

TAXATION (INTERNATIONAL AND OTHER PROVISIONS) ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Schedule 7: Miscellaneous relocations

Overview

1263. This Schedule relocates a number of provisions which have not been dealt with as part of the rewrite of income tax and corporation tax in earlier rewrite Acts, or of international matters in this Act. In the absence of any action to relocate them, these provisions would for the foreseeable future be left where they are currently located and this may not be helpful to users.

Part 1: Relocation of section 38 of, and Schedule 15 to, FA 1973

Overview

1264. This Part inserts sections 77B to 77K inclusive of TMA as Part 7A of that Act. The inserted sections rewrite provisions in section 38 of, and Schedule 15 to, FA 1973, which provide an information power and a power to assess a licensee in respect of activities carried on by non-UK resident sub-contractors on the UK continental shelf.

1265. A licensee is a person or company who has been granted a licence by the United Kingdom government to search for and exploit the oil reserves in Great Britain, under the United Kingdom territorial sea and on the United Kingdom continental shelf. An oil field may have more than one licensee. The licensees will in turn use the services of other businesses to assist in the development and exploitation of the oil reserves but those other businesses will not themselves be licensees.

1266. Where any of those other businesses is not resident in the United Kingdom, these provisions give HMRC the power to seek information from the licensee about payments made to those businesses, and to seek payment of tax due from those other businesses that is unpaid after 30 days.

Section 77B of TMA: Pre-conditions for serving secondary-liability notice

1267. This section sets out the conditions that must exist before HMRC can seek tax from a licensee that should have been paid by a person not resident in the United Kingdom. It is based on paragraphs 4(1) and 5 of Schedule 15 to FA 1973 and paragraph 5(1) of Schedule 2 to CTA 2009.

1268. Paragraph 5 of Schedule 4 to the Petroleum Act 1998 updated the reference to the Petroleum (Production) Act 1934 in paragraph 4(1) of Schedule 15 to FA 1973.

Section 77C of TMA: Secondary-liability notices

1269. This section sets out how a notice must be served on the licensee and how the amount due is to be calculated. It is based on paragraphs 4, 4A, 7A and 8A of Schedule 15 to FA 1973 and section 86(3) of F(No 2)A 1987.
1270. *Subsection (2)* sets out the basic calculation, but this may be modified in cases where an exemption certificate has been issued – see sections 77F and 77G of TMA, inserted by this Schedule.
1271. The source legislation refers to interest under section 86 of TMA. Interest under section 87A of TMA was added by section 86(3)(b) of F(No 2)A 1987.
1272. Certain cases involving contracts made before 23 March 1973 are excluded – see section 77E of TMA.
1273. References to the Board have been changed to references to an officer of Revenue and Customs in line with practice. See *Change 2* in Annex 1.

Section 77D of TMA: Payments under secondary-liability notices

1274. This section specifies that the tax that a licensee may be required to pay under these rules is subject to all the same provisions as if it were tax due and payable by them. It is based on paragraph 4(2) and (3) of Schedule 15 to FA 1973.
1275. *Subsection (2)* permits the licensee to recover any amounts paid from the person whose tax was unpaid. *Subsection (3)* prohibits a deduction in computing profits for any tax paid by the licensee under these provisions.

Section 77E of TMA: Exception for certain pre-1974 cases

1276. This section sets out an exception in respect of contracts made before 23 March 1973, subject to certain conditions. It is based on paragraph 6 of Schedule 15 to FA 1973.

Section 77F of TMA: Issue, cancellation and effect of exemption certificates

1277. This section sets out the circumstances under which HMRC can issue an exemption certificate to a licensee in respect of a named non-UK resident person. It is based on paragraphs 7, 8 and 8A of Schedule 15 to FA 1973.
1278. While the certificate is in force, the licensee is relieved of any liability in respect of tax unpaid by the named person.
1279. References to the Board have been changed to an officer of Revenue and Customs in line with practice. See *Change 2* in Annex 1.

