

Changes in company ownership

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PART 1

TAX AVOIDANCE: CHANGES IN COMPANY OWNERSHIP

CHAPTER 1

INTRODUCTION

- | | | |
|----------|--|----------|
| 1 | Overview of Part [j7767Ac] | 5 |
| (1) | Chapter 2 restricts relief for trading losses in some cases where there is a change in the ownership of a company.
Origin: Drafting. | |
| (2) | Chapters 3 and 4 restrict relief in some cases where there is a change in the ownership of a company with investment business.
Origin: Drafting. | 10 |
| (3) | Chapter 5 restricts relief for property losses in some cases where there is a change in the ownership of a company without investment business.
Origin: Drafting. | |
| (4) | Chapter 6 enables unpaid corporation tax to be recovered from a linked person in some cases where there is a change in the ownership of a company.
Origin: Drafting. | 15 |
| (5) | Chapter 8 contains supplementary provision.
Origin: Drafting. | |
| (6) | See also [Chapter [3] of Part [18] (recovery of unpaid corporation tax due from non-UK resident company)].
Origin: Drafting. | 20 |
| (7) | For the meaning of –
(a) “change in the ownership of a company”, see Chapter 7,
(b) “company with investment business”, see section 58, and
(c) “linked” person, see section 35.
Origin: Drafting. | 25 |

CHAPTER 2

DISALLOWANCE OF TRADING LOSSES

2 Introduction [j7768]

- (1) This Chapter applies if –
- (a) there is a change in the ownership of a company (“the company”), and
 - (b) condition A or B is met.

Origin: ICTA s.768(1), s.768A(1).

- (2) Condition A is that within the period of 6 years beginning 3 years before the change in ownership there is a major change in the nature or conduct of a trade carried on by the company.

Origin: ICTA s.768(1), s.768A(1); drafting.

- (3) Condition B is that the change in ownership occurs at any time after the scale of the activities in a trade carried on by the company has become small or negligible and before any significant revival of the trade.

Origin: ICTA s.768(1), s.768A(1); drafting.

- (4) In this section “major change in the nature or conduct of a trade” includes –
- (a) a major change in the type of property dealt in, or services or facilities provided in, the trade, or
 - (b) a major change in customers, outlets or markets of the trade.

This Chapter applies even if the change is the result of a gradual process which began before the period of 6 years mentioned in subsection (2).

Origin: ICTA s.768(4), s.768A(2); drafting.

- (5) In this Chapter –
- “the change in ownership” means the change in ownership mentioned in subsection (1)(a), and
 - “the company” has the same meaning as in this section.

Origin: Drafting.

3 Disallowance of trading losses [j7768m]

- (1) In calculating the company’s net profits of an accounting period beginning before the change in ownership, no relief may be given under [section j4505rm] (relief for trade losses against total profits) for a loss made by the company in an accounting period ending after the change in ownership.

Origin: ICTA s.768A(1).

- (2) No relief may be given under [section j4513rm] for a loss made by the company in an accounting period beginning before the change in ownership by carrying forward the loss to reduce profits of a trade of an accounting period ending after the change in ownership.

Origin: ICTA s.768(1); drafting.

- (3) For the purposes of this section and section 4 –

- (a) the accounting period in which the change in ownership occurs is treated as two separate accounting periods, the first ending with the change and the second consisting of the remainder of the period, and
 - (b) the profits or losses of the accounting period must be apportioned to the two periods. 5

Origin: ICTA s.768(2), s.768A(2).
 - (4) The apportionment under subsection (3)(b) must be made on a time basis according to the respective lengths of the two periods.
Origin: ICTA s.768(3), s.768A(2).
 - (5) But if that method of apportionment would work unreasonably or unjustly in any case, such other method must be used as is just and reasonable. 10
Origin: ICTA s.768(3), s.768A(2).
 - (6) In subsection (2), “profits of a trade” includes interest or dividends treated as profits of a trade under [section {j4514rm}].
Origin: ICTA s.768(1). 15
- 4 Disallowance of trading losses: calculation of balancing charges [j7768za]**
- (1) The following provisions apply if relief in respect of the company’s losses is restricted because of section 3(2).
Origin: ICTA s.768(6).
 - (2) In applying the provisions of CAA 2001 about balancing charges to the company by reference to any event after the change in ownership, there is to be disregarded any allowance falling to be made in taxing the company’s trade for any accounting period beginning before the change in ownership. This subsection applies despite section 577(3) of CAA 2001. 20
Origin: ICTA s.768(6). 25
 - (3) But subsection (2) does not apply if the profits or gains of that accounting period or of any subsequent accounting period beginning before the change in ownership were sufficient to give effect to the allowance.
Origin: ICTA s.768(6).
 - (4) For the purposes of subsection (3), it must be assumed that any profits or gains are applied in giving effect to any such allowance as is mentioned in subsection (2) in preference to being reduced by any loss which is not attributable to such an allowance. 30
Origin: ICTA s.768(7).
- 5 Disallowance of trading losses where company reconstruction without change in ownership [j7768z]** 35
- In relation to any relief available under [section {j4901Arm}(3) (modified application of Chapter [2] of Part [4])] to a successor company, section 3(2) applies as if –
- (a) any loss sustained by a predecessor company had been sustained by a successor company, and 40

- (b) as if the references to a trade included the trade as carried on by a predecessor company.

Origin: ICTA s.768(5); drafting.

CHAPTER 3

COMPANY WITH INVESTMENT BUSINESS: RESTRICTIONS ON RELIEF: GENERAL PROVISION 5

Introduction

6 **Introduction [j7768B]**

- (1) This Chapter applies if—
- (a) there is a change in the ownership of a company with investment business (“the company”), and 10
 - (b) condition A, B or C is met.

Origin: ICTA s.768B(1), s.768D(1), s.768E(1); drafting.

- (2) Condition A is that after the change in ownership there is a significant increase in the amount of the company’s capital (see sections 17 to 20). 15

Origin: ICTA s.768B(1), (2).

- (3) Condition B is that within the period of 6 years beginning 3 years before the change in ownership there is a major change in the nature or conduct of the business carried on by the company.

Origin: ICTA s.768B(1).

- (4) Condition C is that the change in ownership occurs at any time after the scale of the activities in the business carried on by the company has become small or negligible and before any significant revival of the business. 20

Origin: ICTA s.768B(1).

- (5) In subsection (3) “major change in the nature or conduct of a business” includes a major change in the nature of the investments held by the company, even if the change is the result of a gradual process which began before the period of 6 years mentioned in that subsection. 25

Origin: ICTA s.768B(3).

- (6) In this Chapter—
- “the change in ownership” means the change in ownership mentioned in subsection (1)(a), and 30
 - “the company” has the same meaning as in this section.

Origin: Drafting.

Notional split of accounting period in which change in ownership occurs

7 **Notional split of accounting period in which change in ownership occurs [j728A9B]** 35

- (1) This section applies for the purposes of this Chapter.

Origin: Drafting.

- (2) The accounting period in which the change in ownership occurs (“the actual accounting period”) is treated as two separate accounting periods (“notional accounting periods”), the first ending with the change and the second consisting of the remainder of the period. 5

Origin: ICTA ss.768B(4), s.768D(3), (9), s.768E(2).

- (3) The amounts for the actual accounting period in column 1 of the table in section 14(2) must be apportioned to the two notional accounting periods in accordance with section 14.

Origin: ICTA s.768B(4), (5), s.768D(4), (9), s.768E(3); drafting.

10

- (4) In this Chapter “the actual accounting period” and “notional accounting periods” have the same meaning as in this section.

Origin: Drafting*Restrictions on relief***8 Restriction on debits to be brought into account [j728A9] 15**

- (1) This section has effect for the purpose of restricting the debits to be brought into account for the purposes of Part [6] of [the Corporation Tax Act 2009 (loan relationships)] in respect of the company’s loan relationships.

Origin: ICTA s.768B(10).

- (2) The debits to be brought into account for the purposes of Part [6] of [the Corporation Tax Act 2009] for – 20

(a) the accounting period beginning immediately after the change in ownership, or

(b) any subsequent accounting period,

do not include relevant non-trading debits so far as amount A exceeds amount B. 25

Origin: ICTA Sch.28A para.9(1), (2).

- (3) Amount A is the sum of –
- (a) the amount of those relevant non-trading debits, and
- (b) the amount of any relevant non-trading debits which have been brought into account for the purposes of [that Part] for any previous accounting period ending after the change in ownership. 30

Origin: ICTA Sch.28A para.9(2).

- (4) Amount B is the amount of the profits of the accounting period ending with the change in ownership. 35

Origin: ICTA Sch.28A para.9(2).

- (5) In subsection (4) “the profits” means the profits after making all deductions and giving all reliefs that for corporation tax purposes are made or given against the profits, including deductions and reliefs which under any provision are treated as reducing them for those purposes. 40

Origin: ICTA Sch.28A para.9(3).

- (6) For the meaning of “relevant non-trading debit”, see section 59.

[Origin: Drafting.](#)

9 **Restriction on the carry forward of non-trading deficit from loan relationships [j728A9A]**

- (1) This section has effect for the purpose of restricting the carry forward of a non-trading deficit from the company’s loan relationships under Part [6] of [the Corporation Tax Act 2009 (loan relationships)]. 5

[Origin: ICTA s.768B\(10\).](#)

- (2) Subsection (3) applies if the non-trading deficit in column 1 of row 4 of the table in section 14(2) is apportioned in accordance with section 14(2) to the first notional accounting period. 10

[Origin: ICTA Sch.28A para.9A\(1\).](#)

- (3) None of that non-trading deficit may be carried forward to – 15
- (a) the accounting period beginning immediately after the change in ownership, or
 - (b) any subsequent accounting period.

[Origin: ICTA Sch.28A para.9A\(2\).](#)

10 **Restriction on relief for non-trading loss on intangible fixed assets [j7768E]**

- (1) This section has effect for the purpose of restricting relief under section [721] [j062935] of [the Corporation Tax Act 2009 (treatment of non-trading losses)] in respect of a non-trading loss on intangible fixed assets. 20

[Origin: ICTA s.768E\(1\).](#)

- (2) Relief under section [721] [j062935] of [the Corporation Tax Act 2009] against total profits of the same accounting period is available only in relation to each of the notional accounting periods considered separately. 25

[Origin: ICTA s.768E\(4\).](#)

- (3) A non-trading loss on intangible fixed assets for the first notional accounting period may not be – 30
- (a) carried forward to the second notional accounting period under section [721] [j062935(3)] of [that Act], or
 - (b) treated under that section as if it were a non-trading debit of that period.

