



# Income and Corporation Taxes Act 1970

## 1970 CHAPTER 10

### PART XVIII

#### DOUBLE TAXATION RELIEF

#### CHAPTER II

##### RULES GOVERNING RELIEF BY WAY OF CREDIT

##### *General*

#### **500 Interpretation of credit code**

(1) In this Chapter, except where the context otherwise requires—

" arrangements " means any arrangements having effect by virtue of section 497 above,

" Commonwealth territory " means any of Her Majesty's dominions, any other country for the time being mentioned in section 1(3) of the British Nationality Act 1948, any British protectorate or protected state, and any trust territory administered by the government of any part of Her Majesty's dominions,

" foreign tax " means, in relation to any territory arrangements with the government of which have effect by virtue of section 497 above, any tax chargeable under the laws of that territory for which credit may be allowed under the arrangements,

" the United Kingdom taxes " means income tax and corporation tax,

" underlying tax " means, in relation to any dividend, tax which is not chargeable in respect thereof directly or by deduction, and

" unilateral relief " means relief under section 498 above.

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- (2) For the purposes of this Chapter one company is a subsidiary of another if the other company controls, directly or indirectly, not less than 50 per cent. of the voting power in the first company.
- (3) Any reference in this Chapter to foreign tax shall be construed in relation to credit to be allowed under any arrangements as a reference only to tax chargeable under the laws of the territory with the government of which the arrangements were made.

#### **501 Relief to be given by reducing U.K. taxes by amount of credit due**

- (1) Subject to the provisions of this Chapter, where under any arrangements credit is to be allowed against any of the United Kingdom taxes chargeable in respect of any income, the amount of the United Kingdom taxes so chargeable shall be reduced by the amount of the credit.
- (2) Nothing in subsection (1) above authorises the allowance of credit against any United Kingdom tax against which credit is not allowable under the arrangements.

#### **502 Requirement as to residence**

Credit shall not be allowed under any arrangements against any of the United Kingdom taxes for any chargeable period unless the person in respect of whose income the United Kingdom tax is chargeable is resident in the United Kingdom for that period:

Provided that credit may be allowed by way of unilateral relief—

- (a) for tax paid under the law of the Isle of Man or any of the Channel Islands, if the person in question is, for the chargeable period in question, resident either in the United Kingdom or in the Isle of Man or the Channel Islands, as the case may be, and
- (b) for tax paid under the law of any territory and computed by reference to income from an office or employment the duties of which are performed wholly or mainly in that territory, against income tax chargeable under Schedule E and computed by reference to that income, if the person in question is for the year of assessment in question resident either in the United Kingdom or in that territory.

#### **503 Computation, for purposes of U.K. taxes, of income subject to foreign tax**

- (1) Where credit for foreign tax falls under any arrangements to be allowed in respect of any income, and income tax or corporation tax is payable by reference to the amount received in the United Kingdom, the amount received shall be treated for the purposes of income tax or corporation tax as increased by the amount of the foreign tax in respect of the income, including, in the case of a dividend, any underlying tax which, under the arrangements, is to be taken into account in considering whether any, and if so what, credit is to be allowed in respect of the dividend.
- (2) Where credit for foreign tax falls under any arrangements to be allowed in respect of any income, and subsection (1) above does not apply, then, in computing the amount of the income for the purposes of income tax or corporation tax—
  - (a) no deduction shall be made for foreign tax, whether in respect of the same or any other income, and

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- (b) the amount of the income shall, in the case of a dividend, be treated as increased by any underlying tax which, under the arrangements, is to be taken into account in considering whether any, and if so what, credit is to be allowed in respect of the dividend.
- (3) The amount of any income shall not be treated as increased under this section by reference to any foreign tax which, although not payable, falls to be taken into account for the purposes of credit by virtue of section 497(3) above.

