdom tax liability. It is based on section 798C of ICTA and section 277(1) of TCGA.

112. Section 798C(2) of ICTA requires the taxpayer's income to be treated as reduced. Section 277(1) of TCGA extends section 798C(2) to capital gains tax. Taken literally, the substitution rule in section 277(1) would require "income" to be translated as "capital gains". But, if the subsection is to give effective relief from capital gains tax, as indicated by the opening words of section 277(1), then it should be the taxpayer's chargeable gains that are reduced. *Subsection (4)* accordingly refers to the taxpayer's "chargeable gains".

Section 36: Amount of limit

113. This section restricts the amount of credit which may be allowed against income tax. It is based on section 796(1) to (2A) of ICTA.

114. Where credit relief is allowed against income tax in respect of income from more than one source, *subsection (3)* requires the sources of income to be taken in the order which provides the greatest reduction in the liability to income tax for the tax year. This minor change brings the law into line with practice. See *Change 4* in Annex 1. The corresponding change is proposed in relation to capital gains tax in section 40(3).

Section 37: Credit against tax on trade income: further rules

115. This section supplements section 36 in its application to trade income. It is based on section 798(1) to (3) and (5) of ICTA and paragraph 49 of Schedule 7 to FA 2008.

116. *Subsection (6)* requires apportionments to be not only reasonable but also just. This is a minor change in the law. See *Change 5* in Annex 1. The same change is proposed in section 44.

117. *Subsection (7)* rewrites section 798(5) of ICTA. Paragraph 49 of Schedule 7 to FA 2008 repealed Chapter 11 of Part 3 of ITTOIA and therefore by implication also repealed the reference to that Chapter in section 798(5)(c) of ICTA. Section 798(5)(c) is therefore expressly repealed without replacement.

Section 38: Credit against tax on royalties: further rules

118. This section supplements section 36 in its application to royalties. It is based on section 798(4) of ICTA.

119. If section 277(1) of TCGA applied to section 798(4) of ICTA, then "royalty income arising in different jurisdictions" would have to be read, in relation to capital gains tax, as "royalty capital gains arising in different jurisdictions". Even if the expression "royalty capital gains" could have an application, it is not clear how royalty capital gains could "arise" (or even accrue) "in" a particular jurisdiction. Section 798(4) of ICTA therefore has no application to capital gains tax.

Section 39: Credit reduced by reference to accrued income losses

120. This section provides for credit to be reduced by reference to accrued income losses. It is based on section 807(2) and (5) of ICTA.

Section 40: Amount of limit

121. This section restricts the amount of credit which may be allowed against capital gains tax. It is based on section 796(1) and (2) of ICTA and section 277(1) of TCGA.

122. *Subsection (3)* brings the law into line with practice. See *Change 4* in Annex 1 and the commentary on section 36(3).

123. In *subsection (4)*, the definition of TG is the result of applying section 796(1)(a) of ICTA in relation to capital gains tax in accordance with section 277(1) of TCGA.

124. In section 796(1) of ICTA, the words "allowing for the making of any other income tax reduction under the Income Tax Acts" have no application to capital gains tax. They are therefore not rewritten in *subsection (5)*.

Section 41: Amount of limit

125. This section restricts the total credit which may be allowed against income tax and capital gains tax. It is based on sections 790(3) and 796(3) of ICTA and section 277(1) of TCGA.

126. In applying the limit, *subsection (2)* takes the person's income tax and capital gains tax liabilities together. This minor change brings the law into line with practice. See *Change 6* in Annex 1.

127. The reference to section 414 of ITA (gift aid) in the definition of "A" in subsection (2) includes by implication a reference to section 426 of that Act (election by donor: gift treated as made in previous tax year).

128. Section 796(3) of ICTA refers to "total income tax" and, as applied by section 277(1) of TCGA, to "total capital gains tax". Attempting to spell out the meaning of these expressions could change their scope, with repercussions which could be difficult to predict. Accordingly, subsection (2) retains these expressions.

129. Also, persons other than individuals cannot make gift aid donations falling within section 414 of ITA. But the scope of "total income tax" and "total capital gains tax" in subsection (2) is not entirely clear. Accordingly, this section follows the source legislation in using "person" rather than "individual", to preserve the possibility that, in a case involving a person other than an individual, this section may set a limit on the amount of credit that is allowed in addition to the limits on credit that are set by sections 36 and 40.

