



Income and Corporation Taxes Act 1970

1970 CHAPTER 10

PART XI

COMPANY TAXATION

CHAPTER III

CLOSE COMPANIES

Surtax apportionments

296 Apportionment for surtax of close company's income

- (1) Subject to the provisions of this section, the income of a close company for any accounting period may, for the purposes of surtax, be apportioned by the Board among the participators, and any amount apportioned to a close company, whether originally or by one or more sub-apportionments under this provision, may be further apportioned among the participators in that company.
- (2) For the purposes of an apportionment under this section, there shall be added to the amount of the income to be apportioned any amounts which were deducted in respect of annual payments, not being interest, in arriving at the company's distributable income (as defined in section 291(2) above) for the accounting period and which, in the case of an individual, would not have been deductible or would have been treated as his income in computing his total income for surtax.
- (3) Subject to subsection (2) above and (in the case of non-trading companies) to section 298(2) below.—
 - (a) an apportionment shall not be made under this section of a company's income for an accounting period unless an assessment is made on the company under section 289 above in respect of a shortfall in its distributions for that period, and

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- (b) the amount apportioned shall be the amount of the shortfall taken into account in making that assessment (and for this purpose a set-off of a surplus of franked investment income under section 289(3) above shall not be taken as reducing the amount of the shortfall),
- and an assessment under the said section 289, when it becomes final and conclusive, shall also be final and conclusive for the purposes of this subsection.
- (4) Subject to subsection (5) below and (in the case of non-trading companies) to section 298 below, any apportionment under this section, including any sub-apportionment of an amount directly or indirectly apportioned to a company, shall be made according to the respective interests in the company in question of the participators.
- (5) In determining for the purposes of subsection (4) above the respective interests of the participators, the Board may if it seems proper to them to do so attribute to each participator an interest corresponding to his interest in the assets of the company available for distribution among the participators in the event of a winding up.
- (6) This section shall, notwithstanding the winding-up of a company, or the passing of any resolution or the making of any order or anything else done for the winding up of a company, continue to apply as if the company were not being wound up.
- (7) Notice of an apportionment under this section shall be given by serving on the company a statement showing the total amount apportioned and, as the Board think fit, either the amount apportioned to each participator or the amount apportioned to each class of shares.
- (8) A company which is aggrieved by any notice of apportionment under this section shall be entitled to appeal to the Special Commissioners on giving notice to an officer of the Board within thirty days after the date of the notice; and subject to that an apportionment under this section shall be final and conclusive.
- (9) If a company fails or refuses, on being required to do so by the Board, to furnish a statement of its income for any accounting period apportionable under this section, or renders a statement with which the Board are not satisfied, the Board may make an estimate of that income to the best of their judgment.
- (10) On an appeal to the Special Commissioners, the Commissioners shall have jurisdiction to review any relevant decision taken by the Board under subsection (5) or subsection (9) above.

297 Consequences of apportionment under s. 296

- (1) Where an apportionment of income of a close company has been made under section 296 above, surtax shall be assessed and charged in respect of the sum so apportioned in accordance with the following provisions of this section.
- (2) Subject to subsection (4) below, and (in the case of non-trading companies) to section 298(3) below, the income apportioned to a participator in a company shall for the purposes of surtax form part of his total income, and subject to section 529 of this Act shall be deemed to be the highest part of that income and to have been received by him at the end of the accounting period to which the apportionment relates.

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- (3) Any amount apportioned to the personal representatives of a deceased person shall be treated as included as regards surtax in the aggregate income of the estate for the purposes of Part XV of this Act.
- (4) No individual shall be charged to surtax by virtue of any apportionment unless the sum or, where there is a sub-apportionment, the aggregate sum on which he is so chargeable amounts either to £100 or more or to 5 per cent. or more of the amount apportioned.
- (5) Any surtax chargeable under this section in respect of the amount of the income of a close company apportioned to any participator shall be assessed upon that participator in the name of the company and, subject as hereinafter provided, shall be payable by the company, and all the provisions of the Income Tax Acts relating to surtax assessments and the collection and recovery of surtax shall, with any necessary modification, apply to surtax assessments and to the collection and recovery of surtax charged under this section.
- (6) A notice of charge to surtax under this section shall in the first instance be served on the participator on whom the tax is assessed, and if the participator does not within twenty-eight days from the date of the notice elect to pay the tax, a notice of charge shall be served on the company, and the tax shall thereupon become payable by the company:

