

Part 1: Other special types of company etc
Chapter 1: Co-operative housing associations
Overview of Chapter

1. This Chapter rewrites section 488 of ICTA. It provides tax rules for housing associations and an approvals process that underpins those rules. The approvals process has been modified significantly for Scotland and Wales as a result of devolution. The draft legislation incorporates these effects on the face of the legislation.

Clause 1: Disregard of rent from members and of interest payable

2. This clause provides that, where an approved housing association makes a claim, any rent that it receives from its members is ignored for tax purposes and any interest that it pays is treated by the association as not payable. It is based on section 488(1) and (2) of ICTA.

3. The source legislation is based on tax years, but as these bodies are subject to corporation tax it is more appropriate to operate on the basis of accounting periods. Moving to this basis also brings the disregard of rent and interest into line with the chargeable gains exemption in clause 2. See *Change 680* in Annex 1.

Clause 2: Exemption for gains on a sale of property

4. This clause exempts an approved housing association from corporation tax on gains on sales of property to its members. It is based on section 488(5) of ICTA.

Clause 3: Approval of housing associations

5. This clause sets out the process by which housing associations become approved for the purposes of this Chapter. It is based on section 488(6) and (7) of ICTA.

6. Since section 488 of ICTA was enacted, a number of changes to the approvals regime have been made as a result of devolution.

7. Specified functions have been transferred:

a) to the Scottish Ministers by the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc) Order 2004 (SI 2004/2030), articles 2(1) and 3; and

b) to the Welsh Ministers by the National Assembly for Wales (Transfer of Functions) Order 1999 (SI 1999/672), article 2 and Schedule 1 and by paragraphs 30(1) and (2) of Schedule 11 to the Government of Wales Act 2006.

8. The effects of these modifications are included explicitly in this Chapter.

9. In order to reflect changes in the responsibilities of the Department of the Environment and the Department for Social Development, the approvals process for Northern Ireland refers to the Department for Social Development instead of the Head of the Department of the Environment for Northern Ireland. See *Change 683* in Annex 1.

10. *Subsection (4)* provides a signpost to a saving provision in the Schedule concerning the concurrent exercise of these functions in relation to Wales by the Secretary of State and the Welsh Ministers where the association is a “cross-border body”.

Clause 4: Tests to be satisfied by the association

11. This clause sets out the tests which housing associations have to satisfy in order to be approved for the purposes of this Chapter. It is based on section 488(6) of ICTA.

12. As mentioned in relation to clause 3, since section 488 of ICTA was enacted, a number of changes to the approvals regime have been made as a result of devolution.

13. So far as exercisable in relation to Wales, the functions under section 488(6) have been transferred to the Welsh Ministers by the National Assembly for Wales (Transfer of Functions) Order 1999 (SI 1999/672), article 2 and Schedule 1 and by paragraphs 30(1) and (2) of Schedule 11 to the Government of Wales Act 2006.

14. Article 5 of the Scotland Act 1988 (Transfer of Functions to the Scottish Ministers etc) Order 2004 (SI 2004/2030) amended section 488(6)(iii). The effect of the amendment on the approvals process for Northern Ireland is discussed in *Change 683* in Annex 1.

Clause 5: Delegation of powers to the Regulator of Social Housing

15. This clause permits the Secretary of State to delegate any of his functions under this legislation to the Regulator of Social Housing. It is based on section 488(7A) of ICTA.

16. The Housing and Regeneration Act 2008 establishes the Regulator of Social Housing in place of the Housing Corporation as the body responsible for regulating social housing in England. Section 488(7A) of ICTA is prospectively amended by paragraph 13 of Schedule 9 to the Housing and Regeneration Act 2008, from a day to be appointed by Order (section 325(1) of that Act). Paragraph 7 of the Schedule to the Transfer of Housing Corporation Functions (Modifications and Transitional Provisions) Order 2008 (SI 2008/2839) also treats the reference to Housing Corporation in section 488(7A) as if it were a reference to the Regulator of Social Housing. Clause 5 is based on the amended legislation. If the Order under section 352 has not been made by the time that this Bill is introduced, the provisions based on section 488(7A) will reflect the prospective status of the amendments.

Clause 6: Claims under section 1 or 2

17. This clause sets out the conditions that must be met for a claim under clause 1 or 2 to be made. It is based on section 488(9), (10) and (11) of ICTA.

18. Claims under the source legislation in relation to rent and interest are based on tax years, but as these bodies are subject to corporation tax it is more appropriate to operate on the basis of accounting periods. Moving to this basis also brings those claims into line with the claim for the chargeable gains exemption in clause 2. See *Change 680* in Annex 1.

Clause 7: Adjustments of liability

19. This clause sets out how adjustments to an association’s corporation tax liability may be made as a result of a claim or an amendment of a claim. It is based on section 488(4) and (11A) of ICTA.

