



Finance Act 2008

2008 CHAPTER 9

PART 2

INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX_GENERAL

Residence and domicile

24 Periods of residence

- (1) Section 831 of ITA 2007 (foreign income of individuals in United Kingdom for temporary purpose) is amended as follows.
- (2) In subsection (1), for paragraph (b) substitute—
 - “(b) during the tax year in question the individual spends (in total) less than 183 days in the United Kingdom.”
- (3) After that subsection insert—
 - “(1A) In determining whether an individual is within subsection (1)(b) treat a day as a day spent by the individual in the United Kingdom if (and only if) the individual is present in the United Kingdom at the end of the day.
 - (1B) But in determining that issue do not treat as a day spent by the individual in the United Kingdom any day on which the individual arrives in the United Kingdom as a passenger if—
 - (a) the individual departs from the United Kingdom on the next day, and
 - (b) during the time between arrival and departure the individual does not engage in activities that are to a substantial extent unrelated to the individual's passage through the United Kingdom.”
- (4) In section 832 of that Act (employment income of individuals in United Kingdom for temporary purpose), after subsection (1) insert—

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- “(1A) In determining whether an individual is within subsection (1)(b) treat a day as a day spent by the individual in the United Kingdom if (and only if) the individual is present in the United Kingdom at the end of the day.
- (1B) But in determining that issue do not treat as a day spent by the individual in the United Kingdom any day on which the individual arrives in the United Kingdom as a passenger if—
- (a) the individual departs from the United Kingdom on the next day, and
 - (b) during the time between arrival and departure the individual does not engage in activities that are to a substantial extent unrelated to the individual's passage through the United Kingdom.”
- (5) Section 9 of TCGA 1992 (residence, including temporary residence) is amended as follows.
- (6) In subsection (3), for the words after “if and only if” substitute “ the individual spends (in total) at least 183 days in the United Kingdom. ”
- (7) Insert at the end—
- “(5) In determining for the purposes of subsection (3) above whether an individual spends (in total) at least 183 days in the United Kingdom treat a day as a day spent by the individual in the United Kingdom if (and only if) the individual is present in the United Kingdom at the end of the day.
- (6) But in determining that issue for those purposes do not treat as a day spent by the individual in the United Kingdom any day on which the individual arrives in the United Kingdom as a passenger if—
- (a) the individual departs from the United Kingdom on the next day, and
 - (b) during the time between arrival and departure the individual does not engage in activities that are to a substantial extent unrelated to the individual's passage through the United Kingdom.”
- (8) The amendments made by this section have effect for the tax year 2008-09 and subsequent tax years.

25 Remittance basis

Schedule 7 contains provision for and in connection with the revision of the remittance basis.

Research and development

^{F1}26 Rates of R&D relief and vaccine research relief

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Textual Amendments

- F1** Ss. 26-28 repealed (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

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F127 Qualifying expenditure: R&D relief and vaccine research relief

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Textual Amendments

- F1** Ss. 26-28 repealed (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), **Sch. 3 Pt. 1** (with [Sch. 2 Pts. 1, 2](#))

F128 Companies in difficulty: SME R&D relief and vaccine research relief

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Textual Amendments

- F1** Ss. 26-28 repealed (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), **Sch. 3 Pt. 1** (with [Sch. 2 Pts. 1, 2](#))

F229 Cap on R&D aid

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Textual Amendments

- F2** S. 29 repealed (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), [Sch. 1 para. 729](#), **Sch. 3 Pt. 1** (with [Sch. 2 Pts. 1, 2](#))

F330 Vaccine research relief: declaration about effect of relief

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Textual Amendments

- F3** S. 30 repealed (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), **Sch. 3 Pt. 1** (with [Sch. 2 Pts. 1, 2](#))

Venture capital schemes etc

F431 Enterprise investment scheme: increase in amount of relief

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Textual Amendments

- F4** S. 31 repealed (with effect in accordance with [Sch. 7 para. 22](#) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), **Sch. 7 para. 3(2)**

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32 Venture capital schemes

Schedule 11 contains provision about venture capital schemes.

33 Enterprise management incentives: qualifying companies

- (1) Part 3 of Schedule 5 to ITEPA 2003 (enterprise management incentives: qualifying companies) is amended as follows.
- (2) In paragraph 8 (qualifying companies: introduction), omit the “and” at the end of the entry relating to paragraph 12, and after that entry insert— “ number of employees (see paragraph 12A), and ”.
- (3) After paragraph 12 insert—

12A “The number of employees requirement

- (1) The number of employees requirement in the case of a single company is that the full-time equivalent employee number for it is less than 250.
- (2) The number of employees requirement in the case of a parent company is that the sum of—
 - (a) the full-time equivalent employee number for it, and
 - (b) the full-time equivalent employee numbers for each of its qualifying subsidiaries,
 is less than 250.
- (3) The full-time equivalent employee number for a company is calculated as follows—

Step 1

Find the number of full-time employees of the company.

