



# Finance Act 2011

## 2011 CHAPTER 11

### PART 2

#### INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

##### *Anti-avoidance provisions*

#### **26 Employment income provided through third parties**

Schedule 2 contains provision about steps which are taken in pursuance of, or which have some other connection with, arrangements concerned with the provision of rewards or recognition or loans in connection with current, former or prospective employments.

#### **27 Tainted charity donations**

Schedule 3 contains provision about gifts and other disposals to charities and community amateur sports clubs.

#### **28 Amounts not fully recognised for accounting purposes**

Schedule 4 contains amendments of Parts 5 and 7 of CTA 2009 (loan relationships and derivative contracts) relating to cases where amounts are not fully recognised for accounting purposes.

#### **29 Loan relationships involving connected debtor and creditor**

[<sup>F1</sup>(1) In section 418 of CTA 2009 (loan relationships involving connected debtor and creditor where debits exceed credits), in subsection (2), after “creditor company” insert “ or any company connected with it ”.

(2) In section 419 of that Act (section 418: supplementary), after subsection (6) insert—

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“(6A) References in section 418 to a company bringing debits or credits into account under or for the purposes of this Part include bringing debits or credits into account under or for the purposes of this Part in determining the chargeable profits of the company (or in determining that there were no such profits) for the purposes of Chapter 4 of Part 17 of ICTA (controlled foreign companies).”

- (3) The amendments made by this section have effect in relation to loan relationships to which a company is a party (or to which it is treated as a party under section 418(6A) of CTA 2009) on or after 6 December 2010.
- (4) But amounts are to continue to be brought into account for the purposes of Part 5 of CTA 2009 disregarding those amendments if the amounts relate to a time before that day.]

#### **Textual Amendments**

- F1** S. 29 repealed (with effect in accordance with Sch. 5 para. 7(3)(4) of the repealing Act) by [Finance Act 2011 \(c. 11\)](#), s. 30, Sch. 5 paras. 6(1)(3), 7(2)(e)

### **30 Group mismatch schemes**

Schedule 5 contains provision about group mismatch schemes.

### **31 Company ceasing to be member of group: availability of relief**

- (1) Section 179 of TCGA 1992 (company ceasing to be member of group: post-appointed day cases) is amended as follows.

(2) In subsection (2A)—

- (a) for “Where” substitute “ Subsection (2AA) applies where ”, and  
 (b) for paragraphs (c) and (d) and the words following those paragraphs substitute—

“(c) at the time company A ceases to be a member of the first group there is a connection between that group and the group of companies of which company A becomes a member on leaving the first group ( “ the second group ”), and

(d) subsequently—

- (i) company A ceases to be a member of the second group, or  
 (ii) (before sub-paragraph (i) applies) there ceases to be a connection between the two groups.”

(3) After that subsection insert—

“(2AA) Where this subsection applies—

- (a) in a case within subsection (2A)(d)(ii), for the purposes of this section (other than subsection (2A)) as it applies as respects the acquisition, company A and any associated company are to be treated as having ceased to be members of the second group at the time the connection between the two groups ceases,

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- (b) subsection (1) has effect in relation to company A's ceasing to be a member of the second group as if it had been the second group of which both companies had been members at the time of the acquisition, and
- (c) subsection (2) may operate to prevent subsection (1) applying by virtue of paragraph (b), unless subsection (2AB) applies.

(2AB) This subsection applies if company A's ceasing to be a member of the first group at the same time as one or more associated companies forms part of arrangements the main purpose, or one of the main purposes, of which is the avoidance of a liability to corporation tax.”

- (4) In subsection (2B) for “if, at the time when company A ceases to be a member of the second group” substitute “ at a particular time if, at that time, ”.
- (5) The amendments made by this section have effect in relation to a company in any case in which the time of the company's ceasing to be a member of the first group is on or after 23 March 2011.

## **32 Leasing businesses**

Schedule 6 contains provision about leasing businesses carried on by companies alone or in partnership.

## **33 Long funding finance leases**

- (1) Chapter 6 of Part 2 of CAA 2001 (which includes provision about lessees under long funding leases) is amended as follows.
- (2) In section 70C (long funding finance lease: amount of capital expenditure), after subsection (4) insert—

“(4A) But where the minimum lease payments include a relievable amount, the present value of that amount must be excluded in determining the commencement PVMLP.

(4B) An amount (“amount X”) is a relievable amount if—

- (a) an arrangement is in place under which all or part of any residual amount (as defined in section 70YE) is guaranteed by the lessee or a person connected with the lessee,
- (b) amount X is within the minimum lease payments because of that arrangement (see subsection (1)(a) of that section), and
- (c) it is reasonable to assume that, were amount X to be incurred under the arrangement, relief would be available as a result (beyond relief, by virtue of this section and section 70E, because amount X is within those minimum lease payments).

