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British Tax Guide:

Corporation Tax

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STRATEGIC PARTNER



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British Tax Guide: Corporation Tax 2009-10



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Jon is a specialist in corporate tax and the wider tax aspects of owner managed business. He was a tax partner with Deloitte & Touche until 2002 and then with Grant Thornton UK LLP until June 2008. Jon now runs his own tax consultancy business advising clients and other firms of accountants on business related tax matters. He is a member of the Chartered Institute of Tax Corporation Tax Technical Committee.

Preface

The fourth edition of the *British Tax Guide: Corporation Tax* provides clear, practical and accessible commentary on the tax issues likely to be of widespread interest to tax advisers dealing with their clients' 2009–10 corporation tax affairs. To achieve this aim, it has been necessary either to omit, or to cover in summary form, some less mainstream topics. The authors welcome comments from readers about the scope and depth of the coverage.

The books in this series aim to provide clear, uncluttered, easy-to-read commentary on the main taxes rather than heavy reproduction of source material. Useful cross-references are included and are generally provided in separate footnotes rather than in the body of the text. In the CD and online versions of this work those references are live links to relevant annotated legislation, cases, HMRC Manuals and other reference materials. The full references to CCH's main tax databases also make these books an ideal desktop companion to those services.

Reproduction of source materials has been kept to a minimum. In the CD and online versions of this book, cross-references to source materials are live links to relevant annotated legislation, cases, HMRC Revenue Manuals and other reference materials.

The text is up to date to 31 August 2009 including most recent legislation, case law, HMRC statements of practice and extra statutory concessions. Major developments covered are set out on the What's New page.

The other books in the British Tax Guide series provide straightforward but authoritative commentary on the UK's other main taxes. In each book, extensive cross-referencing is provided to relevant legislation, cases and HMRC guidance as well as to CCH's in-depth commentary in the British Tax Reporter and British VAT Reporter making them an ideal desktop companion to CCH's comprehensive online services.

I am grateful to both my former joint author, Rebecca Murray, for her contribution to selected chapters and to the editor, Neil Grace, for ensuring consistency and quality of presentation and for compiling the book as a whole.

Jon Fursdon
London
August 2009

What's new?

There follows a series of summaries highlighting the main changes and developments relevant to corporation tax that have occurred since the last edition of *British Tax Guide: Corporation Tax*.

Corporation Tax Act 2009

CTA 2009 is the first of the two Tax Law Rewrite Project acts dealing with the rewrite of the corporation tax code and applies to accounting periods ending on or after 1 April 2009. It abolishes the schedular system for charging CT (so that the terms Schedule A and the six Cases of Schedule D are now consigned to history) and rewrites the following:

- The basic rules that determine a company's charge to CT and the computation of the company's profits under various heads of charge.
- The rules dealing with companies with investment business.
- The loan relationship rules and the allied rules on derivatives.
- The CT code on intangible fixed assets.
- The Research & Development tax relief rules for SMEs and large companies.
- The rules giving CT relief for employee share acquisitions.
- The rules dealing with corporate partnerships (in part).
- The rules for the remediation of contaminated land.
- The rules on film production.

All chapters of the book have been updated for the effects of CTA 2009.

Finance Act 2009

The provisions of FA 2009 dealing with corporation tax matters are dealt with in the following chapters:

Subject Matter	Section and/or Schedule of FA 2009	BTG Chapter Reference
Dividend exemption	s. 34, Sch. 14	395-000, 376-200
Changes to Controlled Foreign Companies legislation	s. 36, Sch. 16	399-450
Worldwide debt cap	s. 35, Sch. 15	401-500
International Movements of Capital	s. 37, Sch. 17	399-100
Reallocation of chargeable gain or allowable loss within a group	s. 31, Sch. 12	391-350
Loan relationship: release of trade debts	s. 42	400-150
Loan relationships: connected parties	s. 41, Sch. 20	400-700
Tax relief on business expenditure on cars and motor cycles	s. 30, Sch. 11	379-120
Duties of senior accounting officers of large companies	s. 93, Sch. 46	377-600
Extension of trading loss carry back to 3 years	s. 23, Sch. 6	380-300
Transfers of trade to obtain terminal loss	s. 62	380-300
Foreign currency amounts carried forward or back	s. 38, Sch. 18	376-400
Definition of preference share applying for group relief purposes	s. 28, Sch. 9	391-100
Foreign exchange targeted anti-avoidance rule	s. 43, Sch. 21	400-950
Managed Payment plans	s. 111	377-700
Financial Arrangements Avoidance involving convertible securities	s. 61, Sch. 30 para. 4	401-150
Financial Arrangements Avoidance involving derecognition of derivative contracts	s. 61, Sch. 30 para. 3	402-150

What's new?