Step 2

Add, for each employee of the company who is not a full-time employee, such fraction as is just and reasonable.

The result is the full-time equivalent employee number.

- (4) In this paragraph references to an employee—
 - (a) include a director, but
 - (b) do not include—
 - (i) an employee on maternity or paternity leave, or
 - (ii) a student on vocational training.”
- (4) In paragraph 16 (excluded activities), after paragraph (i) insert—
 - “(ia) shipbuilding (see also paragraph 20A);
 - (ib) producing coal (see also paragraph 20B);
 - (ic) producing steel (see also paragraph 20C);”.
- (5) After paragraph 20 insert—

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20A “Excluded activities: shipbuilding

In paragraph 16(ia) “shipbuilding” has the same meaning as in the Framework on state aid to shipbuilding (2003/C 317/06), published in the Official Journal on 30 December 2003.

20B Excluded activities: producing coal

- (1) This paragraph supplements paragraph 16(ib).
- (2) “Coal” has the meaning given by Article 2 of Council Regulation (EC) No. 1407/2002 (state aid to coal industry).
- (3) The production of coal includes the extraction of it.

20C Excluded activities: producing steel

In paragraph 16(ic) “steel” means any of the steel products listed in Annex 1 to the Guidelines on national regional aid (2006/C 54/08), published in the Official Journal on 4 March 2006.”

- (6) The amendments made by this section have effect in relation to options granted on or after the day on which this Act is passed.

Other business and investment measures

34 Tax credits for certain foreign distributions

- (1) Schedule 12 contains provision about tax credits for certain foreign distributions.
- (2) The amendments made by that Schedule have effect for the tax year 2008-09 and subsequent tax years.

^{F5}35 Small companies' relief: associated companies

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Textual Amendments

- F5** S. 35 repealed (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), [Sch. 3 Pt. 1](#) (with [Sch. 2](#))

36 Company gains from investment life insurance contracts etc

^{F6}(1)

- (2) Schedule 14 contains amendments and repeals consequential on that Schedule etc.

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Textual Amendments

- F6** S. 36(1) repealed (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), Sch. 1 para. 730, **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

37 Trade profits: changes in trading stock

- (1) Schedule 15 contains provision about the effect of certain changes in trading stock on the calculation of profits of trades for the purposes of income tax or corporation tax.
- (2) The amendments made by that Schedule have effect in relation to changes in trading stock occurring on or after 12 March 2008.
- (3) In subsection (2) “change in trading stock” means—
 - (a) in relation to new section 172B of ITTOIA 2005, or paragraph 6 of Schedule 15, an appropriation of trading stock,
 - (b) in relation to new section 172C of ITTOIA 2005, or paragraph 7 of Schedule 15, a thing becoming trading stock,
 - (c) in relation to new section 172D of ITTOIA 2005, or paragraph 8 of Schedule 15, a disposal of trading stock, and
 - (d) in relation to new section 172E of ITTOIA 2005, or paragraph 9 of Schedule 15, an acquisition of trading stock.

38 Non-residents: investment managers

Schedule 16 contains provision about—

- (a) the eligibility of an investment manager to be the UK representative of a non-resident, or an agent of independent status in relation to a non-resident, and
- (b) profits or income of non-residents that are to be disregarded if derived from certain investment transactions carried out by investment managers.

[^{F7}39 Dormant assets

- (1) The Commissioners for Her Majesty’s Revenue and Customs may by regulations—
 - (a) modify Chapters 2 and 3 of Part 15 of ITA 2007 (deduction of income tax on interest payments at source) in relation to interest paid or credited in respect of a relevant dormant asset, and
 - (b) provide that, for the purposes of Chapter 2 of Part 4 of ITTOIA 2005 (charge to income tax on interest), such interest is to be treated as not being paid until the time (if any) at which the balance of the dormant asset is paid out following a claim made by virtue of—
 - (i) section 1(2)(b) or 2(2)(b) of the 2008 Act, or
 - (ii) section 2(2)(b), 5(2)(b), 5(3)(b), 8(2)(b), 12(2)(b), 14(2)(b) or 22(1) of the 2022 Act.
- (2) A relevant dormant asset is an asset in respect of which an amount is to be, or has been, transferred by an institution—
 - (a) to an authorised reclaim fund, with the result that section 1 of the 2008 Act or section 2, 5, 8, 12 or 14 of the 2022 Act applies in relation to the asset, or