#### **504 Limits on credit: income tax**

- (1) The amount of the credit for foreign tax which, under any arrangements, is to be allowed to a person against income tax for any year of assessment shall not exceed the difference between the amounts of income tax which would be borne by him for the year (no credit being allowed for foreign tax)—
  - (a) if he were charged to tax on his total income for the year, computed in accordance with section 503 above, and
  - (b) if he were charged to tax on the same income, computed in the same way, but excluding the income in respect of which the credit is to be allowed.
- (2) Where credit for foreign tax is to be allowed in respect of income from more than one source, subsection (1) above shall be applied successively to the income from each source, but so that, on each successive application, paragraph (a) shall apply to the total income exclusive of the income to which the subsection has already been applied.
- (3) Without prejudice to subsections (1) and (2) above, the total credit for foreign tax to be allowed to a person against income tax for any year of assessment under all arrangements having effect by virtue of section 497 above shall not exceed the total income tax payable by him for that year of assessment, less any income tax which he is entitled to charge against any other person.

#### **505 Limit on credit: corporation tax**

The amount of the credit for foreign tax which, under any arrangements, is to be allowed against corporation tax in respect of any income shall not exceed the corporation tax attributable to that income.

#### *Underlying tax on dividends*

#### **506 Computation of underlying tax**

- (1) Where, in the case of any dividend, arrangements provide for underlying tax to be taken into account in considering whether any, and if so what, credit is to be allowed against the United Kingdom taxes in respect of the dividend, the tax to be taken into account by virtue of that provision shall be so much of the foreign tax borne on the relevant profits by the body corporate paying the dividend as is properly attributable to the proportion of the relevant profits represented by the dividend.
- (2) For the purposes of subsection (1) above, the relevant profits are—
  - (a) if the dividend is paid for a specified period, the profits of that period,
  - (b) if the dividend is not paid for a specified period, but is paid out of specified profits, those profits, and

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- (c) if the dividend is paid neither for a specified period nor out of specified profits, the profits of the last period for which accounts of the body corporate were made up which ended before the dividend became payable:

Provided that if, in a case falling under paragraph (a) or (c) above, the total dividend exceeds the profits available for distribution of the period mentioned in the said paragraph (a) or (c), as the case may be, the relevant profits shall be the profits of that period plus so much of the profits available for distribution of preceding periods (other than profits previously distributed or previously treated as relevant for the purposes of this section) as is equal to the excess; and for the purposes of this proviso, the profits of the most recent preceding period shall first be taken into account, then the profits of the next most recent preceding period, and so on.

- (3) Profits treated as relevant for the purposes of paragraph 9 of Schedule 16 to the Income Tax Act 1952 (which this section re-enacts), and profits deemed by virtue of that paragraph to be profits previously so treated, shall be deemed for the purposes of this section to be profits previously treated as relevant for the purposes of this section.

**507 Extension of relief to certain dividends not covered by arrangements where paid between related companies**

- (1) Where—

- (a) arrangements provide, in relation to dividends of some classes but not in relation to dividends of other classes, that underlying tax is to be taken into account in considering whether any, and if so what, credit is to be allowed against the United Kingdom taxes in respect of the dividends, and
- (b) a dividend is paid which is not of a class in relation to which the arrangements so provide,

then, if the dividend is paid to a company which controls directly or indirectly, or is a subsidiary of a company which controls directly or indirectly, not less than 25 per cent. of the voting power in the company paying the dividend, credit shall be allowed as if the dividend were a dividend of a class in relation to which the arrangements so provide.

- (2) Where any arrangements contain a provision which.—

- (a) applies to any company which controls, directly or indirectly, not less than a stated fraction of the voting power of a company resident in a specified territory outside the United Kingdom, and
- (b) in allowing credit against United Kingdom tax on dividends paid to any such company by the company so resident, authorises account to be taken of tax payable by the company so resident in respect of the profits out of which the dividends were paid,

then, subject to subsection (3) below, credit shall be allowed under the arrangements as if the provision treated the subsidiary of a company which owns, directly or indirectly, the stated fraction of the voting power of a company resident in the specified territory as if that subsidiary also owned that fraction of the voting power of the company so resident.

