



# Finance Act 2013

## 2013 CHAPTER 29

### PART 1

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

### CHAPTER 3

#### CORPORATION TAX: GENERAL

#### *Losses, other reliefs and deductions*

#### **29 Restriction on surrender of losses: controlled foreign company cases**

- (1) Section 105 of CTA 2010 (restriction on surrender of losses etc within section 99(1) (d) to (g)) is amended as follows.
- (2) In subsection (2), for “the surrendering company's gross profits of the surrender period” substitute “ the profit-related threshold ”.
- (3) In subsection (3), for “those gross profits” substitute “ the profit-related threshold ”.
- (4) After subsection (3) insert—
  - “(3A) The profit-related threshold” is the sum of—
    - (a) the surrendering company's gross profits of the surrender period, and
    - (b) where chargeable profits of a CFC for an accounting period ending in the surrender period are apportioned to the surrendering company in accordance with step 3 in subsection (1) of 371BC of TIOPA 2010 and the surrendering company is in relation to that accounting period of the CFC a chargeable company for the purposes of step 4 in that subsection, the total of the chargeable profits so apportioned.

(3B) Where—

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- (a) an accounting period of a CFC ending in the surrender period is one to which (because of paragraph 50 of Schedule 20 of FA 2012) the repeal of Chapter 4 of Part 17 of ICTA does not apply,
- (b) chargeable profits of the CFC for that accounting period are apportioned to the surrendering company in accordance with sections 747(3) and 752 of ICTA, and
- (c) the surrendering company is not prevented by section 747(5) of ICTA from being chargeable to tax in respect of the CFC for that accounting period,

the profit-related threshold also includes the total of the chargeable profits so apportioned.”

- (5) After subsection (5) insert—

“(5A) For the purposes of this section—

“CFC” has the same meaning as in Part 9A of TIOPA 2010, except that in subsection (3B) it means a controlled foreign company as defined by section 747(2) of ICTA;

“chargeable profits”, in relation to a CFC, is to be read in accordance with section 371BA(3) of TIOPA 2010, except that in subsection (3B) it is to be read in accordance with section 747(6) of ICTA.”

- (6) The amendments made by this section have effect where the surrender period of the surrendering company ends on or after 20 March 2013, but subject to the following.
- (7) For the purposes of section 105(3A)(b) and (3B)(b) of CTA 2010, chargeable profits do not include—
- (a) chargeable profits for an accounting period within the meaning of Part 9A of TIOPA 2010 ending before 20 March 2013, or
  - (b) chargeable profits for an accounting period within the meaning of Chapter 4 of Part 17 of ICTA ending before that date.
- (8) Subsection (9) applies where—
- (a) an accounting period within the meaning of Part 9A of TIOPA 2010, or
  - (b) an accounting period within the meaning of Chapter 4 of Part 17 of ICTA, falls partly before and partly on or after 20 March 2013.
- (9) For the purposes of section 105 of CTA 2010, the chargeable profits of the CFC for that period, so far as apportioned to the surrendering company as mentioned in subsection (3A)(b) or (3B)(b) of that section (as the case requires), are to be further apportioned on a just and reasonable basis between the two parts of the period, and the chargeable profits referred to in subsection (3A)(b) or (3B)(b) are not to include the chargeable profits apportioned to the part ending before 20 March 2013.

### **30 Loss relief surrenderable by non-UK resident established in EEA state**

- (1) Section 107 of CTA 2010 (surrender of losses etc) is amended as follows.
- (2) After subsection (1) insert—

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“(1A) If the surrendering company is established in the EEA (within the meaning of section 134A), it may surrender a loss or other amount under this Chapter only so far as conditions A and B are met.

Subsection (6A) imposes restrictions on a surrender under this subsection.”

(3) In subsection (2) for “The” substitute “ In any other case, the ”.

