



Income and Corporation Taxes Act 1988

1988 CHAPTER 1

PART VI

COMPANY DISTRIBUTIONS, TAX CREDITS ETC

CHAPTER VI

MISCELLANEOUS AND SUPPLEMENTAL

Group income

247 Dividends etc. paid by one member of a group to another

- (1) Where a company (“the receiving company”) receives dividends from another company (“the paying company”), both being bodies corporate resident in the United Kingdom, and the paying company is—
- (a) a 51 per cent. subsidiary of the other or of a company so resident of which the other is a 51 per cent. subsidiary; or
 - (b) a trading or holding company owned by a consortium the members of which include the receiving company,

then, subject to the following provisions of this section, the receiving company and the paying company may jointly elect that this subsection shall apply to the dividends received from the paying company by the receiving company (“the election dividends”).

- (2) So long as an election under subsection (1) above is in force the election dividends shall be excluded from sections 14(1) and 231 and are accordingly not included in references to franked payments made by the paying company or the franked investment income of the receiving company but are in the Corporation Tax Acts referred to as “group income” of the receiving company.
- (3) Where an election under subsection (1) above is in force the paying company may by notice to the collector state that it does not wish the election to have effect in relation

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to any amount of dividends specified in the notice and the Corporation Tax Acts shall then have effect in relation to that amount as if there had been no such election.

- (4) Where a company (“the recipient company”) receives from another company (“the payer company”), both being bodies corporate resident in the United Kingdom, any payments which are for corporation tax charges on income of the payer company and either—
- (a) the conditions in subsection (1)(a) or (b) above would be satisfied in relation to the companies if the payments were dividends, or
 - (b) the recipient company is a 51 per cent. subsidiary of the payer company,
- then, subject to the following provisions of this section, the recipient company and the payer company may jointly elect that this subsection shall apply to any such payments received from the payer company by the recipient company, and so long as the election is in force those payments may be made without deduction of income tax and neither section 349 nor section 350 shall apply thereto.
- (5) Subsections (1) to (4) above shall not apply to dividends or other payments received by a company on any investments, if a profit on the sale of those investments would be treated as a trading receipt of that company, and shall not apply to a dividend in any case where, if those subsections do not apply to it, the receiving company will, or would but for section 235 or 237, be entitled by virtue of any exemption to claim payment of the tax credit to which it is entitled in respect of the dividend.
- (6) Where—
- (a) the paying company purports by virtue of an election under subsection (1) above to pay any dividends without paying advance corporation tax, or
 - (b) the payer company purports by virtue of an election under subsection (4) above to make any payment without deduction of income tax,
- and advance corporation tax ought to have been paid or income tax ought to have been deducted, as the case may be, the inspector may make such assessments, adjustments or set-offs as may be required for securing that the resulting liabilities to tax (including interest on unpaid tax) of the paying or payer company and the receiving or recipient company are, so far as possible, the same as they would have been if the advance corporation tax had been duly paid or the income tax had been duly deducted.
- (7) Where tax assessed under subsection (6) above on the paying or payer company is not paid by that company before the expiry of the period of three months from the date on which that tax is payable, that tax shall, without prejudice to the right to recover it from that company, be recoverable from the receiving or recipient company.
- (8) In determining for the purposes of this section 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.
- (9) For the purposes of 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 which are its 90 per cent. subsidiaries;

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- (b) “trading company” means a company whose business consists wholly or mainly of the carrying on of a trade or trades; and
 - (c) a company is owned by a consortium if three-quarters or more of the ordinary share capital of the company is beneficially owned between them by companies resident in the United Kingdom of which none beneficially owns less than one-twentieth of that capital, and those companies are called the members of the consortium.
- (10) References in this section to dividends or payments received by a company apply to any received by another person on behalf of or in trust for the company, but not to any received by the company on behalf of or in trust for another person, and references to “group income” shall be construed accordingly.

248 Provisions supplementary to section 247

- (1) The Board may make regulations with respect to the procedure to be adopted for giving effect to section 247 and as to the information and evidence to be furnished by a company in connection with that section and, subject to the provisions of such regulations, an election under that section (“the election”) shall be made by notice to the inspector which shall set out the facts necessary to show that the companies are entitled to make the election.
- (2) The election shall not have effect in relation to dividends or other payments paid less than three months after the giving of the notice and before the inspector is satisfied that the election is validly made, and has so notified the companies concerned; but shall be of no effect if within those three months the inspector notifies the companies concerned that the validity of the election is not established to his satisfaction.
- (3) The companies concerned shall have the like right of appeal against any decision that the validity of the election is not established as the company paying the dividends or other payments would have if it were an assessment made on that company, and Part V of the Management Act shall apply accordingly.
- (4) The election shall cease to be in force if at any time the companies cease to be entitled to make the election, and on that happening each company shall forthwith notify the inspector.
- (5) Either of the companies making the election may at any time give the inspector notice revoking the election; and any such notice shall have effect from the time it is given.
- (6) The Board shall not make any regulations under subsection (1) above unless a draft of them has been laid before and approved by a resolution of the House of Commons.