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- (b) to an authorised reclaim fund and one or more charities, with the result that section 2 of the 2008 Act applies in relation to the asset.
- (3) Interest paid or credited in respect of a relevant dormant asset includes interest paid or credited by a person who administers the asset on behalf of an authorised reclaim fund after the balance has been transferred.
- (4) In this section—
- “the 2008 Act” means the Dormant Bank and Building Society Accounts Act 2008;
 - “the 2022 Act” means the Dormant Assets Act 2022;
 - “asset” means an asset within the scope of the dormant assets scheme (see section 1(6) of the 2022 Act);
 - “authorised reclaim fund” has the same meaning as in the Dormant Assets Acts 2008 to 2022.]

Textual Amendments

F7 S. 39 substituted (6.6.2022) by [Finance Act 2022 \(c. 3\)](#), [Sch. 6 paras. 2, 6](#); [S.I. 2022/569, reg. 2](#)

40 Individual investment plan regulations

In section 701 of ITTOIA 2005 (investment plan regulations: general and supplementary), insert at the end—

- “(4) They may include provision having effect in relation to times before they are made if the provision does not impose or increase any liability to tax.
- (5) They may make different provision for different cases or circumstances.”

Offshore funds

^{F8}40A Meaning of “offshore fund”

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Textual Amendments

F8 Ss. 40A-42A repealed (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), s. 381(1), [Sch. 8 para. 170](#), [Sch. 10 Pt. 5](#) (with [Sch. 9 paras. 1-9, 22](#))

^{F8}40B Meaning of “mutual fund” etc

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Textual Amendments

F8 Ss. 40A-42A repealed (with effect in accordance with s. 381(1) of the amending Act) by **Taxation (International and Other Provisions) Act 2010 (c. 8), s. 381(1), Sch. 8 para. 170, Sch. 10 Pt. 5** (with Sch. 9 paras. 1-9, 22)

F8 40C Umbrella arrangements

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Textual Amendments

F8 Ss. 40A-42A repealed (with effect in accordance with s. 381(1) of the amending Act) by **Taxation (International and Other Provisions) Act 2010 (c. 8), s. 381(1), Sch. 8 para. 170, Sch. 10 Pt. 5** (with Sch. 9 paras. 1-9, 22)

F8 40D Arrangements comprising more than one class of interest

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Textual Amendments

F8 Ss. 40A-42A repealed (with effect in accordance with s. 381(1) of the amending Act) by **Taxation (International and Other Provisions) Act 2010 (c. 8), s. 381(1), Sch. 8 para. 170, Sch. 10 Pt. 5** (with Sch. 9 paras. 1-9, 22)

F8 40E Meaning of “mutual fund”: exceptions

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Textual Amendments

F8 Ss. 40A-42A repealed (with effect in accordance with s. 381(1) of the amending Act) by **Taxation (International and Other Provisions) Act 2010 (c. 8), s. 381(1), Sch. 8 para. 170, Sch. 10 Pt. 5** (with Sch. 9 paras. 1-9, 22)

F8 40F Meaning of “relevant income-producing assets”

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Textual Amendments

F8 Ss. 40A-42A repealed (with effect in accordance with s. 381(1) of the amending Act) by **Taxation (International and Other Provisions) Act 2010 (c. 8), s. 381(1), Sch. 8 para. 170, Sch. 10 Pt. 5** (with Sch. 9 paras. 1-9, 22)

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F8 40G Meaning of “mutual fund”: powers to vary exceptions

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Textual Amendments

- F8** Ss. 40A-42A repealed (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 8 para. 170, Sch. 10 Pt. 5](#) (with Sch. 9 paras. 1-9, 22)

F8 41 Tax treatment of participants in offshore funds

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Textual Amendments

- F8** Ss. 40A-42A repealed (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 8 para. 170, Sch. 10 Pt. 5](#) (with Sch. 9 paras. 1-9, 22)

F8 42 Regulations under section 41: supplementary

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Textual Amendments

- F8** Ss. 40A-42A repealed (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 8 para. 170, Sch. 10 Pt. 5](#) (with Sch. 9 paras. 1-9, 22)

F8 42A Regulations: procedure

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Textual Amendments

- F8** Ss. 40A-42A repealed (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 8 para. 170, Sch. 10 Pt. 5](#) (with Sch. 9 paras. 1-9, 22)

Insurance companies and friendly societies

43 Insurance companies etc

Schedule 17 contains provisions relating to insurance companies etc.