(4) After subsection (6) insert—

“(6A) A loss or other amount may not be surrendered by virtue of subsection (1A) if and to the extent that it, or any amount brought into account in calculating it, corresponds to, or is represented in, amounts within subsection (6B).

(6B) An amount is within this subsection if, for the purposes of non-UK tax chargeable under the law of a territory, the amount is (in any period) deducted from or otherwise allowed against non-UK profits of any person.”

(5) In subsection (7), after “subsection (6)” insert “ or (6B) ”.

(6) The amendments made by this section have effect in relation to accounting periods beginning on or after 1 April 2013.

(7) But for this purpose an accounting period beginning before, and ending on or after, 1 April 2013 is to be treated as if 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.

(8) An apportionment for the purposes of subsection (7) must be made in accordance with section 1172 of CTA 2010 (time basis) or, if that method produces a result that is unjust or unreasonable, on a just and reasonable basis.

### **31 Arrangements for transfers of companies**

(1) In section 156 of CTA 2010 (definition of “arrangements” for purposes of sections 154 to 155B, etc)—

(a) in subsection (2), in paragraph (b), after “include” insert “—  
(i)”,

(b) at the end of that paragraph insert “, or  
(ii) a condition or requirement imposed by, or agreed with, a Minister of the Crown, the Scottish Ministers, a Northern Ireland department or a statutory body.”,  
and

(c) after that subsection insert—

“(2A) In subsection (2) “statutory body” means a body (other than a company as defined by section 1(1) of the Companies Act 2006) established by or under a statutory provision for the purpose of carrying out functions conferred on it by or under a statutory provision, except that the Treasury may, by order, specify that a body is or is not to be a statutory body for this purpose.”

(2) In sections 154(3) and 155(3) of that Act (arrangements for transfers), for “154A” substitute “ 155A ”.

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- (3) In section 188 of that Act (other definitions for Part 5), in subsection (1), after “company” insert “(except in section 156(2A))”.
- (4) The amendments made by this section have effect in relation to accounting periods ending on or after 1 April 2013.

### **32 Change in company ownership: company reconstructions**

- (1) For section 676 of CTA 2010 (disallowance of trading losses where company reconstruction without a change of ownership) substitute—

#### **“676 Company reconstructions**

- (1) Subsection (2) applies if, before the change in ownership—
  - (a) a trade carried on by another company (“the predecessor company”) is transferred to the company, and
  - (b) the transfer is a transfer to which Chapter 1 of Part 22 applies (transfers of trade without a change of ownership).
- (2) In determining any relief available to the company by virtue of section 944(3) (carry forward of trading losses in successor company), this Chapter applies as if—
  - (a) references to a trade carried on by the company included the trade as carried on by the predecessor company or by any predecessor of that company, and
  - (b) any loss sustained by the predecessor company or any predecessor of that company had been sustained by the company.
- (3) Subsection (4) applies if, after the change in ownership—
  - (a) a trade carried on by the company is transferred to another company (“the successor company”), and
  - (b) the transfer is a transfer to which Chapter 1 of Part 22 applies.
- (4) In determining—
  - (a) any relief available to the company under section 45 (carry forward of trading losses), or
  - (b) any relief available to the successor company or any successor of that company by virtue of section 944(3),
 this Chapter applies as if references to a trade carried on by the company included the trade as carried on by the successor company or by any successor of that company.
- (5) For the purposes of this section a company (“company A”) is a predecessor of another company (“company B”), and company B is a successor of company A, if the first or second condition is met.
- (6) The first condition is that Chapter 1 of Part 22 applies in relation to company A and company B as respectively the predecessor and the successor within the meaning of that Chapter.
- (7) The second condition is that—

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*Status: Point in time view as at 17/07/2014.*

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- (a) Chapter 1 of Part 22 applies in relation to company A and a third company (“company C”) as respectively the predecessor and the successor within the meaning of that Chapter, and
  - (b) company C is (whether by virtue of the first condition or this condition) a predecessor of company B.”
- (2) The amendment made by this section has effect in relation to changes in ownership that occur on or after 20 March 2013.