[Origin: ICTA s.768E\(5\); Annex 1, Change \[jc655\].](#)

11 **Restriction on the deduction of expenses of management [j7768Bd]**

- (1) This section has effect for the purpose of restricting deductions for expenses of management. 35

[Origin: Drafting.](#)

- (2) Any amounts which –

- (a) are, or are treated as, expenses of management referable to the actual accounting period, and
- (b) are apportioned to either of the two notional accounting periods in accordance with section 14,
- are treated for the purposes of Chapter [2] of Part [16] of [the Corporation Tax Act 2009 (companies with investment business)] as expenses of management referable to that notional accounting period. 5
- Origin: ICTA s.768B(6).**
- (3) Any allowances which are apportioned to either of the notional accounting periods in accordance with section 14 are treated for the purposes of section 253 of CAA 2001 and section [1157] [j2001] of [the Corporation Tax Act 2009 (companies with investment business: excess capital allowances)] as falling to be made in that notional accounting period. 10
- Origin: ICTA s.768B(8).**
- (4) In calculating the total profits of an accounting period of the company ending after the change in ownership, no deduction may be made under section [1143] [j2000] of [the Corporation Tax Act 2009 (expenses of management of a company's investment business)] by reference to— 15
- (a) expenses of management deductible for an accounting period beginning before the change, or 20
- (b) allowances falling to be made for such an accounting period.
- Origin: ICTA s.768B(9).**
- 12 Disallowance of UK property business losses [j7768Dc]**
- (1) This section has effect for the purpose of restricting relief under [sections {j4101Arm} and {j4101rm}] for a loss made by the company in a UK property business before the change in ownership. 25
- Origin: ICTA s.768D(2); drafting.**
- (2) Relief under [section {j4101rm}(3)] is available only in relation to each of the notional accounting periods considered separately. 30
- Origin: ICTA s.768D(5).**
- (3) A loss made in an accounting period beginning before the change in ownership may not be—
- (a) carried forward under [section {j4101Arm}(2)(a) or {j4101rm}(5)(a)] to an accounting period ending after the change in ownership, or
- (b) treated in relation to that accounting period as mentioned in [section {j4101Arm}(2)(b) or {j4101rm}(5)(b).] 35
- Origin: ICTA s.768D(6).**
- 13 Disallowance of overseas property business losses [j7768De]**
- (1) This section has effect for the purpose of restricting relief under [section {j4102rm} (relief for losses made in overseas property business)] for a loss made by the company in an overseas property business before the change in ownership. 40

Origin: ICTA s.768D(2), (9); drafting.

- (2) A loss in the business made in an accounting period beginning before the change in ownership may not be used under [section [j4102rm](#)(3)] to reduce profits of the business of an accounting period ending after the change in ownership.

5

Origin: ICTA s.768D(6), (9); drafting.

Apportionment of amounts

14 Apportionment of amounts [j728A6](#)

- (1) This section applies for the purposes of this Chapter, but subsection (2) is subject to subsection (3).

10

Origin: ICTA Sch.28A para.7(1); drafting.

- (2) Any amount for the actual accounting period in column 1 of the following table must be apportioned to the two notional accounting periods in accordance with the corresponding method of apportionment in column 2 of the table.

<i>Row</i>	<i>1. Amount to be apportioned</i>	<i>2. Method of apportionment</i>	<i>15</i>
1	The amount for the actual accounting period of any adjusted non-trading profits from the company's loan relationships (see section 15(2)).	Apportion the amount in column 1 on a time basis according to the respective lengths of the two notional accounting periods.	<i>20</i>
2	The amount for the actual accounting period of any adjusted non-trading deficit from the company's loan relationships (see section 15(3)).	Apportion the amount in column 1 on a time basis according to the respective lengths of the two notional accounting periods.	<i>25</i>
3	The amount of any non-trading debit that falls to be brought into account for the actual accounting period for the purposes of Part [6] of [the Corporation Tax Act 2009 (loan relationships)] in respect of any debtor relationship of the company.	(1) If condition A in section 15(4) is met, apportion the amount in column 1 by reference to the time of accrual of the amount to which the debit relates. (2) If condition B in section 15(5) is met, apportion the amount in column 1 to the first notional accounting period.	<i>30</i>
4	The amount of any non-trading deficit carried forward to the actual accounting period under section [444] j069684 of [the Corporation Tax Act 2009 (basic rule for deficits: carry forward to accounting periods after deficit period)].	Apportion the whole of the amount in column 1 to the first notional accounting period.	<i>35</i>
			<i>40</i>

Row	1. Amount to be apportioned	2. Method of apportionment	
5	The amount of any non-trading credits or debits in respect of intangible fixed assets that fall to be brought into account for the actual accounting period under section [719] [j062934] of [the Corporation Tax Act 2009 (non-trading gains and losses)].	Apportion to each notional accounting period the credits or debits that would fall to be brought into account in that period if it were a period of account for which accounts were drawn up in accordance with generally accepted accounting practice.	5
6	The amount of any non-trading loss on intangible fixed assets carried forward to the actual accounting period under section [721] [j062935(3)] of [the Corporation Tax Act 2009] and treated under that section as if it were a non-trading debit of that period.	Apportion the whole of the amount in column 1 to the first notional accounting period.	10
7	The amount of any expenses of management referable to the actual accounting period under Chapter [2] of Part [16] of [the Corporation Tax Act 2009 (companies with investment business)] (but see section 15(6)).	Apportion to each notional accounting period the amounts that would fall to be brought into account in that period as an amount in column 1 if it were a period of account for which accounts were drawn up in accordance with generally accepted accounting practice.	15 20 25
8	The amount of any excess carried forward under section [1147] [j2002] of [the Corporation Tax Act 2009 (expenses of management carried forward)] to the actual accounting period.	Apportion the whole of the amount in column 1 to the first notional accounting period.	30
9	The amount of any allowances falling to be made for the actual accounting period as a result of section 253 of CAA 2001 which would (but for this Chapter) be added to the expenses of management for the period because of section [1157] [j2001] of [the Corporation Tax Act 2009 (excess capital allowances)].	Apportion the amount in column 1 on a time basis according to the respective lengths of the two notional accounting periods.	35
10	Any other amounts by reference to which the profits or losses of the actual accounting period would (but for this Chapter) be calculated.	Apportion the amount in column 1 on a time basis according to the respective lengths of the two notional accounting periods.	40 45

- (3) If any method of apportionment in column 2 of the table in subsection (2) would work unreasonably or unjustly in any case, such other method must be used as is just and reasonable.

[Origin: ICTA s.768E\(3\), Sch.28A para.8.](#)

- (4) For the meaning of certain expressions used in this section, see section 15. 5

[Origin: Drafting.](#)

15 **Meaning of certain expressions in section 14 [j728A7a]**

- (1) This section applies for the purposes of the table in section 14(2).

[Origin: Drafting.](#)

- (2) For the purposes of column 1 of row 1 of the table, the amount for the actual accounting period of any adjusted non-trading profits from the company's loan relationships is the amount which would be the amount of non-trading profits from those relationships chargeable under section [308] [j061080] of [the Corporation Tax Act 2009 (charge to tax on non-trading profits)] if, in calculating that amount, amounts for that period within column 1 of row 3 or 4 of the table were disregarded. 10
15

[Origin: ICTA Sch.28A para.6A.](#)

- (3) For the purposes of column 1 of row 2 of the table, the amount for the actual accounting period of any adjusted non-trading deficit from the company's loan relationships is the amount which would be the amount of the non-trading deficit from those relationships if, in calculating that amount, amounts for that period within column 1 of row 3 or 4 of the table were disregarded. 20

[Origin: ICTA Sch.28A para.6A.](#)

- (4) Condition A is that –
- (a) the amount in column 1 of row 3 of the table is determined on an amortised cost basis of accounting, and 25
 - (b) none of the following provisions applies –
 - (i) section [378] [j069692] of [the Corporation Tax Act 2009 (late interest treated as not accruing until paid in some cases)],
 - (ii) section [416] [j0696917] of [that Act (postponement until redemption of debits for connected company's deeply discounted securities),] or 30
 - (iii) section [418] [j0696918] of [that Act (postponement until redemption of debits for close company's deeply discounted securities)]. 35

[Origin: ICTA Sch.28A para.7\(1\).](#)

- (5) Condition B is that –
- (a) the amount in column 1 of row 3 of the table is determined on an amortised cost basis of accounting, and
 - (b) any of the provisions mentioned in subsection (4)(b) applies. 40

[Origin: ICTA Sch.28A para.7\(1\).](#)

- (6) The expenses of management mentioned in column 1 of row 7 of the table do not include any expenses for which a deduction would be allowed in

calculating profits otherwise than under section [1143] [j2000] of [the Corporation Tax Act 2009 (expenses of management of a company’s investment business)] were it not for the provisions of this Chapter.

Origin: ICTA Sch.28A para.6.

Adjustment to balancing charges if relief is restricted 5

16 Adjustment to balancing charges if relief is restricted [j7768Bf]

- (1) This section applies if condition A or B is met.

Origin: ICTA s.768B(12), (13).

- (2) Condition A is that the debits to be brought into account for the purposes of Part [6] of [the Corporation Tax Act 2009 (loan relationships)] in the case of the company in respect of its loan relationships are restricted because of section 8. 10

Origin: ICTA s.768B(12), (13).

- (3) Condition B is that deductions from the company’s total profits are restricted because of section 9 or 11.

Origin: ICTA s.768B(12), (13). 15

- (4) In applying the provisions of CAA 2001 about balancing charges to the company by reference to any event after the change in ownership, there is to be disregarded any allowance falling to be made in taxing the company’s trade for any accounting period beginning before the change in ownership.

This subsection applies despite section 577(3) of CAA 2001. 20

Origin: ICTA s.768(6), s.768B(12).

- (5) But subsection (4) does not apply if the profits or gains of that accounting period or of any subsequent accounting period beginning before the change in ownership were sufficient to give effect to the allowance.

Origin: ICTA s.768(6), s.768B(12). 25

- (6) For the purposes of subsection (5), it must be assumed that any profits or gains are applied in giving effect to any such allowance as is mentioned in subsection (4) in preference to being reduced by any loss which is not attributable to such an allowance.