- (3) Subsections (1) and (2) above have no application to unilateral relief; and credit shall not be allowable in the case of the same income both by virtue of the said subsection (2) and by way of unilateral relief.

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#### **508 Extension of relief to U.K. and third country taxes where dividends paid between related companies**

- (1) Where a dividend is paid by a company resident in a territory outside the United Kingdom to a company resident in the United Kingdom which either—
  - (a) controls directly or indirectly, or
  - (b) is a subsidiary of a company which controls directly or indirectly, not less than 25 per cent. of the voting power in the company paying the dividend, then, for the purpose of allowing credit under any arrangements against corporation tax in respect of the dividend, any United Kingdom income tax or corporation tax payable by the first-mentioned company in respect of its profits, and any tax so payable under the law of any territory outside the United Kingdom, shall be taken into account as if it were tax payable under the law of the first-mentioned territory.
- (2) In relation to dividends paid by a company resident in a Commonwealth territory, subsection (1) above shall have effect for the purposes of unilateral relief with the substitution of " 10 per cent. " for " 25 per cent. ".

#### **509 U.K. insurance companies trading overseas**

- (1) Subject to subsection (2) below, where a company resident in the United Kingdom is charged to tax under Case I of Schedule D in respect of any insurance business carried on by it, and that business or any part of it is carried on through a branch or agency in a territory outside the United Kingdom, then, in respect of dividends referable to that business which are paid to the company by companies resident in that territory, any tax payable by those companies in respect of their profits under the law of that or any other territory outside the United Kingdom, and any United Kingdom income tax or corporation tax so payable, shall, in considering whether any, and if so what, credit is to be allowed under any arrangements, be taken into account as tax so payable under the law of the first-mentioned territory is taken into account in a case falling within section 506 above.
- (2) Credit shall not be allowed to a company by virtue of subsection (1) above for any financial year in respect of a greater amount of dividends paid by companies resident in any overseas territory than is equal to any excess of the relevant fraction of the company's total income in that year from investments (including franked investment income and group income) so far as referable to the said business over the amount of the dividends so referable which are paid to it in the year by companies resident in that territory and in respect of which credit may, apart from the said subsection (1), be allowed to it for underlying tax.
- (3) For the purposes of subsection (2) above "the relevant fraction " is, in relation to any overseas territory, the fraction of which the numerator is the company's local, and the denominator the company's total, premium income in the financial year so far as referable to the said business, and premium income shall be deemed to be local premium income in so far as it consists of premiums under contracts entered into at or through a branch or agency in that territory by persons not resident in the United Kingdom.

