



Income and Corporation Taxes Act 1970

1970 CHAPTER 10

PART XVII

TAX AVOIDANCE

CHAPTER I

CANCELLATION OF TAX ADVANTAGES FROM CERTAIN TRANSACTIONS IN SECURITIES

460 Cancellation of tax advantage

(1) Where—

- (a) in any such circumstances as are mentioned in section 461 below, and
- (b) in consequence of a transaction in securities or of the combined effect of two or more such transactions,

a person is in a position to obtain, or has obtained, a tax advantage, then unless he shows that the transaction or transactions were carried out either for bona fide commercial reasons or in the ordinary course of making or managing investments, and that none of them had as their main object, or one of their main objects, to enable tax advantages to be obtained, this section shall apply to him in respect of that transaction or those transactions:

Provided that this section shall not apply to him if—

- (i) the transaction or transactions in securities were carried out, and
- (ii) any change in the nature of any activities carried on by a person, being a change necessary in order that the tax advantage should be obtainable, was effected,

before 5th April 1960.

- (2) Subject to section 468(3) below, for the purposes of this Chapter a tax advantage obtained or obtainable by a person shall be deemed to be obtained or obtainable by him in consequence of a transaction in securities or of the combined effect of two or

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more such transactions, if it is obtained or obtainable in consequence of the combined effect of the transaction or transactions and of the liquidation of a company.

- (3) Where this section applies to a person in respect of any transaction or transactions, the tax advantage obtained or obtainable by him in consequence thereof shall be counteracted by such of the following adjustments, that is to say an assessment, the nullifying of a right to repayment or the requiring of the return of a repayment already made (the amount to be returned being chargeable under Case VI of Schedule D and recoverable accordingly), or the computation or recomputation of profits or gains, or liability to tax, on such basis as the Board may specify by notice in writing served on him as being requisite for counteracting the tax advantage so obtained or obtainable.
- (4) Subject to section 468(3) below, an assessment under subsection (3) above to counteract a tax advantage consisting of the avoidance or reduction of an assessment to income tax which would be payable by a company under section 232(2) of this Act (Schedule F) in respect of a distribution may be made under Case VI of Schedule D on a person other than the company, and may be so made in addition to any assessment to counteract a tax advantage in respect of surtax.

An assessment so made on a person other than the company may be of an amount arrived at without regard to any set-off to which the company would have been entitled under Schedule 9 to this Act.

- (5) Subject to section 468(3) below, in the case of a man and his wife living with him (whether or not she is separately assessed to tax), this Chapter shall be treated as applying to him in respect of any transaction or transactions as it would apply if any property, rights or liabilities of the wife were his property, rights or liabilities in relation to which she had acted only as nominee for him, and shall be treated as applying to the wife in respect of any transaction or transactions as it would apply if any property, rights or liabilities of the man were her property, rights or liabilities in relation to which he had acted only as nominee for her:

Provided that no adjustment made under subsection (3) above by reference to any transaction or transactions to counteract any tax advantage shall by virtue of this subsection be so made that a person bears more tax than if the transaction or transactions had not had as a consequence that any relief or increased relief from, or repayment or increased repayment of, income tax, or any deduction in computing profits or gains, was obtained or obtainable, or that the way in which receipts accrued was such that the recipient did not pay or bear tax on them.

- (6) The Board shall not give a notice under subsection (3) above until they have notified the person in question that they have reason to believe that this section may apply to him in respect of a transaction or transactions specified in the notification ; and if within thirty days of the issue of the notification the said person, being of opinion that this section does not apply to him as aforesaid, makes a statutory declaration to that effect stating the facts and circumstances upon which his opinion is based, and sends it to the Board, then subject to subsection (7) below this section shall not apply to him in respect of the transaction or transactions.
- (7) If, when a statutory declaration has been sent to the Board under subsection (6) above, they see reason to take further action in the matter—
- (a) the Board shall send to the tribunal a certificate to that effect, together with the statutory declaration, and may also send therewith a counter-statement with reference to the matter;

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- (b) the tribunal shall take into consideration the declaration and the certificate, and the counter-statement, if any, and shall determine whether there is or is not a prima facie case for proceeding in the matter, and if they determine that there is no such case this section shall not apply to the person in question in respect of the transaction or transactions:

Provided that such a determination shall not affect the operation of this section in respect of transactions which include that transaction or some or all of those transactions and also include another transaction or other transactions.