Subject Matter	Section and/or Schedule of FA 2009	BTG Chapter Reference
Real Estate Investment Trusts: changes to balance of business tests	s. 66, Sch. 34	406-150
Real Estate Investment Trusts: extension to tied premises	s. 66, Sch. 34	406-150
Error or mistake claims	s. 100, Sch. 52	377-500
Penalties for failure to make returns	s. 106, Sch. 55	377-250
Penalties for failure to pay tax on time	s. 107, Sch. 56	377-700

Other changes to tax law and practice announced since August 2008 relevant to corporation tax are dealt with in the following paragraphs:

Subject Matter	CCH Tax News Issue number	BTR Chapter reference
Cases		
<i>Fenlo Ltd v R & C Commrs</i> : Loan relationships, release of debt, whether connected company	TN 528	400-700
<i>Lee v R & C Commrs</i> : Self Assessment, Enquiry	TN 528	377-750
<i>Buck v R & C Commrs</i> : Family company, income splitting, dividend waiver	TN 528	393-500
<i>Test claimants in the FII Group Litigation v IRC</i> : EU Freedom of Establishment, dividend exemption	TN 527	375-150, 399-400
<i>Sempre Metals Ltd v R & C Commrs</i> : EBT, company contribution, CT deduction	TN 513	409-050, 409-150
<i>Prudential plc v R & C Commrs</i> : loan relationships, derivative contracts, unallowable purpose	TN 510, TN 553	400-700, 402-300
<i>Vodafone 2 v R & C Commrs</i> : CFC legislation, whether incompatible with EU law	TN 549	399-450
<i>DSG Retail Ltd & Ors v R & C Commrs</i> : transfer pricing methods	TN 545	392-100

Subject Matter	CCH Tax News Issue number	BTR Chapter reference
<i>Marks and Spencer plc v R & C Commrs</i> : First Tier Tribunal decision: group relief	TN 547	391-500
Commencement Date for Earlier Legislation		
Changes to enhanced R & D tax credits	TN 510	403-700, 403-715, 403-720, 403-730, 403-810
FA 2008, Sch. 36: HMRC Information and Inspection Powers	TN 539	377-750
FA 2008, Sch. 39: Time limit for elections and claims	TN 539	377-400, 377-500, 377-650
Proposed Legislation		
Compulsory online filing of CT returns and electronic payment of CT	TN 546, TN 552	377-050, 377-700
EU Challenge to cross border group relief legislation	TN 521, TN 518	391-250
Change of Accounting practice regulations: Forex	TN 526	400-950
Other changes to legislation		
REIT: exclusion of letting owner-occupied properties (SI 2009/1482)	TN 551	406-150
R & D expenditure: prescription of Qualifying Bodies (SI 2009/1343)	TN550	403-790, 403-830
Disregard of profits or losses on derivative contracts to hedge foreign exchange risk on issues of shares (SI 2009/1886)		400-950
HMRC Practice		
Introduction of Business Payment Support Service	TN 527	377-700
Guidance on SDLT group relief	TN 527	398-400
Guidance on 'associated company' for s179 TCGA	TN 530	391-300
Loss of SME status: R & D expenditure	TN 525	403-715

What's new?

Subject Matter	CCH Tax News Issue number	BTR Chapter reference
Practice Note on Enquiry window for ‘large’ groups	TN 518	377-750

Key Data: Taxation of Companies

TAXATION OF COMPANIES

7-000 Rates

(BTR: ₺704-000ff.)

Financial year	Full rate %	Small companies' rate %	Profit limit for small companies' rate (lower limit)	Profit limit for small companies' marginal relief (upper limit)	Marginal relief fraction for small companies	Starting rate %	Profit limit for starting rate (lower limit)	Profit limit for starting rate marginal relief (upper limit)	Marginal relief fraction for starting rate
2009	28	21	300,000	1,500,000	7/400	See (2)	See (2)	See (2)	See (2)
2008	28	21	300,000	1,500,000	7/400	See (2)	See (2)	See (2)	See (2)
2007	30	20	300,000	1,500,000	1/40	See (2)	See (2)	See (2)	See (2)
2006	30	19	300,000	1,500,000	11/400	See (2)	See (2)	See (2)	See (2)
2005	30	19	300,000	1,500,000	11/400	0	10,000	50,000	19/400
2004	30	19	300,000	1,500,000	11/400	0	10,000	50,000	19/400

Notes

(1) The lower and upper limits for the small companies' rate and the small companies' marginal relief, as well as the similar lower and upper limits for the starting rate, are reduced proportionally:

- for accounting periods of less than 12 months, and

- in the case of associated companies, by dividing the limits by the total number of non-dormant associated companies.