Stock dividends

249 Stock dividends treated as income

- (1) Subject to subsections (7) to (9) below, this section applies to any of the following share capital, that is to say—
 - (a) any share capital issued by a company resident in the United Kingdom in consequence of the exercise by any person of an option conferred on him to receive in respect of shares in the company (whether the last-mentioned

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- shares were issued before or after the coming into force of this section) either a dividend in cash or additional share capital; and
- (b) any bonus share capital issued by a company so resident in respect of any shares in the company of a relevant class (whether the last-mentioned shares were issued before or after the coming into force of this section).
- (2) For the purposes of subsection (1)(b) above a class of shares is a relevant class if—
- (a) shares of that class carry the right to receive bonus share capital in the company of the same or a different class; and
- (b) that right is conferred by the terms on which shares of that class were originally issued or by those terms as subsequently extended or otherwise varied.
- (3) Where a company issues any share capital in a case in which two or more persons are entitled thereto, the following provisions of this section and paragraph 12(1) to (3) of Schedule 19 shall have effect as if the company had issued to each of those persons separately a part of that share capital proportionate to his interest therein on the due date of issue.
- (4) Subject to the following provisions of this section, where a company issues any share capital in a case in which an individual is beneficially entitled to that share capital, that individual shall be treated as having received on the due date of issue income of an amount which, if reduced by an amount equal to income tax on that income at the basic rate for the year of assessment in which that date fell, would be equal to the appropriate amount in cash, and—
- (a) no assessment shall be made on the individual in respect of income tax at the basic rate on that income but he shall be treated as having paid tax at the basic rate on it or, if his total income is reduced by any deductions, on so much of it as is part of his total income as so reduced;
- (b) no repayment shall be made of income tax treated by virtue of paragraph (a) above as having been paid; and
- (c) that income shall be treated for the purposes of sections 348 and 349(1) as not brought into charge to income tax.
- (5) Where a company issues any share capital to the personal representatives of a deceased person as such during the administration period, the amount of income which, if the case had been one in which an individual was beneficially entitled to that share capital, that individual would have been treated under subsection (4) above as having received shall be deemed for the purposes of Part XVI to be part of the aggregate income of the estate of the deceased.
- This subsection shall be construed as if it were contained in Part XVI.
- (6) Where a company issues any share capital to trustees in respect of any shares in the company held by them (or by them and one or more other persons) in a case in which a dividend in cash paid to the trustees in respect of those shares would have been to any extent income to which section 686 applies, then—
- (a) there shall be ascertained the amount of income which, if the case had been one in which an individual was beneficially entitled to that share capital, that individual would have been treated under subsection (4) above as having received; and

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- (b) income of that amount shall be treated as having arisen to the trustees on the due date of issue and as if it had been chargeable to income tax at the basic rate; and
 - (c) paragraphs (a) to (c) of subsection (4) above shall, with the substitution of “income” for “total income” and with all other necessary modifications, apply to that income as they apply to income which an individual is treated as having received under that subsection.
- (7) This section does not apply to—
- (a) any share capital of which the due date of issue is earlier than 6th April 1975; or
 - (b) any share capital issued by a company in respect of shares in the company which confer on the holder a right to convert or exchange them into or for shares in the company of a class which is not a relevant class for the purposes of subsection (1)(b) above where the due date of issue of the share capital so issued precedes the earlier of the following dates, namely—
 - (i) the day next after the earliest date after 5th August 1975 on which conversion or exchange of the shares could be effected by an exercise of that right; and
 - (ii) 6th April 1976 or, in the case of share capital issued by an investment trust, 6th April 1977.
- (8) Where, in a case within subsection (4) above, the share capital in question is issued in respect of shares in the company issued before 6th April 1975 which confer on the holder a right to convert or exchange them into or for shares of a different class, this section shall not apply to so much (if any) of any bonus share capital issued by the company after 5th April 1976 in connection with an exercise of that right as would have been issued if that right had been exercised so as to effect the conversion or exchange of the shares on the earliest possible date after 5th April 1975; and subsections (5) and (6) above shall, where applicable, have effect accordingly.
- (9) Where any bonus share capital falling within subsection (1)(b) above is after 5th April 1975 converted into or exchanged for shares in the company in question of a different class, then—
- (a) this section shall not apply to any shares in the company issued, in connection with the conversion or exchange, in consideration of the cancellation, extinguishment or acquisition by the company of that bonus share capital; but
 - (b) section 230(a) and (b) shall apply to any shares in the company issued, in connection with the conversion or exchange, in consideration of the cancellation, extinguishment or acquisition by the company of so much of that bonus share capital as caused an individual to be treated under subsection (4) above as having received an amount of income on the due date of issue (or would have done so if the case had been one in which an individual was beneficially entitled to that share capital).

