

**Part 1: Rules For Special Types of Company**

**Chapter 1: Companies in Liquidation or Administration**

**Overview**

1. This Chapter deals with the taxation of companies in liquidation or administration. It is based on sections 342 and 342A of ICTA.

2. The rules governing the accounting periods of such companies are to be found in [Chapter 2] of [Part 2] of the Corporation Tax Act 2009.

**Clause 1: Meaning of “final year”, “penultimate year” etc**

3. This clause defines four of the terms used in Chapter [1]. It is based on sections 6(4), 342(1) and 342A(1) of ICTA.

**Clause 2: Meaning of “rate of corporation tax” in case of small companies**

4. This clause defines “rate of corporation tax” for small companies subject to this Chapter. It is based on section 342(2) and (3) and section 342A(2) and (3) of ICTA.

**Clause 3: Company in liquidation: corporation tax rates**

5. This clause sets out the corporation tax rates that are to be applied in the final or penultimate year of the liquidation period of a company that is being wound up. It is based on section 342(2), (3) and (8) of ICTA.

6. If the rates of corporation tax have either been fixed or proposed for the final year or the penultimate year then the proposed or fixed rates are to be used. Therefore in the vast majority of cases the normal corporation tax rates will apply.

7. Corporation tax rates are generally proposed in the PBR (Pre-Budget Report). The PBR takes place in autumn. The PBR in the autumn of Financial Year 1 will propose corporation tax rates for Financial Year 3. The same PBR will propose the small companies’ rates and fractions for Financial Year 2. The associated Finance Act usually becomes law in July of Financial Year 2. Thus the corporation tax rates for Financial Year 3 become fixed in Financial Year 2 and the small companies’ rates and fractions for Financial Year 2 also become fixed in Financial Year 2.

8. The clause assists liquidators seeking to finalise a company’s liability in advance of a formal winding up by setting out the rates to be used even in those rare cases where corporation tax rates have not been fixed at the time when a liquidator wishes to make an assessment to tax.

**Clause 4: Company in liquidation: making of assessment to tax**

9. This clause enables a liquidator to make a corporation tax self assessment for an accounting period that has not finished. It is based on section 342(4), (5) and (6) of ICTA.

10. In normal circumstances it is not possible to make a corporation tax self-assessment before the end of an accounting period. In the majority of instances the

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profits for the period will not be known in advance and the relevant corporation tax rates may not have been fixed.

11. Liquidators may seek to finalise a company's liability in advance of the completion of a formal winding up. Liquidators may wish to finalise the assessment of a company's liability in advance of the completion of its winding up and the purpose of the clause is to enable the liquidator to do so.

12. Clause [13] [j9014] of [Corporation Tax Bill 2009] (see *subsection (3)*) is based on section 12(7) of ICTA.

**Clause 5: Company in administration: corporation tax rates**

13. This clause sets out the corporation tax rates that are to be applied in the final year and the penultimate year of an administration period that concludes with the company's dissolution. It is based on section 342A(2), (3) and (10) of ICTA.

14. If the rates of corporation tax have either been fixed or proposed for the final year or the penultimate year then the proposed or fixed rates are to be used. Therefore in the vast majority of cases the normal corporation tax rates will apply.

15. The clause assists administrators seeking to finalise a company's liability in advance of an anticipated dissolution date by setting out the rates to be used even in those rare cases where corporation tax rates have not been fixed at the time when the administrator wishes to make an assessment to tax.

**Clause 6: Company in administration: making of assessment to tax**

16. This clause enables an administrator to make a corporation tax self assessment for an accounting period that has not finished. It is based on section 342A(6), (7) and (8) of ICTA.

17. In normal circumstances it is not possible to make a corporation tax self-assessment before the end of an accounting period. In the majority of instances the profits for the period will not be known in advance and the relevant corporation tax rates may not have been fixed.

18. Administrators may seek to finalise a company's liability in advance of an anticipated dissolution date. Administrators may wish to finalise the assessment of a company's liability in advance of the company's dissolution and the purpose of the clause is to enable the administrator to do so.

19. Clause [11] [j9011](1) of [Corporation Tax Bill 2009] (see *subsection (3)*) is based on section 12(3), (7ZA) of ICTA.

**Clause 7: Meaning of rate being "fixed" or "proposed"**

20. This clause defines terms used in the previous clauses. It is based on section 342(7) and 342A(9) of ICTA.

**Clause 8: Exemption for interest on overpaid tax in final accounting period**

21. This clause provides a limited exemption for interest on overpaid tax received or paid in the final accounting period. It is based on sections 342(3A) and 342A(4), (5) of ICTA.