(2) From 1 April 2006, the starting and non-corporate distribution rates are replaced with a new single banding for small companies set at the existing small companies' rate. The small companies' rate therefore applies to companies with taxable profits between £0 and £300,000.

(3) From 1 April 2004 to 31 March 2006, the benefit of the starting rate and marginal starting rate relief applied only to undistributed profits and profits distributed to other companies. Profits chargeable to corporation tax below the threshold for the small companies' rate that have been distributed to non-company shareholders are subject to a minimum rate (the 'non-corporate distribution rate': NCD rate which, for the financial years 2004 and 2005, is equivalent to the small companies' rate). Profits distributed to other bodies subject to corporation tax are disregarded for the purpose of establishing whether the NCD rate applies.

(4) 'Close investment holding companies' did not receive the benefit of the small companies' rate or the starting rate and so are taxable entirely at the full rate regardless of the level of their profits.

(5) The full rate of corporation tax for the financial year 2010 will be 28 per cent (FA 2009, s. 7).

Effective marginal rates

For marginal small companies' relief and marginal starting rate relief, there is an effective rate of tax in the margin, i.e. between the lower and upper limits given for each in the preceding table, which *exceeds* the full rate. These marginal rates are not prescribed by statute, but are derived from the appropriate corporation tax rates and fractions. The applicable rates are as follows.

Financial year	Marginal small companies' rate %	Marginal starting rate %
2009	29.75	(1)
2008	29.75	(1)
2007	32.5	(1)
2006	32.75	(1)
2005	32.75	23.75
2004	32.75	23.75

Notes

(1) From 1 April 2006, the starting rate is replaced with a new single banding for small companies set at the existing small companies' rate. The small companies' rate therefore applies to companies with taxable profits between £0 and £300,000.

Marginal relief

(ICTA 1988, s. 13)

$$\text{Deduction} = (\text{Upper Limit} - \text{Profits}) \times \frac{\text{Basic profits}}{\text{Profits}} \times \text{Marginal Relief Fraction}$$

'Profits' means profits as finally computed for corporation tax purposes *plus* franked investment income *excluding* franked investment income received from companies in the same group. Distributions are treated as coming from within the group if they are received from a company which is a 51 per cent subsidiary or a consortium company, the recipient being a member of the consortium. For distributions received on or after 1 July 2009, the reference to franked investment income (and the exclusion for franked investment income received from group companies) both include distributions received from companies resident outside the UK (as well as distributions that are received from UK resident companies) that are exempt from corporation tax under the distribution exemption.

‘Basic profits’ means profits as finally computed for corporation tax purposes (also known as ‘profits chargeable to corporation tax’).

Similar provisions apply for calculating marginal relief for the starting rate effective from 1 April 2000 to 31 March 2006.

Charge on loan to participators

(ICTA 1988, s. 419)

(BTR: ¶776-900ff.)

The rate of charge is fixed at 25 per cent of the amount of the loan or advance until further notice.

The charge itself is separate from other liabilities, being treated ‘as if it were an amount of corporation tax chargeable on the company’.

ADMINISTRATION

7-020 Filing deadlines

(FA 1998, Sch. 18, para. 14)

(BTR: ¶ 804-000ff.)

The filing date for a return of profits (CT600, or approved substitute) is generally the later of the three dates outlined below. Note that only the first two of these are relevant unless the company is making a return in respect of an accounting period forming part of a period of account which is greater than 12 months in length.

- 12 months from the end of the return period.
- Three months after the issue of a notice to deliver a corporation tax return.
- If a period of account is greater than 12 months in length, it will be divided into two or more accounting periods.

If such a period of account is no longer than 18 months, the filing date for both accounting periods is 12 months from the end of the period of account.

If such a period of account is greater than 18 months, the filing date is 30 months from the start of the period of account.