Section 77G of TMA: Liabilities for assessments made after exemption certificate cancelled

1280. This section determines how the liability of the licensee is calculated where a certificate issued under section 77F has been in force and then cancelled. It is based on paragraphs 4(1), 5, 7, 7A and 8A of Schedule 15 to FA 1973, section 86(3) of F(No 2)A 1987 and paragraph 5(1) of Schedule 2 to CTA 2009.
1281. The essence of the calculation is that where tax is due for a period which is partly covered by an exemption certificate under section 77F, the tax is apportioned between the period when the certificate was in force and the period after it was revoked in proportion to the profits, gains and chargeable gains of the respective periods.

Section 77H of TMA: Calculations under sections 77C(3) and 77G(7)

1282. This section sets out further rules to cover situations where apportionments are required in calculating the tax due from the licensee. It is based on paragraph 8A of Schedule 15 to FA 1973.
1283. The reference to the Board has been changed to an officer of Revenue and Customs in line with practice. See *Change 2* in Annex 1.

Section 77I of TMA: Information

1284. This section sets out the power under which HMRC may seek information from a licensee in respect of transactions with and payments made to a non-UK resident person. It is based on paragraph 2 of Schedule 15 to FA 1973.
1285. The reference to “an inspector” has been revised to an officer of Revenue and Customs in line with changes made by CRCA.

Section 77J of TMA: Meaning of “related to a licence” as respects tax, or profits or gains

1286. This section provides a number of definitions that are necessary for these provisions. It is based on section 38(2) of, and paragraph 4(1) of Schedule 15 to, FA 1973.

Section 77K of TMA: Other definitions in Part 7A

1287. This section provides further interpretation. It is new.

Part 2: Relocation of section 24 of FA 1974

Overview

1288. This Part inserts sections 8(4A) and (4B), 8ZA and 15A of TMA. The inserted provisions are based on section 24 of FA 1974 (returns of persons treated as employees).
1289. Section 24 of FA 1974 contains provisions enabling information to be obtained about the foreign earnings of individuals working in the United Kingdom. The section covers both employers and employees.

Section 8(4A) and (4B) of TMA: Personal return

1290. Section 8(4A) and (4B) provide that a notice under section 8 of TMA may require certain employees to provide details of their general earnings.
1291. Section 8(4B) includes the reference to “general earnings” that was inserted in section 24 of FA 1974 by ITEPA. Section 7(3) of ITEPA defines “general earnings” for the purposes of the Income Tax Acts and the Corporation Tax Acts.

Section 8ZA of TMA: Interpretation of section 8(4A)

1292. Section 8ZA lists the conditions that must be met if a person is to be subject to section 8(4A).
1293. The section sets out a series of conditions to be met. This approach differs from the source which simply referred to the conditions in turn.
1294. *Subsection (4)* refers to a person who carries on a trade. The definition of trade for the purposes of TMA is to be found in section 118 of that Act. The definition of trade for the purposes of section 24 of FA 1974 is to be found in section 989 of ITA. The definitions differ in form but not in substance. It is therefore not considered that the change in definition constitutes a change in the law.

Section 15A of TMA: Non-resident's staff are UK client's employees for section 15 purposes

1295. Section 15A provides that any person for whose benefit certain employees perform duties may be required to provide details of those employees in response to a notice issued under section 15 of TMA.
1296. The format follows that established by section 8ZA and uses similar wording.
1297. The origin for the section is shown in part to be “drafting”. This refers to *subsection (5)* which states that section 15 applies “only so as to enable P to be required to make a return ...”. The source stated that section 15 applied “only so as to require him to make a return ...”. The intention is to make clear that a return under section 15 is not mandatory simply because the conditions in *subsections (2) to (4)* of section 15A are met. A notice to make a return under section 15 asking for the names and addresses of the employees must first be issued.