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F⁹44 Friendly societies

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Textual Amendments

F9 S. 44 omitted (17.7.2012) by virtue of [Finance Act 2012 \(c. 14\)](#), [Sch. 18 para. 23\(f\)\(i\)](#)

Employment matters

45 Homes outside UK owned through company etc

(1) In ITEPA 2003, after section 100 insert—

“100A Homes outside UK owned through company etc

- (1) This Chapter does not apply to living accommodation outside the United Kingdom provided by a company for a director or other officer of the company (“D”) or a member of D's family or household if—
 - (a) the company is wholly owned by D or D and other individuals (and no interest in the company is partnership property), and
 - (b) the company has been the holding company of the property at all times after the relevant time.
- (2) The company is “the holding company of the property” when—
 - (a) it owns a relevant interest in the property,
 - (b) its main or only asset is that interest, and
 - (c) the only activities undertaken by it are ones that are incidental to its ownership of that interest.
- (3) The company is also “the holding company of the property” when—
 - (a) a company (“the subsidiary”) which is wholly owned by the company meets the conditions in paragraphs (a) to (c) of subsection (2),
 - (b) the company's main or only asset is its interest in the subsidiary, and
 - (c) the only activities undertaken by the company are ones that are incidental to its ownership of that interest.
- (4) “Relevant interest in the property” means an interest under the law of any territory that confers (or would but for any inferior interest confer) a right to exclusive possession of the property at all times or at certain times.
- (5) “The relevant time” is the time the company first owned a relevant interest in the property; but this is subject to subsection (6).
- (6) If—
 - (a) none of D's interest in the company was acquired directly or indirectly from a person connected with D, and
 - (b) the company owned a relevant interest in the property at the time D first acquired an interest in the company,

“the relevant time” is the time D first acquired such an interest.

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100B Section 100A(1): exceptions

- (1) Section 100A(1) does not apply if subsection (2), (3) or (4) applies.
 - (2) This subsection applies if—
 - (a) the company's interest in the property was acquired directly or indirectly from a connected company at an undervalue, or
 - (b) the company's interest in the property derives from an interest that was so acquired.
 - (3) This subsection applies if, at any time after the relevant time—
 - (a) expenditure in respect of the property has been incurred directly or indirectly by a connected company, or
 - (b) any borrowing of the company directly or indirectly from a connected company has been outstanding (but see subsection (7)).
 - (4) This subsection applies if the living accommodation is provided in pursuance of an arrangement the main purpose, or one of the main purposes, of which is the avoidance of tax or national insurance contributions.
 - (5) In subsection (2) references to the acquisition of an interest include the grant of an interest.
 - (6) For the purposes of that subsection, an interest is acquired at an undervalue if the total consideration for it is less than that which might reasonably have been expected to be obtained on a disposal of the interest on the open market; and “consideration” here means consideration provided at any time (and, for example, includes payments by way of rent).
 - (7) For the purposes of subsection (3)(b), no account is to be taken of—
 - (a) any borrowing at a commercial rate, or
 - (b) any borrowing which results in D being treated under Chapter 7 (taxable benefits: loans) as receiving earnings.
 - (8) In subsection (4) “arrangement” includes any scheme, agreement or understanding, whether or not enforceable.
 - (9) In this section “connected company” means—
 - (a) a company connected with D, with a member of D's family or with an employer of D, or
 - (b) a company connected with such a company.”
- (2) The amendment made by subsection (1) is treated as always having had effect.
- (3) Section 145 of ICTA (living accommodation provided for employee) is to be treated as never having applied to living accommodation outside the United Kingdom provided in circumstances in which, had it been provided on or after 6 April 2003, section 100A(1) of ITEPA 2003 would cause Chapter 5 of Part 3 of ITEPA 2003 (taxable benefits: living accommodation) not to apply.

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46 In-work and return to work credits and payments

- (1) In section 677(1) of ITEPA 2003 (UK social security benefits wholly exempt from tax), in Part 1 of Table B (benefits payable under primary legislation), insert at the appropriate places—

“In-work credit	ETA 1973	Section 2
	ETA(NI) 1950	Section 1
In-work emergency discretion fund payment	ETA 1973	Section 2
In-work emergency fund payment	ETA(NI) 1950	Section 1”, and
“Return to work credit	ETA 1973	Section 2
	ETA(NI) 1950	Section 1”.