### **33 Change in company ownership: shell companies**

Schedule 13—

- (a) inserts into Part 14 of CTA 2010 (change in company ownership) a new Chapter 5A (shell companies: restrictions on relief), and
- (b) makes consequential provision.

### **34 Transfer of deductions**

Schedule 14—

- (a) inserts into CTA 2010 a new Part 14A (transfer of deductions), and
- (b) makes consequential provision.

### **35 R&D expenditure credits**

Schedule 15 contains provision about R&D expenditure credits.

### **36 Relief for television production and video games development**

- (1) Schedule 16 contains provision about television production.
- (2) Schedule 17 contains provision about video games development.
- (3) Schedule 18 contains consequential amendments.

#### *Exemption from charge*

### **37 Health service bodies: exemption**

In section 986 of CTA 2010 (exemption from corporation tax: meaning of “health service body”), insert the following entries at the appropriate places in the table—

“a clinical commissioning group	section 1I of the National Health Service Act 2006”
“Health and Social Care Information Centre	section 252 of the Health and Social Care Act 2012”
“National Health Service Commissioning Board	section 1H of the National Health Service Act 2006”

*Status: Point in time view as at 17/07/2014.*

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“National Institute for Health and Care section 232 of the Health and Social Care Act 2012”.

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### **38 Chief constables etc (England and Wales): exemption**

(1) In Chapter 8 of Part 22 of CTA 2010 (exemptions), after section 987 insert—

*“Police*

#### **987A Chief constables etc (England and Wales)**

The following are not liable to corporation tax—

- (a) a chief constable of a police force maintained under section 2 of the Police Act 1996;
  - (b) the Commissioner of Police of the Metropolis.”
- (2) The amendment made by this section is treated as having come into force on 16 January 2012, but, in relation to any time before 22 November 2012, section 987A of CTA 2010 has effect as if paragraph (a) were omitted.

*Other provisions*

### **39 Real estate investment trusts: UK REITs which invest in other UK REITs**

Schedule 19 amends Part 12 of CTA 2010 (real estate investment trusts).

### **40 Corporation tax relief for employee share acquisitions etc**

- (1) Chapter 6 of Part 12 of CTA 2009 (relief for employee share acquisitions: relationship between relief under Part 12 and other reliefs) is amended as follows.
- (2) For section 1038 substitute—

#### **“1038 Exclusion of other deductions**

- (1) Subsection (2) applies if relief is or, apart from condition 2 in section 1009(1), would be available under this Part.

For this purpose, it does not matter if the amount of the relief is or would be calculated as nil.

- (2) Except as provided for by this Part, for the purpose of calculating any company's profits for corporation tax purposes for any accounting period, no deduction is allowed—
- (a) in relation to the provision of the shares or to any matter connected with the provision of the shares, or
  - (b) so far as not covered by paragraph (a) in a case in which the shares are acquired pursuant to an option, in relation to the option or to any matter connected with the option.

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*Status: Point in time view as at 17/07/2014.*

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- (3) In a case in which section 1022 has applied, in subsection (2)(b) references to the option cover the new option and any relevant earlier qualifying option.
  - (4) For the purposes of subsection (2) it does not matter if the accounting period in question falls wholly before or after the time at which the shares are acquired.
  - (5) In a case in which the shares are acquired under an employee share scheme, the deductions disallowed by subsection (2) include (in particular) deductions for amounts paid or payable by the employing company in relation to the participation of the employee in the scheme.
  - (6) But subsection (2) does not disallow deductions for—
    - (a) expenses incurred in setting up the scheme,
    - (b) expenses incurred in meeting, or contributing to, the costs of administering the scheme,
    - (c) the costs of borrowing for the purposes of the scheme, or
    - (d) fees, commission, stamp duty, stamp duty reserve tax, and similar incidental expenses of acquiring the shares.
  - (7) “Employee share scheme” means a scheme or arrangement for enabling shares to be acquired because of persons' employment.
  - (8) In a case in which relief is or, apart from condition 2 in section 1009(1), would be available under Chapter 5 by virtue of section 1030(2), subsection (2) does not disallow deductions in relation to the provision of the convertible securities.”
- (3) After section 1038 insert—