Section 42: Amount of limit

130. This section restricts the amount of credit which may be allowed against corporation tax. It is based on sections 797(1) to (3B), 797A(3), (6) and (7) and 797B(3) of ICTA.

131. Section 797(2) of ICTA is subject to subsections (2A) and (3) of that section (provisions about permanent establishments and general deductions). The rule in section 797(2) of ICTA is primarily rewritten in *subsection (2)*.

132. *Subsection (3)* clarifies the relationship between the rewritten rule and (among others) the provisions based on section 797(3) of ICTA.

133. *Subsection (4)* then says that the rewritten rule is to be read with the provisions based on section 797(2A) of ICTA. In these ways, the section rewrites the words "Subject to subsections (2A) and (3)" that appear in section 797(2) of ICTA. Subsection (4) also says that the rewritten rule is to be read with the provisions based on sections 798A and 798B of ICTA (which qualify the rule so far as relating to trade income) and with the provisions based on sections 797A(1) and (2) and 797B(1) and (2) of ICTA (assumptions for the purposes of the rule about how tax is charged on loan relationships and intangible fixed assets).

134. The source legislation has the effect that the rule is to be read with those provisions, but does not expressly say that. The references in subsection (4) to the sections based on those provisions are therefore included as a drafting clarification.

Section 43: Profits attributable to permanent establishment for purposes of section 42(2)

135. This section supplements section 42 in its application to UK resident companies with permanent establishments outside the United Kingdom. It is based on section 797(2A) of ICTA.

Section 44: Credit against tax on trade income

136. This section supplements section 42 in its application to trade income. It is based on section 798A of ICTA.

137. Section 798A(2) of ICTA applies for the interpretation of "the relevant income or gain" in section 797(1) of that Act. Section 798A(2) refers to "income arising or gains accruing", and section 798A(3) has "income or gain" (three times). But "the relevant income or gain" in section 797(1) harks back to "any income or *chargeable* gain", and it follows from the definition of "trade income" in section 798A(4) that section 798A does not affect credit relief against corporation tax on chargeable gains. *Subsections (2)* and *(3)* therefore omit as otiose the references to gains in section 798A(2) and (3).

138. In section 798A(3)(a) of ICTA, "deductions" is apt to include expenses. Subsection (3)(a) therefore omits "or expenses" as otiose.

139. *Subsection (4)* requires apportionments to be not only reasonable but also just. See *Change 5* in Annex 1 and the commentary on section 37.

140. Before its amendment by paragraph 249 of Schedule 1 to CTA 2009, section 798A(4) of ICTA referred to section 104 of that Act and not to section 103 of that Act. Sections 103 and 104 of ICTA were rewritten for the purposes of corporation tax and repealed by CTA 2009. Most post-cessation receipts are charged under what used to be section 103 of ICTA, leaving what used to be section 104 of ICTA to pick up the "change of basis" adjustments. See section 104(3) of ICTA (repealed), which made it clear that section 103 of ICTA (repealed) had priority. *Subsection (7)* is based on section 798A(5) of ICTA, which was inserted by paragraph 249 of Schedule 1 to CTA 2009 in order to preserve the distinction between post-cessation receipts charged to tax by section 103 (to which section 798A does not apply) and those charged to tax by section 104 (to which section 798A does apply).

Section 45: Credit against tax on trade income: anti-avoidance rules

141. This section is directed against schemes and arrangements designed to divert income, for credit relief purposes, to other persons. It is based on section 798B(4) to (4C) of ICTA.

Section 46: Applying section 44(2): asset in hedging relationship with derivative contract

142. This section supplements section 44 in its application to assets in hedging relationships with derivative contracts. It is based on section 798B(1) and (2) of ICTA.

Section 47: Applying section 44(2): royalty income

143. This section supplements section 44 in its application to royalties. It is based on section 798B(3) of ICTA.

144. This section is a corporation tax provision, and *subsection (2)* therefore has "accounting period" where the source legislation has "year of assessment". This is a minor change in the law. See *Change 7* in Annex 1.