- (8) Subject to section 468(3) below, any notice or notification under subsection (3) or subsection (6) above, or under section 465 below, concerning the application of this section to a person who has died may be given or issued to his personal representatives, and the provisions of this Chapter relating to the making of a statutory declaration, to rights of appeal and to the giving of information shall be construed accordingly.
- (9) No other provision contained in the Tax Acts shall be construed as limiting the powers conferred by this section, but nothing in this section shall authorise the making of an assessment later than six years after the chargeable period to which the tax advantage relates.

461 The prescribed circumstances

The circumstances mentioned in section 460(1) above are—

- “A That in connection with the distribution of profits of a company, or in connection with the sale or purchase of securities being a sale or purchase followed by the purchase or sale of the same or other securities, the person in question, being entitled by reason of—

- (a) any exemption from tax, or
- (b) the setting-off of losses against profits or income, or
- (c) the giving of group relief,

to recover tax in respect of dividends received by him, receives an abnormal amount by way of dividend

OR

- (1) That in connection with the distribution of profits of a company, or in connection with the sale or purchase of securities being a sale or purchase followed by the purchase or sale of the same or other securities, the person in question becomes entitled—

- (a) in respect of securities held or sold by him, or
- (b) subject to section 468(3) below, in respect of securities formerly held by him (whether sold by him or not),

to a deduction in computing profits or gains by reason of a fall in the value of the securities resulting from the payment of a dividend thereon or from any other dealing with any assets of a company.

- (2) Where a company in the circumstances mentioned in sub-paragraph (1) above becomes entitled to a deduction as there mentioned, section 460 above shall apply in relation to any tax advantage obtained or obtainable in consequence of that deduction by another company by way of group relief as if obtained or obtainable by the other company in circumstances falling within sub-paragraph (1) above.

OR

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- (1) That the person in question receives, in consequence of a transaction whereby any other person—
- (a) subsequently receives, or has received, an abnormal amount by way of dividend ; or
 - (b) subsequently becomes entitled, or has become entitled, to a deduction as mentioned in paragraph B(1) above,
- a consideration which either—
- (i) is, or represents the value of, assets which are (or apart from anything done by the company in question would have been) available for distribution by way of dividend, or
 - (ii) is received in respect of future receipts of the company, or
 - (iii) is, or represents the value of, trading stock of the company,
- and the said person so receives the consideration that he does not pay or bear tax on it as income.
- (2) The assets mentioned in sub-paragraph (1) above do not include assets which (while of a description which under the law of the country in which the company is incorporated is available for distribution by way of dividend) are shown to represent a return of sums paid by subscribers on the issue of securities.

OR

- (1) That in connection with the distribution of profits of a company to which this paragraph applies, the person in question so receives as is mentioned in paragraph C(1) above such a consideration as is therein mentioned.
- (2) The companies to which this paragraph applies are—
- (a) any company under the control of not more than five persons, and
 - (b) any other company which does not satisfy the condition that its shares or stocks or some class thereof (disregarding debenture stock, preferred shares or preferred stock), are authorised to be dealt in on a stock exchange in the United Kingdom, and are so dealt in (regularly or from time to time),
- so, however, that this paragraph does not apply to a company under the control of one or more companies to which this paragraph does not apply.
- (3) Subsections (2) to (6) of section 302 of this Act (definition of control) shall apply for the purposes of this paragraph.

OR

- (1) That in connection with the transfer directly or indirectly of assets of a company to which paragraph D above applies to another such company, or in connection with any transaction in securities in which two or more companies to which paragraph D above applies are concerned, the person in question receives non-taxable consideration which is or represents the value of assets available for distribution by such a company, and which consists of any share capital or any security (as defined by section 237(5) of this Act) issued by such a company.
- (2) So far as sub-paragraph (1) above relates to share capital other than redeemable share capital, it shall not apply unless and except to the extent that the share capital is repaid (in a winding-up or otherwise), and where section 460 above applies to a person by virtue of sub-paragraph (1) above on the repayment of any share capital any

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assessment to tax under subsection (3) of the said section 460 shall be an assessment to tax for the year in which the share capital is repaid.

(3) In this paragraph—

" assets available for distribution " means assets which are, or apart from anything done by the company in question would have been, available for distribution by way of dividend, or trading stock of the company,

" non-taxable ", in relation to a person receiving consideration, means that the recipient does not pay or bear tax on it as income (apart from the provisions of this Chapter),

" share " includes stock and any other interest of a member in a company, and the references in sub-paragraph (2) above to the repayment of share capital include references to any distribution made in respect of any shares in a winding-up or dissolution of the company.

(4) This paragraph has effect subject to section 468(3) below.”

