

Part 1: Miscellaneous rules

Overview

1. This Chapter provides exemption from corporation tax for certain bodies or relaxes in certain cases the way in which the normal corporation tax rules apply.
2. This Chapter rewrites some, but not all, of the provisions in Chapter 6 of Part 12 of ICTA. The clause dealing with exemptions for charities, and for bodies that are treated as charities, which form part of Chapter 6 have been included with the rules for charitable companies etc in Part [8] of [Bill 6].

Q1. We welcome comments on the approach of separating the clauses dealing with exemptions for charitable companies from the clauses that deal with other exemptions and exceptions.

3. A number of sections of Part 12 of ICTA are obsolete and this Bill repeals these redundant sections.

Chapter 1: Other miscellaneous rules

Clause 1{j8406}: Local authorities and local authority associations

4. This clause exempts United Kingdom local authorities and local authority associations from corporation tax. It is based on section 519 of ICTA.

Clause 2{j8406a}: Meaning of “local authority association”

5. This clause provides a definition for “local authority association”. It is based on section 519(3) of ICTA.

Clause 3{j8407}: Health service bodies

6. This clause exempts health service bodies from corporation tax. It is based on section 519A(1) of ICTA.

7. It is the first of three clauses that deal with the exemption from corporation tax of health service bodies. The exemption is straightforward except in the case of NHS foundation trusts where under certain circumstances the exemption does not apply. The clauses are based on section 519A of ICTA.

Clause 4{j8407a}: Meaning of “health service body”

8. This clause provides a definition of “health service body”. It is based on section 519A(2).

Clause 5{j8407b}: NHS foundation trusts

9. This clause removes some classes of activity carried on by NHS foundation trusts from the exemption to corporation tax in clause 3{j8407}. It is based on section 519A(3), (4), (5), (6), (7), and (8) of ICTA.

10. The exception from the exemption broadly applies to commercial activities.

11. *Subsection (1)* provides that an order must be made by the Treasury for the exception to apply.

12. Under the terms of Health and Social Care (Community Health and Standards) Act 2003 an NHS foundation trust is not obliged to carry on commercial activity through a separate company. Such activity may be subject to corporation tax if the conditions set out in *subsections (7) and (8)* are met.

13. The taxation treatment of NHS foundation trusts may be contrasted with that for local authorities and local authority associations (see clause 1{j8406}). Using powers under section 99(4) of the Local Government Act 2003, the Government issued the Local Government (Best Value Authorities) (Power to Trade) (England) Order 2004 (SI 2004/1705). This order allows local authorities to trade but provides that the trade must be carried on by a company.

Clause 6{j8401}: Issue departments of the Reserve Bank of India and the State Bank of Pakistan

14. This clause exempts from corporation tax the income of the issue departments of the central banks of India and Pakistan. It is based on section 517 of ICTA.

Clause 7{j2033a}: Agricultural societies

15. This clause exempts profits made by an agricultural society from exhibitions or shows where those profits are applied solely to the purposes of the society. It is based on section 510 of ICTA.

16. The clause gives statutory effect to the decision of the High Court in *Peterborough Royal Foxhound Show Society V IRC* [1936] 20 TC 249 by replacing the reference in section 510 ICTA to livestock breeding with a reference to the breeding of any kind of animal.

Section 510 ICTA includes “livestock breeding” among the activities that define an agricultural society for the purpose of the exemption under that section. In the case mentioned above it was held that “livestock breeding” in section 23 FA 1924 (which became section 510 ICTA) included foxhound breeding. The judge in that case said that,

“The words “live stock” are ordinarily and properly used in contrast with dead stock and include all live animals and birds the breeding of which is regulated by man.”

The decision in that case was applied in *IRC v Glasgow (City) Ornithological Association* [1938] 21 TC 445, in which the Court of Session held that “livestock” in section 23 of FA 1924 included caged birds.

Clause 8{j8400}: European Economic Interest Groupings

17. This clause sets out the basic rules that determine how corporation tax is to be charged on the members of a European Economic Interest Grouping (EEIG). It is based on section 510A of ICTA.

18. Members of a grouping may be companies, individuals or partnerships. See section 842 of ITA 2007 for the income tax rules that apply to the non-corporate members of an EEIG.