Origin: ICTA s.768(7), s.768B(12). 30

Meaning of "significant increase in the amount of a company’s capital"

17 Meaning of “significant increase in the amount of a company’s capital” [j728A1]

- (1) This section and sections 18 to 20 have effect for determining whether, for the purposes of section 6(2), there is a significant increase in the amount of a company’s capital after a change in the ownership of the company. 35

Origin: ICTA Sch.28A para.1.

- (2) There is a significant increase in the amount of a company’s capital if amount B—
- (a) exceeds amount A by at least £1 million, or
 - (b) is at least twice amount A.

Origin: ICTA Sch.28A para.2.

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- (3) For the meaning of—
- (a) “Amount A” and “Amount B”, see sections 18 and 19 respectively, and
 - (b) “amount of capital”, see section 20.

Origin: Drafting.

18 Amount A [j728A1a] 10

- (1) In section 17, amount A is the lower of—
- (a) the amount of the company’s capital immediately before the change in ownership, and
 - (b) the highest 60 day minimum amount for the pre-change year.

Origin: ICTA Sch.28A para.3(1).

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- (2) The highest 60 day minimum amount for the pre-change year is found as follows.

Step 1

Find the daily amounts of the company’s capital over the pre-change year.

Step 2

Take the highest of the daily amounts.

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Step 3

Find out whether there was in the pre-change year a period of at least 60 days in which there was no daily amount lower than the amount taken.

Step 4

If there was, the amount taken is the highest 60 day minimum amount for the pre-change year.

If there was not, take the next highest of the daily amounts and repeat step 3; and so on, until the highest 60 day minimum amount for the pre-change year is found.

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Origin: ICTA Sch.28A para.3(2), (3), (4), (5), (6).

- (3) In this section “the pre-change year” means the period of one year ending immediately before the change in ownership.

Origin: ICTA Sch.28A para.3(7).

19 Amount B [j728A1b] 35

- (1) In section 17, amount B is the highest 60 day minimum amount for the post-change period.

Origin: ICTA Sch.28A para.4(1).

- (2) The highest 60 day minimum amount for the post-change period is found as follows.

Step 1

Find the daily amounts of the company's capital over the post-change period.

Step 2

Take the highest of the daily amounts.

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Step 3

Find out whether there was in the post-change period a period of at least 60 days in which there was no daily amount lower than the amount taken.

Step 4

If there was, the amount taken is the highest 60 day minimum amount for the post-change period.

If there was not, take the next highest of the daily amounts and repeat step 3; and so on, until the highest 60 day minimum amount for the post-change period is found.

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[Origin: ICTA Sch.28A para.4\(1\).](#)

- (3) In this section “the post-change period” means the period of 3 years beginning with the change in ownership.

[Origin: ICTA Sch.28A para.4\(2\).](#)

20 Meaning of “amount of capital” [j728A5] 20

- (1) This section applies for the purposes of sections 17 to 19.

[Origin: Drafting.](#)

- (2) The amount of the capital of a company is the sum of—
- the amount of the paid up share capital of the company,
 - the amount outstanding of any debt incurred by the company for any money borrowed or capital assets acquired by the company, 25
 - the amount outstanding of any debt so incurred for any right to receive income created in favour of the company,
 - the amount outstanding of any debt so incurred for consideration the value of which to the company was (at the time when the debt was incurred) substantially less than the amount of the debt (including any premium on the debt), and 30
 - the amount outstanding of any redeemable loan capital issued by the company.

[Origin: ICTA Sch.28A para.5\(1\).](#) 35

- (3) For the purposes of subsection (2)—
- the amount of the paid up share capital includes any amount in the share premium account of the company, and
 - the amount outstanding of any debts includes the amount of any interest due on the debts. 40

[Origin: ICTA Sch.28A para.5\(2\).](#)

- (4) Amounts of capital must be expressed in sterling.
 Origin: ICTA Sch.28A para.5(3).
- (5) In this section “share premium account” has the same meaning as in section 610 of the Companies Act 2006.
 Origin: ICTA Sch.28A para.5(2). 5

CHAPTER 4

COMPANY WITH INVESTMENT BUSINESS: RESTRICTIONS ON RELIEF: ASSET TRANSFERRED WITHIN GROUP

Introduction

- 21 Introduction [j7768C]** 10
- (1) This Chapter applies if—
- (a) there is a change in the ownership of a company with investment business (“the company”), and
 - (b) conditions 1, 2 and 3 are met.
- Origin: ICTA s.768C(1), s.768D(1), s.768E(1); drafting. 15
- (2) Condition 1 is that none of conditions A to C in section 6 is met.
 Origin: ICTA s.768C(1).
- (3) Condition 2 is that after the change in ownership the company acquires an asset from another company in circumstances such that—
- (a) section 171(1) of TCGA 1992 (no gain/ no loss on transfer within group), or
 - (b) section [743] [j062955] of [the Corporation Tax Act 2009 (tax-neutral transfer on transfer within group)],
- applies to the acquisition. 20
- Origin: ICTA s.768C(1), (13). 25
- (4) Condition 3 is that—
- (a) in a case within subsection (3)(a), a chargeable gain accrues to the company on a disposal of the asset within the period of 3 years beginning with the change in ownership, or
 - (b) in a case within subsection (3)(b), there is a non-trading chargeable realisation gain on the realisation of the asset within that period. 30
- Origin: ICTA s.768C(1), (13).
- (5) For the purposes of subsection (4), an asset (P) acquired by the company as mentioned in subsection (3) is treated as the same as an asset (Q) owned at a later time by the company if the value of Q is derived in whole or in part from P. 35
- Origin: ICTA s.768C(2).
- (6) In particular, P is treated as the same as Q for those purposes if—
- (a) Q is a freehold,

- (b) P was a leasehold, and
- (c) the lessee has acquired the reversion.

Origin: ICTA s.768C(2).

- (7) In this Chapter –
- “the change in ownership” means the change in ownership mentioned in subsection (1)(a), 5
 - “the company” has the same meaning as in this section,
 - “non-trading chargeable realisation gain” means a chargeable realisation gain (within the meaning of Part [9] of [the Corporation Tax Act 2009 (intangible fixed assets)] which is a non-trading gain on intangible fixed assets within the meaning of section [719] [j062934] of [that Act (non-trading gains and losses)], and 10
 - “the relevant gain” means the gain within subsection (4)(a) or (b).

Origin: ICTA s.768C(1), (13); drafting.

22 Meaning of “amount of profits which represents a relevant gain” [j728A10C] 15

- (1) In this Chapter, the amount of any profits which represent a relevant gain is found by comparing –
- (a) the amount (“Y”) of the relevant gain, with
 - (b) the amount (“Z”) which is included in respect of chargeable gains or, as the case may be, non-trading chargeable realisation gains for the accounting period concerned. 20

Origin: ICTA s.768C(8), (13).

- (2) If Y does not exceed Z, the amount of the profits which represents the relevant gain equals Y.

Origin: ICTA s.768C(8). 25

- (3) If Y exceeds Z, the amount of those profits equals Z.

Origin: ICTA s.768C(8).

23 Meaning of “the relevant provisions” [j728A10B]

In this Chapter “the relevant provisions” means –

- (a) section 8(1) of, and Schedule 7A to, TCGA 1992, or 30
- (b) Chapter [6] of Part [9] of [the Corporation Tax Act 2009 (intangible fixed assets: how credits and debits are given effect).]

Origin: ICTA s.768C(12), (13), Sch.28A para.13(2).

Notional split of accounting period in which change in ownership occurs

24 Notional split of accounting period in which change in ownership occurs [j728A10D] 35

- (1) This section applies for the purposes of this Chapter.

Origin: Drafting.

- (2) The accounting period in which the change in ownership occurs (“the actual accounting period”) is treated as two separate accounting periods (“notional accounting periods”), the first ending with the change and the second consisting of the remainder of the period.

Origin: ICTA s.768C(3), s.768D(3), (9), s.768E(2).

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- (3) The amounts for the actual accounting period in column 1 of the table in section 31(2) must be apportioned to the two notional accounting periods in accordance with section 31.

Origin: ICTA s.768C(3),(4), s.768D(4), (9), s.768E(3).

- (4) In this Chapter “the actual accounting period” and “notional accounting periods” have the same meaning as in this section.

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Origin: Drafting.

Restrictions on relief

25 Restriction on debits to be brought into account [j728A10]

- (1) This section has effect for the purpose of restricting the debits to be brought into account for the purposes of Part [6] of [the Corporation Tax Act 2009 (loan relationships)] in respect of the company’s loan relationships.

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Origin: ICTA s.768C(9)

- (2) But this section applies only if, in accordance with the relevant provisions and section 31, an amount is included in respect of chargeable gains or, as the case may be, non-trading chargeable realisation gains in the total profits of the accounting period of the company in which the relevant gain accrues or arises.

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Origin: ICTA s.768C(6).

- (3) The debits to be brought into account for the purposes of Part [6] of [the Corporation Tax Act 2009] for –

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(a) the accounting period beginning immediately after the change in ownership, or

(b) any subsequent accounting period,

do not include relevant non-trading debits so far as the amount of those debits exceeds [the modified total profits of the accounting period].

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Origin: ICTA Sch.28A para.10(1),(2).

- (4) In subsection (3) “[the modified total profits of the accounting period]” means the [total profits] of that period –

(a) reduced, if that period is the period in which the relevant gain accrues or arises, by an amount equal to so much of those profits as represents the relevant gain, and

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(b) [after making all deductions and giving all reliefs that for corporation tax purposes are made or given against the profits, including deductions and reliefs which under any provision are treated as reducing them for those purposes,] but not any reduction as a result of section [448] [j069681] of [the Corporation Tax Act 2009 (claim to set off deficit against other profits for the deficit period)].

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Origin: ICTA Sch.28A para.10(3).

