



Finance Act 2001

2001 CHAPTER 9

PART 3

INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

CHAPTER 2

OTHER PROVISIONS

Miscellaneous

83 Life policies, life annuity contracts and capital redemption policies

- (1) Schedule 28 to this Act (which makes amendments relating to Chapter 2 of Part 13 of the Taxes Act 1988) has effect.
- (2) The amendments made by Part 1 of that Schedule (which relate to the assignment or surrender of part of, or a share in, the rights conferred by a policy or contract) have effect, in the case of any policy or contract, in relation to any year (within the meaning given by section 546(4) of the Taxes Act 1988) beginning on or after 6th April 2001.
- (3) The amendments made by Part 2 of that Schedule (which relate to the provision by insurers etc of information relating to chargeable events happening in connection with a policy or contract) have effect in relation to chargeable events happening on or after 6th April 2002.

84 Exclusion of deductions for deemed manufactured payments

- (1) Section 736B of the Taxes Act 1988 (deemed manufactured payments in case of stock lending arrangements) is amended as follows.
- (2) In subsection (2) (application of provisions to deemed manufactured payments) after “shall apply” insert “, subject to subsection (2A) below,”.

Status: This is the original version (as it was originally enacted).

(3) After that subsection insert—

“(2A) The borrower is not entitled, by virtue of anything in Schedule 23A or any provision of regulations under that Schedule, or otherwise—

- (a) to any deduction in computing profits or gains for the purposes of income tax or corporation tax, or
- (b) to any deduction against total income or, as the case may be, total profits,

in respect of any such deemed requirement or payment as is provided for by subsection (2) above.

Where the borrower is a company, an amount may not be surrendered by way of group relief if a deduction in respect of it is prohibited by this subsection.”

(4) This section applies to payments treated under section 736B as made on or after 3rd October 2000.

85 Deduction of tax: payments between companies etc

(1) After section 349 of the Taxes Act 1988 (certain payments to be made under deduction of tax) insert—

“349A Exceptions to section 349 for payments between companies etc

- (1) The provisions specified in subsection (3) below (which require tax to be deducted on making certain payments) do not apply to a payment made by a company if, at the time the payment is made, the company reasonably believes that one of the conditions specified in section 349B is satisfied.
- (2) Subsection (1) above has effect subject to any directions under section 349C.
- (3) The provisions are—
 - section 349(1) (certain annuities and other annual payments, and royalties and other sums paid for use of UK patents),
 - section 349(2)(a) and (b) (UK interest),
 - section 349(3A) (dividend or interest on securities issued by building societies), and
 - section 524(3)(b) (which provides for section 349(1) to apply to proceeds of sale of UK patent rights).
- (4) References in subsection (3) above to any provision of section 349 do not include that provision as applied—
 - (a) under section 777(9) (directions applying section 349(1) to certain payments to non-residents), or
 - (b) by paragraph 4(2) of Schedule 23A (manufactured overseas dividends to be treated as annual payments within section 349).
- (5) References in this section to the company by which a payment is made do not include a company acting as trustee or agent for another person.
- (6) For the purposes of this section, a payment by a partnership is treated as made by a company if any member of the partnership is a company.

Status: This is the original version (as it was originally enacted).

349B The conditions mentioned in section 349A(1)

- (1) The first of the conditions mentioned in section 349A(1) is that the person beneficially entitled to the income in respect of which the payment is made is—
 - (a) a company resident in the United Kingdom, or
 - (b) a partnership each member of which is a company resident in the United Kingdom.
- (2) The second of those conditions is that—
 - (a) the person beneficially entitled to the income in respect of which the payment is made is a company not resident in the United Kingdom (“the non-resident company”),
 - (b) the non-resident company carries on a trade in the United Kingdom through a branch or agency, and
 - (c) the payment falls to be brought into account in computing the chargeable profits (within the meaning given by section 11(2)) of the non-resident company.

349C Directions disapplying section 349A(1)

- (1) The Board may give a direction to a company directing that section 349A(1) is not to apply in relation to any payment that—
 - (a) is made by the company after the giving of the direction, and
 - (b) is specified in the direction or is of a description so specified.
- (2) Such a direction shall not be given unless the Board have reasonable grounds for believing as respects each payment to which the direction relates that it is likely that neither of the conditions specified in section 349B will be satisfied in relation to the payment at the time the payment is made.
- (3) A direction under this section may be varied or revoked by a subsequent such direction.
- (4) In this section “company” includes a partnership of which any member is a company.

349D Section 349A(1): consequences of reasonable but incorrect belief

- (1) Where—
 - (a) a payment is made by a company without an amount representing the income tax on the payment being deducted from the payment,
 - (b) at the time the payment is made, the company reasonably believes that one of the conditions specified in section 349B is satisfied,
 - (c) if the company did not so believe, tax would be deductible from the payment under section 349, and
 - (d) neither of the conditions specified in section 349B is satisfied at the time the payment is made,section 350 applies as if the payment were within section 349 (and Schedule 16 applies as if tax were deductible from the payment under section 349).

Status: This is the original version (as it was originally enacted).