**“1038A Exclusion of deductions for share options: shares not acquired**

- (1) Subsection (2) applies if—
  - (a) a person obtains an option to acquire shares and the requirements of section 1015(1)(a) to (c) are met in relation to the obtaining of the option, or
  - (b) so far as not covered by paragraph (a), a person obtains an option to acquire shares and the obtaining of the option is connected with an option previously obtained in a case covered by paragraph (a) or this paragraph.
- (2) For the purpose of calculating any company's profits for corporation tax purposes for any accounting period, no deduction is allowed in relation to—
  - (a) the option, or
  - (b) any matter connected with the option,unless the shares are acquired pursuant to the option.
- (3) For the purposes of subsection (2) it does not matter if the accounting period in question falls wholly before or after the time at which the option is obtained.
- (4) In a case in which the shares would be acquired under an employee share scheme, the deductions disallowed by subsection (2) include (in particular) deductions for amounts paid or payable by the employing company in relation to the participation of the employee in the scheme.

*Status: Point in time view as at 17/07/2014.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2013, CHAPTER 3. (See end of Document for details)*

- (5) But subsection (2) does not disallow deductions for—
- (a) expenses incurred in setting up the scheme,
  - (b) expenses incurred in meeting, or contributing to, the costs of administering the scheme,
  - (c) the costs of borrowing for the purposes of the scheme, or
  - (d) fees, commission, stamp duty, stamp duty reserve tax, and similar incidental expenses of acquiring the shares.
- (6) “Employee share scheme” means a scheme or arrangement for enabling shares to be acquired because of persons' employment.
- (7) Subsection (2) does not disallow deductions for—
- (a) amounts on which the employee is subject to a charge under ITEPA 2003,
  - (b) amounts on which the employee would have been subject to a charge under ITEPA 2003 had the employee been a UK employee at all material times, or
  - (c) if the employee has died, amounts on which the employee would have been subject to a charge under ITEPA 2003 had the employee been alive.
- (8) “UK employee” is to be read in accordance with section 1017(4).”
- (4) For the purposes of the following subsections—
- “pre-20 March 2013 relevant accounting period” means an accounting period which begins before 20 March 2013 but ends on or after that date, and
- “relevant accounting period” means an accounting period which ends on or after 20 March 2013.
- (5) The amendment made by subsection (2) above has effect for the purpose of disallowing deductions for relevant accounting periods.
- For this purpose, it does not matter if the acquisition of shares which gives rise, or would give rise, to the relief under Part 12 of CTA 2009 occurs before a company's first relevant accounting period.
- (6) But the amendment made by subsection (2) above has no effect for the purpose of disallowing a deduction for a pre-20 March 2013 relevant accounting period where the acquisition of shares which gives rise, or would give rise, to the relief under Part 12 of CTA 2009 occurs before 20 March 2013.
- (7) The amendment made by subsection (3) above has effect for the purpose of disallowing deductions for relevant accounting periods.
- For this purpose, it does not matter if the option is obtained before a company's first relevant accounting period.
- (8) But the amendment made by subsection (3) above has no effect for the purpose of disallowing a deduction for a pre-20 March 2013 relevant accounting period where—
- (a) the option is obtained before 20 March 2013, and
  - (b) before that date, an event (for example, the lapse or cancellation of the option) occurs in consequence of which the shares cannot be acquired pursuant to the option.



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#### **41 Derivative contracts: property total return swaps etc**

(1) Chapter 7 of Part 7 of CTA 2009 (chargeable gains arising in relation to derivative contracts) is amended as follows.