(4C) In deciding for the purposes of subsection (4B)(c) whether relief would be available as a result, no account is to be taken of—

- (a) any part of the arrangement other than the part by virtue of which all or part of the residual amount is guaranteed, or
- (b) any other arrangement connected with the arrangement or forming part of a set of arrangements that includes the arrangement.”

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- (3) In section 70D (long funding finance lease: additional expenditure: allowances for lessee), after subsection (1) insert—
- “(1A) Any increase attributable to a relievable amount is to be ignored for the purposes of subsection (1)(d).
- (1B) Subsections (4B) and (4C) of section 70C apply (with any necessary modifications) for the purposes of this section as for the purposes of that section.”
- (4) In section 70E (disposal events and disposal values), in subsection (2C)(b), after “section 70YE)” insert “ other than any relievable payment ”.
- (5) In that section, after subsection (2D) insert—
- “(2DA) A payment (“payment X”) is a relievable payment if—
- (a) an arrangement is in place under which all or part of any residual amount (as defined in section 70YE) is guaranteed by the lessee or a person connected with the lessee,
- (b) payment X is within the minimum lease payments because of that arrangement (see subsection (1)(a) of that section), and
- (c) it is reasonable to assume that relief would be available as a result of making payment X (beyond relief, by virtue of section 70C or 70D and this section, because payment X is within those minimum lease payments).
- (2DB) For the purposes of subsection (2DA)(c)—
- (a) “relief” has the meaning given in section 70C, and
- (b) subsection (4C) of that section applies as it applies for the purposes of subsection (4B)(c) of that section.”
- (6) The amendments made by subsections (2) and (3) have effect in cases where the arrangement is entered into on or after 9 March 2011.
- (7) The amendments made by subsections (4) and (5) have effect in relation to payments made on or after 9 March 2011 (regardless of when the arrangement was entered into).

### **34 Investment companies**

Schedule 7 contains provision about investment companies.

#### *Exemptions and reliefs*

### **35 Reduction in childcare relief for higher earners**

Schedule 8 contains provision for reducing childcare relief for higher earners.

### **36 Childcare: salary sacrifice etc and the national minimum wage**

- (1) In section 270A of ITEPA 2003 (limited exemption for qualifying childcare vouchers), after subsection (5) insert—
- “(5A) Where the scheme under which the vouchers are provided involves—

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- (a) relevant salary sacrifice arrangements, or
- (b) relevant flexible remuneration arrangements,

Condition C is not prevented from being met by reason only that the scheme is not open to relevant low-paid employees.

(5B) In subsection (5A)—

“relevant salary sacrifice arrangements” means arrangements (whenever made) under which the employees for whom the vouchers are provided give up the right to receive an amount of general earnings or specific employment income in return for the provision of the vouchers;

“relevant flexible remuneration arrangements” means arrangements (whenever made) under which the employees for whom the vouchers are provided agree with the employer that they are to be provided with the vouchers rather than receive some other description of employment income;

“relevant low-paid employees” means any of the employer’s employees who are remunerated by the employer at a rate such that, if the relevant salary sacrifice arrangements or relevant flexible remuneration arrangements applied to them, the rate at which they would then be so remunerated would be likely to be lower than the national minimum wage.”

(2) In section 318A of that Act (exemption for childcare other than employer-provided care), after subsection (5) insert—

“(5A) Where the scheme under which the care is provided involves—

- (a) relevant salary sacrifice arrangements, or
- (b) relevant flexible remuneration arrangements,

Condition C is not prevented from being met by reason only that the scheme is not open to relevant low-paid employees.

(5B) In subsection (5A)—

“relevant salary sacrifice arrangements” means arrangements (whenever made) under which the employees for whom the care is provided give up the right to receive an amount of general earnings or specific employment income in return for the provision of the care;

“relevant flexible remuneration arrangements” means arrangements (whenever made) under which the employees for whom the care is provided agree with the employer that they are to be provided with the care rather than receive some other description of employment income;

“relevant low-paid employees” means any of the employer’s employees who are remunerated by the employer at a rate such that, if the relevant salary sacrifice arrangements or relevant flexible remuneration arrangements applied to them, the rate at which they would then be so remunerated would be likely to be lower than the national minimum wage.”

(3) The amendments made by this section have effect for the tax year 2005-06 and subsequent tax years.

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### 37 Accommodation expenses of MPs

- (1) In section 292 of ITEPA 2003 (accommodation expenses of MPs), after subsection (4) insert—

“(5) The reference in subsection (1) to a payment made to a member of the House of Commons under section 5(1) of the Parliamentary Standards Act 2009 includes a payment made under that section to another person at the direction of a member (see section 6(7) of that Act).”