Provided that—

- (a) nothing in this subsection shall prejudice the right to recover from the company the surtax charged in respect of any participator who has elected as aforesaid but who fails to pay the tax by 1st January in the year next following the year of assessment or within twenty-eight days of the date on which he so elected, whichever is the later, and
- (b) where a notice of charge is served on a company and the tax thereupon becoming payable is not paid by the company before the expiry of three months from the date of service or before 2nd January in the year next following the year of assessment, whichever is the later, the tax shall thereupon, without prejudice to the right to recover it from the company, be recoverable from the participator on whom it was assessed.
- (7) Where, in consequence of a sub-apportionment, subsections (5) and (6) above apply in relation to a participator in a company other than the company whose income is apportioned, references in those subsections to the company shall be taken as references to the company whose income is apportioned.
- (8) Where—
- (a) any undistributed income which has been assessed and charged to surtax under this section is subsequently distributed, and
- (b) on the occasion of its distribution the distributions for the accounting period exceed the required standard,

a fraction of any amount to which an individual is entitled shall be deemed not to form part of his total income for the purposes of surtax; and the said fraction is

$$\frac{A}{B}$$

where—

A is the said excess, and

B is the whole distributions for the period.

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- (9) Sections 34(1) and 37(1) (time limits for assessment) and section 33(1) (relief for error or mistake) of the Taxes Management Act 1970 shall apply in relation to surtax assessed under this section as if for references to six years there were substituted references to seven years.

298 Apportionment of income of non-trading companies

- (1) The provisions of this section and section 299 below apply in relation to a close company which is not a trading company, and in those provisions such a company is referred to as a " non-trading company ".
- (2) There may be apportioned under section 296 above, if the Board see reason for it, the whole of a non-trading company's income for an accounting period up to the amount of the required standard (notwithstanding that there has been no shortfall in distributions for that period), together with any addition to be made under subsection (2) of that section, but with such reduction, if any, as may be just in respect of distributions made for the period to persons other than participators and associates of participators :

Provided that for this purpose the required standard shall be treated as reduced by so much of any shortfall in the distributions for the period as would under section 290(4) above or, where subsection (1) of section 294 above applies, under subsection (2) of that section, be disregarded in an assessment made in respect of that shortfall.

- (3) Where an apportionment is made by virtue of subsection (2) above, an individual shall not be charged to surtax on an amount treated in consequence of the apportionment or any sub-apportionment as being his income except in so far as it exceeds the amount which, apart from the apportionment, falls in respect of distributions made by the company in the accounting period to be included in the statement of total income to be made by him for the purposes of surtax.
- (4) For the purposes of section 296(4) above, a loan creditor shall be deemed to have an interest in any company which is a non-trading company to the extent that the income to be apportioned, or assets representing it, has or have been expended or applied, or is or are available to be expended or applied, in redemption, repayment or discharge of the loan capital or debt (including any premium thereon) in respect of which he is a loan creditor.
- (5) In the case of a non-trading company where, by virtue or in consequence of any settlement, a loan creditor has been or could be required by some other person (in this subsection referred to as " the beneficiary ") to pay to the beneficiary the whole or a part of any sums which have been or might be paid to the loan creditor by the company in redemption, repayment or discharge of the loan capital or debt (including any premium thereon) in respect of which he is a loan creditor, or to pay or transfer to the beneficiary the whole or a part of any sums or assets representing (directly or indirectly) any such sums, then—
- (a) if the requirement related, or could relate, to the whole of the sums or assets in question, the beneficiary and not the loan creditor shall be deemed for the purposes of section 296 above to be a participator in the company and, for the purposes of subsection (4) of that section, to have the interest in the company which the loan creditor would, but for this provision, be deemed to have in respect of that loan capital or debt; and
 - (b) in any other case, the beneficiary, as well as the loan creditor, shall be deemed to be a participator in the company for the purposes of section 296 above and,

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for the purposes of subsection (4) of that section, the interest which the loan creditor is deemed to have in the company in respect of that loan capital or debt shall be divided between them in such manner as the Board think fit.

In this subsection "settlement" includes any disposition, trust, covenant, agreement, arrangement or transfer of assets.

- (6) On an appeal to the Special Commissioners, the Commissioners shall have jurisdiction to review any relevant decision taken by the Board in exercise of their functions under subsection (5) above.