20. Adjustments under the source legislation as a result of claims in relation to rent and interest may be based on tax years or accounting periods, but as these bodies are subject to corporation tax it is more appropriate to operate on the basis of accounting periods. See *Change 680* in Annex 1.

Clause 8: Power to make further provision

21. This clause sets out the power to make further provision by statutory instrument or, in Northern Ireland, by statutory rule. It is based on section 488(8) of ICTA.

22. Powers to make regulations under this provision in relation to Wales were transferred to the Welsh Ministers by the National Assembly for Wales (Transfer of Functions) Order 1999 (SI 1999/672), article 2 and Schedule 1 and by paragraphs 30(1) and (2) of Schedule 11 to the Government of Wales Act 2006.

23. In order to reflect changes in the responsibilities of the Department of the Environment and the Department for Social Development, the powers to make regulations under this provision for the purposes of housing associations in Northern Ireland refer to the Department for Social Development rather than the Head of the Department of the Environment for Northern Ireland. See *Change 683* in Annex 1.

Chapter 2: Self-build societies

Overview of Chapter

24. This Chapter rewrites section 489 of ICTA. It provides tax rules for self-build societies and an approvals process that underpins those rules. The approvals process has been modified significantly for Wales as a result of devolution. The draft legislation incorporates these effects on the face of the legislation.

Clause 9: Meaning of “self-build society”

25. This clause sets out the meaning of “self-build society” for the purposes of the Chapter. It is based on section 489(11) of ICTA.

26. Part 7 of the Housing (Northern Ireland) Order 1981 was revoked by the Housing (Northern Ireland) Order 1992 (SI 1992/1725) (NI15). “Self-build society” has the same meaning in the 1992 Order as it had in Part 7 of the 1981 Order.

Clause 10: Disregard of rent from members

27. This clause sets out that where a self-build society is approved and makes a claim, any rent that it receives from its members is ignored for tax purposes. It is based on section 489(1) and (11) of ICTA.

28. The source legislation is based on tax years, but as these bodies are subject to corporation tax it is more appropriate to operate on the basis of accounting periods. Moving to this basis also brings the disregard for rent into line with the chargeable gains exemption in clause 11. See *Change 680* in Annex 1.

Clause 11: Exemption for gains on disposal of land to members

29. This clause exempts an approved society from corporation tax on gains on sales of property to its members. It is based on section 489(3) of ICTA.

Clause 12: Approval of self-build societies

30. This clause sets out the process by which self-build societies become approved for the purposes of this Chapter. It is based on section 489(4), (5) and (12) of ICTA.

31. Approvals under this clause for self-build societies in Wales have been transferred to the Welsh Ministers by the National Assembly for Wales (Transfer of Functions) Order 1999, article 2 and Schedule 1 and by paragraphs 30(1) and (2) of Schedule 11 to the Government of Wales Act 2006.

32. The effects of these modifications are included explicitly in this Chapter.

33. In order to reflect changes in the responsibilities of the Department of the Environment and the Department for Social Development, the approvals process for Northern Ireland refers to the Department for Social Development instead of the Department of the Environment for Northern Ireland. See *Change 683* in Annex 1.

34. *Subsection (5)* provides a signpost to a saving provision in the Schedule concerning the concurrent exercise of these functions in relation to Wales by the Secretary of State and the Welsh Ministers where the society is a “cross-border body”.

Clause 13: Delegation of powers to the Regulator of Social Housing

35. This clause permits the Secretary of State to delegate any of his functions under clause 12 to the Regulator of Social Housing. It is based on section 489(5A) of ICTA.

36. The Housing and Regeneration Act 2008 establishes the Regulator of Social Housing in place of the Housing Corporation as the body responsible for regulating social housing in England. Section 489(5A) of ICTA is prospectively amended by paragraph 14 of Schedule 9 to the Housing and Regeneration Act 2008, from a day to be appointed by Order (section 325(1) of that Act). Paragraph 7 of the Schedule to the Transfer of Housing Corporation Functions (Modifications and Transitional Provisions) Order 2008 (SI 2008/2839) also treats the reference to Housing Corporation in section 489(5A) as if it were a reference to the Regulator of Social Housing.

Clause 14: Claims under section 10 or 11

37. This clause sets out the conditions that must be met for a claim under clause 10 or 11 to be made. It is based on section 489(7) to (10) of ICTA.

38. Claims under the source legislation in relation to rent are based on tax years, but as these bodies are subject to corporation tax it is more appropriate to operate on the basis of accounting periods. Moving to this basis also brings those claims into line with the claim for the chargeable gains exemption in clause 11. See *Change 680* in Annex 1.