Notes

Obligation to file a return is not automatic but is imposed by notice issued by the inspector.

Every company which is chargeable to corporation tax in respect of any accounting period, and which has not made a return of its profits for that period, nor received a notice to make

such a return, is under a duty to give notice to the inspector that it is so chargeable. The notice must be given not later than 12 months after the end of that accounting period.

For accounting periods beginning on or after 22 July 2004, a company must notify HMRC that its first accounting period has begun within 3 three months of the accounting period beginning. This also applies to dormant companies which cease to be dormant.

An amended return under self assessment may not be made later than 12 months after the filing date stipulated above.

7-030 Due and payable dates

(BTR:¶ 803-500ff.)

Liability	Due date
Mainstream tax (TMA 1970, s. 59D)	Nine months and one day after end of an accounting period
Mainstream tax in instalments ⁽¹⁾ :	The 14th day of the seventh, tenth, 13th and 16th months after start of a 12 month accounting period.
Income tax on interest, annual payments etc.	14 days after end of return period. ⁽²⁾
Charge on loans to participators (ICTA 1988, s. 419)	Nine months and one day after the end of the accounting period in which the loan was advanced.

Notes

⁽¹⁾ TMA 1970, s. 59E and SI 1998/3175 provide for the payment of corporation tax by ‘large’ companies (defined in accordance with the small companies’ marginal relief upper limit) in instalments

Companies which are ‘large’ because of the number of associated companies or because of substantial dividend income will not have to pay by instalments if their corporation tax liabilities are less than £10,000 (for accounting periods ending after 30 June 2000; previously the limit was £5,000). Companies which become ‘large’ in an accounting period, having previously had profits below the upper limit, may be exempt from instalment arrangements in certain circumstances. Groups containing ‘large’ companies are able to pay corporation tax on a group-wide basis.

For accounting periods ending after 30 June 2005, corporation tax and the supplementary charge payable by oil companies on ring fence profits are payable in three equal instalments. Corporation tax due on other profits (i.e. non-ring fence) continues to be payable in quarterly instalments as above.

The payment dates for the three instalments once the transitional period (see below) has passed are as follows:

(1) one-third payable six months and 13 days from the start of the accounting period (unless the date for instalment (3) is earlier);

- (2) one-third payable three months from the first instalment due date (unless (3) is earlier); and
- (3) the balance payable 14 days from the end of the accounting period (regardless of the length of the period).

Transitional arrangements apply for the first accounting period affected. These arrangements leave the first two quarterly instalments unchanged (at one-quarter each of the estimated liability for the period) but then require payment of the remainder of the estimated liability on ring fence profits for that accounting period to be paid on the new third instalment date.

⁽²⁾ Return periods end on 31 March, 30 June, 30 September, 31 December and at the end of an accounting period.

The requirement for companies to deduct and account for income tax on certain payments is removed with effect for payments after 31 March 2001 of:

- interest, royalties, annuities and other annual payments made to companies within the charge to UK corporation tax on that income; and
- interest on quoted Eurobonds paid to non-residents.

7-040 Penalties

(BTR: ¶804-300)

Infringement penalised	Maximum penalty	Provision	
		TMA 1970	Other
Failure to notify chargeability	100% of tax unpaid 12 months after end of accounting period ⁽¹⁾	s. 10(3)	FA 1998, Sch. 18, para. 2
Failure to make return ⁽²⁾	<i>Fixed rate penalty</i> ⁽³⁾	s. 94(1), (5)	FA 1998, Sch. 18, para. 17(2), (3)
<ul style="list-style-type: none"> • up to 3 months after filing date • more than 3 months after filing date 	£100 (persistent failure, £500) £200 (persistent failure, £1,000)		
	<i>Tax-geared penalty</i> ⁽⁴⁾	s. 94(6)	FA 1998, Sch. 18, para. 18
<ul style="list-style-type: none"> • at least 18 months but less than 24 months after end of return period • 24 months or more after end of return period 	10% of tax unpaid at 18 months after end of return period 20% of tax unpaid at 18 months after end of return period		