Section 48: Applying section 44(2): "portfolio" of transactions, arrangements or assets

145. This section supplements section 44 in its application to "portfolios" of transactions, arrangements or assets. It is based on section 798B(5) of ICTA.

146. Section 798B(5) of ICTA uses the expression "fair and reasonable". In rewriting this, *subsection (5)* follows the convention in this Act that apportionments are to be "just and reasonable". This is not a change in the law, because it is not possible for anything to be fair and reasonable without being just and reasonable or just and reasonable without being fair and reasonable.

Section 49: Restricting section 44(3) if company is a bank or connected with a bank

147. This section supplements section 44(3) in certain cases where the taxpayer is a bank (or is connected with a bank). It is based on section 798A(3A) to (3C) of ICTA.

Section 50: Tax for period on loan relationships

Section 51: Tax for period on intangible fixed assets

148. These sections harmonise the credit relief regime with, respectively, the loan relationships regime and the intangible fixed assets regime. They are based on sections 797A(1) and (2) and 797B(1) and (2) of ICTA.

149. For credit relief purposes, items of income are dealt with separately, as indicated by "any income" in section 42(1). And, broadly speaking, deductions which can be set against more than one description of profits are allocated for credit relief purposes as the company thinks fit: section 52. This contrasts with the treatment of the same matters under the loan relationships and intangible fixed assets regimes.

150. For loan relationships purposes, interest receivable (from both United Kingdom and foreign sources) from non-trading loan relationships, interest payable on non-trading loan relationships, and other gains and losses relating to non-trading loan relationships go into the same "pot". The net non-trading result is then either taxed or relieved.

151. Similarly, non-trading debits and non-trading credits on intangible fixed assets are netted off and the net non-trading result is taxed or relieved.

152. The effect of sections 50 and 51 is that, in the cases of (respectively) loan relationships and intangible fixed assets, one has to go behind the net non-trading results in order to analyse the figures from which those results are arrived at. The sections then provide that, for credit relief purposes, corporation tax is in those cases to be treated as being charged not on the net non-trading results but on the gross non-trading receipts.

Section 52: General deductions

153. This section lays down the general corporation tax rule that for credit relief purposes a company may allocate deductions as it thinks fit. It is based on section 797(3) of ICTA.

154. Section 797(3) of ICTA refers to there being "any deduction to be made for charges on income, expenses of management, expenses payable (within the meaning of section 76(1)) or other amounts which can be deducted from or set against or treated as reducing profits of more than one description". *Subsection* (1) refers, more succinctly, to there being "any amount ("the deduction") that for corporation tax purposes is deductible from, or otherwise allowable against, profits of more than one description". This compression does not change the law.

Section 53: Earlier years' non-trading deficits on loan relationships

Section 54: Non-trading debits on loan relationships

Section 55: Current year's non-trading deficits on loan relationships

155. These sections harmonise the credit relief regime with the loan relationships regime. They are based on sections 797(3) to (6) and 797A of ICTA.

156. As explained in the commentary on section 50, the figures calculated for the purposes of the loan relationships regimes need to be analysed for the purposes of credit relief. Sections 53 and 55 are about the allocation for those purposes of non-trading deficits. Section 54 is about the allocation for those purposes of non-trading debits.

157. In sections 53 to 55, "the period" is the period mentioned in section 42(2).

Section 56: Non-trading debits on intangible fixed assets

158. This section harmonises the credit relief regime with the intangible fixed assets regime. It is based on sections 797(3) and 797B(1), (3) and (4) of ICTA.

159. As explained in the commentary on section 51, the figures calculated for the purposes of the intangible fixed assets regimes need to be analysed for the purposes of credit relief. This section is about the allocation for those purposes of non-trading debits.

160. In this section, "the period" is the period mentioned in section 42(2).

Section 57: Credit in respect of dividend: taking account of underlying tax

161. This section is the first in a series of sections dealing with credit relief for tax underlying dividends. It is based on section 799(1), (1A), (2) and (2A) of ICTA, section 277(1) of TCGA, paragraphs 8(5) and 9(3) of Schedule 30 to FA 2000 and paragraph 2(4) of Schedule 27 to FA 2001.