462 Appeal against Board's notice

(1) Any person to whom notice has been given under subsection (3) of section 460 above may within thirty days by notice to the Board appeal to the Special Commissioners on the grounds that that section does not apply to him in respect of the transaction or transactions in question, or that the adjustments directed to be made are inappropriate.

(2) If he or the Board are dissatisfied with the determination of the Special Commissioners they may, on giving notice to the clerk to the Special Commissioners within thirty days after the determination, require the appeal to be re-heard by the tribunal, and the Special Commissioners shall transmit to the tribunal any document in their possession which was delivered to them for the purposes of the appeal.

(3) Where notice is given under subsection (2) above, the tribunal shall re-hear and determine the appeal and shall have and exercise the same powers and authorities in relation to the appeal as the Special Commissioners might have and exercise, and the determination of the tribunal thereon shall be final and conclusive:

Provided that section 56 of the Taxes Management Act 1970 (statement of case for opinion of High Court) shall apply with the necessary modifications in the case of any such rehearing and determination as it applies in the case of appeals to the General or Special Commissioners.

(4) On an appeal under this section the Special Commissioners or the tribunal shall have power to cancel or vary a notice under subsection (3) of section 460 above or to vary or quash an assessment made in accordance with such a notice, but the bringing of an appeal or the statement of a case shall not affect the validity of a notice given or of any other thing done in pursuance of the said subsection (3) pending the determination of the proceedings.

463 The tribunal

For the purposes of this Chapter the tribunal shall consist of—

- (a) a chairman, being either the chairman of the Board of Referees appointed under section 26(7) of the Capital Allowances Act 1968 or a person appointed by the Lord Chancellor, for a specified period or in relation to a specified case,

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to act as chairman of the tribunal in the absence of the chairman of the Board of Referees on account of illness or for any other reason, and

- (b) two or more persons appointed by the Lord Chancellor as having special knowledge of and experience in financial or commercial matters.

464 Procedure for clearance in advance

- (1) The following provisions shall have effect where in pursuance of this section a person furnishes to the Board particulars of a transaction or transactions effected or to be effected by him, that is to say—

- (a) if the Board are of opinion that the particulars, or any further information furnished in pursuance of this paragraph, are not sufficient for the purposes of this section, they shall within thirty days of the receipt thereof notify to the said person what further information they require for those purposes, and unless that further information is furnished to the Board within thirty days from the notification, or such further time as the Board may allow, they shall not be required to proceed further under this section ;
- (b) subject to the preceding paragraph, the Board shall within thirty days of the receipt of the particulars, or, where that paragraph has effect, of all further information required, notify the said person whether or not they are satisfied that the transaction or transactions as described in the particulars were or will be such that no notice under section 460(3) above ought to be given in respect of it or them,

and, subject to the following provisions of this section, if the Board notify him that they are so satisfied section 460 above shall not apply to him in respect of that transaction or those transactions.

- (2) If the particulars, and any further information given under this section with respect to any transaction or transactions, are not such as to make full and accurate disclosure of all facts and considerations relating thereto which are material to be known to the Board, any notification given by the Board under this section shall be void.
- (3) In no event shall the giving of a notification under this section with respect to any transaction or transactions prevent section 460 above applying to a person in respect of transactions which include that transaction or all or some of those transactions and also include another transaction or other transactions.

465 Power to obtain information

Where it appears to the Board that by reason of any transaction or transactions a person may be a person to whom section 460 above applies, the Board may by notice in writing served on him require him, within such time not less than twenty-eight days as may be specified in the notice, to furnish information in his possession with respect to the transaction or any of the transactions, being information as to matters, specified in the notice, which are relevant to the question whether a notice under subsection (3) of that section should be given in respect of him.

466 Meaning of " tax advantage "

- (1) In this Chapter " tax advantage " means a relief or increased relief from, or repayment or increased repayment of, tax, or the avoidance or reduction of an assessment to tax or the avoidance of a possible assessment thereto, whether the avoidance or reduction

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is effected by receipts accruing in such a way that the recipient does not pay or bear tax on them, or by a deduction in computing profits or gains.

- (2) Subject to section 468(3) below, for the purposes of subsection (1) above it shall be assumed that a person who might have received from a company any dividend or other distribution (as defined for the purposes of the Corporation Tax Acts) would have borne the income tax chargeable under Schedule F which the company would have had to account for under section 232(2) of this Act in respect of the distribution.