- (2) In Part 1 of Schedule 1 to that Act (abbreviations of Acts etc), insert at the appropriate places—

“ETA(NI) 1950	The Employment and Training Act (Northern Ireland) 1950 (c. 29 (N.I.”), and
“ETA 1973	The Employment and Training Act 1973 (c. 50)”.

- (3) The amendments made by this section have effect for the tax year 2008-09 and subsequent tax years.

47 Company cars: lower threshold for CO₂ emissions figure

^{F10}(1)

- (2) In consequence of the amendment made by subsection (1), omit—
- (a) in FA 2003, section 138(3), and
 - (b) in FA 2006, section 59(6).
- (3) The amendments made by this section have effect for the tax year 2008-09 and subsequent tax years.

Textual Amendments

F10 S. 47(1) omitted (with effect in accordance with Sch. 28 para. 10(1) of the amending Act) by virtue of Finance Act 2009 (c. 10), **Sch. 28 para. 9**

48 Van fuel benefit

- (1) In section 239(3) of ITEPA 2003 (exemption in respect of payments and benefits connected with taxable cars and vans subject to section 149), insert at the end “ or section 160 (benefit of van fuel treated as earnings). ”

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- (2) In section 269(2) of that Act (exemption in respect of non-cash vouchers and credit-tokens where benefits or money obtained in connection with taxable car or subject to section 149)—
 - (a) for “, but see section 149(3)” substitute “ or van, but see section 149(3) or section 160(3) ”, and
 - (b) after “earnings)” insert “ or section 160 (benefit of van fuel treated as earnings) ”.

49 Employment-related securities etc: deductible amounts etc

- (1) In section 149AA of TCGA 1992 (restricted and convertible employment-related securities), after subsection (6) insert—

“(7) In subsection (1) the reference to any amount that constituted earnings under Chapter 1 of Part 3 of ITEPA 2003 does not include any amount of exempt income (within the meaning of section 8 of that Act).”

- (2) ITEPA 2003 is amended as follows.
- (3) In section 428(2)(b) as originally enacted (conditional interests in shares: amount of charge), insert at the end “ (other than an amount of exempt income) ”.
- (4) In section 428(7)(b) (restricted securities: amount of charge), insert at the end “ (other than an amount of exempt income) ”.
- (5) In section 446T(3)(b) (securities acquired for less than market value: amount of charge), insert at the end “ (other than an amount of exempt income) ”.
- (6) In section 480(5)(a) (securities options: deductible amounts), insert at the end “ (other than an amount of exempt income) ”.

^{F11}(7)

^{F11}(8)

- (9) The amendment made by subsection (1) has effect in relation to disposals made on or after 12 March 2008.
- (10) The amendment made by subsection (3) has effect in relation to events within section 427(1)(a) or (b) of ITEPA 2003 (as originally enacted) occurring on or after that date.
- (11) The amendments made by subsections (4) and (6) have effect in relation to chargeable events occurring on or after that date.
- (12) The amendment made by subsection (5) has effect in relation to employment-related securities acquired (or treated as acquired) on or after that date.

^{F12}(13)

Textual Amendments

F11 S. 49(7)(8) repealed (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), **Sch. 3 Pt. 1** (with [Sch. 2 Pts. 1, 2](#))

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F12 S. 49(13) repealed (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 3 Pt. 1](#) (with [Sch. 2 Pts. 1, 2](#))

50 Employment-related securities: repeal of obsolete provisions

- (1) In ICTA, omit sections 138 and 139 (share acquisitions by directors and employees: shares acquired before 26 October 1987).
- (2) In ITEPA 2003—
 - (a) in section 418 (other related provisions), omit subsection (4), and
 - (b) in Schedule 7 (transitionals and savings), omit paragraph 57.
- (3) The amendments made by this section have effect for the tax year 2008-09 and subsequent tax years.

51 Armed forces: the Council Tax Relief

- (1) In ITEPA 2003, after section 297A insert—

“297B Armed forces: the Council Tax Relief

- (1) No liability to income tax arises in respect of payments of the Council Tax Relief to members of the armed forces of the Crown.
- (2) Payments of the Council Tax Relief are payments designated as such by the Secretary of State.”
- (2) The amendment made by subsection (1) has effect in relation to payments made on or after 1 April 2008.

52 Greater London Authority: severance payments

- (1) Section 291(2) of ITEPA 2003 (termination payments to MPs and others ceasing to hold office) is amended as follows.
- (2) In paragraph (ea), omit “or”.
- (3) At the end of paragraph (f) insert “, or
 - (g) made under section 26A of the Greater London Authority Act 1999 (payments on ceasing to hold office as Mayor of London or as a member of the London Assembly).”
- (4) The amendments made by this section have effect in relation to payments made on or after 6 April 2008.