(2) In section 643 (contracts relating to land or certain tangible movable property)—

- (a) in subsection (1), for “and C” substitute “, C and D”, and
- (b) after subsection (4) insert—

“(4A) Condition D is that no two or more of the parties to the derivative contract are connected persons.”

(3) In section 650 (property based total return swaps)—

- (a) in subsection (1), for “to F” substitute “ to H”, and
- (b) after subsection (7) insert—

“(8) Condition G is that no two or more of the parties to the derivative contract are connected persons.

(9) Condition H is that the securing of a tax advantage is neither the main purpose, nor one of the main purposes, for which the company is a party to the derivative contract.

“Tax advantage” has the meaning given by section 1139 of CTA 2010.”

(4) In section 659 (meaning of “relevant credits” and “relevant debits”), after subsection (4) insert—

“(4A) But if the derivative contract has effect such that the return arising from the contract, so far as calculated by reference to that index, is calculated by reference to a percentage (“the capped percentage”) which is closer to zero than the full percentage change in that index over that period (or which is zero even though there has been a change in that index), for the purposes of subsection (4) R% is the capped percentage.”

(5) The amendments made by this section have effect in relation to accounting periods beginning on or after 5 December 2012.

(6) But, for the purposes of subsection (5), an accounting period beginning before, and ending on or after, 5 December 2012 is to be treated as if 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.

#### **42 Corporation tax: tax mismatch schemes**

Schedule 20 contains provision about tax mismatch schemes.

#### **<sup>F1</sup>43 Tier two capital**

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*Status: Point in time view as at 17/07/2014.*

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### Textual Amendments

- F1** S. 43 repealed (with effect in accordance with reg. 1(2)(3) of the amending S.I.) by [The Taxation of Regulatory Capital Securities Regulations 2013 \(S.I. 2013/3209\)](#), regs. 1(1), **12(b)**

## 44 Financing costs and income: group treasury companies

- (1) In section 316 of TIOPA 2010 (group treasury companies) for subsections (2) to (8) substitute—

“(2) A company is a group treasury company in the relevant period if—

- (a) it is a member of the worldwide group,
- (b) it undertakes treasury activities for the worldwide group in the relevant period (whether or not it also undertakes other activities),
- (c) at least 90% of the relevant income of the company for the relevant period is group treasury revenue, and
- (d) it makes an election in respect of the relevant period for the purposes of this section.

(3) Subsection (4) applies if throughout the relevant period—

- (a) all or substantially all of the activities undertaken by a group treasury company consist of treasury activities undertaken by it for the worldwide group, and
- (b) all or substantially all of the assets and liabilities of the company relate to such activities.

(4) Where this subsection applies, the relevant amount, and all other amounts that are relevant amounts in respect of the group treasury company and the relevant period, are treated as not being a financing expense amount or a financing income amount of the group treasury company.

(5) If subsection (4) does not apply, those relevant amounts are treated as not being a financing expense amount or a financing income amount of the group treasury company only to the extent that they relate to treasury activities undertaken by the company for the worldwide group.

(6) For the purposes of subsection (5) the extent to which amounts relate to the matters mentioned is to be determined on a just and reasonable basis.

(7) An election under this section must be made within 3 years after the end of the relevant period.”

- (2) The amendment made by this section has effect in relation to periods of account of the worldwide group beginning on or after 11 December 2012.

## 45 Condition for company to be an “investment trust”

- (1) In section 1158(2) of CTA 2010 (condition A for a company to be an “investment trust”), for “the business of the company consists of” substitute “ all, or substantially all, of the business of the company is ”.

- (2) The amendment made by this section has effect in relation to accounting periods beginning on or after 1 January 2012.

*Status: Point in time view as at 17/07/2014.*

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## **46 Community amateur sports clubs**

Schedule 21 contains provision about community amateur sports clubs.

**Status:**

Point in time view as at 17/07/2014.

**Changes to legislation:**

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