- (5) If, as a result of subsection (3), a debit is to any extent not brought into account for an accounting period, that debit may (to that extent) be brought into account for the next accounting period, but this is subject to the application of subsections (3) and (4) to that next accounting period.
Origin: ICTA Sch.28A para.10(4). 5
- (6) For the meaning of “relevant non-trading debit”, see section 59.
Origin: Drafting.
- 26 Restriction on the carry forward of non-trading deficit from loan relationships [j728A10A]**
- (1) This section has effect for the purpose of restricting the carry forward of a non-trading deficit from the company’s loan relationships under Part [6] of [the Corporation Tax Act 2009 (loan relationships)]. 10
Origin: ICTA s.768C(9).
- (2) But this section applies only if, in accordance with the relevant provisions and section 31, an amount is included in respect of chargeable gains or, as the case may be, non-trading chargeable realisation gains in the total profits of the accounting period of the company in which the relevant gain accrues or arises. 15
Origin: ICTA s.768C(6).
- (3) Subsection (4) applies if the non-trading deficit in column 1 of row 5 of the table in section 31(2) is apportioned in accordance with section 31(2) to the first notional accounting period. 20
Origin: ICTA Sch.28A para.10A(1).
- (4) None of that non-trading deficit may be carried forward to—
(a) the accounting period beginning immediately after the change in ownership, or
(b) any subsequent accounting period. 25
Origin: ICTA Sch.28A para.10A(2).
- 27 Restriction on relief for non-trading loss on intangible fixed assets [j7768Ea]**
- (1) This section has effect for the purpose of restricting relief under section [721] [j062935] of [the Corporation Tax Act 2009 (treatment of non-trading losses)] in respect of a non-trading loss on intangible fixed assets incurred. 30
Origin: ICTA s.768E(1).
- (2) But this section applies only if, in accordance with the relevant provisions and section 31, an amount is included in respect of chargeable gains or, as the case may be, non-trading chargeable realisation gains in the total profits of the accounting period of the company (“the relevant period”) in which the relevant gain accrues or arises. 35
Origin: ICTA s.768E(5); Annex 1, Change [jc656].
- (3) Relief under section [721] [j062935] of [the Corporation Tax Act 2009] against total profits of the same accounting period is available only in relation to each of the notional accounting periods considered separately. 40

Origin: ICTA s.768E(4).

- (4) No relief may be given under section [721] [j062935(1)] of [that Act (claim to set non-trading loss against total profits)] in respect of so much of the total profits of the relevant period as represents the relevant gain.

Origin: ICTA s.768E(5); Annex 1, Change [jc655].

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28 Restrictions on the deduction of expenses of management [j7768Ca]

- (1) This section has effect for the purpose of restricting deductions for expenses of management.

Origin: Drafting.

- (2) Any amounts which – 10
- (a) are, or are treated as, expenses of management referable to the actual accounting period, and
 - (b) are apportioned to either of the two notional accounting periods in accordance with section 31,

are treated for the purposes of Chapter [2] of Part [16] of [the Corporation Tax Act 2009 (companies with investment business)] as expenses of management referable to that notional accounting period. 15

Origin: ICTA s.768C(5).

- (3) Any allowances which are apportioned to either of the notional accounting periods in accordance with section 31 are treated for the purposes of section 253 of CAA 2001 and section [1157] [j2001] of [the Corporation Tax Act 2009 (companies with investment business: excess capital allowances)] as falling to be made in that notional accounting period. 20

Origin: ICTA s.768C(5).

- (4) Subsection (5) applies if, in accordance with the relevant provisions and section 31, an amount is included in respect of chargeable gains or, as the case may be, non-trading chargeable realisation gains in the total profits of the accounting period of the company in which the relevant gain accrues or arises. 25

Origin: ICTA s.768C(6), (13).

- (5) In calculating the total profits of the accounting period of the company in which the relevant gain accrues or arises, no deduction may be made under section [1143] [j2000] of [the Corporation Tax Act 2009 (expenses of management of a company's investment business)] by reference to – 30
- (a) expenses of management deductible for an accounting period beginning before the change in ownership, or 35
 - (b) allowances falling to be made for such an accounting period, from so much of those profits as represents the relevant gain.

Origin: ICTA s.768C(7).

29 Disallowance of UK property business losses [j7768Dd]

- (1) This section has effect for the purpose of restricting relief under [sections {j4101Arm} and {j4101rm}] for a loss made by the company in a UK property business before the change in ownership. 40

Origin: ICTA s.768D(2); drafting.

- (2) But this section applies only if, in accordance with the relevant provisions and section 31, an amount is included in respect of chargeable gains or, as the case may be, non-trading chargeable realisation gains in the total profits of the accounting period of the company in which the relevant gain accrues or arises. 5

Origin: ICTA s.768D(6); Annex 1, Change [jc656].

- (3) Relief under [section {j4101rm}(3)] is available only in relation to each of the notional accounting periods considered separately.

Origin: ICTA s.768D(5).

- (4) A loss made in an accounting period beginning before the change in ownership may not be deducted, as a result of [section {j4101Arm}(2) or {j4101rm}(5)], from so much of the profits of an accounting period ending after the change in ownership as represents the relevant gain. 10

Origin: ICTA s.768D(6).

30 Disallowance of overseas property business losses [j7768Df] 15

- (1) This section has effect for the purpose of restricting relief under [section {j4102rm}] for a loss made by the company in an overseas property business before the change in ownership.

Origin: ICTA s.768D(2), (9); drafting.

- (2) But this section applies only if, in accordance with the relevant provisions and section 31, an amount is included in respect of chargeable gains or, as the case may be, non-trading chargeable realisation gains in the total profits of the accounting period of the company in which the relevant gain accrues or arises. 20

Origin: ICTA s.768D(6), (9); Annex 1, Change [jc656].

- (3) A loss in the business made in an accounting period beginning before the change in ownership may not be used under [section {j4102rm}(3)] to reduce so much of the profits of the business of an accounting period ending after the change in ownership as represents the relevant gain. 25

Origin: ICTA s.768D(6), (9); drafting.

Apportionment of amounts 30

31 Apportionment of amounts [j728A6a]

- (1) This section applies for the purposes of this Chapter, but subsection (2) is subject to subsection (3).

Origin: ICTA Sch.28A paras.14, 16(1).

- (2) Any amount for the actual accounting period in column 1 of the following table must be apportioned to the two notional accounting periods in accordance with the corresponding method of apportionment in column 2 of the table. 35

Row	1. Amount to be apportioned	2. Method of apportionment	
1	The amount which would in accordance with the relevant provisions (and but for this Chapter) be included in respect of chargeable gains or, as the case may be, non-trading chargeable realisation gains in the total profits of the actual accounting period.	(1) If the amount in column 1 does not exceed the amount of the relevant gain, apportion the whole of it to the second notional accounting period. (2) If the amount in column 1 exceeds the amount of the relevant gain, apportion the excess to the first notional accounting period and the relevant gain to the second notional accounting period.	5 10
2	The amount for the actual accounting period of any adjusted non-trading profits from the company's loan relationships (see section 32(2)).	Apportion the amount in column 1 on a time basis according to the respective lengths of the two notional accounting periods.	15
3	The amount for the actual accounting period of any adjusted non-trading deficit from the company's loan relationships (see section 32(3)).	Apportion the amount in column 1 on a time basis according to the respective lengths of the two notional accounting periods.	20
4	The amount of any non-trading debit that falls to be brought into account for the actual accounting period for the purposes of Part [6] of [the Corporation Tax Act 2009 (loan relationships)] in respect of any debtor relationship of the company.	(1) If condition A in section 32(4) is met, apportion the amount in column 1 by reference to the time of accrual of the amount to which the debit relates. (2) If condition B in section 32(5) is met, apportion the amount in column 1 to the first notional accounting period.	25 30
5	The amount of any non-trading deficit carried forward to the actual accounting period under section [444] [j069684] of [the Corporation Tax Act 2009 (basic rule for deficits: carry forward to accounting periods after deficit period)].	Apportion the whole of the amount in column 1 to the first notional accounting period.	35
6	The amount of any non-trading credits or debits in respect of intangible fixed assets that fall to be brought into account for the actual accounting period under section [719] [j062934] of [the Corporation Tax Act 2009 (non-trading gains and losses)].	Apportion to each notional accounting period the credits or debits that would fall to be brought into account in that period if it were a period of account for which accounts were drawn up in accordance with generally accepted accounting practice.	40 45

Row	1. Amount to be apportioned	2. Method of apportionment	
7	The amount of any non-trading loss on intangible fixed assets carried forward to the actual accounting period under section [721] [j062935(3)] of [the Corporation Tax Act 2009] and treated under that section as if it were a non-trading debit of that period.	Apportion the whole of the amount in column 1 to the first notional accounting period.	5
8	The amount of any expenses of management referable to the actual accounting period under Chapter [2] of Part [16] of [the Corporation Tax Act 2009 (companies with investment business)] (but see section 32(6)).	Apportion to each notional accounting period the amounts that would fall to be brought into account in that period as an amount in column 1 if it were a period of account for which accounts were drawn up in accordance with generally accepted accounting practice.	10 15
9	The amount of any excess carried forward under section [1147] [j2002] of [the Corporation Tax Act 2009 (expenses of management carried forward)] to the actual accounting period.	Apportion the whole of the amount in column 1 to the first notional accounting period.	20
10	The amount of any allowances falling to be made for the actual accounting period as a result of section 253 of CAA 2001 which would (but for this Chapter) be added to the expenses of management for the period because of section [1157] [j2001] of [the Corporation Tax Act 2009 (excess capital allowances)].	Apportion the amount in column 1 on a time basis according to the respective lengths of the two notional accounting periods.	25 30
11	Any other amounts by reference to which the profits or losses of the actual accounting period would (but for this Chapter) be calculated.	Apportion the amount in column 1 on a time basis according to the respective lengths of the two notional accounting periods.	35

Origin: ICTA s.768C(13), Sch.28A paras.13, 15, 16(1).

- (3) If any method of apportionment in column 1 of rows 2 to 11 of the table in subsection (2) would work unreasonably or unjustly in any case, such other method must be used as is just and reasonable.

Origin: ICTA s.768E(3), Sch.28A para.17.

- (4) For the meaning of certain expressions used in this section, see section 32.

Origin: Drafting.

32 Meaning of certain expressions in section 31 [j728A7c]

- (1) This section applies for the purposes of the table in section 31(2).

[Origin: Drafting.](#)

- (2) For the purposes of column 1 of row 2 of the table, the amount for the actual accounting period of any adjusted non-trading profits from the company's loan relationships is the amount which would be the amount of non-trading profits from those relationships chargeable under section [308] [j061080] of [the Corporation Tax Act 2009 (charge to tax on non-trading profits)] if, in calculating that amount, amounts for that period within column 1 of row 4 or 5 of the table were disregarded. 5
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[Origin: ICTA Sch.28A para.13A.](#)

- (3) For the purposes of column 1 of row 3 of the table, the amount for the actual accounting period of any non-trading deficit from the company's loan relationships is the amount which would be the amount of the non-trading deficit from those relationships if, in calculating that amount, amounts for that period within column 1 of row 4 or 5 of the table were disregarded. 15

[Origin: ICTA Sch.28A para.13A.](#)

- (4) Condition A is that—
- (a) the amount in column 1 of row 4 of the table is determined on an amortised cost basis of accounting, and 20
 - (b) none of the following provisions applies—
 - (i) section [378] [j069692] of [the Corporation Tax Act 2009 (late interest treated as not accruing until paid in some cases)],
 - (ii) section [416] [j0696917] of [that Act (postponement until redemption of debits for connected company's deeply discounted securities), or 25
 - (iii) section [418] [j0696918] of [that Act (postponement until redemption of debits for close company's deeply discounted securities).]