- (2) The amendment made by this section has effect in relation to payments made under section 5(1) of the Parliamentary Standards Act 2009 on or after 1 November 2010.

### 38 Experts seconded to European Union bodies

- (1) In Chapter 8 of Part 4 of ITEPA 2003 (employment income: special kinds of employment), after section 304 insert—

#### “304A Experts seconded to other European Union bodies

- (1) No liability to income tax arises in respect of any subsistence allowances paid by a relevant EU body to persons who, because of their expertise in matters relating to the subject matter of the functions of the relevant EU body, have been seconded to the body by their employers.

- (2) Each of the following is a “relevant EU body”—

- (a) the European Medicines Agency, established as the European Agency for the Evaluation of Medicinal Products by Council Regulation (EEC) No 2309/93 of 22 July 1993,
- (b) the European Police College, established by Council Decision of 20 September 2005 (2005/681/JHA),
- (c) the European Banking Authority, established by Regulation (EU) No 1093/2010 of 24 November 2010, and
- (d) any other body established by an EU instrument which is designated as a relevant EU body for the purposes of this section by an order made by the Treasury.”

- (2) The amendment made by this section has effect in relation to subsistence allowances paid in respect of periods beginning on or after 1 January 2011.

### 39 Employment income: exemption for fees relating to monitoring schemes

- (1) In Chapter 11 of Part 4 of ITEPA 2003 (employment income: miscellaneous exemptions), after section 326 insert—

#### *“Monitoring schemes*

#### **326A Fees relating to monitoring schemes relating to vulnerable persons**

- (1) No liability to income tax arises by virtue of the payment or reimbursement of a fee in respect of an application to join the scheme administered under section 44 of the Protection of Vulnerable Groups (Scotland) Act 2007 (asp

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14) (scheme to collate and disclose information about individuals working with vulnerable persons).

(2) The Treasury may by order amend subsection (1) so as—

- (a) to add to the fees covered by that subsection a fee of a specified kind payable in connection with a scheme for England and Wales or Northern Ireland which corresponds to the scheme administered under section 44 of the Protection of Vulnerable Groups (Scotland) Act 2007, or
- (b) to amend or remove a reference to a fee added under paragraph (a)."

(2) The amendment made by this section has effect for the tax year 2010-11 and subsequent tax years.

#### **40 Individual investment plans for children**

(1) Chapter 3 of Part 6 of ITTOIA 2005 (income from individual investment plans) is amended in accordance with subsections (2) to (5).

(2) In section 694 (income from individual investment plans), after subsection (1) insert—

“(1A) In subsection (1) “income of an individual from investments under a plan” includes income from investments which is treated as the individual's income by virtue of section 629 (income paid to relevant children of settlor).”

(3) After section 695 insert—

##### **“695A Investment plans for children**

(1) This section applies where investment plan regulations provide that income of a child from investments under a plan (a “child plan”) is exempt from income tax (either wholly or to such extent as is specified in the regulations).

(2) In addition to any provision which may be made by virtue of any other provision of this Chapter, investment plan regulations may—

- (a) specify descriptions of persons by whom investments may be made for a child,
- (b) provide that withdrawals may be made only in the circumstances specified in the regulations, and
- (c) provide that, in the case of a child who is under 16, the plan managers may act only on the direction of a person of a description specified in the regulations.

(3) They may also provide—

- (a) that any assignment of, or agreement to assign, investments under a child plan, and any charge on or agreement to charge any such investments, is void,
- (b) that, on the bankruptcy of a child with investments under a child plan, the entitlement to those investments does not pass to any trustee or other person acting on behalf of the child's creditors, and
- (c) that, where a contract is entered into by or on behalf of a child who is 16 or over in connection with a child plan under which investments are held—