22. Clause [13] [j9014] of [Corporation Tax Bill 2009] (see *subsection (4)*) is based on section 12(7) of ICTA.

**Chapter 2: Banks in Compulsory Liquidation: Taxation of Receipts**

***Overview***

23. This Chapter deals with the taxation of banks in compulsory liquidation. It is based on Schedule 12 to F(No2)A 1992.

**Clause 9: Overview**

24. This clause gives an overview of the Chapter. It is new.

25. Although the Chapter can only apply to companies it provides for the charging of income tax as well as corporation tax. This is because in certain circumstances a company may be liable to income tax. For example, if a non-UK resident company trading in the UK through a permanent establishment goes into liquidation and the company's permanent establishment ceases to exist the company will no longer be liable to corporation tax. However, it may still be liable to income tax.

**Clause 10: Application**

26. This clause sets out the conditions that a company must meet in order for the Chapter to apply. It is based on paragraph 1 of Schedule 12 to F(No2)A 1992.

27. The reference to section 840A(1) of ICTA in *subsection (2)* is currently in square brackets. The definition of "bank" will be rewritten in Bill 6 and the reference will be amended in due course.

28. *Subsection (6)* refers to an EEA firm with permission under paragraph 15 of Schedule 3 to the Financial Services and Markets Act 2000. The source qualified this by adding in parentheses "(as a result of qualifying for authorisation by virtue of paragraph 12 of that Schedule)". This qualification is considered unnecessary as the only way in which permission under paragraph 15 may be given is by virtue of paragraph 12. These words are therefore repealed without replacement.

**Clause 11: Charge to tax on winding up receipts**

29. This clause charges amounts received during the winding up period. It is based on paragraph 3(1), (2) and (3) of Schedule 12 to F(No2)A 1992.

30. Clause [156] [j035510] of [Corporation Tax Bill 2009] (see *subsection (4)*) is based on sections 100(2) and 101(3) of ICTA.

**Clause 12: Transfer of rights to payment**

31. This clause charges sums received in respect of transfers of rights as if those sums were winding up receipts. It is based on paragraph 5 of Schedule 12 to F(No2)A 1992.

32. In the case of a non arm's length transaction the source provides that market value is to be substituted for the consideration received. However, the tax charge is based on amounts received. Therefore in relation to the deemed amounts arising from non arm's length transactions the source states that "references ... to sums received shall be construed accordingly."

33. Although the meaning is not in doubt the source is not as clear as it might be. In the rewritten clause a slightly different approach has been adopted by explicitly treating the value of transferred rights as winding up receipts.

**Clause 13: Allowable deductions**

34. This clause provides rules for setting allowable deductions against winding up receipts. It is based on paragraph 4 of Schedule 12 to F(No2)A 1992.

**Clause 14: Election to carry back**

35. This clause gives a company the right to elect to carry back a winding up receipt to the date that the business ceased. It is based on paragraph 6 of Schedule 12 to F(No2)A 1992.

36. *Subsection (4)* refers to the Corporation Tax Acts whereas the source refers to the Tax Acts. The Chapter only applies to companies. The Corporation Tax Acts are defined in Schedule 1 to the Interpretation Act 1978 as meaning the enactments relating to the taxation of the income and chargeable gains of companies and of company distributions (including provisions relating to income tax). The reference to the Corporation Tax Acts is therefore apposite in this instance.

**Clause 15: Relationship of Chapter with other tax provisions**

37. This clause gives priority to a charge under this Chapter over potential charges arising under other provisions (for example under Chapter 2 of Part 4 of ITTOIA). It is based on paragraph 3(4) and (5) of Schedule 12 to F(No2)A 1992.

38. Clause [451] [j0610805](1) of [Corporation Tax Bill 2009] (see *subsection (2)*) is based on section 80(5) and Schedule 9 paragraph 1(2) of FA 1996.

**Clause 16: Interpretation of Chapter**

39. This clause sets out a number of definitions and interpretations relevant to the Chapter. It is based on paragraph 2 of Schedule 12 to F(No2)A 1992.

**Schedule 1: Minor and consequential amendments**

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**Section 342(9)**

40. *Subsection (9)* of section 342 has not been rewritten. It should have been repealed when FA 1993 (sections 206(1), 213 and Schedule 23) repealed section 8(4) of ICTA. Section 8(4) dealt with a situation where rates of tax were uncertain. The subsection is obsolete and will be repealed.