250 Returns

- (1) A company shall for each of its accounting periods make, in accordance with this section, returns to the inspector of all share capital to which section 249 applies (“relevant share capital”) and which was issued by it in that period.
- (2) A return shall be made for—

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- (a) each complete quarter falling within the accounting period, that is to say, each of the periods of three months ending with 31st March, 30th June, 30th September or 31st December which falls within that period;
 - (b) each part of the accounting period which is not a complete quarter and ends on the first (or only), or begins immediately after the last (or only), of those dates which falls within the accounting period;
 - (c) if none of those dates falls within the accounting period, the whole accounting period.
- (3) A return for any period for which a return is required to be made under this section (a “return period”) shall be made within 30 days from the end of that period.
- (4) No return need be made under this section by a company for any period in which it has issued no relevant share capital.
- (5) The return made by a company for any return period shall state—
- (a) the date on which any relevant share capital issued by it in the period was issued and, if different, the date on which the company was first required to issue it;
 - (b) particulars of the terms on which any such share capital so issued by it was issued; and
 - (c) what is, in relation to any such share capital so issued, the appropriate amount in cash.
- (6) If it appears to the inspector that a company ought to have, but has not, made a return for any return period, he may (notwithstanding subsection (4) above) by notice require the company to make a return for that period within such time (not being less than 30 days) as may be specified in the notice; and a return required to be made under this subsection shall, if such be the case, state that no relevant share capital was issued in the period in question.
- (7) As regards any share capital included in a return made under this section by a company, the inspector may by notice require the company to furnish him within such time (not being less than 30 days) as may be specified in the notice with such further information relating thereto as he may reasonably require for the purposes of sections 230 and 249, this section and section 251 and paragraph 12 of Schedule 19.

251 Interpretation of sections 249 and 250

- (1) For the purposes of sections 249 and 250 —
- (a) “bonus share capital”, in relation to a company, means share capital issued by the company otherwise than wholly for new consideration or such part of any share capital so issued as is not properly referable to new consideration;
 - (b) “due date of issue”, in relation to any share capital issued by a company, means the earliest date on which the company was required to issue that share capital;
 - (c) an option to receive either a dividend in cash or additional share capital is conferred on a person not only where he is required to choose one or the other, but also where he is offered the one subject to a right, however expressed, to choose the other instead, and a person’s abandonment of, or failure to exercise, such a right is to be treated as an exercise of the option;
- and in section 254 the definition of “security” (in subsection (1)) and subsections (5) and (11) shall not apply.

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- (2) In sections 249 and 250 “the appropriate amount in cash”, in relation to any share capital to which section 249 applies—
- (a) in a case where that share capital was issued —
- (i) in consequence of the exercise of an option such as is mentioned in section 249(1)(a); or
- (ii) in a quantity which is determined by or determines the amount of a dividend in cash payable in respect of share capital in the company of a different class,
- and where the relevant cash dividend is not substantially greater nor substantially less than the market value of that share capital on the relevant date, means the amount of the relevant cash dividend or, in a case in which section 249(3) applies, a due proportion of that amount;
- (b) in a case where paragraph (a) above does not apply, means the market value of that share capital on the relevant date or, in a case in which section 249(3) applies, a due proportion of that market value.
- (3) In subsection (2) above—
- “the relevant cash dividend”, in a case falling within subsection (2)(a)(i) above, means the cash dividend mentioned in section 249(1)(a) or, in a case falling within subsection (2)(a)(ii) above, means the cash dividend there mentioned (subject to subsection (4) below);
- “the relevant date”, in the case of share capital listed in the Stock Exchange Daily Official List, means the date of first dealing and, in the case of share capital not so listed, means the due date of issue; and
- “market value”, in relation to any share capital in a company, means, subject to the provisions applied by subsections (5) and (6) below, the price which that share capital might reasonably be expected to fetch on a sale in the open market.
- (4) Where, in a case falling within subsection (2)(a)(ii) above, the company on the occasion on which it issues the share capital in question also issues a dividend in cash (“the accompanying cash dividend”) in respect of the shares in the company in respect of which that share capital is issued, “the relevant cash dividend” means the cash dividend mentioned in subsection (2)(a)(ii) above reduced by the amount of the accompanying cash dividend.
- (5) Section 150(3) of the 1979 Act (market value of shares or securities listed in the Stock Exchange Daily Official List) shall apply for the purposes of subsection (3) above as it applies for the purposes of that Act.
- (6) In the case of shares or securities which are not quoted on a recognised stock exchange at the time when their market value for the purposes of subsection (2) above falls to be determined, subsection (3) of section 152 of the 1979 Act shall apply with respect to the determination of their market value for those purposes as it applies with respect to a determination falling within subsection (1) of that section.