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- (i) by the child, or
  - (ii) by another child in relation to whom the child has parental responsibility,
- the contract has effect as if the child had been 18 or over when it was entered into.
- (4) Where, by virtue of provision made in investment plan regulations under subsection (2)(a), investments are made for a child under a child plan, for the purposes of this Chapter the child is treated as having made those investments.
- (5) In this section—
- “assignment” includes assignment, and “assign” is to be construed accordingly;
  - “bankruptcy”, in relation to a child, includes the sequestration of the child's estate;
  - “charge on or agreement to charge” includes a right in security over or an agreement to create a right in security over;
  - “child” means an individual under 18;
  - “parental responsibility” means—
    - (a) parental responsibility within the meaning of the Children Act 1989 or the Children (Northern Ireland) Order 1995, or
    - (b) parental responsibilities within the meaning of the Children (Scotland) Act 1995;
- and any reference to investments being held by a child includes a reference to investments being held by plan managers on behalf of the child by virtue of section 696(1).”
- (4) In section 699 (non-entitlement to exemption), at the end insert—
- “(9) In this section references to an investor include an individual entitled to an exemption given by investment plan regulations by virtue of section 694(1A).”
- (5) In section 701 (general and supplementary powers), at the end insert—
- “(6) In this section references to an investor include an individual entitled to an exemption given by investment plan regulations by virtue of section 694(1A).”
- (6) In section 151 of TCGA 1992 (personal equity plans), in subsection (2)—
- (a) for “section 694(1) and (2)” substitute “ section 694(1) to (2) ”, and
  - (b) for the words from “but with” to the end substitute “but with the following modifications—
    - (a) any reference to income tax is to be read as a reference to capital gains tax,
    - (b) the reference in section 695A(1) to the case where regulations provide that income of a child from investments under a plan is exempt from income tax is to be read as a reference to the case where regulations provide that a child who invests under a plan is entitled to relief from capital gains tax in respect of the investments,



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- (c) the reference in section 695A(4) to that Chapter is to be read as a reference to this section, and
- (d) that Chapter has effect as if sections 699(9) and 701(6) were omitted.”

#### **41 Gift aid: increase of limits on total value of benefits associated with gifts**

- (1) In section 418 of ITA 2007 (gifts to charities by individuals: restrictions on associated benefits), in subsection (3), for “£500” substitute “ £2,500 ”.
- (2) In section 197 of CTA 2010 (gifts to charities by companies: restrictions on associated benefits), in subsection (3), for “£500” substitute “ £2,500 ”.
- (3) Accordingly, omit section 60(1)(b) of FA 2007.
- (4) The amendments made by subsections (1) and (3) have effect in relation to gifts made on or after 6 April 2011.
- (5) The amendment made by subsection (2) has effect in relation to gifts made in an accounting period ending on or after 1 April 2011.

#### **42 Enterprise investment scheme: amount of relief**

- (1) Part 5 of ITA 2007 (enterprise investment scheme) is amended in accordance with subsections (2) to (4).
- (2) In section 158 (form and amount of EIS relief), in subsection (2A) for “20%” substitute “ 30% ”.
- (3) In the following provisions for “EIS rate” substitute “ EIS original rate ”
  - (a) section 209(3);
  - (b) section 210(1)(b);
  - (c) section 213(2);
  - (d) section 220(1)(b);
  - (e) section 224(2);
  - (f) section 229(1)(b).
- (4) After section 256 insert—

##### **“256A Meaning of “the EIS original rate”**

In this Part “the EIS original rate”, in relation to EIS relief, means the EIS rate for the tax year for which the EIS relief was obtained.”

- (5) In Schedule 4 to that Act (index of defined expressions), at the appropriate place insert—

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“EIS original rate (in Part 5)

section 256A”

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- (6) This section comes into force on such day as the Treasury may by order appoint.
- (7) The amendments made by this section have effect in relation to the tax year 2011-12 and subsequent tax years.

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- (8) But where the EIS relief attributable to shares was obtained for the tax year 2007-08 or an earlier tax year, the references to the EIS original rate in the provisions mentioned in paragraph (a) to (f) of subsection (3) are to be read as references to 20%.

**Subordinate Legislation Made**

P1 S. 42(6) power fully exercised: 13.10.2011 appointed by {S.I. 2011/2459}, art. 2

**43 Relief for expenditure on R&D by SMEs**

- (1) Part 13 of CTA 2009 (additional relief for expenditure on research and development) is amended as follows.
- (2) Chapter 2 (relief for small or medium-sized enterprises (“SMEs”)) is amended in accordance with subsections (3) to (6).
- (3) In section 1044 (additional deduction in calculating profits of trade), in subsection (8), for “75%” substitute “ 100% ”.
- (4) In section 1045 (alternative treatment for pre-trading expenditure: deemed trading loss), in subsection (7), for “175%” substitute “ 200% ”.
- (5) In section 1055 (tax credit: meaning of “Chapter 2 surrenderable loss”), in subsection (2)(b), for “175%” substitute “ 200% ”.
- (6) In section 1058 (amount of tax credit), in subsection (1)(a), for “14%” substitute “ 12.5% ”.

F<sup>2</sup>(7) .....

F<sup>2</sup>(8) .....

F<sup>2</sup>(9) .....

F<sup>2</sup>(10) .....

F<sup>2</sup>(11) .....

- (12) This section comes into force on such day as the Treasury may by order appoint.
- (13) The amendments made by this section have effect in relation to expenditure incurred on or after 1 April 2011.