Clause 9{j8402}: Harbour reorganisation schemes: corporation tax

19. This clause provides that if certain conditions are met, a trade transferred to a harbour authority as a result of a harbour reorganisation scheme is certified as not having ceased; and losses which would have been available to the transferor for relief may be used by the transferee. It is based on section 518(1), (2) and (3) of ICTA.

20. The clause is the first of five clauses that deal with the corporation tax consequences of the transfer of a trade under a harbour reorganisation scheme.

21. One of the conditions set out in *subsection (1)* is that the section applies only if the trade is transferred from a body corporate that is not a limited liability company. It is therefore clear that the clause and those that follow can apply only in very limited circumstances.

Clause 10{j8403}: Harbour reorganisation schemes: CAA 2001

22. This clause sets out the rules relating to capital allowances that apply when a trade is transferred to a harbour authority under a harbour reorganisation scheme. It is based on section 518(4) and (5) of ICTA.

Clause 11{j8403a}: Harbour reorganisation schemes: chargeable gains

23. This clause sets out the rules relating to chargeable gains that apply when a trade is transferred to a harbour authority under a harbour reorganisation scheme. It is based on section 518(7) of ICTA.

Clause 12{j8404}: Harbour reorganisation schemes: transfer of part of trade

24. This clause modifies the rules in clause 9{j8402} if only part of a trade is transferred to a harbour authority under a certified harbour reorganisation scheme. It is based on section 518(8) and (9) of ICTA.

25. *Subsection (4)(b)* refers to the need to make “just and reasonable apportionments” in certain circumstances and includes a minor change in the law. A change is proposed to bring the corporation tax code into line with that for income tax. See Change 604{j604} in Annex 1.

Q2. Change 604{j604} reproduces change 93 in ITA 2007 and so brings the income and corporation tax codes back into line. We welcome comments on the proposal to carry Change 93 in ITA 2007 across to corporation tax.

Clause 13{j8405}: Harbour reorganisation schemes: interpretation

26. This clause provides a number of definitions for clauses 9{j8402} to 12{j8404}. It is based on section 518(10) of ICTA.

Schedule 1: Minor and consequential amendments

Part 1: Income and Corporation Taxes Act 1988

Section 511

27. The section deals with the Electricity Council and Boards, the Northern Ireland Electricity Service and the Gas Council. None of these bodies now exist. The only part of the section that has not so far been repealed is subsection (7). This deals with the application of the Corporation Tax Acts to the Gas Council. It is obsolete and is repealed.

Section 513

28. The section ensures continuity of tax treatment for the successor company of the British Airways Board and the successor company of the National Freight Organisation. The section is obsolete and is repealed.

Part 2: Other enactments

Finance Act 1999

Section 63

29. The section provides for transitional treatment in respect of transfer fees relating to contracts entered into before the beginning of the first accounting period of a football or other sports club subject either to FRS10 or the FRS for Smaller Entities. The section is obsolete and is repealed.

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

Change 604{jc604}: Requiring an apportionment to be just and reasonable: clause 12{j8404}

This change requires any apportionment that is not required by the source legislation to be made on a just and reasonable basis to be made on such a basis.

In some cases where there is an apportionment under legislation rewritten in this Act, the apportionment is required by the source legislation to be made on a just and reasonable basis. In other cases, it is required to be made only on a just basis or only on a reasonable basis, or there are no requirements. In new tax legislation it is now the practice to require an apportionment to be just and reasonable. For example, before it was replaced by ITEPA, section 140B(4) of ICTA (inserted by FA 1998) required a just and reasonable apportionment to be made of any consideration given partly in respect of one thing and partly in respect of another. There is no reason why an apportionment should not be on a just and reasonable basis. And it is desirable that all apportionments should be made on the same basis.

Accordingly, where an apportionment under legislation rewritten in this Act is not required to be made on a just and reasonable basis, the rewritten provision requires the apportionment to be made on a just and reasonable basis.

The same change was made in ITTOIA to provide a uniform expression of the basis on which apportionments are to be made.

This change makes minor amendments to a number of existing rules, but is expected to have no practical effect as it is in line with generally accepted practice.