Part 3: Relocation of section 42 of ICTA

Overview

1298. This Part inserts sections 302A, 302B and 302C into Chapter 4 of Part 3 of ITTOIA (profits of property businesses: lease premiums etc), which deal with determinations of amounts treated as receipts by that Chapter. They are based on section 42 of ICTA and take account of amendments to that section by paragraph 133 of Schedule 1 to the Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 ([SI 2009/56](#)) which came into force on 1 April 2009.

Section 302A of ITTOIA: Appeals against proposed determinations

1299. Section 302A provides for determinations of amounts that may affect the liability of more than one person and for appeals against proposed determinations.

Section 302B of ITTOIA: Section 302A: supplementary

1300. Section 302B> supplements section 302A.

Section 302C of ITTOIA: Determination by tribunal

1301. Section 302C provides for objections to provisional determinations under section 302A to be determined by an independent tribunal.

Section 242 of CTA 2009: Determination by tribunal

1302. Wording in section 242(2) of CTA 2009 is aligned with that in section 302C(2) of ITTOIA.

Part 4: Relocation of section 84A of ICTA

Overview

1303. This Part inserts section 94A of ITTOIA and amends section 272 of that Act. Section 94A is based on section 84A of ICTA.
1304. Section 84A of ICTA (costs of establishing share option or profit sharing schemes) is rewritten for corporation tax purposes in section 999 of CTA 2009. It remains in force for income tax purposes as amended by Schedule 1 to CTA 2009.
1305. Section 84A(5) of ICTA is repealed without replacement as it is a spent commencement provision.

Section 94A of ITTOIA: Costs of setting up SAYE option scheme or CSOP scheme

1306. Section 94A allows a company a deduction for the costs of setting up an approved “save as you earn” (SAYE) option scheme or an approved “company share option plan” (CSOP) scheme. The deduction is allowed in calculating for income tax purposes the profits of a trade carried on by the company and, by virtue of section 272 of ITTOIA, of a property business carried on by it.
1307. Only a company may establish an SAYE option scheme or a CSOP scheme. In most cases the profits of the trade or property business carried on by the establishing company will be within the charge to corporation tax and section 999 of CTA 2009 will apply. But a scheme may be established by a non-UK resident company. The profits of a trade or property business carried on by such a company may be within the charge to income tax.

Section 272 of ITTOIA: Profits of a property business: application of trading income rules

1308. The amendment of section 272(2) to include reference to section 94A ensures that the deduction which was available under section 84A of ICTA (as applied by section 272(1) of ITTOIA) when calculating the profits of a property business is instead available under section 94A of ITTOIA (as applied by section 272(1) and (2) of that Act).

Part 5: Relocation of section 152 of ICTA

Overview

1309. This Part inserts sections 54A, 54B and 54C of TMA, which deal with taxable amounts of unemployment benefits. They are based on section 152 of ICTA.
1310. The new wording clarifies the relationship between an application to make a late objection and the making of the late objection itself. See *Change 14* in Annex 1.

Section 54A of TMA: No questioning in appeal of amounts of certain social security income

1311. Section 54A sets out the consequences of a notice being given of a taxable amount of jobseeker’s allowance or income support.

Section 54B of TMA: Notifications of taxable amounts of certain social security income

1312. Section 54B sets out the process for notification and objection.

Section 54C of TMA: Interpretation of sections 54A and 54B: “appropriate officer” etc

1313. Section 54C provides definitions.
1314. The benefit known as “unemployment benefit” has been superseded by jobseeker’s allowance, but the term has been retained in the rewritten legislation as it could be argued that it was used more generally to cover any form of unemployment benefit.
1315. Social security functions in Northern Ireland were transferred to the Department for Social Development by the Departments (Transfer and Assignment of Functions) Order (Northern Ireland) 1999 ([SR\(NI\) 1999/481](#)).