**Subordinate Legislation Made**

P2 S. 43(12) power fully exercised: 15.9.2011 appointed by {S.I. 2011/2280}, art. 2

**Textual Amendments**

F2 S. 43(7)-(11) omitted (with effect in accordance with Sch. 3 para. 38 of the amending Act) by virtue of Finance Act 2012 (c. 14), Sch. 3 para. 32(c)

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### *Chargeable gains*

#### **44 Value shifting**

Schedule 9 contains provision about value shifting.

#### **45 Company ceasing to be member of a group**

Schedule 10 contains provision about the consequences, for the purposes of corporation tax on chargeable gains, of a company ceasing to be a member of a group.

#### **46 Pre-entry losses**

Schedule 11 contains provision about losses accruing to a company before the time when it becomes a member of a group of companies and losses accruing on assets held by a company at such a time.

### *Foreign profits*

#### **47 Controlled foreign companies**

Schedule 12 contains provision in relation to controlled foreign companies.

#### **48 Profits of foreign permanent establishments etc**

Schedule 13 contains provision about the profits of foreign permanent establishments of UK resident companies etc.

### *Investment trusts*

#### **49 Meaning of “investment trust”**

- (1) Chapter 4 of Part 24 of CTA 2010 (investment trusts) is amended as follows.
- (2) For section 1158 (meaning of “investment trust” in the Corporation Tax Acts) substitute—

##### **“1158 Meaning of “investment trust”**

- (1) For the purposes of the Corporation Tax Acts a company is an “investment trust” with respect to an accounting period if—
  - (a) conditions A to C are met throughout the period, and
  - (b) the company is approved for the period by the Commissioners for Her Majesty's Revenue and Customs (see section 1159).
- (2) Condition A is that the business of the company consists of investing its funds in shares, land or other assets with the aim of spreading investment risk and giving members of the company the benefit of the results of the management of its funds.

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- (3) Condition B is that the shares making up the company's ordinary share capital (or, if there are such shares of more than one class, those of each class) are admitted to trading on a regulated market.
  - (4) For this purpose “regulated market” has the same meaning as in Directive [2004/39/EC](#) of the European Parliament and of the Council on markets in financial instruments (see Article 4.1(14)).
  - (5) Condition C is that the company is not—
    - (a) a venture capital trust (within the meaning of Part 6 of ITA 2007), or
    - (b) a company UK REIT (within the meaning of Part 12 of this Act).
  - (6) The Treasury may by regulations provide—
    - (a) for one or both of conditions A and B to be treated as met in the cases, and subject to any conditions, specified in the regulations, and
    - (b) for the period for which the condition or conditions are treated as met.
  - (7) The Treasury may also by regulations amend subsection (3) or (4).
  - (8) A statutory instrument containing the first regulations under subsection (6) may not be made unless a draft of the instrument has been laid before and approved by a resolution of the House of Commons.
  - (9) Any other statutory instrument containing regulations under this section is subject to annulment in pursuance of a resolution of the House of Commons.”
- (3) For section 1159 (conditions for approval) substitute—

#### **“1159 Approval**

- (1) The Treasury may by regulations make provision about the approval of a company for an accounting period for the purposes of section 1158(1)(b), including provision about—
  - (a) applications for approval,
  - (b) the determination of applications for approval,
  - (c) requirements to be met by the company while approved,
  - (d) the withdrawal of approval by notice, or
  - (e) the consequences of the withdrawal of approval.
- (2) The regulations may, in particular—
  - (a) include provision under which an application for approval—
    - (i) is to be made by reference to the accounting period in which the application is made or such earlier or later accounting period as may be specified in the application, and
    - (ii) is to constitute an application for approval for that and all subsequent accounting periods,
  - (b) specify the form and content of, and information to accompany, an application,
  - (c) permit or require the Commissioners to grant or refuse an application where conditions specified in the regulations are met (or appear to the Commissioners to be met) in relation to the company,
  - (d) permit or require the Commissioners to withdraw approval where—

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- (i) conditions specified in the regulations are met (or appear to the Commissioners to be met) in relation to the company, or
  - (ii) the company has failed to comply with requirements imposed by the regulations,
  - (e) include provision prohibiting a company from which approval has been withdrawn from reapplying, or
  - (f) include provision under which approval may or must be withdrawn in relation to an accounting period that ends before the notice withdrawing approval is given.
- (3) Regulations under this section—
- (a) may make different provision for different cases or purposes, and
  - (b) may make incidental, consequential, supplementary or transitional provision.
- (4) A statutory instrument containing the first regulations under this section may not be made unless a draft of the instrument has been laid before and approved by a resolution of the House of Commons.
- (5) Any other statutory instrument containing regulations under this section is subject to annulment in pursuance of a resolution of the House of Commons.
- (6) In this section “the Commissioners” means the Commissioners for Her Majesty's Revenue and Customs.”
- (4) Omit sections 1160 to 1165 (which relate to the interpretation of the provisions replaced by this section).
- (5) In Schedule 4 (index of defined expressions), omit the following entries—
- “company (in Chapter 4 of Part 24)”
  - “scheme of reconstruction (in Chapter 4 of Part 24)”
  - “shares (in Chapter 4 of Part 24)”.
- (6) The amendments made by this section have effect in relation to accounting periods beginning on or after such day as the Treasury may by order appoint.

