

Clause 1: Registered industrial and provident societies

1. This clause extends the scope of clause 15 (carry forward of trade loss against subsequent trade profits) for registered industrial and provident societies. It is based on Extra Statutory Concession C5.
2. The classes of income to which the clause applies differ slightly from those in the ESC. A definition of industrial and provident society has also been included (although this may in due course be replaced by a bill wide definition). See *Change 667* in Annex 1.
3. The use of square brackets in *subsection 4* indicates that the subsection will be removed if a bill wide definition for industrial and provident society is adopted.

Q1. We welcome comments on the proposal to enact ESC C5.

Clause 2: Non-UK resident company: receipts of interest, dividends or royalties

4. This clause prohibits the deduction of losses under clause 3 (relief for trade losses against total profits) or 15 (carry forward of trade loss against subsequent trade profits) to the extent that such losses arise to a non-UK resident company as a result of excluding certain kinds of tax exempt income from the company's profits. It is based on section 808 of ICTA.
5. The source legislation is located in Chapter 3 of Part 18 of ICTA (containing Miscellaneous Provisions relating to Double Taxation Relief). The rewritten clause has been located with other clauses which restrict or otherwise affect the use of losses.
6. A non-UK resident company may utilise any losses that arise under clauses 3 or 15 provided that those losses are calculated on the basis that receipts of tax-exempt interest, dividends or royalties are included in the company's profits.
7. The source legislation applies to non-UK resident insurance companies carrying on gross roll up business. This element of section 808 of ICTA will be rewritten as section 436C of ICTA. This new section is included in Part 1 of Schedule 1.

ANNEX 1: MINOR CHANGES IN THE LAW MADE BY THE BILL

Change 667: Industrial and provident societies: enactment of ESC C5: clause 1

This change gives statutory effect to ESC C5.

ESC C5 states that:

TA 1988 s 393(8) enables a company with a trading loss brought forward under TA 1988 s 393(1) to set off the loss not only against the trading income of the accounting period but also against any interest or dividends on investments which would have been taken into account as trading income but for the fact that they are charged to tax under other provisions.

In the case of a registered industrial and provident society carrying on a trade, the following items of income may be regarded as trading income for the purposes of s 393(8)--

- (a) interest brought into the computation of corporation tax profits as income under Schedule D Case III;
- (b) annual interest received under deduction of tax;
- (c) amounts assessable under Schedule D Case V.

Clause 1 gives effect to this concession with a number of necessary modifications.

The reference to interest in (a) has been replaced with a reference to amounts that are chargeable under clause 308(charge to tax on non-trading profits from loan relationships) of the Corporation Tax Bill 2009 and the reference to amounts assessable under Case V in (c) has been replaced with a reference to amounts arising from possessions outside the United Kingdom. The reference to annual interest received under deduction of tax has not been rewritten as any such income would now be caught within the reference to amounts chargeable under clause 308.

The ESC does not include a definition of industrial and provident society. The definition from [section 486(12) of ICTA] has been adopted.

This change is in taxpayers' favour in principle. But it is expected to have no practical effect as it is in line with current practice.