Part 6: Relocation of section 337A(2) of ICTA

Overview

1316. This Part inserts section 1301A of CTA 2009.

Section 1301A of CTA 2009: Restriction of deductions for interest

1317. This new section rewrites section 337A(2)(a) of ICTA, which allows no deduction for interest other than under the loan relationships provisions. Section 337A(2)(a) of ICTA was originally proposed to be repealed by CTA 2009, but was retained as it was considered necessary for any cases where “interest” might not fall within the loan relationships provisions. It is now rewritten within Chapter 1 of Part 20 (restriction of deductions) of CTA 2009 as the more appropriate location for such a provision.

Part 7: Relocation of section 475 of ICTA

Overview

1318. This Part inserts section 154A of ITTOIA, which deals with the restriction of a debit for borrowing costs if a non-UK resident holds 3½% War Loan for use in a business of banking, insurance or dealing in securities. It is based on section 475 of ICTA.

Section 154A of ITTOIA: Certain non-UK residents with interest on 3½% War Loan 1952 Or After

1319. Section 154A rewrites (for income tax) section 475 of ICTA which was overlooked in the preparation of ITTOIA. The corresponding corporation tax rule is in section 405 of CTA 2009.

1320. Interest on 3½% War Loan is paid without deduction of tax and is exempt in the hands of a non-UK resident. Because a person may borrow to acquire these securities a deduction may be made for the cost of the borrowing but without any taxable income. This section disallows the appropriate proportion of the costs of borrowing as a trade deduction.

1321. *Subsections (1), (3) and (4)* rewrite “3½% War Loan 1952 or after” as “3½% War Loan 1952 Or After” to prevent the reader attaching the words “or after” to any following words, thereby adopting the solution used in section 154(8)(b) of FA 1996.

Part 8: Relocation of section 700 of ICTA

Overview

1322. This Part inserts section 682A of ITTOIA, which deals with the power to obtain information from personal representatives and from beneficiaries in estates. It is based on section 700 of ICTA.

Section 682A of ITTOIA: Statements relating to estate income

1323. Section 682A enables a person to request statements relating to a deceased person’s estate. It is based on section 700(5) and (6) of ICTA. The corresponding corporation tax provision is section 967 of CTA 2009.

1324. The last part of section 700(5) of ICTA that requires the statement to set out the matters in section 700(5)(a) to (b) separately for each part of estate income, in cases where different applicable rates apply, has not been rewritten. This requirement is considered unnecessary because the requirement to show amounts separately must occur in order for section 682A(1)(b) to be satisfied.

Part 9: Relocation of section 787 of ICTA

Chapter 7 of Part 13 of ITA: Avoidance involving obtaining tax relief for interest

1325. This Part inserts Chapter 7 in Part 13 of ITA consisting of section 809ZG (tax relief schemes and arrangements), which is based on section 787 of ICTA.
1326. Section 787 of ICTA originally appeared as section 38 of FA 1976. It is an anti-avoidance provision directed against schemes designed to generate tax relief for interest.
1327. Section 443 of CTA 2009 rewrote section 787 of ICTA for the purposes of corporation tax, and Schedule 1 to that Act confined section 787 to income tax.
1328. Most of the income tax provisions in Part 17 of ICTA (tax avoidance) have been rewritten in ITA or are rewritten in that Act by Schedules 4 and 5 to this Act. For the convenience of the user, section 787 of ICTA is rewritten as a new section in Part 13 of ITA (tax avoidance).

Part 10: Relocation of sections 130 to 132 of FA 1988

Overview

1329. This Part inserts sections 109B to 109F of TMA which are based on sections 130 to 132 of FA 1988. The sections provide for securing payment of outstanding tax when a company ceases to be resident in the United Kingdom.

Section 109B of TMA: Provisions for securing payment by company of outstanding tax

1330. This section sets out the conditions respecting payment of outstanding tax that must be met before a company ceases to be resident in the United Kingdom. It is based on section 130(1) to (5) of FA 1988.
1331. The reference to “Treasury consent” in section 130(1) of FA 1988 (and hence also the definition in section 130(6)) has not been rewritten as it is obsolete.

