EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes consequential adjustments to the Corporation Tax Acts required by the amendments to sections 75 and 76 of the Income and Corporation Taxes Act 1988 (c. 1) which are made by section 38 to 40 and 45 of, and Schedule 6 to, the Finance Act 2004 (c. 12). In what follows "ICTA" means the 1988 Act and the former sections 75 and 76 are referred to below as "old sections 75 and 76" while their successors are referred to as "new sections 75 and 76".

Article 1 provides for the citation, commencement and effect of the Order and the interpretation of some terms used in it.

Article 2 provides that the Schedule to the Order shall have effect.

The Schedule to the Order contains the amendments. These have been grouped in this note by theme rather than statutory order.

The amendments fall into a series of discrete groups:

The first group of amendments reflects the fact that relief for management expenses is now available to a company with investment business, not just an investment company. The amendments to which this relates are those to—

(a) sections 79, 79A and 79B of ICTA (relief for contributions to certain bodies)

(b) section 93 of ICTA (other grants under Industrial Development Act 1982 etc)

(c) section 392A of ICTA (Schedule A losses)

(d) section 403ZD of ICTA (group relief: meaning of "management expenses" in section 403)

(e) section 468 of ICTA (authorised unit trusts)

(f) section 487 of ICTA (credit unions)

(g) section 578A of ICTA (expenditure on car hire)

(h) Schedule 4AA to ICTA (share incentive plans: corporation tax deductions)

(i) section 44 of the Finance Act 1989 (investment and insurance companies: computation)

(j) Schedule 8 to the Finance Act 1996 (loan relationships: claims etc relating to deficits)

(k) section 15 of the Capital Allowances Act 2001 (qualifying activities) and section 18 of that Act (related definitions);

(l) section 253 of the Capital Allowances Act 2001 (method of giving allowances: companies with investment business);

(m) paragraph 9 of Schedule 23 to the Finance Act 2003 (corporation tax relief for employee share acquisition: shares: method of giving relief); and

(n) paragraph 16 of Schedule 23 to that Act (corporation tax relief for employee share acquisition: options: method of giving relief).

The second group of amendments reflect the fact that section 76 has been decoupled from section 75 and uses a different phraseology ("expenses payable brought into account in Step 1 of section 76(7)"). The amendments in this group are to—

(a) sections 79, 79A and 79B of ICTA (relief for contributions to certain bodies);

(b) section 84A of ICTA (costs of establishing share option or profit sharing schemes: relief);

(c) section 85 of ICTA (payments to trustees of approved profit sharing schemes);

(d) section 85A of ICTA (costs of establishing employee share ownership trusts);

(e) section 86 of ICTA (employees seconded to charities and educational establishments);

(f) section 90 of ICTA (additional payments to redundant employees);

(g) section 403ZD of ICTA (group relief: meaning of "management expenses" in section 403);

(h) section 403ZE of ICTA (computation of gross profits);

(i) section 577 of ICTA (business entertaining expenses);

(j) section 577A of ICTA (expenditure involving crime);

(k) section 578A of ICTA (expenditure on car hire);

(l) section 579 of ICTA (statutory redundancy payments);

(m) section 588 of ICTA (training courses for employees);

(n) section 589A of ICTA (counselling services for employees);

(o) section 592(4) to (6) of ICTA (exempt approved schemes);

(p) section 617 of ICTA (social security benefits and contributions);

(q) section 797 of ICTA (limits on credit for foreign tax; corporation tax);

(r) Schedule 4AA to ICTA (share incentive plans: corporation tax deductions);

(s) Schedule 26 to ICTA (controlled foreign companies: reliefs against liability for tax in respect of chargeable profits);

(t) section 73 of the Finance Act 1988 (consideration for certain restrictive undertakings);

(u) section 76 of the Finance Act 1989 (non-approved retirement benefit schemes);

(v) Schedule 22 to the Finance Act 2001 (land remediation tax credit: entitlement to relief: "I minus E" basis); and

(w) section 357 of the Income Tax Earnings and Pensions Act 2003 (business entertainment and gifts: exception where employer's expenses disallowed).

The third group amends references to "disbursed", which are replaced by "deductible" or other phrases appropriate to the terminology of the new section 75 in the following provisions—

(a) section 392A of ICTA (Schedule A losses);

(b) section 400 of ICTA (write-off of government investment);

(c) section 403ZD of ICTA (group relief: meaning of "management expenses" in section 403);

(d) section 404 of ICTA (limitation of group relief in relation to certain dual resident companies);

(e) section 468 of ICTA (authorised unit trusts);

(f) section 468L of ICTA (interest distributions);

(g) Schedule 4AA to ICTA (share incentive plans: corporation tax deductions); and

(h) Schedule 28A to ICTA (change in ownership of investment company: deductions).