**Subordinate Legislation Made**

**P3** S. 49(6) power fully exercised: 1.1.2012 appointed by {S.I. 2011/2977}, art. 2

**50 Power to make provision about treatment of transactions**

In Part 13 of CTA 2010 (special types of company etc), after Chapter 3 insert—

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## “CHAPTER 3A

### INVESTMENT TRUSTS

#### **622A Power to make provision about treatment of transactions**

- (1) The Treasury may by regulations provide that a transaction of a specified kind entered into by an investment trust is to be treated for the purposes of the Corporation Tax Acts as entered into by it otherwise than in the course of a trade.
- (2) Regulations under this section—
  - (a) may make different provision for different cases or purposes, and
  - (b) may make incidental, consequential, supplementary or transitional provision.
- (3) A statutory instrument containing the first regulations under this section may not be made unless a draft of the instrument has been laid before and approved by a resolution of the House of Commons.
- (4) Any other statutory instrument containing regulations under this section is subject to annulment in pursuance of a resolution of the House of Commons.
- (5) In this section “specified” means specified in regulations under this section.”

#### *Miscellaneous*

#### **51 Taxable benefits: calculating the appropriate percentage for cars**

- (1) In section 139 of ITEPA 2003 (cars with a CO<sub>2</sub> emissions figure: the appropriate percentage), as substituted by section 59 of FA 2010 with effect for the tax year 2012-13 and subsequent tax years, in subsection (5) for “100 grams” substitute “95 grams”.
- (2) The amendment made by this section has effect for the tax year 2013-14 and subsequent tax years.

#### **52 Furnished holiday lettings**

Schedule 14 contains provisions about furnished holiday lettings.

#### **53 Leases and changes to accounting standards**

- (1) This section applies where there is a change in a leasing accounting standard which—
  - (a) occurs on or after 1 January 2011, and
  - (b) is not within subsection (3),
 (in this section referred to as a “leasing change”).
- (2) “Leasing accounting standard” means—
  - (a) International Accounting Standard 17 (leases) issued by the International Accounting Standards Board,

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- (b) Statement of Standard Accounting Practice 21 (accounting for leases and hire purchase contracts) recognised by the Accounting Standards Board,
  - (c) the part of the International Financial Reporting Standard for Small and Medium-sized Entities issued by the International Accounting Standards Board which relates specifically to leases,
  - (d) the part of the Financial Reporting Standard for Smaller Entities issued by the Accounting Standards Board which relates specifically to leases, or
  - (e) any accounting standard, or part of an accounting standard, which replaces (wholly or in part) a standard or part mentioned in paragraphs (a) to (d).
- (3) A change is within this subsection if, and to the extent that, it is one which permits or requires persons, when preparing accounts in accordance with UK GAAP, to account for a lease, or a transaction accounted for as a lease, in a manner equivalent to that provided for by the International Financial Reporting Standard for Small and Medium-sized Entities issued by the International Accounting Standards Board (disregarding any leasing change which may be made to that Standard).
- (4) Changes within subsection (1) include those which may or must be adopted for periods of account which fall wholly or partly before the time the change occurs or before the day on which this Act is passed.
- (5) For the purposes of the Taxes Acts any reference in those Acts (other than this section) —
- (a) to a thing being determined or done in accordance with or by reference to generally accepted accounting practice, or
  - (b) to accounts prepared (or not prepared) in accordance with international accounting standards or UK GAAP,
- is to be construed as if any leasing change had not occurred.
- (6) Section 997 of ITA 2007 and section 1127 of CTA 2010 (meaning of “generally accepted accounting practice” and related expressions in the Tax Acts) have effect subject to subsection (5).
- (7) Where a person prepares or is required to prepare accounts in accordance with new standards for a period of account, the Taxes Acts (other than this section) have effect as if the person prepared or was required to prepare accounts, for that period, in accordance with the corresponding old standards.
- (8) For the purposes of subsection (7)—
- (a) if the new standards are international accounting standards, the corresponding old standards are international accounting standards disregarding any leasing change, and
  - (b) if the new standards are UK GAAP, the corresponding old standards are UK GAAP disregarding any leasing change.
- (9) In this section—
- “accounting body” means the International Accounting Standards Board or the Accounting Standards Board, or a successor body to either of those Boards;
  - “accounting standard” includes any statement of practice, guidance or other similar document issued or recognised by an accounting body;