Section 109C of TMA: Penalty for company’s failure to comply with section 109B

1332. This section charges a penalty if a company ceases to be resident in the United Kingdom before each of the conditions in section 109B of TMA is met. It is based on section 131(1) of FA 1988.

Section 109D of TMA: Penalty for other persons if company fails to comply with section 109B

1333. This section charges a penalty on persons other than the company in certain circumstances where a company ceases to be resident in the United Kingdom before each of the conditions in section 109B of TMA is met. It is based on section 131(2) to (5) of FA 1988.

Section 109E of TMA: Liability of other persons for unpaid tax

1334. This section provides for persons other than the migrating company to be liable for unpaid tax where tax payable by that company is not paid within a specified time. It is based on section 132 of FA 1988.

Section 109F of TMA: Interpretation of sections 109B to 109E

1335. This section is based on sections 130(7) and (8) and 131(6) of FA 1988 and paragraph 5 of Schedule 7 to ITEPA.

Part 11: Relocation of section 151 of FA 1989

Section 30AA of TMA: Assessing income tax on trustees and personal representatives

1336. This Part inserts section 30AA of TMA which is based on section 151 of FA 1989.

1337. Section 151 of FA 1989 is the only one of a number of management provisions introduced by that Act which did not take effect by way of amendment of TMA. For the convenience of users, it is now relocated in TMA.

1338. As a consequence of the amendments made to section 151(2) of FA 1989 by paragraph 281(2) and (3) of Schedule 1 to ITA, paragraph 91 of Schedule 2 to ITTOIA is spent, and is accordingly omitted. Those amendments removed from section 151(2) of FA 1989 the two references to gains whose interpretation was the subject-matter of paragraph 91 of Schedule 2 to ITTOIA.

Part 12: Relocation of Schedule 12 to F(No 2)A 1992 so far as applying for income tax purposes

Overview

1339. This Part inserts Chapter 3A of Part 14 of ITA (Banks etc in compulsory liquidation). It is based on Schedule 12 to F(No 2)A 1992.

1340. The source provisions applied for both income tax and corporation tax purposes. The corporation tax aspects are rewritten in Chapter 6 of Part 13 of CTA 2010. The income tax aspects are rewritten in ITA.

1341. The pattern of sections in ITA closely follows that in CTA 2010.

Section 837A of ITA: Overview of Chapter

1342. This section gives an overview of the Chapter. It is new.

Section 837B of ITA: Application of Chapter

1343. This section sets out the conditions that a company must meet in order for the Chapter to apply. It is based on paragraph 1 of Schedule 12 to F(No 2)A 1992.

1344. *Subsection (6)* refers to an EEA firm with permission under paragraph 15 of Schedule 3 to the Financial Services and Markets Act 2000. The source qualified this by adding “(as a result of qualifying for authorisation by virtue of paragraph 12 of that Schedule)”. This qualification is considered unnecessary as the only way in which permission under paragraph 15 may be given is by virtue of paragraph 12. These words are therefore repealed without replacement.

Section 837C of ITA: Charge to income tax on winding up receipts

1345. This section charges amounts received during the winding up period. It is based on paragraph 3(1), (2) and (3) of Schedule 12 to F(No 2)A 1992.

Section 837D of ITA: Transfer of rights to payment

1346. This section charges sums received in respect of transfers of rights as if those sums were winding up receipts. It is based on paragraph 5 of Schedule 12 to F(No 2)A 1992.

1347. In the case of a non-arm's length transaction the source provides that market value is to be substituted for the consideration received. However, the tax charge is based on amounts received. In relation to the deemed amounts arising from non-arm's length transactions the source, therefore, states that "references ... to sums received shall be construed accordingly."
1348. Although the meaning is not in doubt the source is not as clear as it might have been. In the rewritten section a slightly different approach is adopted by explicitly treating the value of transferred rights as winding up receipts.