Section 58: Calculation if dividend paid by non-resident company to resident company

162. This section quantifies the underlying tax to be taken into account if the dividend under review is paid by a company resident outside the United Kingdom to a UK resident company. It is based on section 799(1), (1A) and (2) of ICTA.

Section 59: Meaning of "relevant profits" in section 58

163. This interpretative section is based on section 799(3) to (7) of ICTA.

Section 60: Underlying tax to be left out of account on claim to that effect

164. This section permits a claim for credit relief to be framed so as to exclude specified amounts of underlying tax. It is based on section 799(1B) of ICTA and paragraph 2(4) of Schedule 27 to FA 2001.

Section 61: Calculation if section 58 does not apply

165. This section quantifies the underlying tax to be taken into account if the dividend under review is not paid by a company resident outside the United Kingdom to a UK resident company (and is thus outside section 58). It is based on section 799(1) and (2) of ICTA.

Section 62: Meaning of "relevant profits" in section 61

166. This interpretative section is based on section 799(3) and (4) of ICTA.

Section 63: Non-UK company dividend paid to 10% investor: relief for UK and other tax

167. This section provides, if the appropriate conditions are met, for certain other taxes to be treated as underlying tax, namely taxes which are (a) payable in respect of the profits of the company paying the dividend and (b) not imposed in the jurisdiction in which that company is resident. It is based on sections 792(2) and 801(1), (1A) and (5) of ICTA.

168. *Subsection (5)(a)* does not mention capital gains tax payable by the overseas company, because companies resident outside the United Kingdom are outside the scope of capital gains tax.

169. In the italicised cross-heading before this section, "tax...that is not foreign tax" is to be read in accordance with section 21(1) and therefore includes third country tax within *subsection (5)(b)*.

Section 64: Meaning of "dividend-paying chain" of companies

170. This interpretative section is based on sections 792(2) and 801(1), (2), (3), (5) and (5A) of ICTA.

Section 65: Relief for underlying tax paid by company lower in dividend-paying chain

171. This section provides for tax payable by the company paying the dividend to be treated as underlying tax paid by the dividend's recipient. It is based on section 801(1), (2), (2A), (3), (4) and (5A) of ICTA and paragraphs 8(5) and 11(3) of Schedule 30 to FA 2000.

172. *Subsections (2)* and *(3)* set the conditions for the section to apply.

173. *Subsection (4)* is the main operative provision. Subsection (4)(b) enables the section to be applied repeatedly and thus deals with dividend-paying chains of companies comprising more than three companies.

Section 66: Limitations on section 65(4)

174. This section sets limitations on section 65(4). It is based on section 801(4) of ICTA.

Section 67: Restriction of relief if underlying tax at rate higher than rate of corporation tax

175. This section combats schemes designed to inflate relievable underlying tax. It is based on section 801A(1) to (5) of ICTA.

Section 68: Meaning of "avoidance scheme" in section 67

176. This interpretative section is based on sections 792(2) and 801A(6) to (11) of ICTA.

Section 69: Dividends paid out of transferred profits

177. This section applies the rules about underlying tax to cases in which the profits of one company become profits of another company otherwise than by way of dividend. It is based on section 801B of ICTA.

Section 70: Underlying tax reflecting interest on loans

178. This section, which deals with cases involving banks, prevents the rules about underlying tax from being used to circumvent the restrictions on credit relief imposed by sections 44(3) and 49. It is based on sections 792(2) and 803 of ICTA.

Section 71: Foreign taxation of group as single entity

179. This section applies the rules about underlying tax to cases in which, under non-UK tax law, groups of companies are taxed as single entities. It is based on sections 792(2) and 803A of ICTA and paragraph 15(2) of Schedule 30 to FA 2000.

Section 72: Application of section 73(1)

180. This section is the first of a series of sections concerned with DTR for unrelieved foreign tax suffered on the profits of an overseas permanent establishment. It is based on section 806L(1), (4) and (5) of ICTA.

Section 73: Carry-forward and carry-back of unrelieved foreign tax

181. This section permits unrelieved foreign tax to be carried forward and carried back. It is based on sections 806L(2) and (6) and 806M(1) and (2) of ICTA.