- (2) In this section “company” includes a partnership of which any member is a company.”.
- (2) In section 98 of the Taxes Management Act 1970 (c. 9) (penalties for failing to make, or making incorrectly, certain returns etc.), after subsection (4) insert—
- “(4A) If—
- (a) a failure to comply with section 350(1) of, or Schedule 16 to, the principal Act arises from a person’s failure to deliver an account, or show the amount, of a payment, and
 - (b) the payment is within subsection (4B) below,
- subsection (1) above shall have effect as if for “£300” there were substituted “£3,000” and as if for “£60” there were substituted “£600”.
- (4B) A payment is within this subsection if—
- (a) the payment is made by a company without an amount representing the income tax on the payment being deducted from the payment,
 - (b) at the time the payment is made, the company—
 - (i) does not believe that either of the conditions specified in section 349B of the principal Act is satisfied, or
 - (ii) where it believes that either of those conditions is satisfied, could not reasonably so believe,
 - (c) the payment is one from which tax is deductible under section 349 of the principal Act unless the company reasonably believes that one of those conditions is satisfied, and
 - (d) neither of those conditions is satisfied at the time the payment is made.
- (4C) In subsection (4B) above “company” includes a partnership of which any member is a company.”.
- (3) In section 338(4) of the Taxes Act 1988 (when payment by company to non-resident to be treated as charge on income), after paragraph (a) insert—
- “(aa) the person beneficially entitled to the income in respect of which the payment is made is a company not resident in the United Kingdom (“the non-resident company”), the non-resident company carries on a trade in the United Kingdom through a branch or agency and the payment falls to be brought into account in computing the chargeable profits (within the meaning given by section 11(2)) of the non-resident company, or”.
- (4) Subsections (1) to (3) apply to payments made on or after 1st April 2001.
- (5) Sections 247 and 248 of the Taxes Act 1988 (companies within a group may elect for section 349 not to apply to payments between them) shall cease to have effect.
- (6) Subsection (5) applies in relation to payments made after the day on which this Act is passed.

86 Profits for purposes of small companies' relief

- (1) Section 13 of the Taxes Act 1988 (small companies' relief) is amended in accordance with subsections (2) to (4).

Status: This is the original version (as it was originally enacted).

- (2) In subsection (7) (profits of company for accounting period)—
 - (a) in paragraph (a), omit “resident in the United Kingdom”, and
 - (b) in paragraph (b), for “section 247(1A)” substitute “subsection (7A) below”.
- (3) After subsection (7) insert—

“(7A) A company falls within this subsection if—

 - (a) it is a 75 per cent subsidiary of any other company, or
 - (b) arrangements of any kind (whether in writing or not) are in existence by virtue of which it could become such a subsidiary.”.
- (4) For subsection (8AA) (interpretation of subsection (7)) substitute—

“(8AA) Section 13ZA applies for the interpretation of subsection (7) above.”.
- (5) After section 13 of the Taxes Act 1988 insert—

“13Z A Interpretation of section 13(7)

- (1) In determining for the purposes of section 13(7) whether one body corporate is a 51 per cent subsidiary of another, that other shall be treated as not being the owner of any share capital—
 - (a) which it owns indirectly, and
 - (b) which is owned directly by a body corporate for which a profit on the sale of the shares would be a trading receipt.
- (2) Notwithstanding that at any time a company (“the subsidiary company”) is a 51 per cent subsidiary of another company (“the parent company”) it shall not be treated at that time as such a subsidiary for the purposes of section 13(7) unless, additionally, at that time—
 - (a) the parent company would be beneficially entitled to more than 50 per cent of any profits available for distribution to equity holders of the subsidiary company, and
 - (b) the parent company would be beneficially entitled to more than 50 per cent of any assets of the subsidiary company available for distribution to its equity holders on a winding-up.
- (3) For the purposes of section 13(7) and this section—
 - (a) “trading or holding company” means a trading company or a company the business of which consists wholly or mainly in the holding of shares or securities of trading companies that are its 90 per cent subsidiaries;
 - (b) “trading company” means a company whose business consists wholly or mainly of the carrying on of a trade or trades;
 - (c) a company is owned by a consortium if 75 per cent or more of the ordinary share capital of the company is beneficially owned between them by companies of which none—
 - (i) beneficially owns less than 5 per cent of that capital,
 - (ii) would be beneficially entitled to less than 5 per cent of any profits available for distribution to equity holders of the company, or

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(iii) would be beneficially entitled to less than 5 per cent of any assets of the company available for distribution to its equity holders on a winding up,

and those companies are called the members of the consortium.

(4) Schedule 18 (equity holders and assets etc. available for distribution) applies for the purposes of subsections (2) and (3)(c) above as it applies for the purposes of section 413(7).”

(6) The amendments made by this section apply for the purposes of accounting periods ending on or after 1st April 2001.

87 Tax deductions and credits: end of provisional repayment regime

(1) The provisions of section 438A of, and Schedule 19AB to, the Taxes Act 1988 (provisional repayments in respect of tax borne by deduction and tax credits) shall cease to have effect as follows.

(2) Those provisions shall not apply in relation to income tax borne by deduction from payments received after 30th September 2001.

(3) For the purposes of the following provisions (as they apply in relation to tax credits)—

(a) section 121 of the Finance Act 1993 (c. 34) (application of Schedule 19AB to tax exempt business of friendly societies) and any regulations under that section, and

(b) any regulations under section 333B of the Taxes Act 1988 (individual savings account business etc. of insurance companies and friendly societies),

that Schedule shall be deemed to continue to apply in relation to pension business of insurance companies as it would do so apart from subsection (2).

(4) The power to make regulations under each of the sections referred to in subsection (3) includes power to set out the text of that Schedule as applied by regulations under that section.

(5) The provisions of section 438A of, and Schedule 19AB to, the Taxes Act 1988 shall not apply in relation to tax credits in respect of distributions made on or after 6th April 2004.