Section 837E of ITA: Allowable deductions

1349. This section provides rules for setting allowable deductions against winding up receipts. It is based on paragraph 4 of Schedule 12 to F(No 2)A 1992.

Section 837F of ITA: Election to carry back

1350. This section gives a company the right to elect to carry back a winding up receipt to the date that the business ceased. It is based on paragraph 6 of Schedule 12 to F(No 2)A 1992.

Section 837G of ITA: Relationship of Chapter with other income tax provisions

1351. This section gives priority to a charge under this Chapter over potential charges arising under other provisions. It is based on paragraph 3(4) and (5) of Schedule 12 to F(No 2)A 1992.

Section 837H of ITA: Interpretation of Chapter

1352. This section sets out a number of definitions and interpretations relevant to the Chapter. It is based on paragraph 2 of Schedule 12 to F(No 2)A 1992.

Part 13: Relocation of section 200 of FA 1996 so far as applying for income tax purposes

Overview

1353. This Part inserts section 835B of ITA. It is based on section 200 of FA 1996.

Section 835B of ITA: Domicile for income tax purposes of overseas electors

1354. Section 835B specifies that action taken by an individual to register for or vote in United Kingdom elections shall not affect the question of the individual's domicile for the purposes of income tax unless the individual chooses that it should affect the question.
1355. Section 200 of FA 1996 continues to apply for capital gains tax and inheritance tax purposes.

Part 14: Relocation of section 36 of FA 1998 and section 111 of FA 2009

Overview

1356. This Part inserts new sections 59F to 59H of TMA. It is based on section 36 of FA 1998 and section 111 of FA 2009.

Section 59F of TMA: Arrangements for paying tax on behalf of group members

1357. This section provides for arrangements to be made between members of a group for one of the members to discharge one or more of the other members' corporation tax liabilities. The reference to "the Board" is replaced with a reference to "an officer of Revenue and Customs". See *Change 2* in Annex 1.

Sections 59G and 59H of TMA: Managed payment plans

1358. These sections make provision for taxpayers to enter into managed payment plans. Under managed payment plans, taxpayers agree to pay income tax, capital gains tax or corporation tax due by instalments balanced equally before and after the normal due dates. While in the plan, taxpayers are protected from the interest and penalty consequences on payments made after the normal due date.

Part 15: Relocation of section 118 of FA 1998

Overview

1359. This Part inserts sections 43E and 43F of TMA, which cover the making of claims for income tax purposes by means of electronic communications. It is based on section 118 of FA 1998 and paragraph 1(1) of Schedule 17 to the Communications Act 2003.

Section 43E of TMA: Making of income tax claims by electronic communications etc

1360. Section 43E of TMA gives the Commissioners for HMRC the power to specify that certain claims made by individuals for income tax purposes may be made by an electronic communications service. It sets out the scope of the Commissioners' authority and certain restrictions.

Section 43F of TMA: Effect of directions under section 43E

1361. Section 43F of TMA sets out the effect of directions under section 43E.

Part 16: Relocation of section 144 of FA 2000

Overview

1362. This Part inserts section 106A of TMA. It is based on section 144 of FA 2000, sections 281(7) and 282(2) and (3) of the Criminal Justice Act 2003 and section 45(1), (2), (6) and (7) of the Criminal Proceedings etc (Reform) (Scotland) Act 2007.

1363. Section 144 of FA 2000 is one of a number of similar sections that create an offence of fraudulent evasion in relation to taxes and duties for which HMRC has responsibility. Section 144 relates to the fraudulent evasion of income tax.

1364. The offence under section 144 is a so-called "either way" offence. That is, it can be tried on indictment in the Crown Court or summarily in the Magistrates Court.

Section 106A of TMA: Offence of fraudulent evasion of income tax

1365. The section defines the offence of fraudulent evasion of income tax and sets out the possible penalties for such an offence.