Section 74: Rules for carrying back unrelieved foreign tax

182. This section sets out the rules for carrying back unrelieved foreign tax. It is based on section 806L(2) to (4) of ICTA.

Section 75: Two or more establishments treated as a single establishment

183. This section treats two or more overseas permanent establishments as a single establishment if they are so treated for the purposes of overseas tax law. It is based on section 806M(1) and (4) of ICTA.

Section 76: Former and subsequent establishments regarded as distinct establishments

184. This section requires former and subsequent overseas permanent establishments to be regarded as different establishments. It is based on section 806M(1) and (3) of ICTA.

Section 77: Claims for relief under section 73(1)

185. This section stipulates that relief under section 73(1) needs to be claimed and lays down rules about such a claim. It is based on section 806M(1) and (5) to (7) of ICTA.

Section 78: Meaning of "overseas permanent establishment"

186. This interpretative section is based on sections 806L(7) and 806M(1) of ICTA.

Section 79: Time limits for action if tax adjustment makes credit excessive or insufficient

187. This section permits assessments or claims for relief to be made after the normal time limits, if the amount of credit given is found to be excessive or insufficient by reason of an adjustment of the amount of tax payable. It is based on section 806(2) of ICTA and section 277(1) of TCGA.

Section 80: Duty to give notice that adjustment has rendered credit excessive

188. This section requires the taxpayer to give notice that an adjustment of the amount of tax payable has rendered the amount of credit given excessive. It is based on sections 806(3) to (6) and 831(5) of ICTA and section 277(1) of TCGA.

Section 81: Giving a counteraction notice

189. This section is the first of a group of anti-avoidance sections directed against schemes and arrangements designed to increase DTR. It enables an officer of Revenue and Customs to activate these anti-avoidance provisions by giving a counteraction notice. It is based on sections 804ZA(1), (8) and (11A) and 831(5) of ICTA and section 277(1) of TCGA.

190. Section 804ZA of ICTA gives this function to the Commissioners for HMRC. In practice, the Commissioners delegate this function to officers of Revenue and Customs, and *subsections (1)* and *(2)* reflect this. This is a minor change in the law: see *Change 2* in Annex 1. The Commissioners delegate the function of giving counteraction notices to a group of specialist officers; *Change 2* makes no change to this practice.

191. Section 703 of ICTA (transactions in securities) gave the function of giving counteraction notices to the Board. Rewriting this for income tax purposes, Chapter 1 of Part 13 of ITA gives this function to officers of Revenue and Customs, and the same change in the law is made in Part 15 of CTA 2010 which rewrites section 703 of ICTA for corporation tax purposes. This Change is also made in Part 6 of this Act (tax arbitrage). *Change 2* in this section is consistent with this approach.

192. As *Change 2* is made in this section, it is also made in sections 89, 91 and 92.

Section 82: Conditions for the purposes of section 81(1)

193. This section sets out the conditions mentioned in section 81(1). It is based on sections 804ZA(1) to (7) and (11A), 831(5) and 832(3) of ICTA and section 277(1) of TCGA.

Section 83: Schemes and arrangements referred to in section 82(4)

194. This section concerns the schemes and arrangements against which these provisions are directed. It fills out condition C in section 82(4), and introduces sections 84 to 88 (which specify the general features of the schemes and arrangements in question). It is based on section 804ZA(11) of ICTA and paragraph 1 of Schedule 28AB to that Act.

195. If a scheme or arrangement is not an underlying-tax scheme or arrangement (as defined in *subsection (3)*), *subsection (2)* brings it within this section if one or more of sections 84 to 88 apply to it.

196. In the case of an underlying-tax scheme or arrangement, *subsections (4)* to *(7)* modify the application of sections 84 to 88. If one or more of sections 84 to 88 would apply to the scheme or arrangement if the overseas-resident body corporate in question was resident in the United Kingdom, subsection (4) brings the scheme or arrangement within this section.

Section 84: Section 83(2) and (4): schemes enabling attribution of foreign tax

197. This section applies to schemes or arrangements which shift foreign tax from one source of income or chargeable gain to another. It is based on paragraph 2 of Schedule 28AB to ICTA and section 277(1) of TCGA.