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“change”, in relation to a leasing accounting standard, means the issue, revocation, amendment or recognition of, or withdrawal of recognition from, the standard by an accounting body;

“international accounting standards” has the same meaning as in section 1127 of CTA 2010;

“new standards” means accounting standards which reflect one or more leasing changes;

“Taxes Acts” means—

(a) the Tax Acts, and

(b) TCGA 1992 and all other enactments relating to capital gains tax;

“UK GAAP” means UK generally accepted accounting practice as defined in section 997(2) of ITA 2007 and section 1127(2) of CTA 2010.

- (10) This section has effect in relation to any period (including any period falling wholly or partly before the day on which this Act is passed) in respect of which a change to a leasing accounting standard which occurs on or after 1 January 2011 may or must be adopted by any person for accounting purposes.

#### **54 Leasing companies: withdrawal of election**

- (1) In section 398A(1)(a) of CTA 2010 (election out of qualifying change of ownership), after “day”)” insert “ before 23 March 2011 ”.
- (2) The amendment made by this section is to be treated as having come into force on 23 March 2011.

#### **55 Companies with small profits: associated companies**

- (1) For section 27 of CTA 2010 (meaning of “associated company”: attribution to persons of rights and powers of their partners) substitute—

##### **“27 Attribution to persons of rights and powers of their associates**

- (1) This section applies if—

(a) it is necessary to determine in accordance with section 25(4) and (5) whether a company is an associated company of another company, and

(b) the relationship between the two companies is not one of substantial commercial interdependence.

- (2) In the application of section 451 (meaning of “control”: rights to be attributed) for the purposes of the determination, any person to whom rights and duties fall to be attributed under subsections (4) and (5) of that section is to be treated, for the purposes of those subsections, as having no associates.

- (3) The Treasury may by order prescribe factors that are to be taken into account in determining whether a relationship between two companies amounts to substantial commercial interdependence for the purposes of this section.”

- (2) The amendment made by this section has effect in relation to accounting periods ending on or after 1 April 2011.



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- (3) But a company may elect that the amendment made by this section is of no effect in relation to an accounting period that begins before that date.
- (4) An election under subsection (3) must be made within one year from the end of the accounting period to which it relates.
- (5) The first order under section 27(3) of CTA 2010 (as substituted by subsection (1) of this section) may be made so as to have effect in relation to accounting periods ending on or after 1 April 2011.

### **F356 Insurance companies: apportionment of amounts brought into account**

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#### **Textual Amendments**

**F3** S. 56 omitted (17.7.2012) by virtue of [Finance Act 2012 \(c. 14\)](#), [Sch. 16 para. 247\(y\)](#)

### **57 Tonnage tax: capital allowances in respect of ship leasing**

- (1) Part 10 of Schedule 22 to FA 2000 (companies within tonnage tax: capital allowances in respect of ship leasing) is amended as follows.
- (2) In paragraph 94 (quantitative restrictions on allowances)—
  - (a) in sub-paragraph (3)(a), for “a rate of 20% per annum” substitute “ the rate determined under sub-paragraph (3A) ”,
  - (b) in sub-paragraph (3)(b), for “a rate of 10% per annum” substitute “ the rate specified in section 104D(1) of the Capital Allowances Act 2001 ”,
  - (c) after sub-paragraph (3) insert—

“(3A) The rate mentioned in sub-paragraph (3)(a) is—

    - (a) if the rate of the writing down allowance to which the lessor would be entitled in respect of the expenditure apart from this paragraph is that specified in section 56(1) of the Capital Allowances Act 2001, that rate, and
    - (b) otherwise, the rate specified in section 104D(1) of that Act.”,
  - (d) in sub-paragraph (4)—
    - (i) omit the words “within each of those bands”,
    - (ii) after “separate pools” insert “ in accordance with sub-paragraph (4A) ”, and
    - (iii) omit the second sentence, and
  - (e) after that sub-paragraph insert—

“(4A) The expenditure is to be allocated to the following pools—

    - (a) to the extent that it is expenditure in respect of which the lessor is entitled to writing down allowance at the rate specified in section 56(1) of the Capital Allowances Act 2001, a pool to be known as “the tonnage tax (main rate) pool”, and
    - (b) to the extent that it is expenditure in respect of which the lessor is entitled to writing down allowance at the rate

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specified in section 104D(1) of that Act, a pool to be known as “the tonnage tax (special rate) pool”.”

