



# Income and Corporation Taxes Act 1970

## 1970 CHAPTER 10

### PART XVII

#### TAX AVOIDANCE

### CHAPTER II

#### OTHER PROVISIONS ABOUT SECURITIES

##### *Purchase and sale of securities*

#### **471 Application of following sections**

- (1) Subject as hereinafter provided sections 472, 473 and 474 below relate to cases of a purchase by a person (in those sections referred to as " the first buyer ") of any securities and their subsequent sale by him, the result of the transaction being that interest becoming payable in respect of the securities (in those sections referred to as " the interest") is receivable by the first buyer.
- (2) The said sections do not relate to cases where—
  - (a) the time elapsing between the purchase by the first buyer and his taking steps to dispose of the securities exceeded six months, or
  - (b) that time exceeded one month and it is shown to the satisfaction of the Board that the purchase and sale were each effected at the current market price, and that the sale was not effected in pursuance of an agreement or arrangement made before or at the time of the purchase.

The jurisdiction of the General Commissioners or Special Commissioners on any appeal shall include jurisdiction to review any relevant decision taken by the Board in the exercise of then-functions under this subsection.

- (3) The reference in subsection (2) above to the first buyer taking steps to dispose of the securities shall be construed—

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- (a) if he sold them in the exercise of an option he had acquired, as a reference to his acquisition of the option,
  - (b) in any other case, as a reference to his selling them.
- (4) For the purposes of this and the said three sections a sale of securities similar to, and of the like nominal amount as, securities previously bought (hereinafter referred to as "the original securities") shall be equivalent to a sale of the original securities, and subsection (3) above shall apply accordingly; and where the first buyer bought parcels of similar securities at different times a subsequent sale of any of the securities shall so far as may be related to the last to be bought of the parcels, and then to the last but one, and so on:

Provided that a person shall be under no greater liability to tax by virtue of this subsection than he would have been under if instead of selling the similar securities he had sold the original securities.

- (5) Where at the time when a trade is, or is deemed to be, set up and commenced any securities form part of the trading stock belonging to the trade, those securities shall be treated for the purposes of this section as having been sold at that time in the open market by the person to whom they belonged immediately before that time and as having been purchased at that time in the open market by the person thereafter engaged in carrying on the trade; and, subject to the preceding provisions of this subsection, where there is a change in the persons engaged in carrying on a trade which is not a change on which the trade is deemed to be discontinued the provisions of this section shall apply in relation to the person so engaged after the change as if anything done to or by his predecessor had been done to or by him.
- (6) For the purposes of this and the said three sections—
- (a) "interest" includes a dividend;
  - (b) "person" includes any body of persons, and references to a person entitled to any exemption from tax include, in a case of an exemption expressed to apply to income of a trust or fund, references to the persons entitled to make claims for the granting of that exemption;
  - (c) "securities" includes stocks and shares;
  - (d) 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 the purposes of this paragraph rights guaranteed by the Treasury shall be treated as rights against the Treasury.

#### **472 Dealers in securities**

- (1) Subject to the provisions of this section, if the first buyer is engaged in carrying on a trade which consists of or comprises dealings in securities, then in computing for any of the purposes of the Tax Acts the profits arising from or loss sustained in the trade the price paid by him for the securities shall be reduced by the appropriate amount in respect of the interest, as determined in accordance with section 475 below.
- (2) Subsection (1) of this section shall not apply if the first buyer—
- (a) is in the opinion of the Board bona fide carrying on the business of a discount house in the United Kingdom, or

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- (b) is a member of the London Stock Exchange who is recognised by the committee thereof as carrying on the business of a jobber, or
  - (c) is a member of any other stock exchange in the United Kingdom who is recognised by the committee thereof as carrying on the business of a dealer, and the securities were bought in the ordinary course of his said business and, in the case of a dealer such as is mentioned in paragraph (c) of this subsection, were securities in which he was authorised by the said committee to deal.
- (3) Subsection (1) of this section shall not apply if the purchase of the securities by the first buyer and their resale, or as the case may be the subsequent sale of similar securities, constitute a transaction which is to be left out of account in computing profits or losses by virtue of section 469(4) above.
- (4) Subsection (1) of this section shall not apply if the securities are overseas securities bought by the first buyer on a stock exchange outside the United Kingdom in the ordinary course of his trade as a dealer in securities and the following conditions are satisfied, namely—
- (a) the interest is brought into account in computing for the purposes of the Tax Acts the profits arising from or loss sustained in the trade, and
  - (b) where credit against tax would fall to be allowed in respect of the interest under section 497 or section 498 of this Act (double taxation relief), the first buyer elects that credit shall not be so allowed.