Section 85: Section 83(2) and (4): schemes about effect of paying foreign tax

198. This section applies to schemes or arrangements which inflate credit for foreign tax. It is based on section 831(5) of ICTA, paragraph 3 of Schedule 28AB to that Act and section 277(1) of TCGA.

Section 86: Section 83(2) and (4): schemes about claims or elections etc

199. This section applies, in particular, to schemes or arrangements about claims or elections. It is based on paragraph 4 of Schedule 28AB to ICTA.

Section 87: Section 83(2) and (4): schemes that would reduce a person's tax liability

200. This section applies to schemes that would reduce a person's tax liability. It is based on sections 831(5) and 832(3) of ICTA, paragraph 5 of Schedule 28AB to that Act and section 277(1) of TCGA.

Section 88: Section 83(2) and (4): schemes involving tax-deductible payments

201. This section applies to schemes involving tax-deductible payments. It is based on paragraph 6 of Schedule 28AB to ICTA and section 277(1) of TCGA.

Section 89: Contents of counteraction notice

202. This section sets out what a counteraction notice may contain. It is based on section 804ZA(9), (10) and (11A) of ICTA.

203. *Subsections (1)* and *(2)* include a minor change in the law. See *Change 2* in Annex 1 and the commentary on section 81.

Section 90: Consequences of counteraction notices

204. This section sets out the consequence of a counteraction notice being given. It is based on section 804ZB of ICTA.

Section 91: Counteraction notices given before tax return made

205. This section meshes the DTR legislation in with the machinery of Self Assessment in cases in which a counteraction notice is given before the taxpayer's tax return is made for the chargeable period specified in the notice. It is based on section 804ZC(1), (2) and (11) of ICTA.

206. *Subsection (1)* includes a minor change in the law. See *Change 2* in Annex 1 and the commentary on section 81.

207. Section 804ZC(2)(b) and (11)(b) of ICTA refer to the taxpayer amending the return "for the purpose of complying with the notice". To sharpen the drafting, *subsections (2)(b)* and *(3)(a)* refer to the taxpayer amending the return "for the purpose of complying with the provision referred to in the notice".

Section 92: Counteraction notices given after tax return made

208. This section meshes the DTR legislation in with the machinery of Self Assessment in cases in which a counteraction notice is given after the taxpayer's tax return has been

made for the accounting period specified in the notice. It is based on section 804ZC(3) to (7) of ICTA.

209. *Subsections (1)* to *(5)* include a minor change in the law. See *Change 2* in Annex 1 and the commentary on section 81.

Section 93: Amendment, closure notices and discovery assessments in section 92 cases

210. This section concerns amendments to tax returns, and is also about closure notices and discovery assessments in cases in which section 92 applies. It is based on section 804ZC(8) to (11) of ICTA.

211. Section 804ZC(8), (9)(b), (10)(b) and (11)(b) of ICTA refer to the taxpayer amending the return "for the purpose of complying with the notice". To sharpen the drafting, *subsections (2)*, *(5)* and *(6)* refer to the taxpayer amending the return "for the purpose of complying with the provision referred to" in the notice.

Section 94: Information made available for the purposes of section 92(4)

212. This section supplements section 92(4). It is based on section 804ZC(6) of ICTA.

213. This section expands the cross-references in section 804ZC(6)(a) and (b) of ICTA to section 29 of TMA and paragraph 44 of Schedule 18 to FA 1998.

214. In section 29(6)(a) of TMA, there cannot be "accounts" which are not "documents", nor can there be "statements … accompanying the return" which are not "documents". *Subsection (2)(c)* and *(3)(c)* therefore compress "accounts, statements or documents accompanying the return" to "documents accompanying a return".

215. Similarly:

- *subsections (2)(d), (3)(d)* and *(5)(c)* omit as otiose the reference to "accounts" in section 29(6)(c) of TMA;
- *subsections (4)(d)* and *(6)(d)* omit as otiose the reference to "accounts" in paragraph 44(2)(c) of Schedule 18 to FA 1998; and
- *subsections (5)(b)* and *(6)(c)* compress "any accounts, statements or documents accompanying any such claim" in, respectively, section 29(6)(b) of TMA and paragraph 44(2)(b) of Schedule 18 to FA 1998 to "any documents accompanying such a claim".