Key Data: Taxation of Companies

Infringement penalised	Maximum penalty	Provision	
		TMA 1970	Other
Error in taxpayer's document • standard amount • where the inaccuracy is deliberate but not concealed • where the inaccuracy is deliberate and concealed	30% of potential revenue lost 70% of potential lost revenue 100% of the potential lost revenue	–	FA 2007, Sch. 24, para. 4
Failure to keep and preserve records (subject to specific exceptions)	Up to £3,000	–	FA 1998, Sch. 18, para. 23
Failure to produce documents required in connection with an enquiry • standard amount • continued failure	£300 daily penalty of £60	–	FA 2008, Sch. 36, para. 39 and 40
Failure to produce documents required in connection with an enquiry	standard amount of £300 plus £60 per day for continued failure	–	FA 2008, Sch. 36, para. 39 and 40
Failure to notify commencement of trade within 3 months of first accounting period	standard amount of £300 plus £60 per day for continued failure	–	FA 2004, s. 55

Notes

(1) With effect from 1 April 2010, the penalty due will be up to a maximum of 100 per cent of the potential lost revenue (FA 2008, Sch. 41, para. 1 and 6).

(2) From a date yet to be announced, *Finance Act 2009* introduced a new flat rate and tax-gearred penalty regime for the late filing of corporation tax returns. Finance Act 2009 also provided for a new penalty regime for the late payment of corporation tax, again from a date to be announced.

(3) Fixed rate penalty does not apply if return filed by date allowed by Registrar of Companies.

(4) Tax-gearred penalty is charged in addition to fixed penalty. Where more than one tax-gearred penalty is incurred the total penalty shall not exceed the largest individual penalty on that part.

7-060 Interest on overdue tax

(BTR: ¶803-900)

Interest on	Interest runs from	Provision in TMA 1970
Overdue corporation tax	Date tax due and payable (nine months and one day after end of accounting period) ⁽¹⁾	s. 87A
Corporation tax payable in instalments	Date instalment is due to be paid	s. 87A
Overdue income tax deducted from certain payments ⁽²⁾	14 days after end of return period	s. 87
Overdue ACT	14 days after end of return period	s. 87
Overdue tax due on loans to participators	Date tax due and payable	s. 109

Notes

⁽¹⁾ Where one group company is liable to interest and another group company with the same accounting period is due a repayment of corporation tax an election may be made for the overpayment to be surrendered so as to reduce the interest liability of the first company which will be treated as having paid tax at the same time as the surrendering company (FA 1989, s. 102).

⁽²⁾ Interest provisions cease to apply to ACT for accounting periods beginning on or after 6 April 1999 following abolition of ACT.

⁽³⁾ The Finance Act 2009 contained provisions to harmonise interest regimes across all HMRC taxes and duties except corporation tax (CT) and petroleum revenue tax (PRT). It is expected that the legislation to apply the harmonised interest regime to CT and PRT will be introduced in Finance Bill 2010.

7-080 Rates of interest on overdue tax

With effect for **interest** periods commencing on 6 February 1997, the rates of interest for the purposes of late paid or unpaid corporation tax are different from those for other taxes. From that date, the rate of interest on late paid or unpaid corporation tax will depend on the accounting period for which the tax is due and, under self assessment, the nature of the tax due:

Self assessment

For accounting periods within the self assessment regime (or CTSA – APs ending on or after 1 July 1999), these rates are distinct from those for periods before the start of self assessment because the interest is an allowable deduction for tax purposes (see below).

In addition, there are separate provisions for:

- overpaid instalments of corporation tax (which benefit from a more favourable rate – for details of payment by instalments, see 7-450); and
- other liabilities such as the final liability due on the date specified in accordance with the table below.

Pre-self assessment

For accounting periods before the start of self assessment, there are two rates of interest applicable to all unpaid/late paid tax depending on whether the accounting period is within the Pay and File regime (APs ending after 30 September 1993) or not (i.e. periods ending before 1 October 1993).

CTSA (APs ending on or after 1 July 1999)

1. Unpaid CT (other than underpaid instalments)

Period of application	Rate %
From 24 March 2009	2.5
27 January 2009 to 23 March 2009	3.5
6 January 2009 to 26 January 2009	4.5
6 December 2008 to 5 January 2009	5.5
6 November 2008 to 5 December 2008	6.5
6 January 2008 to 5 November 2008	7.5
6 August 2007 to 5 January 2008	8.5
6 September 2006 to 5 August 2007	7.5
6 September 2005 to 5 September 2006	6.5
6 September 2004 to 5 September 2005	7.5
6 December 2003 to 5 September 2004	6.5
6 August 2003 to 5 December 2003	5.5
6 November 2001 to 5 August 2003	6.5
6 May 2001 to 5 November 2001	7.5
6 February 2000 to 5 May 2001	8.5