Charities etc

53 Gift aid: payments to charities

Schedule 19 contains provision for the Commissioners for Her Majesty's Revenue and Customs to make payments to charities which receive donations under the gift aid scheme.

Status: Point in time view as at 24/05/2024.

Changes to legislation: Finance Act 2008, Part 2 is up to date with all changes known to be in force on or before 27 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

F13 54 Community investment tax relief

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Textual Amendments

F13 S. 54 repealed (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), [Sch. 3 Pt. 1](#) (with [Sch. 2](#))

Leasing

55 Leases of plant or machinery

Schedule 20 contains provision about leases of plant or machinery.

F14 56 Sale of lessor companies etc

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Textual Amendments

F14 S. 56 repealed (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), [Sch. 3 Pt. 1](#) (with [Sch. 2](#))

Double taxation arrangements

F15 57 Double taxation relief

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Textual Amendments

F15 S. 57 repealed (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), s. 381(1), [Sch. 10 Pt. 1](#) (with [Sch. 9 paras. 1-9, 22](#))

58 UK residents and foreign partnerships

F16(1)

(2) In section 59 of TCGA 1992 (partnerships), insert at the end—

“(4) For the purposes of subsections (2) and (3) the members of a partnership include any person entitled to a share of capital gains of the partnership.”

(3) In section 858 of ITTOIA 2005 (resident partners and double taxation agreements), insert at the end—

“(4) For the purposes of this section the members of a firm include any person entitled to a share of income of the firm.”

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- (4) The amendments made by subsections (1) to (3) are treated as always having had effect.
- (5) For the purposes of the predecessor provisions, the members of a partnership are to be treated as having included, at all times to which those provisions applied, a person entitled to a share of income or capital gains of the partnership.
- (6) “The predecessor provisions” means—
- (a) section 153(4) and (5) of the Income and Corporation Taxes Act 1970 (c. 10) (as it had effect under section 62(2) of F(No.2)A 1987), and
 - (b) sections 112(4) to (6) and 115(5) of ICTA.

Textual Amendments

F16 S. 58(1) repealed (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), [Sch. 3 Pt. 1](#) (with [Sch. 2 Pts. 1, 2](#))

F17 59 UK residents and foreign enterprises

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Textual Amendments

F17 S. 59 repealed (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), s. 381(1), [Sch. 10 Pt. 1](#) (with [Sch. 9 paras. 1-9, 22](#))

Other anti-avoidance provisions

60 Restrictions on trade loss relief for individuals

Schedule 21 contains provision restricting relief for losses made by individuals who, otherwise than in partnership, carry on trades in a non-active capacity.

61 Non-active partners

- (1) In section 103B(2) of ITA 2007 (meaning of “non-active partner” for purposes of provisions restricting trade loss relief), for “carried on for the purposes of the trade” substitute “of the trade and those activities are carried on—
- (a) on a commercial basis, and
 - (b) with a view to the realisation of profits as a result of the activities.”
- (2) The amendment made by subsection (1) has effect in relation to relevant periods ending on or after 12 March 2008.

62 Financial arrangements avoidance

Schedule 22 contains provision about avoidance involving financial arrangements.

Status: Point in time view as at 24/05/2024.

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63 Manufactured payments

- (1) Schedule 23 contains anti-avoidance provisions about manufactured payments.
- (2) The amendments made by that Schedule have effect in relation to manufactured payments (including deemed manufactured payments) made (or treated as made) on or after 31 January 2008.

64 Controlled foreign companies

- (1) Chapter 4 of Part 17 of ICTA (controlled foreign companies) is amended as follows.
- (2) In section 747 (imputation of chargeable profits of controlled foreign companies)—
 - (a) in subsection (6), before “and” at the end of paragraph (a) insert—
 - “(aa) any reference in this Chapter to its chargeable profits for an accounting period includes (subject to subsections (7) to (9)) income which accrues during that accounting period to the trustees of a settlement in relation to which the company is a settlor or a beneficiary;”, and
 - (b) after that subsection insert—
 - “(7) Where there is more than one settlor or beneficiary in relation to the settlement mentioned in subsection (6)(aa), the income is to be apportioned between the company and the other settlors or beneficiaries on a just and reasonable basis.
 - (8) Where income within subsection (6)(aa) is included in the chargeable profits of a company, any dividend or other distribution received by the company which derives from that income is not included in the chargeable profits of the company to the extent that it is so derived.
 - (9) Any income within subsection (6)(aa) which would (apart from this subsection)—
 - (a) be included in the chargeable profits of a company which is a beneficiary in relation to a settlement and apportioned under subsection (3), and
 - (b) be included in the chargeable profits of a company which is a settlor in relation to the settlement and apportioned under that subsection,is not to be included in the chargeable profits of the company which is a settlor.”
- (3) In section 755D (meaning of control)—
 - (a) after subsection (1) insert—
 - “(1A) For the purposes of this Chapter a person also controls a company if the person possesses, or is entitled to acquire, such rights as would—
 - (a) if the whole of the income of the company were distributed, entitle the person to receive the greater part of the amount so distributed,
 - (b) if the whole of the company's share capital were disposed of, entitle the person to receive the greater part of the proceeds of the disposal, or