216. Section 29(6)(c) of TMA uses the word "furnished". Paragraph 44(2)(c) of Schedule 18 to FA 1998 is very similar, but uses the more modern word "provided". Subsections (2)(d), (3)(d) and (5)(c), which are based on section 29(6)(c) of TMA, therefore use the word "provided".

217. Section 29(6)(d) of TMA refers to "the situation mentioned in subsection (1) above" and paragraph 44(2)(d) of Schedule 18 to FA 1998 refers to "the situation mentioned in paragraph 41(1) or (2)". *Subsection (7)* makes it clear that, in the present context, these references are references to exercise of power to give the person a counteraction notice.

Section 95: Interpretation of sections 89 to 94

218. This interpretative section is based on sections 804ZA(6) and (12), 804ZC(12) and 831(5) of ICTA and section 277(1) of TCGA.

Section 96: Companies with overseas branches: restriction of credit

219. This section governs the allowance of credit relief against corporation tax charged on profits of life assurance business if the relief is in respect of foreign tax on insurance

business carried on through an overseas branch of an insurance company. It is based on section 804A of ICTA.

220. This section provides that, where tax is charged overseas otherwise than wholly by reference to profits, the shareholders' share of the foreign tax (to be measured in accordance with the rules in *subsections (5)* and *(6)*) is to qualify for credit relief, even though the balance of the foreign tax can be deducted in calculating the profits of life assurance business carried on by the company.

221. This section is the first of a group of sections concerned with DTR for insurance companies. Chapter 1 of Part 12 of ICTA (insurance companies) is not rewritten. But, as the bulk of Part 18 of ICTA (DTR) is being rewritten in this Act, the balance of convenience favours including sections 804A to 804E of ICTA (DTR: insurance companies) in the rewrite. Since the rewrite of those sections needs to be read alongside the unrewritten Chapter 1 of Part 12 of ICTA, their rewrite takes a relatively conservative approach.

Section 97: Companies with more than one category of business: restriction of credit

222. This section gives specific apportionment rules for attributing foreign tax to different categories of long-term business carried on by an insurance company where an item of income or gain on which foreign tax is payable is referable to more than one category of business. It is based on section 804B(1) to (5), (8) and (9) of ICTA.

Section 98: Attribution for section 97 purposes if category is gross roll-up business

223. This section supplements section 97. It is based on section 804B(6) to (7A) of ICTA.

Section 99: Allocation of expenses etc in calculations under section 35 of CTA 2009

224. This section sets out rules for setting an insurance company's expenses and other deductions against items of income to calculate the measure of income, and therefore of corporation tax in respect of it, against which the creditability of foreign tax is to be measured. It is based on section 804C(1), (2), (5) and (10) to (13) of ICTA.

225. Under *subsection (1)(b)*, this section only applies if a calculation falls to be made in accordance with the provisions applicable for the purposes of section 35 of CTA 2009.

226. Under *subsection (2)*, the amount of credit for foreign tax is restricted, first in accordance with section 100 and then (if relevant) by section 101.

Section 100: First limitation for purposes of section 99(2)

227. This section specifies the first limitation on the amount of credit for foreign tax imposed by section 99(2). It is based on section 804C(3) and (6) to (8) of ICTA.

228. *Subsection (4)(b)* refers to "any … unilateral relief arrangements for any territory outside the United Kingdom" (rather than "… a territory outside the United Kingdom"), because the total may relate to several sets of arrangements.

Section 101: Second limitation for purposes of section 99(2)

229. This section specifies the second limitation on the amount of credit for foreign tax imposed by section 99(2). It is based on section 804C(4) and (9) of ICTA.

230. *Subsection (2)* refers to "unilateral relief arrangements for any territory outside the United Kingdom" (rather than "… a territory outside the United Kingdom"), because the total may relate to several sets of arrangements.

Section 102: Interpreting sections 99 to 101 for life assurance or gross roll-up business

Section 103: Interpreting sections 99 to 101 for other insurance business

Section 104: Interpreting sections 100 and 101: amounts referable to category of business

231. These interpretative sections are based on sections 804C(13) and (14), 804D and 804E of ICTA.