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*Miscellaneous rules*

**510 Relief against income tax in respect of income arising in years of commencement**

- (1) Subject to the provisions of this section, credit for overseas tax paid in respect of any income arising in the years of commencement shall be allowed under this Part of this Act against United Kingdom income tax chargeable for any year of assessment in respect of that income if it would have been so allowed but for the fact that credit for that overseas tax had been allowed against the United Kingdom income tax chargeable in respect of that income for a previous year of assessment.
- (2) The amount of credit to be allowed in respect of any income by virtue of this section for any year of assessment shall not exceed the difference between—
  - (a) the total credit allowable against income tax in respect of that income under this Part of this Act (including this section) for all years of assessment for which credit is so allowable, and
  - (b) the amount of credit which was in fact so allowed in respect of that income for any earlier year or years of assessment.
- (3) The total credit allowable as aforesaid in respect of any income for all those years of assessment shall be taken to be the amount of the overseas tax charged on that income, adjusted where the number of the United Kingdom periods of assessment exceeds the number of the foreign periods of assessment, in the proportion which the former number bears to the latter, a period for which part only of the income is charged to tax being counted not as one period but as a fraction equal to the proportion which that part of the income bears to the whole of the income.
- (4) Where the same income is charged to different overseas taxes for different foreign periods of assessment, subsection (3) above, so far as it relates to the adjustment of overseas tax, shall be applied separately to each of the overseas taxes, and the total credit allowable shall be the aggregate of those taxes after the making of any adjustments in accordance with that subsection as so applied.
- (5) Where credit against income tax for any year of assessment is allowed by virtue of subsection (1) above in respect of any income (hereafter referred to as "the original income"), and subsequently, by reason of the enactments relating to cessation, income arising in a non-basis period from the same source as the original income is not assessed to income tax, then, if the amount of credit allowed against income tax in respect of the original income under this Part of this Act (including this section) for all years of assessment for which credit is so allowable exceeds the aggregate of the following amounts—
  - (a) the amount of the credit against income tax which would have been allowed apart from subsection (1) above for all those years in respect of the original income, and
  - (b) the amount of the overseas tax for which, under this Part of this Act, credit would have been allowable against income tax in respect of income arising in the non-basis period from the same source as the original income,
 the person chargeable in respect of income (if any) from the same source in the year of assessment following the non-basis period shall be treated as having received in that year a payment chargeable under Case VI of Schedule D of an amount such that income tax thereon at the standard rate is equal to the excess:

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Provided that any payment which any person is treated by virtue of this subsection as having received shall not on that account constitute income of his for any of the purposes of the Income Tax Acts other than this subsection, and, in particular, no part thereof shall constitute profits or gains brought into charge to income tax for the purposes of section 52 of this Act.

(6) Any claim for relief by way of credit under subsection (1) above against income tax for any year of assessment shall be made within six years of the end of that year, or, where there is more than one year of assessment in respect of which such relief may be given, within six years of the end of the later of them.

(7) In this section—

" overseas tax " means tax under the law of a territory outside the United Kingdom,

" non-basis period " means a period the income arising in which is, by reason only of the operation of the enactments relating to cessations, not chargeable to United Kingdom income tax for any year of assessment,

" United Kingdom period of assessment " and " foreign period of assessment ", in relation to any income, mean respectively a year or other period for which under the relevant law the income falls to be charged to the relevant tax,

" years of commencement ", in relation to income from any source, means the first three years of assessment for which income from that source falls to be assessed to income tax, and also, in the case of profits or gains chargeable to tax under Case I or Case II of Schedule D, the whole of any period falling partly within those years such that the profits or gains arising in the period fall to be assessed to income tax for a year of assessment later than those years,

references to the enactments relating to cessations are references to sections 118, 121, 124 and 154 of this Act, and

references to income arising in any year include, in relation to income the income tax on which is to be computed by reference to the amount of income received in the United Kingdom, references to income received in that year.

## **511 Elections against credit**

Credit shall not be allowed under any arrangements against the United Kingdom taxes chargeable in respect of any income of any person if he elects that credit shall not be allowed in respect of that income.

## **512 Time limit for claims etc.**

(1) Subject to subsection (2) below and section 510(6) above, any claim for an allowance under any arrangements by way of credit for foreign tax in respect of any income shall be made not later than six years from the end of the chargeable period for which the income falls to be charged to income tax or corporation tax, or would fall so to be charged if any income tax or corporation tax were chargeable in respect thereof.

(2) Where the amount of any credit given under the arrangements is rendered excessive or insufficient by reason of any adjustment of the amount of any tax payable either in the United Kingdom or under the laws of any other territory, nothing in the Tax Acts limiting the time for the making of assessments or claims for relief shall apply to any assessment or claim to which the adjustment gives rise, being an assessment or claim

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made not later than six years from the time when all such assessments, adjustments and other determinations have been made, whether in the United Kingdom or elsewhere, as are material in determining whether any, and if so what, credit falls to be given.