[Origin: ICTA Sch.28A para.16\(1\).](#) 30

- (5) Condition B is that—
- (a) the amount in column 1 of row 4 of the table is determined on an amortised cost basis of accounting, and
 - (b) any of the provisions mentioned in subsection (4)(b) applies.

[Origin: ICTA Sch.28A para.16\(1\).](#) 35

- (6) The expenses of management mentioned in column 1 of row 8 of the table do not include any expenses for which a deduction would be allowed in calculating profits otherwise than under section [1143] [j2000] of [the Corporation Tax Act 2009 (expenses of management of a company's investment business)] were it not for the provisions of this Chapter. 40

[Origin: ICTA Sch.28A para.13\(1\).](#)

CHAPTER 5

COMPANY WITHOUT INVESTMENT BUSINESS: DISALLOWANCE OF PROPERTY LOSSES

33 Company carrying on UK property business [j7768Da]

- (1) This section applies if—
 - (a) there is a change in the ownership of a company carrying on a UK property business, 5
 - (b) the company is not a company with investment business, and
 - (c) condition A or B is met.

Origin: ICTA s.768D(1); drafting.
- (2) Condition A is that within the period of 6 years beginning 3 years before the change in ownership there is a major change in the nature or conduct of a trade or UK property business carried on by the company. 10

Origin: ICTA s.768D(1), (8); drafting.
- (3) Condition B is that the change in ownership occurs at any time after the scale of the activities in a trade or UK property business carried on by the company has become small or negligible and before any significant revival of the trade or business. 15

Origin: ICTA s.768D(1), (8); drafting.
- (4) The following provisions have effect for the purpose of restricting relief under [section {j4101rm}] for a loss made by the company in a UK property business before the change in ownership. 20

Origin: ICTA s.768D(2).
- (5) The accounting period in which the change in ownership occurs (“the actual accounting period”) is treated for that purpose as two separate accounting periods (“notional accounting periods”), the first ending with the change and the second consisting of the remainder of the period. 25

Origin: ICTA s.768D(3).
- (6) The profits or losses of the actual accounting period must be apportioned to the two notional accounting periods on a time basis according to the respective lengths of the two periods. 30

Origin: ICTA s.768D(4).
- (7) But if that method of apportionment would work unjustly or unreasonably in any case, such other method must be used as is just and reasonable.

Origin: ICTA s.768D(4).
- (8) Relief under [section {j4101rm}(3)] is available only in relation to each of the notional accounting periods considered separately. 35

Origin: ICTA s.768D(5).
- (9) A loss made in an accounting period beginning before the change in ownership may not be—
 - (a) carried forward under [section {j4101rm}(5)(a)] to an accounting period ending after the change in ownership, or 40

- (b) treated in relation to such an accounting period as mentioned in [section [§4101rm](#)](5)(b)].

[Origin: ICTA s.768D\(6\).](#)

- (10) In this section “major change in the nature or conduct of a trade or UK property business” includes – 5
- (a) a major change in the type of property dealt in, or services or facilities provided in, the trade or business, or
- (b) a major change in customers, outlets or markets of the trade or business.

This section applies even if the change is the result of a gradual process which began before the period of 6 years mentioned in subsection (2). 10

[Origin: ICTA s.768D\(1\), \(8\); drafting.](#)

34 Company carrying on overseas property business [§7768Db](#)

- (1) This section applies if – 15
- (a) there is a change in the ownership of a company carrying on an overseas property business,
- (b) the company is not a company with investment business, and
- (c) condition A or B is met.

[Origin: ICTA s.768D\(1\), \(8\), \(9\); drafting.](#)

- (2) Condition A is that within the period of 6 years beginning 3 years before the change in ownership there is a major change in the nature or conduct of a trade or overseas property business carried on by the company. 20

[Origin: ICTA s.768D\(1\), \(8\), \(9\); drafting.](#)

- (3) Condition B is that the change in ownership occurs at any time after the scale of the activities in a trade or overseas property business carried on by the company has become small or negligible and before any significant revival of the trade or business. 25

[Origin: ICTA s.768D\(1\), \(8\), \(9\); drafting.](#)

- (4) The following provisions have effect for the purpose of restricting relief under [section [§4102rm](#)] for a loss made by the company in an overseas property business before the change in ownership. 30

[Origin: ICTA s.768D\(2\), \(9\); drafting.](#)

- (5) The accounting period in which the change in ownership occurs (“the actual accounting period”) is treated for that purpose as two separate accounting periods (“notional accounting periods”), the first ending with the change and the second consisting of the remainder of the period. 35

[Origin: ICTA s.768D\(3\), \(9\).](#)

- (6) The profits or losses of the actual accounting period must be apportioned to the two notional accounting periods on a time basis according to the respective lengths of the two periods. 40

[Origin: ICTA s.768D\(4\), \(9\).](#)

- (7) But if that method of apportionment would work unjustly or unreasonably in any case, such other method must be used as is just and reasonable.

Origin: ICTA s.768D(4), (9).

- (8) A loss in the business made in an accounting period beginning before the change in ownership may not be used under [section {j4102rm}(3)] to reduce profits of the business of an accounting period ending after the change in ownership. 5

Origin: ICTA s.768D(6), (9); drafting.

- (9) In this section “major change in the nature or conduct of a trade or overseas property business” includes – 10
- (a) a major change in the type of property dealt in, or services or facilities provided in, the trade or business, or
 - (b) a major change in customers, outlets or markets of the trade or business.

This section applies even if the change is the result of a gradual process which began before the period of 6 years mentioned in subsection (2). 15

Origin: ICTA s.768D(1), (8), (9); drafting.

CHAPTER 6

RECOVERY OF UNPAID CORPORATION TAX

General definitions 20

35 Meaning of “linked” person [j7767Ad]

- (1) If there is a change in the ownership of a company, a person is “linked” to the company, for the purposes of this Chapter, if condition A or B is met.

Origin: ICTA s.767A(2), s. 767AA(4).

- (2) Condition A is that the person had control of the company at any time in the relevant period before the change. 25

Origin: ICTA s.767A(2), s. 767AA(4).

- (3) Condition B is that the person is a company of which a person mentioned in subsection (2) had control at any time in the period of 3 years before the change.

Origin: ICTA s.767A(2), s. 767AA(4). 30

- (4) For the meaning of –

- (a) “control”, see section 36, and
- (b) “the relevant period”, see section 38.

Origin: Drafting.

36 Meaning of “control” [j7767Bb] 35

- (1) This section applies for the purposes of this Chapter.

Origin: Drafting.

-
- (2) A person (“P”) has control of a company (“C”) if P –
- (a) exercises,
 - (b) is able to exercise, or
 - (c) is entitled to acquire,
- direct or indirect control over C’s affairs. 5
- Origin: ICTA s.767B(4); drafting.*
- (3) In particular, P has control of C if P possesses or is entitled to acquire –
- (a) 50% of the share capital or issued share capital of C,
 - (b) 50% of the voting power in C,
 - (c) so much of the issued share capital of C as would, on the assumption that the whole of the income of C were distributed among the participators, entitle P to receive the greater part of the amount so distributed, or 10
 - (d) such rights as would entitle P, in the event of the winding up of C or in any other circumstances, to receive the greater part of the assets of C which would then be available for distribution among the participators. 15
- Origin: ICTA s.767B(4), (5); drafting.*
- (4) Any rights that P or any other person has as a loan creditor are to be disregarded for the purposes of the assumption in subsection (3)(c). 20
- Origin: ICTA s.767B(4); drafting.*
- (5) If two or more persons together satisfy any of the conditions in subsections (2) and (3) and do so because they acted together to put themselves in a position to satisfy the condition, each of them has control of C. 25
- Origin: ICTA s.767B(4), (6); drafting.*
- (6) In this section –
- “loan creditor” has the meaning given by [section {j7417c}], and
 - “participator” has the meaning given by [section {j7417}].
- Origin: Drafting.*
- 37 Rights to be attributed for the purposes of section 36 [j7767Bb1] 30**
- (1) This section applies for the purposes of section 36.
- Origin: Drafting.*
- (2) A person is treated as entitled to acquire anything which the person –
- (a) is entitled to acquire at a future date, or
 - (b) will at a future date be entitled to acquire. 35
- Origin: ICTA s.767B(4); drafting.*
- (3) If a person –
- (a) possesses any rights or powers on behalf of another person (A), or
 - (b) may be required to exercise any rights or powers on A’s direction or behalf, 40
- those rights or powers are to be attributed to A.

Origin: ICTA s.767B(4); drafting.

- (4) There may also be attributed to a person all the rights and powers—
- (a) of a company of which the person has, or the person and associates of the person have, control,
 - (b) of any two or more companies within paragraph (a), 5
 - (c) of any associate of the person, or
 - (d) of any two or more associates of the person.

Origin: ICTA s.767B(4); drafting.

- (5) The rights and power which may be attributed under subsection (4)—
- (a) include those attributed to a company or associate under subsection (3) but 10
 - (b) do not include those attributed to an associate under subsection (4).

Origin: ICTA s.767B(4); drafting.

- (6) Such attribution must be made under subsection (4) as will result in C being treated as under the control of 5 or fewer participators if it can be so treated. 15

Origin: ICTA s.767B(4); drafting.

- (7) In this section—
- “associate” has the meaning given by [section {j7417a}], and
 - “participator” has the meaning given by [section {j7417}].

Origin: Drafting. 20

38 Meaning of “the relevant period” [j7767Aj]

- (1) This section applies for the purposes of this Chapter.

Origin: Drafting.

- (2) “The relevant period”, in relation to a change in the ownership of a company, means the period of 3 years before the change. 25

Origin: s.767A(3), s.767AA(5).

- (3) But if in the period of 3 years before the change (“the later change”) there was another change in the ownership of the company (“the earlier change”), “the relevant period” means the period between the earlier change and the later change. 30

Origin: ICTA s.767A(3), s.767AA(5).