299 Supplementary provisions as to apportionment of income of non-trading companies

- (1) If, in the case of a non-trading company, the Board are of opinion that any person who is not a participator in the company for the purposes of section 296 above is, or is likely to be, able to secure that income or assets, whether present or future, of the company will be applied either directly or indirectly for his benefit, they may, if they think fit, treat him as a participator in the company for those purposes.
- (2) In apportioning the income of a non-trading company under section 296 above—
- (a) to any person who is treated as a participator in the company by virtue of subsection (1) above, or
 - (b) to any person who is a participator in the company but has no relevant interests in the company, and in their opinion is, or is likely to be, able to secure that income or assets, whether present or future, of the company will be applied either directly or indirectly for his benefit, or
 - (c) to any person who is a participator in the company and in their opinion is, or is likely to be, able to secure that income or assets, whether present or future, of the company will be applied either directly or indirectly for his benefit to a greater extent than is represented in the value for apportionment purposes of his relevant interests in the company considered in relation to the value for those purposes of the relevant interests of other persons therein,
- the Board may apportion to him such part of the income of the company as appears to them to be appropriate, and may adjust as they may consider necessary the apportionment of the remainder of the company's income.
- (3) Subsection (2) above applies to the sub-apportionment of an amount directly or indirectly apportioned to a non-trading company under section 296 above as it applies to an apportionment of the company's income.
- (4) For the purposes of this section, a person shall be deemed to be able to secure that income or assets will be applied for his benefit if he is in fact able to do so by any means whatsoever, whether he has any rights at law or in equity in that behalf or not, and the Board may draw the inference that a person is likely to be able to secure that income or assets of a company will be applied for his benefit or, as the case may be, will be so applied to a greater extent than is represented in the value for apportionment purposes of any relevant interests which he has in the company, if and only if they are satisfied—
- (a) that he has, directly or indirectly, transferred assets to the company the value of which is not represented, or is not adequately represented, in the value for apportionment purposes of any relevant interests which he has in the company, and

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- (b) that the persons who, whether as directors or share holders or in any other capacity have, or will at any material time have, powers or rights affecting the disposal or application of the income or assets of the company are likely to act in accordance with his wishes, or that he is able to secure that persons who at the material times will have such powers or rights will be persons likely to act in accordance with his wishes.
- (5) Where the Board have, under subsection (2) above, apportioned income of a company for any accounting period, and the amount apportioned to any participator is less than the amount of income distributed to that participator by the company in respect of the said period in such manner that the amount distributed would, apart from this subsection, fall to be included in the statement of total income to be made by that participator for the purposes of surtax, the excess of the amount so distributed over the amount apportioned to that participator shall be deemed not to form part of the participator's total income for tax purposes:

Provided that, where notice of appeal is given against the apportionment, the reference in this subsection to the amount apportioned to the participator shall be construed as a reference to the amount apportioned to him on the final determination of the appeal.

- (6) For the purposes of this section—
- (a) references to a person shall, in the case of an individual, be deemed to include the wife or husband of the individual,
 - (b) " assets " includes property or rights of any kind, and " transfer ", in relation to rights, includes the creation of those rights, and
 - (c) " relevant interests " means, in relation to a person connected in any way with a company, interests by reference to which income of the company could be apportioned to him under section 296 of this Act apart from this section, and " value for apportionment purposes " means, in relation to any relevant interests in any company, the value falling to be put thereon in apportioning the income of the company under the said section 296.
- (7) On an appeal to the Special Commissioners, the Commissioners shall have jurisdiction to review any relevant decision taken by the Board in exercise of their functions under this section.

300 Apportionment of interest paid by certain non-trading companies

- (1) Subject to the provisions of this section, all interest paid by a close company in any accounting period shall be apportioned under section 296 above as if the interest were income of the close company for the accounting period.
- (2) Subsection (1) above shall not apply to a company—
- (a) if it is a trading company, or
 - (b) if it is a member of a trading group, or
 - (c) if the whole, or substantially the whole, of its income is of one or more of the following descriptions, that is—
 - (i) estate or trading income,
 - (ii) interest, and dividends or other distributions, received from a 51 per cent. subsidiary of it (both companies being bodies corporate) if the subsidiary is itself within any of paragraphs (a), (b) and (c) of this subsection.

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- (3) Subsection (1) above shall not apply—
- (a) to interest which would be eligible for relief under section 57 or section 62 of this Act (loans for purchase or improvement of land and certain pre-1970 loans) if paid by an individual, or
 - (b) to interest which is money wholly and exclusively laid out or expended for the purposes of a trade carried on by the company.
- (4) If any amount of interest apportionable under subsection (1) above is interest paid to a participator in the close company, the amount apportionable to that participator by virtue of subsection (1) above shall be reduced by the first-mentioned amount (and without requiring the reduction to be reflected in the amount apportioned to any other person).
- (5) Section 296(3) above has effect subject to the provisions of this section, and an amount apportionable by virtue of this section shall be in addition to amounts (if any) apportionable under section 296 above without this section.
- (6) In determining under section 296 above and the provisions applying for the purposes of that section the person to whom any amount is to be apportionable by virtue of this section, any interest which any person possesses as a loan creditor shall be disregarded (but without prejudice to the making of an apportionment to him in any other capacity).
- (7) In determining for the purposes of subsection (2)(c)(ii) above whether one body corporate is a 51 per cent. subsidiary of another, that other shall be treated as not being the owner—
- (a) of any share capital which it owns directly or indirectly in a body corporate not resident in the United Kingdom, or
 - (b) of any share capital which it owns indirectly and which is owned directly by a body corporate for which a profit on the sale of the shares would be a trading receipt.