Clause 15: Adjustments of liability

39. This clause sets out how adjustments to a society’s corporation tax liability may be made as a result of a claim or an amendment of a claim. It is based on section 489(2) and (9A) of ICTA.

40. Adjustments under the source legislation as a result of claims in relation to rent may be based on tax years or accounting periods, but as these bodies are subject to corporation tax

it is more appropriate to operate on the basis of accounting periods. See *Change 680* in Annex 1.

Clause 16: Power to make further provision

41. This clause sets out the power to make further provision by statutory instrument or, in Northern Ireland, by statutory rule. It is based on section 489(6) and (12) of ICTA.

42. Powers to make regulations under this provision for the purposes of self-build societies in Wales were transferred to the Welsh Ministers by the National Assembly for Wales (Transfer of Functions) Order 1999 (SI 1999/672), article 2 and Schedule 1 and by paragraphs 30(1) and (2) of Schedule 11 to the Government of Wales Act 2006.

43. In order to reflect changes in the responsibilities of the Department of the Environment and the Department for Social Development, powers to make regulations under this provision for the purposes of self-build societies in Northern Ireland refer to the Department for Social Development instead of the Head of the Department of the Environment for Northern Ireland. See *Change 683* in Annex 1.

Schedule

44. This Schedule is a saving provision concerning the concurrent exercise of the functions relating to Wales by the Secretary of State and the Welsh Ministers where the body is a “cross-border body”. A cross-border body is a body which operates in both England and Wales. See article 2(c) of SI 1999/672 in relation to the concurrent exercise, and paragraph 3(2) of Schedule 3 to the Government of Wales Act 1998 for the definition of a “cross-border body”.

Change 680: Co-operative housing associations and self-build societies: Change from tax year to accounting period: Clauses 1, 6, 7, 10, 14 and 15.

This change amends the references to year of assessment in relation to co-operative housing associations (section 488 of ICTA) and self-build societies (section 489 of ICTA).

These bodies are all within the charge to corporation tax. However, in the source legislation, their claims to exemption in respect of rents receivable from tenants are in terms of tax years. This is because there is also a potential impact on the tenant's income tax liability - for example, the tenant might have been entitled to deduct the rent payable as an expense for tax purposes.

In addition, earlier versions of the legislation transferred entitlement to relief for interest payable from the association/society to the tenant under the relief for mortgage interest provisions until that relief was abolished. It therefore made sense to operate by reference to tax years.

In contrast, the exemption from corporation tax on chargeable gains in respect of disposals of property by these bodies to their members has always been by reference to an accounting period.

As the link to mortgage interest relief has now gone the rationale for retaining the tax year as the basis of the claim and relief is significantly reduced and this change therefore standardises the claim and relief on the basis of an accounting period.

There is no need for a transitional provision as these bodies can claim for part of a tax year or accounting period so there will be no gaps in eligibility for exemption.

This change is in principle and in practice adverse to some taxpayers and favourable to others. But the numbers affected and the amounts involved are likely to be small.

Change 683: Co-operative housing associations and self-build societies: Department for Social Development for Northern Ireland: Clauses 3, 4, 8, 12 and 16.

This change replaces references to “the Head of the Department of the Environment for Northern Ireland”, “the Head of the Department for Social Development for Northern Ireland” and “the Department of the Environment for Northern Ireland” with “the Department for Social Development”.

Article 6(e) and Part 5 of Schedule 4 of the Departments (Transfer and Assignment of Functions) Order (Northern Ireland) 1999 (SI 1999/481) transferred housing functions under the Housing (Northern Ireland) Orders 1981 to 1992 from the Department of the Environment to the Department for Social Development (DSD). In view of the transfers of functions and the responsibility of the DSD for other matters relating to housing, it is appropriate for the functions under sections 488 and 489 of ICTA relating to Northern Ireland to be exercisable by the DSD. This change therefore replaces the references in sections 488(6)(b) and (8) and 489(12) of ICTA to “the Department of the Environment for Northern Ireland” with the “Department for Social Development”.

Article 5 of the Scotland Act 1988 (Transfer of Functions to the Scottish Ministers etc) Order 2004 substituted the reference to “the Head of the Department for Social Development for Northern Ireland” in section 488(6)(iii) of ICTA. It is unclear whether there was sufficient power under this Order to make that substitution. Subsections (5) and (6) of clause 4 make it clear that the functions concerned are exercisable by the DSD as regards Northern Ireland.

By virtue of paragraph 11(2) of Schedule 12 to the Northern Ireland Act 1998, references in section 488 of ICTA to the Head of a Department are to a Minister. In clauses 3, 4 and 8 functions are expressed to be conferred on the Northern Ireland department concerned, rather than on the Minister in charge of the department, in line with modern practice.

This change has no implications for the amount of tax due, who pays it or when. It affects (in principle and in practice) only administrative matters.