Recovery of unpaid corporation tax for accounting period beginning before change

39 Recovery of unpaid corporation tax for accounting period beginning before change [j7767Aa]

- (1) This section applies if an officer of Revenue and Customs considers that— 35
- (a) there has been a change in the ownership of a company (“X”),
 - (b) any corporation tax assessed on X for an accounting period beginning before the change remains unpaid at any time more than 6 months after it was assessed, and

- (c) any of conditions A to C in section 40 (conditions relating to company's trade or business) is met.
- Origin: ICTA s.767A(1), (9); Annex 1, Change [jc601]; drafting.*
- (2) A person who is linked to X may be assessed by the officer and charged to an amount of corporation tax which does not exceed the amount remaining unpaid. 5
- Origin: ICTA s.767A(1), (8); Annex 1, Change [jc601]; drafting.*
- (3) A person assessed and charged under this section must be assessed and charged in the name of X. 10
- Origin: ICTA s.767A(1).*
- (4) An assessment under this section is not out of time if it is made within 3 years from the date of the final determination of the liability of X to corporation tax for the accounting period mentioned in subsection (1)(b). 15
- Origin: ICTA s.767A(10).*
- 40 Conditions relating to company's trade or business [j7767Ab]** **15**
- (1) The following are the conditions mentioned in section 39(1)(c). 20
- Origin: Drafting.*
- (2) Condition A is that –
- (a) in the period of 3 years before the change in the ownership of X, the activities of a trade or business of X cease or the scale of those activities becomes small or negligible, and
 - (b) there is no significant revival of those activities before the change occurs.
- Origin: ICTA s.767A(4).*
- (3) Condition B is that after the change in the ownership of X, but under arrangements made before it, the activities of a trade or business of X cease or the scale of those activities becomes small or negligible. 25
- Origin: ICTA s.767A(5).*
- (4) Condition C is that –
- (a) there is a major change in the nature or conduct of a trade or business of X in the relevant 6 year period, 30
 - (b) a relevant transfer of assets of X occurs –
 - (i) in the period of 3 years before the change in the ownership of X, or
 - (ii) after the change but under arrangements made before it, and 35
 - (c) the major change mentioned in paragraph (a) is attributable to that transfer.
- Origin: ICTA s.767A(6).*
- (5) In this section –
- “the relevant 6 year period” means the period of 6 years beginning 3 years before the change in the ownership of X, 40

- “relevant transfer”, in relation to assets of X, means a transfer of those assets –
- (a) to a person who had control of X at any time in the relevant period before the change in the ownership of X,
 - (b) to a person connected with a person mentioned in paragraph (a), or 5
 - (c) to a person under arrangements which enable any of those assets, or any assets representing those assets, to be transferred to a person mentioned in paragraph (a) or (b), and
- “transfer”, in relation to an asset, includes – 10
- (a) any disposal, letting or hiring of it,
 - (b) any grant or transfer of any right, interest or licence in or over it, and
 - (c) the giving of any business facilities with respect to it.
- Origin: ICTA s.767A(6), (7), s.767B(8). 15
- (6) For the meaning of “a major change in the nature or conduct of a trade or business”, see section 41.
- Origin: Drafting.
- 41 Meaning of “a major change in the nature or conduct of a trade or business” [j7767Bc] 20**
- (1) This section applies for the purposes of section 40(4).
- Origin: Drafting.
- (2) “A major change in the nature or conduct of a trade or business” includes –
- (a) a major change in the type of property dealt in, or services or facilities provided, in the trade or business, 25
 - (b) a major change in customers, outlets or markets of the trade or business,
 - (c) a change by which the company ceases to be a trading company and becomes an investment company,
 - (d) a change by which the company ceases to be an investment company and becomes a trading company, and 30
 - (e) if the company is an investment company, a major change in the nature of the investments held by the company.
- Origin: ICTA s.767B(7); drafting.
- (3) Any reference in subsection (2) to a change includes a change which is achieved gradually as a result of a series of transfers. 35
- Origin: ICTA s.767B(7); drafting.
- (4) In this section “trading company” means a company whose business consists wholly or mainly in the carrying on of a trade.
- Origin: ICTA s.767B(7); drafting. 40
- (5) For the purposes of this section, a company is an investment company if –
- (a) its business consists wholly or mainly in the making of investments, and

- (b) the principal part of its income is derived from investments.

Origin: ICTA s.767B(7); drafting.

- (6) But a company is not an investment company if its business consists wholly or mainly in the holding of shares or securities of companies –
- (a) which are its 90% subsidiaries, and
 - (b) which are trading companies.

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Origin: ICTA s.767B(7); drafting.

Recovery of unpaid corporation tax for accounting period ending on or after change

42 Recovery of unpaid corporation tax for accounting period ending on or after change [j7767AAa]

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- (1) This section applies if an officer of Revenue and Customs considers that –
- (a) there has been a change in the ownership of a company (“Y”),
 - (b) any corporation tax has been assessed on Y or an associated company for an accounting period ending on or after the change,
 - (c) that tax remains unpaid at any time more than 6 months after it was assessed, and
 - (d) the condition in section 43 (the expectation condition) is met.

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Origin: ICTA s.767AA(1); Annex 1, Change [jc601].

- (2) A person who is linked to Y may be assessed by the officer and charged to an amount of corporation tax which does not exceed the amount remaining unpaid.

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Origin: ICTA s.767AA(1); Annex 1, Change [jc601].

- (3) A person assessed and charged under this section must be assessed and charged in the name of the company (“T”) by which the tax remains unpaid.

Origin: ICTA s.767AA(9).

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- (4) An assessment under this section is not out of time if it is made within 3 years from the date of the final determination of the liability of T to corporation tax for the accounting period mentioned in subsection (1)(b).

Origin: ICTA s.767AA(10).

- (5) For the meaning of “associated company”, see section 47.

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Origin: Drafting.

43 The expectation condition [j7767AAb]

- (1) The condition mentioned in section 42(1)(d) is that it would be reasonable (apart from section 42) to make the inference specified in subsection (3) from any of the matters specified in subsection (2).

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Origin: ICTA s.767AA(2).

- (2) Those matters are –
- (a) the terms of any transactions entered into in connection with the change in the ownership of Y, and

(b) the other circumstances of the change and of any such transactions.

Origin: ICTA s.767AA(2).

- (3) The inference is that at least one of the transactions mentioned in subsection (2) was entered into by one or more of its parties on the assumption that, if a potential tax liability were to arise, it would be unlikely to be met or to be met in full. 5

Origin: ICTA s.767AA(2).

- (4) A “potential tax liability” is a liability to pay corporation tax which would or might arise – 10
- (a) from an assessment, made after the change in ownership, on Y or an associated company (whether or not a particular associated company), and
 - (b) in foreseeable circumstances.

Origin: ICTA s.767AA(3).

- (5) Circumstances are “foreseeable circumstances” if – 15
- (a) the circumstances were reasonably foreseeable at the time of the change in ownership, or
 - (b) there was a reasonably foreseeable risk at that time that the circumstances might occur.

Origin: ICTA s.767AA(3). 20

- (6) For the meaning of “transaction entered into in connection with change in ownership”, see section 44.

Origin: Drafting.

44 Meaning of “transaction entered into in connection with change in ownership” [j7767AAAd] 25

- (1) This section has effect for the purposes of section 43.

Origin: Drafting.

- (2) A transaction is entered into in connection with a change in the ownership of Y if – 30
- (a) it is the transaction, or one of the transactions, by which the change is effected, or
 - (b) it is entered into as part of a series of transactions, or scheme, of which transactions effecting the change have formed or will form part.

Origin: ICTA s.767AA(6).

- (3) Any reference in this section to a scheme is to a scheme, arrangements or understanding of any kind. 35

Origin: ICTA s.767AA(7)

- (4) It does not matter for the purposes of subsection (3) – 40
- (a) whether the scheme, arrangements or understanding is legally enforceable, or
 - (b) how many transactions are involved.

Origin: ICTA s.767AA(7).

- (5) It does not matter, for the purpose of determining whether any transactions have formed or will form part of a series of transactions or scheme, that the parties to each of the transactions are the not same.

Origin: ICTA s.767AA(7).

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- (6) The cases in which any two or more transactions are to be taken as forming part of a series of transactions or scheme include a case in which it would be reasonable to assume that one or more of them –

- (a) would not have been entered into independently of the other or others, or
 (b) if entered into independently of the other or others, would not have taken the same form or been on the same terms.

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Origin: ICTA s.767AA(7).

Miscellaneous

45 Interest on overdue tax [j7767Ba]

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- (1) Section 87A of TMA 1970 (interest on overdue tax) has effect in relation to corporation tax assessed under section 39 or 42 (recovery of unpaid corporation tax) with the following modification.

Origin: ICTA s.767B(1), (1A).

- (2) That modification is that any reference to the date when the tax becomes due and payable must be read as a reference to the date when the tax became due and payable –

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- (a) in the case of an assessment under section 39 (recovery of tax for accounting period beginning before change), by X,
 (b) in the case of an assessment under section 42 (recovery of tax for accounting period ending on or after change), by Y or the associated company, depending on which is the company whose unpaid tax gave rise to the assessment.

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Origin: ICTA s.767B(1), (1A).

46 Effect of payment in pursuance of assessment under section 39 or 42 [j7767Bd]

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- (1) A payment –
 (a) in pursuance of an assessment under section 39 or 42 (recovery of unpaid corporation tax), or
 (b) of interest under section 87A of TMA 1970 (as that section has effect in accordance with section 45),

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is not allowed as a deduction in calculating income, profits or losses for any tax purposes.

Origin: ICTA s.767B(2), (3).

- (2) A person who makes such a payment may recover an amount equal to the payment –

40

- (a) in the case of an assessment under section 39 (recovery of tax for accounting period beginning before change), from X, or

- (b) in the case of an assessment under section 42 (recovery of tax for accounting period ending on or after change), from Y or the associated company, depending on which is the company whose unpaid tax gave rise to the assessment.

Origin: ICTA s.767B(2). 5

47 Meaning of “associated company” [j7767Cd]

- (1) This section has effect for the purposes of sections 42 and 43.

Origin: Drafting.

- (2) “Associated company”, in relation to Y and an assessment to tax, means a company (whenever formed) which, at the time of the assessment or at an earlier time after the change in the ownership of Y – 10
 - (a) has control of Y,
 - (b) is a company of which Y has control, or
 - (c) is a company under the control of the same person as Y.