The fourth group amends special timing rules that apply to section 75 to reflect the new language of section 75 in the following provisions—

(a) sections 79, 79A and 79B of ICTA (relief for contributions to certain bodies);

(b) section 84A of ICTA (costs of establishing share option or profit sharing schemes: relief);

(c) section 85A of ICTA (costs of establishing employee share ownership trusts);

(d) section 90 of ICTA (additional payments to redundant employees);

(e) section 579 of ICTA (statutory redundancy payments);

(f) section 588 of ICTA (training courses for employees);

(g) Schedule 4AA to ICTA (share incentive plans: corporation tax deductions);

(h) Schedule 28A to ICTA (change in ownership of investment company: deductions); and

(i) section 44 of the Finance Act 1989 (investment and insurance companies: computation).

The fifth group amends references to a carry forward of management expenses under the old section 75(3) by substituting references to new section 75(9) in the following provisions—

(a) section 400 of ICTA (write-off of government investment);

(b) section 403ZD of ICTA (group relief: meaning of "management expenses" in section 403);

(c) section 403ZE of ICTA (computation of gross profits); and

(d) Schedule 28A to ICTA (change in ownership of investment company: deductions).

The sixth group amends references to amounts being treated as expenses of management under the old section 76 by replacing them with references to being expenses payable (including expenses brought into account in Step 1 or Step 3 in the new section 76) or an expenses deduction, in the following provisions—

(a) section 432AB of ICTA (losses from Schedule A business or overseas property business);

(b) section 437 of ICTA (general annuity business);

(c) section 444A of ICTA (transfers of business);

(d) section 587B of ICTA (gifts of shares, securities and real property to charities etc);

(e) section 44(7) of the Finance Act 1989 (investment and insurance companies: computation);

(f) Schedule 7 to the Finance Act 1991 (basic life assurance and general annuity business: transitional relief for old annuity contracts);

(g) section 256 of the Capital Allowances Act 2001 (life assurance business: different giving effect rules for different categories of business);

(h) paragraph 14 of Schedule 22 to the Finance Act 2001 (remediation of contaminated land: entitlement to land remediation tax credit);

(i) paragraph 17 of Schedule 22 to the Finance Act 2001 (land remediation tax credit: entitlement to relief: "I minus E" basis);

(j) paragraph 23 of Schedule 22 to the Finance Act 2001 (land remediation tax credit: giving effect to relief: enhanced expenses of management);

(k) paragraph 27 of Schedule 22 to the Finance Act 2001 (land remediation tax credit: restriction on carrying forward expenses of management);

(l) Schedule 12 to Finance Act 2002 (tax relief for research and development: entitlement to relief in respect of "I minus E" Basis);

(m) Schedule 13 to the Finance Act 2002 (expenditure on vaccine research etc: entitlement to relief in respect of "I minus E" basis); and

(n) Schedule 29 to the Finance Act 2002 (intangible fixed assets: special provisions relating to insurance companies).

The seventh group amends references to the old sections 75 and 76 to reflect the fact that the payments fall to be treated as expenses payable under new section 75 without needing to be so treated under new section 76 in the following places—

(a) section 86A of ICTA (charitable donations: contributions to agent's expenses); and

(b) section 88 of ICTA (payment to Export Credits Guarantee Department).

The eighth group comprises amendments to the language of the carry forward under the old section 76(5) (minimum profits test) to reflect the new section 76(13) in paragraphs 14, 17, 53 and 54(2) of Schedule 22 to Finance Act 2001 (remediation of contaminated land: entitlement to land remediation tax credit).

Life assurance provisions not covered in previous paragraphs are amended as a result of changes to the minimum profits test (otherwise know as the notional Case I restriction) and other changes to section 76 made by section 40 Finance Act 2004. The provisions concerned—

(a) repeal the transitional provisions in section 87 of the Finance Act 1989 for the pool of pre-1990 expenses, which are now redundant;

(b) amend section 37 of the Taxation of Chargeable Gains Act 1992, repealing a reference to the old minimum profits test in section 76 which has been redundant since the enactment of section 65 Finance (No. 2) Act 1992;

(c) amend other provisions to secure consistency of terminology with that used in the new sections 75 and 76 and

(d) make other consequential repeals.

In addition paragraphs 72 to 78 make consequential amendments to subordinate legislation.

These Regulations do not impose new costs on business.