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- (c) in the event of the winding-up of the company or in any other circumstances, entitle the person to receive the greater part of the assets of the company which would then be available for distribution.”, and
- (b) in subsection (2), after “above” insert “ or satisfy subsection (1A) above ”.
- ^{F18}(4)
- (5) In paragraph 6 of Schedule 25 (definition of exempt activities), after sub-paragraph (5B) insert—
- “(5C) For the purposes of this paragraph, the gross income of a holding company or a superior holding company during an accounting period includes—
- (a) any income which accrues during that period to the trustees of a settlement in relation to which the company is a settlor or a beneficiary, and
- (b) any income which accrues during that period to a partnership of which the company is a partner, apportioned between the company and the other partners on a just and reasonable basis.
- (5D) Where there is more than one settlor or beneficiary in relation to the settlement mentioned in sub-paragraph (5C)(a), the income is to be apportioned between the company and the other settlors or beneficiaries on a just and reasonable basis.
- (5E) In sub-paragraph (5C)(b) “partnership” includes an entity established under the law of a country or territory outside the United Kingdom of a similar character to a partnership; and “partner” is to be read accordingly.”
- (6) The amendments made by subsections (2) and (5) have effect in relation to income accruing on or after 12 March 2008.
- (7) The amendments made by subsection (3) have effect for determining whether, at any time on or after 12 March 2008, a company is controlled by persons resident in the United Kingdom for the purposes of Chapter 4 of Part 17 of ICTA.
- (8) The amendments made by subsection (4) have effect in relation to any dividend paid on or after 12 March 2008.
- (9) In relation to an accounting period of a company beginning before, and ending on or after, 12 March 2008 (“the straddling period”), the amendments made by this section have effect as if, for the purposes of Chapter 4 of Part 17 of ICTA, so much of the period as falls before that date, and so much of the period as falls on or after that date, were separate accounting periods.
- (10) The company's chargeable profits for the straddling period, and its creditable tax (if any) for that period, are to be apportioned to the two separate accounting periods on a just and reasonable basis.
- (11) In this section “accounting period”, “chargeable profits” and “creditable tax” have the same meaning as in Chapter 4 of Part 17 of ICTA.

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Textual Amendments

- F18** S. 64(4) omitted (with effect in accordance with Sch. 16 para. 6 of the amending Act) by virtue of Finance Act 2009 (c. 10), **Sch. 16 para. 5(j)** (with Sch. 16 paras. 78)

^{F19}65 Intangible fixed assets: related parties

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Textual Amendments

- F19** S. 65 repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

66 Repeal of obsolete anti-avoidance provisions

- (1) In Part 17 of ICTA (tax avoidance)—
- (a) in section 704 (cancellation of corporation tax advantages: the prescribed circumstances), omit—
 - (i) paragraph B (and the “OR” after it), and
 - (ii) in paragraph C(1), paragraph (b) (and the “or” before it),
 - (b) in section 709 (definitions), omit subsection (2A),
 - (c) omit sections 731 to 735 (purchase and sale of securities), and
 - (d) omit section 736 (company dealing in securities: distribution materially reducing value of holding).
- (2) In Part 13 of ITA 2007 (tax avoidance)—
- (a) in section 684(2) (person liable to counteraction of income tax advantage), omit the entry relating to section 687 of that Act,
 - (b) omit section 687 (deductions from profits obtained following distribution or dealings), and
 - (c) in section 688 (receipt of consideration representing company's assets, future receipts or trading stock), omit—
 - (i) in subsection (3), paragraph (b) (and the “or” before it), and
 - (ii) subsections (4), (5) and (9).
- (3) In consequence of the amendments made by subsection (1)(a) and (b), omit—
- (a) in FA 1997, section 73, and
 - (b) in ITA 2007, paragraph 155(4) and (5) and (6)(b) of Schedule 1.
- (4) In consequence of the amendments made by subsection (1)(c) and (d), omit—
- (a) in ICTA, sections 343(5) and 738,
 - (b) in FA 1990, section 53,
 - (c) in FA 1991, sections 55 and 56,
 - (d) in TCGA 1992, paragraph 14(40) and (41) of Schedule 10,
 - (e) in FA 1994, paragraph 17 of Schedule 16,
 - (f) in FA 1995, section 81,
 - (g) in FA 1996—