Origin: ICTA ss.767AA(8). 15

CHAPTER 7

MEANING OF "CHANGE IN THE OWNERSHIP OF A COMPANY"

Meaning of "change in the ownership of a company"

48 Meaning of “change in the ownership of a company” [j7769]

- (1) For the purposes of this Part there is a change in the ownership of a company if condition A, B or C is met. 20

Origin: ICTA s.769(1).

- (2) Condition A is that a single person acquires a holding of more than half the ordinary share capital of the company.

Origin: ICTA s.769(1). 25

- (3) Condition B is that –
 - (a) two or more persons each acquire a holding of at least 5% of the ordinary share capital of the company, and
 - (b) those holdings together amount to more than half the ordinary share capital of the company. 30

Origin: ICTA s.769(1).

- (4) Condition C is that –
 - (a) two or more persons each acquire a holding of the ordinary share capital of the company, and
 - (b) those holdings together amount to more than half the ordinary share capital of the company. 35

Origin: ICTA s.769(1).

- (5) A holding of less than 5% must be disregarded for the purposes of condition C unless –
- (a) it is an addition to an existing holding, and
 - (b) the two holdings together amount to at least 5% of the ordinary share capital of the company.

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[Origin: ICTA s.769\(1\).](#)

- (6) See also sections 50 and 51 which provide for things other than ordinary share capital to be taken into account in determining whether there has been a change in the ownership of a company.

[Origin: Drafting.](#)

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49 Meaning of “change in the ownership of a company”: supplementary [j7769e]

- (1) The following provisions apply for the purposes of section 48.

[Origin: ICTA s.769\(2\).](#)

- (2) The circumstances at any two points in time with not more than 3 years between may be compared, and a holder (“H”) at the later time may be regarded as having acquired whatever H did not hold at the earlier time.
- It does not matter what H has acquired or disposed of in between.

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[Origin: ICTA s.769\(2\).](#)

- (3) To allow for any issue of shares or other reorganisation of capital, the comparison may be made in terms of percentage holdings of the total ordinary share capital at the respective times, so that a person whose percentage holding is greater at the later time may be regarded as having acquired a percentage holding equal to the increase.

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[Origin: ICTA s.769\(2\).](#)

- (4) To decide if a person has acquired –
- (a) a holding of at least 5%, or
 - (b) a holding which makes at least 5% when added to an existing holding, acquisitions by, and holdings of, two or more persons who are connected persons must be added together as if they were acquisitions by, and holdings of, one and the same person.

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[Origin: ICTA s.769\(2\).](#)

- (5) Any acquisition of shares under a will or on intestacy must be left out of account.

[Origin: ICTA s.769\(2\).](#)

- (6) Any gift of shares which is unsolicited and made without regard to the provisions of this Part must be left out of account.

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[Origin: ICTA s.769\(2\).](#)

- 50 Cases where things other than ordinary share capital may be taken into account for the purposes of Chapters 2 to 5 [j7769k]**
- (1) This section applies for the purposes of Chapters 2 to 5 if conditions A and B are met.
Origin: ICTA s.769(3), (3A). 5
- (2) Condition A is that persons (whether company members or not) possess extraordinary rights or powers under any document regulating a company.
Origin: ICTA s.769(3), (3A).
- (3) Condition B is that because of that fact ownership of the ordinary share capital may not be an appropriate test of whether there has been a major change in the persons for whose benefit the relief may ultimately enure. 10
Origin: ICTA s.769(3), (3A); drafting.
- (4) In determining whether there has been a change in the ownership of the company for the purposes of Chapter 2, 3, 4 or 5, any of the following may be taken into account instead of ordinary share capital – 15
- (a) holdings of all kinds of share capital,
 - (b) holdings of any particular kind of share capital,
 - (c) voting power, and
 - (d) any other kind of special power.
- Origin:** ICTA s.769(3), (3A). 20
- 51 Cases in which things other than ordinary share capital may taken be into account for the purposes of Chapter 6 [j7769f]**
- (1) This section applies for the purposes of Chapter 6 if conditions A and B are met.
Origin: ICTA s.769(2A).
- (2) Condition A is that persons (whether company members or not) possess extraordinary rights or powers under any document regulating a company. 25
Origin: ICTA s.769(2A).
- (3) Condition B is that because of that fact ownership of the ordinary share capital may not be an appropriate test of whether there has been a change in the ownership of the company. 30
Origin: ICTA s.769(2A).
- (4) In determining whether there has been a change in the ownership of the company for the purposes of Chapter 6, any of the following may be taken into account instead of ordinary share capital – 35
- (a) holdings of all kinds of share capital,
 - (b) holdings of any particular kind of share capital,
 - (c) voting power, and
 - (d) any other kind of special power.
- Origin:** ICTA s.769(2A).

Changes in indirect ownership

52 Changes in indirect ownership [j7769h]

- (1) This section applies if there is a change in the ownership of a company, other than a change in ownership which must be disregarded because of section 53.
 Origin: ICTA s.769(6). 5
- (2) The reference in subsection (1) to a change in the ownership of a company includes a change in ownership occurring as a result of the application of this section.
 Origin: ICTA s.769(6).
- (3) If condition A in section 48 is met, the person mentioned in that condition is treated for the purposes of this Chapter as having acquired at the time of the change in ownership any relevant assets owned by the company. 10
 Origin: ICTA s.769(6).
- (4) If condition B in section 48 is met but condition A is not, each of the persons mentioned in condition B is treated for the purposes of this Chapter as having acquired at the time of the change in ownership the appropriate fraction of any relevant assets owned by the company. 15
 Origin: ICTA s.769(6).
- (5) In a case not falling within subsection (3) or (4), each of the persons mentioned in condition C in section 48 (other than any person whose holding is disregarded for the purposes of that condition) is treated for the purposes of this Chapter as having acquired at the time of the change in ownership the appropriate fraction of any relevant assets owned by the company. 20
 Origin: ICTA s.769(6).
- (6) In this section – 25
 “the appropriate fraction”, in relation to one of two or more persons mentioned in subsection (4) or (5), means –
- $$\frac{X}{Y}$$
- where – 30
- (a) X is the percentage of the ordinary share capital acquired by that person, and
- (b) Y is the percentage of that capital acquired by all those persons taken together, and
- “relevant assets”, in relation to a company, means – 35
- (a) any ordinary share capital of another company, and
- (b) any property or rights which under section 50 or 51 may be taken into account instead of ordinary share capital of another company.
 Origin: ICTA s.769(6A).

Disregard of change in ownership

53 Disregard of change in company ownership [j7769g]

- (1) A change in the ownership of a company (“the subsidiary company”) must be disregarded for the purposes of Chapters 2 to 6 if –
- (a) immediately before the change in ownership, the subsidiary company is a qualifying 75% subsidiary of another company (“the parent company”), and 5
 - (b) although there is a change in the direct ownership of the subsidiary company, the subsidiary company continues after the change to be a qualifying 75% subsidiary of the parent company. 10

Origin: ICTA s.769(5), (6B).

- (2) For the purposes of this section, the subsidiary company is a qualifying 75% subsidiary of the parent company if conditions A, B and C are met.

Origin: ICTA s.769(5), (6B).

- (3) Condition A is that the subsidiary company is a 75% subsidiary of the parent company. 15

Origin: ICTA s.769(5)

- (4) Condition B is that the parent company would be beneficially entitled to at least 75% of any profits available for distribution to equity holders of the subsidiary company. 20

Origin: ICTA s.769(6B).

- (5) Condition C is that the parent company would be beneficially entitled to at least 75% of any assets of the subsidiary company available for distribution to its equity holders on a winding up.

Origin: ICTA s.769(6B). 25

- (6) [Chapter [6] of Part [5] (equity holders and profits and assets available for distribution)] applies for the purposes of subsections (4) and (5) as it applies for the purposes of [section {j4800Brm}(6)(a) and (b)].

Origin: ICTA s.769(6C).

Supplementary provision 30

54 Provision applying for the purposes of Chapters 2 to 5 [j7769i]

- (1) This section applies for the purposes of Chapters 2 to 5.

Origin: ICTA s.769(4), (8), (9).

- (2) If any of those Chapters has operated to restrict relief by reference to a change in the ownership of a company taking place at any time, no transaction or circumstances before that time may be taken into account in determining whether there is any subsequent change in the ownership of the company. 35

Origin: ICTA s.769(4).

- (3) The following provisions apply if –

- (a) any relevant assets are taken into account in determining that there has been a change in the ownership of a company, and
- (b) the relevant assets were acquired –
- (i) in pursuance of a contract of sale or option or other contract, or
 - (ii) by a person holding such a contract. 5
- [Origin: ICTA s.769\(8\).](#)
- (4) The time when the change in the ownership of the company took place must be determined as if the acquisition had been made –
- (a) when the contract was made with the holder, or
 - (b) when the benefit of it was assigned to the holder. 10
- [Origin: ICTA s.769\(8\).](#)
- (5) Accordingly, a person exercising an option to purchase shares is treated as having purchased the shares when that person acquired the option.
- [Origin: ICTA s.769\(8\).](#)
- (6) In this section “relevant assets” means – 15
- (a) ordinary share capital, or
 - (b) any property or rights which under section 50 or 51 may be taken into account instead of ordinary share capital.
- [Origin: ICTA s.769\(8\); drafting.](#)
- 55 Interpretation [j7769j]** 20
- In this Chapter –
- “ownership” means beneficial ownership (and references to acquisition are construed accordingly), and
- “shares” includes stock.
- [Origin: ICTA s.769\(7\).](#) 25

CHAPTER 8

SUPPLEMENTARY PROVISION

- 56 Extended time limit for assessment [j7768v]** 30
- If the operation of any provision in Chapters 2 to 6 depends on circumstances or events at a time or times after (but not more than 3 years after) a change in the ownership of a company, an assessment to give effect to that provision is not out of time if made within 6 years from that time, or the latest of those times.
- [Origin: ICTA s.768\(8\), s.768A\(2\), s.768B\(12\), s.768C\(11\), s.768D\(7\), s.768E\(6\).](#)
- 57 Provision of information about ownership of shares etc [j7768u]** 35
- (1) A person (“P”) in whose name any shares, stock or securities of a company are registered must comply with the obligation in subsection (2) if required to do so by notice given by an officer of Revenue and Customs for the purposes of any provision of this Part.

Origin: ICTA s.767B(10), s.768(9), s.768A(2), s.768B(12), s.768C(11), s.768D(7), s.768E(6).