467 Further interpretation

- (1) In this Chapter—

" company " includes any body corporate, references to dividends include references to interest,

" securities "—

- (a) includes shares and stock, and
 (b) subject to section 468(3) below, in relation to a company not limited by shares (whether or not it has a share capital) includes also a reference to the interest of a member of the company as such, whatever the form of that interest,

" trading stock " has the same meaning as in section 137 of this Act,

" transaction in securities " includes transactions, of whatever description, relating to securities, and in particular—

- (i) the purchase, sale or exchange of securities,
 (ii) the issuing or securing the issue of, or applying or subscribing for, new securities,
 (iii) the altering, or securing the alteration of, the rights attached to securities.

- (2) In section 461 above—

- (a) references to profits include references to income, reserves or other assets,
 (b) references to distribution include references to transfer or realisation (including application in discharge of liabilities), and
 (c) references to the receipt of consideration include references to the receipt of any money or money's worth.

- (3) For the purposes of section 461 above an amount received by way of dividend shall be treated as abnormal if the Board, the Special Commissioners or the tribunal, as the case may be, are satisfied—

- (a) in the case of a dividend at a fixed rate, that it substantially exceeds the amount which the recipient would have received if the dividend had accrued from day to day and he had been entitled only to so much of the dividend as accrued while he held the securities, so however that an amount shall not be treated as abnormal by virtue only of this paragraph if during the six months beginning with the purchase of the securities the recipient does not sell or otherwise dispose of, or acquire an option to sell, any of those securities or any securities similar to those securities, or
 (b) in any case, that it substantially exceeds a normal return on the price paid for the securities:

Provided that there shall be disregarded any amount received by a company before 30th April 1969 by way of dividend from an associated company in so far as the dividend was paid out of income arising to the company paying it since the two

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companies became associated companies, and Schedule 17 to the Finance Act 1965 shall with the necessary modifications apply for determining the extent to which the dividend was so paid.

In this proviso references to an associated company or companies shall be construed in accordance with paragraphs (c) and (d) of section 486(4) of this Act.

- (4) For the purposes of subsection (3) (a) above securities shall be deemed to be similar if they entitle their holders to the same rights against the same persons as to capital and interest and the same remedies for the enforcement of those rights, notwithstanding any difference in the total nominal amounts of the respective securities or in the form in which they are held or the manner in which they can be transferred, and for those purposes rights guaranteed by the Treasury shall be treated as rights against the Treasury.

468 Commencement and other transitory provisions

- (1) No notification shall be issued after 5th April 1970 under section 28(4) of the Finance Act 1960 (which is re-enacted in section 460(6) above) and this Chapter, including the said section 460(6), shall have effect (for all purposes and by reference to all chargeable periods, times and occasions on or before the said date or later) to the exclusion of the enactments re-enacted in this Chapter except in relation to matters and proceedings consequent upon a notification issued (on or before the said date) under the said section 28(4).
- (2) Subject to subsection (1) above, in relation to tax advantages related to corporation tax this Chapter shall apply (without prejudice to any general provision of this Act or the Finance Act 1965 for the continuity of income tax and corporation tax) to transactions taking place before the charge to corporation tax became effective.
- (3) The provisions of this Chapter specified in subsection (4) below shall not apply to a person in respect of any transaction or transactions in securities if they were carried out before the relevant date, and if any change in the nature of any activities carried on by any person, being a change necessary in order that the tax advantage should be obtainable in consequence of the transaction or transactions, was also effected before that date, but nothing in those provisions shall be taken to prejudice the operation of this Chapter, without those provisions, in any such case.

In this subsection " the relevant date " is—

- (a) in relation to the provisions in column 1 in subsection (4) below, 10th April 1962, and
- (b) in relation to the provisions in column 2 of that subsection, 3rd May 1966.
- (4) The said provisions are—

Relevant date: 10th April 1962 Section 460(2)(5)	Relevant date: 3rd May 1966 Section 460(4)(8)
In section 461 paragraph B(1)(b)	In section 461 paragraph E
In section 467(1) paragraph (6) of the definition of " securities "	Section 466(2)
Subsection (5) below.	

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- (5) Subject to subsections (3) and (4) above, paragraphs A and B(2) of section 461 above shall have effect as if the references to group relief included references to relief under section 20 of the Finance Act 1953 (which related to subvention payments and was superseded by group relief).
- (6) As respects any period before the coming into force of paragraph 15 of Schedule 15 to the Finance Act 1965, paragraph D(3) of section 461 and the proviso to section 467(3) of this Act (which re-enact part of the said paragraph 15) shall not apply, and the relevant provisions of the Finance Act 1960 as originally enacted which were replaced by the said paragraph 15 shall be applied instead.