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- (i) paragraph 36 of Schedule 20, and
 - (ii) paragraph 9 of Schedule 38,
 - (h) in FA 1997, section 77,
 - (i) in F(No.2)A 1997—
 - (i) section 26, and
 - (ii) paragraph 14 of Schedule 6,
 - (j) in FA 2003, paragraph 6 of Schedule 38,
 - (k) in ITTOIA 2005, paragraphs 302 and 303 of Schedule 1,
 - (l) in ITA 2007—
 - (i) in section 64(8), paragraph (f) (and the “and” before it),
 - (ii) in section 72(5), paragraph (f) (and the “and” before it),
 - (iii) in section 448(3), “and section 451”,
 - (iv) in section 449(3), “and section 451”,
 - (v) section 451,
 - (vi) in section 505, in subsection (4) “and section 506” and, in subsection (5) “and in section 506”,
 - (vii) section 506, and
 - (viii) paragraphs 167 to 170 of Schedule 1, and
 - (m) in FA 2007, paragraph 6 of Schedule 14.
- (5) The amendments made by subsections (1)(a) and (b), (2) and (3) have effect in relation to transactions in securities entered into on or after 1 April 2008.
- (6) The amendment made by subsection (1)(c) has effect in relation to cases where the purchase by the first buyer (within the meaning of section 731(2) of ICTA) is made on or after that date.
- (7) The amendment made by subsection (1)(d) has effect in relation to distributions made on or after that date.
- (8) The amendments made by subsection (4) have effect in accordance with subsections (6) and (7).

Miscellaneous

67 Income of beneficiaries under settlor-interested settlements

- (1) In section 685A of ITTOIA 2005 (settlor-interested settlements), after subsection (5) insert—
- “(5A) If the recipient of the annual payment is treated by subsection (3) as having paid income tax in respect of the annual payment, the amount of the payment is treated as the highest part of the recipient's total income for all income tax purposes except the purposes of sections 535 to 537 (gains from contracts for life insurance etc: top slicing relief).
- (5B) See section 1012 of ITA 2007 (relationship between highest part rules) for the relationship between—
- (a) the rule in subsection (5A), and
 - (b) other rules requiring particular income to be treated as the highest part of a person's income.”

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- (2) In section 1012(4) of ITA 2007 (relationship between rules on highest part of total income), after the entry relating to section 465A of ITOIA 2005 insert— “section 685A(5A) of ITTOIA 2005 (payments from trustees of settlor-interested settlements to be treated as highest part of total income),”.
- (3) The amendments made by this section have effect for the tax year 2006-07 and subsequent tax years.

68 Income charged at dividend upper rate

- (1) In section 13(2) of ITA 2007 (income charged at dividend upper rate: individuals)—
 - (a) omit “and” at the end of paragraph (a), and
 - (b) at the end of paragraph (b) insert “, and
 - (c) is not relevant foreign income charged in accordance with section 832 of ITTOIA 2005.”
- (2) The amendments made by subsection (1) have effect for the tax year 2008-09 and subsequent tax years.

69 Payments on account of income tax

- (1) In section 964 of ITA 2007, omit subsection (5) (sums representing income tax deducted from annual payments not to be taken into account for the purpose of calculating amounts to be paid on account of income tax).
- (2) The repeal made by subsection (1) has effect for the purpose of calculating the amount of any payments to be made under section 59A of TMA 1970 on account of liability to income tax for the tax year 2008-09 and subsequent tax years.

70 Allowances etc for non-resident nationals of an EEA state

- (1) In section 278 of ICTA (non-residents eligible for reliefs)—
 - (a) in subsection (2)(a), omit “or an EEA national”, and
 - (b) omit subsection (9).
- (2) In section 56(3) of ITA 2007 (non-UK residents eligible for personal allowances and tax reductions), before paragraph (a) insert—
“(za) is a national of an EEA state,”.
- (3) Accordingly, omit section 145 of FA 1996 (personal reliefs for non-resident EEA nationals).
- (4) The amendments made by this section have effect for the tax year 2008-09 and subsequent tax years.

Status:

Point in time view as at 24/05/2024.

Changes to legislation:

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