- (2) The obligation is –
- (a) to state whether or not P is the beneficial owner of those shares, stock or securities, and 5
 - (b) if P is not the beneficial owner of any of those shares, stocks or securities, to provide the name and address of the person on whose behalf they are registered.

Origin: ICTA s.767B(10), s.768(9), s.768A(2), s.768B(12), s.768C(11), s.768D(7), s.768E(6); drafting. 10

58 Meaning of “company with investment business” [j7768t]

In this Part “company with investment business” has the meaning given by section [1142] [j2000A(1)] of [the Corporation Tax Act 2009].

Origin: ICTA s.768B(14), s.768C(12), s.768D(8), s.768E(7).

59 Meaning of “relevant non-trading debit” [j728A11] 15

- (1) This section applies for the purposes of sections 8 and 25.

Origin: Drafting.

- (2) “Relevant non-trading debit” means a non-trading debit within subsection (3), (4) or (5).

Origin: ICTA Sch.28A para.11(1). 20

- (3) A non-trading debit is within this subsection if –
- (a) it is determined on an amortised cost basis of accounting,
 - (b) section [416] [j0696917] or [418] [j0696918] of [the Corporation Tax Act 2009 (postponement until redemption of debits for connected or close companies’ deeply discounted securities)] applies, and 25
 - (c) were it not for those sections and section [378] [j069692] of [that Act (late interest treated as not accruing until paid in some cases)], the debit would have fallen to be brought into account for the purposes of Part [6] of [that Act (loan relationships)] for an accounting period ending before or with the change in ownership of the company. 30

Origin: ICTA Sch.28A para.11(1).

- (4) A non-trading debit is within this subsection if –
- (a) it is determined on an amortised cost basis of accounting,
 - (b) section [378] [j069692] of [that Act] applies, and
 - (c) were it not for that section and sections [416] [j0696917] and [418] [j0696918] of [that Act], the debit would have fallen to be brought into account for the purposes of Part [6] of [that Act] for an accounting period ending before or with the change in ownership of the company. 35

Origin: ICTA Sch.28A para.11(1).

- (5) A non-trading debit is within this subsection if – 40
- (a) it is not within subsection (3) or (4),
 - (b) it is a debit in respect of a debtor relationship of the company,

- (c) it is determined on an amortised cost basis of accounting, and
- (d) it relates to an amount that accrued before the change in ownership of the company.

[Origin: ICTA Sch.28A para.11\(3\).](#)

- (6) Expressions used both in this section and in Part [6] of [the Corporation Tax Act 2009 (loan relationships)] have the same meaning as in that Part. 5

[Origin: ICTA Sch.28A para.12.](#)

PART 2

CORPORATION TAX LIABILITY: MISCELLANEOUS RULES

CHAPTER 1 10

RECOVERY OF UNPAID CORPORATION TAX DUE FROM NON-UK RESIDENT COMPANY

60 Overview of Chapter [\[j7281\]](#)

- (1) This Chapter enables unpaid corporation tax due from a non-UK resident company to be recovered from a related company.

[Origin: Drafting](#) 15

- (2) See also [Chapter [6] of Part [14] (recovery of unpaid corporation tax from a linked person in some cases where there is a change in the ownership of a company)].

[Origin: Drafting.](#)

- (3) In subsection (1) and the following provisions of this Chapter, “company” means any body corporate. 20

[Origin: FA 2000 Sch.28 para.6\(1\).](#)

- (4) For the meaning of “related company”, see section 63.

[Origin: Drafting.](#)

61 Case in which this Chapter applies [\[j7281a\]](#) 25

- (1) This Chapter applies if –
 - (a) an amount of corporation tax has been assessed on a company for an accounting period,
 - (b) the whole or part of that amount is unpaid at the end of the period of 6 months after the time when it became payable, and 30
 - (c) the company is non-UK resident.

[Origin: FA 2000 Sch.28 para.1.](#)

- (2) In this Chapter “the taxpayer company” means the company mentioned in subsection (1).

[Origin: FA 2000 Sch.28 para.1.](#) 35

62 Meaning of “the relevant period” [j7282a]

In this Chapter “the relevant period”, in relation to an amount of unpaid corporation tax for an accounting period of the taxpayer company, means the period –

- (a) beginning 12 months before the start of the accounting period, and 5
- (b) ending when the unpaid tax became payable.

Origin: FA 2000 Sch.28 para.2(2).

63 Meaning of “related company” [j7282]

- (1) A company is a “related company”, for the purposes of this Chapter, if, at any time in the relevant period, it was a member – 10
 - (a) of the same group as the taxpayer company,
 - (b) of a consortium which at that time owned the taxpayer company, or
 - (c) of the same group as a company which at that time was a member of a consortium owning the taxpayer company.

Origin: FA 2000 Sch.28 para.2(1). 15

- (2) For the purposes of subsection (1)(a), two companies are members of the same group if –
 - (a) one is the 51% subsidiary of the other, or
 - (b) both are 51% subsidiaries of a third company.

Origin: FA 2000 Sch.28 para.2(3). 20

- (3) For the purposes of subsection (1)(c), two companies are members of the same group if they are members of the same group of companies within the meaning of [Part 5] (group relief).

Origin: FA 2000 Sch.28 para.2(3).

- (4) For the purposes of this Chapter – 25
 - (a) a company is a member of a consortium if it is a member of a consortium within the meaning of [Part 5], and
 - (b) a company is owned by a consortium if it is owned by a consortium within the meaning of [that Part].

Origin: FA 2000 Sch.28 para.2(4). 30

64 Notice requiring payment of unpaid tax [j7283]

- (1) An officer of Revenue and Customs may serve a notice on a related company requiring it, within 30 days of the service of the notice, to pay –
 - (a) in a case which is not a consortium case, the amount of the unpaid tax, or 35
 - (b) in a consortium case, the proportion of that amount found under section 66.

Origin: FA 2000 Sch.28 para.3(1); Annex 1, Change [jc601]; drafting.

- (2) The notice must state –
 - (a) the amount of corporation tax assessed on the taxpayer company for the accounting period in question that remains unpaid, 40

- (b) the date when it first became payable, and
- (c) the amount which must be paid by the company on which the notice is served.

Origin: FA 2000 Sch.28 para.3(2).

- (3) The notice has effect – 5
- (a) for the purposes of the recovery from that company of the amount required to be paid and of interest on that amount, and
 - (b) for the purposes of appeals,
- as if it were a notice of assessment and that amount were an amount of tax due from that company. 10

Origin: FA 2000 Sch.28 para.3(3).

- (4) In this Chapter “consortium case” means a case where the related company is not within section 63(1)(a).

Origin: FA 2000 para.5(2); drafting.

65 Time limit for giving notice [j7284] 15

- (1) A notice under this Chapter must be served before the end of the period of 3 years beginning with the date when the liability of the taxpayer company to corporation tax for the accounting period in question is finally determined.

Origin: FA 2000 Sch.28 para.4(1).

- (2) If the unpaid tax is charged as a result of a determination under paragraph 36 or 37 of Schedule 18 to FA 1998 (determination where no return delivered or return incomplete), the date mentioned in subsection (1) is taken to be the date when the determination is made. 20

Origin: FA 2000 Sch.28 para.4(2).

- (3) If the unpaid tax is charged in a self-assessment, the date mentioned in subsection (1) is taken to be the latest of – 25

- (a) the last date when notice of enquiry may be given into the return containing the self-assessment,
- (b) if notice of enquiry is given, 30 days after the enquiry is completed,
- (c) if more than one notice of enquiry is given, 30 days after the last notice of completion, 30
- (d) if after such an enquiry an officer of Revenue and Customs amends the return, 30 days after notice of the amendment is issued, and
- (e) if an appeal is brought against such an amendment, 30 days after the appeal is finally determined. 35

Origin: FA 2000 Sch.28 para.4(3).

- (4) If the unpaid tax is charged in a discovery assessment, the date mentioned in subsection (1) is taken to be –

- (a) if there is no appeal against the assessment, the date when the tax becomes due and payable, or
- (b) if there is such an appeal, the date when the appeal is finally determined. 40

Origin: FA 2000 Sch.28 para.4(4).

- (5) The reference in subsection (3) to a self-assessment includes a self-assessment that supersedes a determination (see paragraph 40 of Schedule 18 to FA 1998).

Origin: FA 2000 Sch.28 para.4(3).

66 Amount payable in consortium case [j7285]

- (1) In a consortium case, the amount that the related company may be required to pay by notice under this Chapter is the proportion of the unpaid tax corresponding – 5
- (a) if the company is only within section 63(1)(b), to the share which the company has had in the consortium for the relevant period,
 - (b) if the company is only within section 63(1)(c), to the share which companies that have been members of the same group of companies as the company have had in the consortium for the relevant period, or 10
 - (c) if the company is within section 63(1)(b) and (c), to whichever is the greater of the amounts given by paragraphs (a) and (b).

Origin: FA 2000 Sch.28 para.5(1). 15

- (2) For the purposes of this section, a member's share in a consortium, in relation to the relevant period, is whichever is the lowest in that period of the percentages specified in subsection (3).

Origin: FA 2000 Sch.28 para.5(3).

- (3) Those percentages are – 20
- (a) the percentage of the ordinary share capital of the taxpayer company which is beneficially owned by the member,
 - (b) the percentage to which the member is beneficially entitled of any profits available for distribution to equity holders of the taxpayer company, and 25
 - (c) the percentage to which the member would be beneficially entitled of any assets of the taxpayer company available for distribution to its equity holders on a winding up.

Origin: FA 2000 Sch.28 para.5(3).

- (4) If any of the percentages mentioned in subsection (3) has fluctuated in the relevant period, the average percentage over the period must be taken. 30

Origin: FA 2000 Sch.28 para.5(3).

- (5) [Chapter [6] of Part [5] (equity holders and profits and assets available for distribution)] applies for the purposes of subsection (3) as it applies for the purposes of [sections [j4807rm](3)(b) and (c) and [j4807AArm](3)(b) and (c)]. 35

Origin: FA 2000 Sch.28 para.5(4).

67 Supplementary provision [j7286]

- (1) A company that has paid an amount in pursuance of a notice under this Chapter may recover that amount from the taxpayer company.

Origin: FA 2000 Sch.28 para.6(2). 40

- (2) A payment in pursuance of a notice under this Chapter is not allowed as a deduction in calculating income, profits or losses for any tax purposes.

Origin: FA 2000 Sch.28 para.6(3).