1366. *Subsection (3)* provides that the penalty under summary conviction may be different in England and Wales, Northern Ireland and Scotland. The maximum period of imprisonment in England and Wales is currently six months. This will, however, increase to 12 months when a commencement order in relation to section 282(3) of the Criminal Justice Act 2003 is passed. The maximum penalty in Northern Ireland is six months as in the source legislation as enacted. The Criminal Justice Act 2003 does not apply in Northern Ireland. The maximum penalty in Scotland is 12 months. It was originally six months in line with the source legislation as enacted. Section 45 of the Criminal Proceedings etc (Reform) (Scotland) Act 2007 has, however, extended the maximum penalty for such offences to 12 months.

Part 17: Relocation of section 199 of FA 2003

Overview

1367. This Part inserts sections 18B to 18E of TMA. They are based on section 199 of FA 2003.
1368. Section 199 of FA 2003 enables the Treasury to make regulations to counter cross-border tax evasion by individuals on their savings income.
1369. Regulations have been made under the source legislation by the Reporting of Savings Income Information Regulations 2003 (SI 2003/3297). The regulations have been subsequently amended by the Reporting of Savings Income Information (Amendment) Regulations 2005 and 2006 (SIs 2005/1539 and 2006/3286).
1370. This Part also provides for the omission from the Table in section 98 of TMA of the entry for regulations under section 199 of FA 2003. That entry is not rewritten elsewhere in the Table since regulations under the new section 18B are covered by the existing entry in the Table for Part 3 of TMA.

Section 18B of TMA: Savings income; regulations about European and international aspects

1371. This section sets out the circumstances under which the Treasury may make regulations to ensure the effective taxation of savings income. It is based on section 199(1), (9), (12) and (13) of FA 2003.

Section 18C of TMA: Regulations under section 18B: provision about “paying agents”

1372. This section enlarges on the scope of regulations under section 18B insofar as they may relate to paying agents. It is based on section 199(2), (3) and (7) to (10) of FA 2003.

Section 18D of TMA: Content of regulations under section 18B: supplementary provision

1373. This section specifies a number of additional provisions that are within the scope of regulations under section 18B. It is based on section 199(4) to (6) and (11) of FA 2003.

Section 18E of TMA: Interpretation of sections 18B to 18D: “prescribed” etc

1374. This section provides definitions of terms used in sections 18B to 18D. It is based on section 199(14) of FA 2003.

Part 18: Relocation of section 61 of F(No 2)A 2005

Overview

1375. This Part inserts paragraphs 87A, 87B and 87C of Schedule 18 to FA 1998. They are based on section 61 of F(No 2)A 2005.
1376. These provisions ensure continuity of application of the corporation tax administrative and collection provisions in Schedule 18 to FA 1998 in the case of a Societas Europaea (SE).

Paragraph 87A of Schedule 18 to FA 1998: Company ceasing to be UK resident on formation of SE by merger

1377. Paragraph 87A applies where a company ceases to be UK resident as a result of the formation of an SE by merger. It ensures that all matters dealt with by Schedule 18 to FA 1998 in respect of the company before the merger can still be dealt with.

Paragraph 87B of Schedule 18 to FA 1998: SE ceasing to be UK resident

1378. Paragraph 87B applies where an existing SE transfers its registered office out of the UK – the SE is treated as still being UK resident for the purposes of dealing with matters under Schedule 18 to FA 1998 that arose or accrued before the change of registered office.

Paragraph 87C of Schedule 18 to FA 1998: Meaning of SE

1379. Paragraph 87C provides a definition.

Part 19: Relocation of paragraph 13 of Schedule 13 to FA 2007

Overview

1380. This Part inserts sections 925A to 925F of ITA, which are based on paragraphs 13 to 15 of Schedule 13 to FA 2007, and consequentially amends section 926 of ITA.