In this subsection " overseas securities " means securities of the government of, or of a body of persons resident in, any country or territory outside the United Kingdom and the Republic of Iceland.

#### **473 Persons entitled to exemptions**

- (1) If the first buyer is entitled under any enactment to an exemption from tax which, apart from this subsection, would extend to the interest, then the exemption shall not extend to an amount equal to the appropriate amount in respect of the interest, as determined in accordance with section 475 below:

Provided that if the first buyer is entitled as aforesaid and any annual payment is payable by him out of the interest, the annual payment shall be deemed as to the whole thereof to be paid out of profits or gains not brought into charge to income tax, and section 53 of this Act shall apply accordingly.

- (2) This section shall not apply where the exemption arises from the residence of the first buyer in the Republic of Ireland.

#### **474 Persons other than dealers in securities**

- (1) If the first buyer carries on a trade not falling within section 472 above, then in ascertaining whether any or what repayment of income tax is to be made to him under section 168 of this Act by reference to any loss sustained in the trade and the amount of his income for the year of assessment his income for which includes the interest, there shall be left out of account—
- (a) the appropriate amount in respect of the interest, as determined in accordance with section 475 below, and
  - (b) any tax paid on that amount.

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- (2) Where the first buyer is a company which does not carry on a trade falling within section 472 above, the appropriate amount in respect of the interest, as determined in accordance with section 475 below, and any tax paid in respect of or deducted from that amount shall be disregarded except that, for the purposes of corporation tax on chargeable gains—
- (a) where that appropriate amount is determined in accordance with section 475(2) below, the appropriate proportion of the net interest receivable by the first buyer as mentioned in that subsection, and
  - (b) where that appropriate amount is determined in accordance with section 475(6) below, the net amount of interest corresponding to the gross interest referred to in that subsection,
- shall be treated as if it were a capital distribution within the meaning of Part III of the Finance Act 1965 received in respect of the holding of the securities concerned. This subsection applies to any interest received after 29th April 1969.

#### **475 Meaning of " appropriate amount in respect of" interest**

- (1) For the purposes of section 472 above the appropriate amount in respect of the interest is the appropriate proportion of the net interest receivable by the first buyer.
- (2) For the purposes of sections 473 and 474 above the appropriate amount in respect of the interest is the gross amount corresponding with the appropriate proportion of the net interest receivable by the first buyer.
- (3) For the purposes of this section the appropriate proportion is the proportion which—
  - (a) the period beginning with the date on which the securities were first quoted in the official list of the London Stock Exchange at a price excluding the value of the interest payment last payable before the interest receivable by the first buyer, and ending with the day before the day on which the first buyer bought the securities,
 bears to—
  - (b) the period beginning with the said date and ending with the day before the first date after the purchase by the first buyer on which the securities are quoted in the said list at a price excluding the value of the interest receivable by the first buyer.
- (4) Where the interest receivable by the first buyer was the first interest payment payable in respect of the securities, paragraphs (a) and (b) of subsection (3) above shall have effect with the substitution, for references to the date on which the securities were first quoted as mentioned in the said paragraph (a), of the beginning of the period for which the interest was payable:

Provided that where the capital amount of the securities was not fully paid at the beginning of the said period and one or more instalments of capital were paid during that period—

- (a) the interest shall be treated as divided into parts, calculated by reference to the amount of the interest attributable to the capital paid at or before the beginning of the said period and the amount thereof attributable to each such instalment, and
- (b) treating each of the said parts as interest payable for the said period or, where the part was calculated by reference to any such instalment, as interest payable for the part of the said period beginning with the payment of the instalment,

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- there shall be calculated, in accordance with the preceding provisions of this section, the amount constituting the appropriate proportion of each part, and
- (c) the appropriate proportion of the interest for the purposes of this section shall be the proportion thereof constituted by the sum of the said amounts.
- (5) In relation to securities not quoted in the official list of the London Stock Exchange, subsection (3) above shall have effect with the substitution for the periods therein mentioned of such periods as in the opinion of the Commissioners having jurisdiction in the matter, correspond therewith in the case of the securities in question.
- (6) Where the securities are of a description such that under the rules of the London Stock Exchange the bargain price is increased, where interest is receivable by the buyer, by reference to gross interest accruing before the bargain date, the preceding subsections shall not apply but for the purposes of sections 472, 473 and 474 above the appropriate amount in respect of the interest shall be the amount of the increase in the bargain price.