- (3) In paragraph 95(4)—
  - (a) for “(4)” substitute “ (4A) ”, and
  - (b) for “20%” substitute “ tonnage tax (main rate) ” and for “10%” substitute “ tonnage tax (special rate) ”.
- (4) In paragraph 97—
  - (a) in sub-paragraphs (2) and (3), for “20%” substitute “ tonnage tax (main rate) ” and for “10%” substitute “ tonnage tax (special rate) ”, and
  - (b) in sub-paragraph (4), for “10%” substitute “ tonnage tax (special rate) ”.
- (5) In paragraph 98(8), for “20%” substitute “ tonnage tax (main rate) ” and for “10%” substitute “ tonnage tax (special rate) ”.
- (6) In paragraph 99 (quantitative restrictions: change of circumstances taking case out of restrictions)—
  - (a) in sub-paragraph (2), for “20%” substitute “ tonnage tax (main rate) ” and for “10%” substitute “ tonnage tax (special rate) ”,
  - (b) in sub-paragraph (4), for the words from “the whole of” to the end substitute “ the amount that the tax written down value of the ship would have been, at the time the change of circumstances occurs, had paragraph 94 never applied. ”, and
  - (c) omit sub-paragraph (5).
- (7) In consequence of the amendments made by this section, omit section 80(5) to (7) of FA 2008.
- (8) The amendments made by this section have effect in relation to chargeable periods ending on or after 1 January 2011.
- (9) But the amendments made by this section are of no effect in relation to expenditure incurred before that date.

## **58 Transfer pricing: application of OECD principles**

- (1) In section 164 of TIOPA 2010 (Part to be interpreted in accordance with OECD principles), for subsection (4) substitute—
  - “(4) In this section “the transfer pricing guidelines” means—
    - (a) the version of the Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations approved by the Organisation for Economic Co-operation and Development (OECD) on 22 July 2010, or
    - (b) such other document approved and published by the OECD in place of that (or a later) version or in place of those Guidelines as is designated for the time being by order made by the Treasury,
 including, in either case, such material published by the OECD as part of (or by way of update or supplement to) the version or other document concerned as may be so designated.”
- (2) The amendment made by this section has effect (in relation to provision made or imposed at any time)—

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- (a) for corporation tax purposes, for accounting periods beginning on or after 1 April 2011, and
- (b) for income tax purposes, for the tax year 2011-12 and subsequent tax years.

## 59 Offshore funds

In Part 8 of TIOPA 2010 (offshore funds), after section 363 insert—

### **“363A Residence of offshore funds which are undertakings for collective investment in transferable securities**

- (1) This section applies to an offshore fund (within the meaning of section 355) which—
  - (a) is, for the purposes of the UCITS Directive, an undertaking for collective investment in transferable securities, and
  - (b) is authorised pursuant to Article 5 of the UCITS Directive in a Member State other than the United Kingdom.
- (2) If—
  - (a) the offshore fund is a body corporate which, under the law of the Member State in which it is authorised pursuant to Article 5 of the UCITS Directive, is treated as resident in that State for the purposes of any tax imposed under that law on income, and
  - (b) (apart from this section) the body corporate would be treated as resident in the United Kingdom for the purposes of any enactment (within the meaning of section 354) relating to income tax, corporation tax or capital gains tax,the body corporate is instead to be treated as if it were not resident in the United Kingdom.
- (3) If, by virtue of section 99 or 103A of TCGA 1992, that Act applies in relation to the offshore fund as if it were a company, that Act applies as if the company were neither resident nor ordinarily resident in the United Kingdom (if it would not otherwise do so).
- (4) In this section “the UCITS Directive” means Directive [2009/65/EC](#) of the European Parliament and of the Council.”

## 60 Index-linked gilt-edged securities

- (1) In section 399 of CTA 2009 (index-linked gilt-edged securities: basic rules), for subsection (4) substitute—

“(4) In this section and sections 400 to 400C—

“index-linked gilt-edged securities” means any gilt-edged securities under which the amounts of the payments are determined wholly or partly by reference to an index of prices published by the Statistics Board;

“relevant prices index”, in relation to an index-linked gilt-edged security, means the index of prices by reference to which the amounts of the payments under the security are wholly or partly determined.”

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- (2) In the following provisions of that Act, for “retail” substitute “ relevant ”
  - (a) section 400(1)(b), (2), (3) and (6);
  - (b) section 400A(3) and (7)(b).
- (3) Accordingly, in Schedule 14 to FA 2010, omit paragraph 4(4).
- (4) The amendments made by this section have effect in relation to securities issued on or after the day on which this Act is passed.

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