1381. Schedule 13 to FA 2007 made provision for the taxation of sale and repurchase of securities, and Schedule 14 to that Act repealed many of the corporation tax provisions for such transactions in Part 17 of ICTA. Chapter 10 of Part 6 of CTA 2009 (relationships treated as loan relationships etc: repos) rewrote the provisions of Schedule 13 to FA 2007 which applied to corporation tax on income.

1382. Paragraph 13 of Schedule 13 to FA 2007 provides for income tax to be deducted at source in certain cases involving the sale and repurchase of securities. It applies provisions of Chapter 9 of Part 15 of ITA, which requires income tax to be deducted at source in certain cases involving manufactured payments.

1383. Part 15 of ITA rewrote all the primary legislation on the deduction of income tax at source which had been enacted before FA 2007. For the convenience of the user, paragraph 13 of Schedule 13 to FA 2007 and the relevant supplementary provisions of paragraphs 14 and 15 of that Schedule are rewritten as a sequence of new sections in Chapter 9 of Part 15 of ITA, and paragraph 13 of that Schedule is repealed.

Section 925A of ITA: Creditor repos

1384. This section deems a company which has a creditor repo to make manufactured payments. It is based on paragraphs 13(1) and 14(6) and (7) of Schedule 13 to FA 2007.

1385. In paragraph 13(1)(a) of Schedule 13 to FA 2007, “the lender” refers to “a company” in the opening words of paragraph 13(1). Section 925A(1) brings this out.

Section 925B of ITA: Debtor repos

1386. This section deems a company which has a debtor repo to receive manufactured payments. It is based on paragraphs 13(2) and (4) and 14(6) and (7) of Schedule 13 to FA 2007.

1387. In paragraph 13(2)(a) of Schedule 13 to FA 2007, “the borrower” refers to “a company” in the opening words of paragraph 13(2). Section 925B(1) brings this out.

Section 925C of ITA: Actual payments ignored if section 925A or 925B applies

1388. This section is a priority rule. It is based on paragraph 13(3) of Schedule 13 to FA 2007.

1389. In a case in which a repo involves an actual manufactured payment (which would be within Chapter 9 of Part 15 of ITA anyway), the actual manufactured payment is deemed not to have been made, and section 925A or 925B applies.

Section 925D of ITA: Power to modify repo sections

1390. This section gives the Treasury the power to modify sections 925A to 925F of ITA in relation to (a) “non-standard” repo cases (see section 925E), (b) cases involving redemption arrangements or (c) both. It is based on paragraph 15(1), (6), (7) and (9) of Schedule 13 to FA 2007.
1391. The effect of paragraph 15(7)(a) of Schedule 13 to FA 2007 is replicated by the existing section 927 of ITA, which applies to this section.

Section 925E of ITA: Cases where section 925D applies: non-standard repos

1392. This section supplements section 925D. It is based on paragraph 15(2) to (5) and (9) of Schedule 13 to FA 2007.
1393. *Subsection (1)* does not rewrite “in relation to the repo” in paragraph 15(2)(c) of Schedule 13 to FA 2007. Those words are otiose, because the wording of the conditions in subsection (1) ties them fully to the factual situation.

Section 925F of ITA: Interpretation of the repo sections

1394. This section is interpretative. It is based on paragraph 14(1), (3), (4) and (5) of Schedule 13 to FA 2007.

Section 926 of ITA: Interpretation of Chapter

1395. *Subsection (1A)* is interpretative. It is new. In the Chapter into which sections 925A to 925F are inserted, words and phrases have the same meaning as in Chapter 2 of Part 11 of ITA: see section 926(1) of ITA. The source legislation rewritten by those new sections is not subject to that interpretative rule. It therefore follows that the rule would need to be disapplied in relation to the new sections if it affected how they were to be read. As it seems possible to argue that the rule may have some limited effect on how the new sections are to be read, subsection (1A) is inserted to clarify the position.