Supplemental

252 Rectification of excessive set-off etc. of ACT or tax credit

- (1) If an inspector discovers that—

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- (a) any set-off of advance corporation tax under section 239, or
- (b) any set-off or payment of tax credit,

ought not to have been made, or is or has become excessive, the inspector may make any such assessments as may in his judgment be required for recovering any tax that ought to have been paid or any payment of tax credit that ought not to have been made and generally for securing that the resulting liabilities to tax (including interest on unpaid tax) of the persons concerned are what they would have been if only such set-offs or payments had been made as ought to have been made.

(2) In any case where—

- (a) interest has been paid under section 826 on a payment of tax credit; and
- (b) interest ought not to have been paid on that payment, either at all or to any extent,

an assessment under this section may be made for recovering any interest that ought not to have been paid.

(3) Where—

- (a) an assessment is made under this section to recover tax credit paid to a company in respect of franked investment income received by the company in an accounting period; and
- (b) more than one payment of tax credit has been made in respect of that period,

any sum recovered shall as far as possible be treated as relating to a payment of tax credit made later rather than to a payment made earlier.

(4) Subsections (2) and (3) above shall have effect in relation to payments of tax credit claimed in respect of accounting periods ending after such day as may be appointed for the purpose of those subsections by order made by the Treasury, not being earlier than 31st March 1992.

(5) The Management Act shall apply to any assessment under this section for recovering a payment of tax credit or interest on such a payment as if it were an assessment to income tax for the year of assessment, or in the case of a company, corporation tax for the accounting period, in respect of which the payment was claimed, and as if that payment represented a loss of tax to the Crown; and any sum charged by any such assessment shall, subject to any appeal against the assessment, be due within 14 days after the issue of the notice of assessment.

253 Power to modify or replace section 234(5) to (9) and Schedule 13

(1) The Board may by regulations—

- (a) modify, supplement or replace any of the provisions of subsections (5) to (9) of section 234 for the purpose of requiring companies resident in the United Kingdom to make returns and give information to the inspector in respect of distributions made by them, whether before or after the passing of this Act, which are not qualifying distributions;
- (b) modify, supplement or replace any of the provisions of Schedule 13 for the purpose of regulating the time and manner in which advance corporation tax is to be accounted for and paid or the manner in which effect is to be given to section 241(1) to (3);

and references in this Act and in any other enactment to section 234(5) to (9) and to Schedule 13 shall be construed as including references to any such regulations.

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- (2) Without prejudice to the generality of subsection (1) above, regulations under that subsection may, in relation to advance corporation tax, modify any provision of Parts II to VI of the Management Act or apply any such provision with or without modifications.
- (3) Regulations under this section may—
 - (a) make different provision for different descriptions of companies and for different circumstances and may authorise the Board, where in their opinion there are special circumstances justifying it, to make special arrangements as respects advance corporation tax or the repayment of income tax borne by a company or the payment to a company of amounts in respect of any tax credit to which it is entitled;
 - (b) include such transitional and other supplemental provisions as appear to the Board to be expedient or necessary.
- (4) The Board shall not make any regulations under this section unless a draft of them has been laid before and approved by a resolution of the House of Commons.

254 Interpretation of Part VI

- (1) In this Part, except where the context otherwise requires—
 - “new consideration” means, subject to subsections (5) and (6) below, consideration not provided directly or indirectly out of the assets of the company, and in particular does not include amounts retained by the company by way of capitalising a distribution;
 - “security” includes securities not creating or evidencing a charge on assets, and interest paid by a company on money advanced without the issue of a security for the advance, or other consideration given by a company for the use of money so advanced, shall be treated as if paid or given in respect of a security issued for the advance by the company;
 - “share” includes stock, and any other interest of a member in a company;and in this section “a 90 per cent. group” means a company and all of its 90 per cent. subsidiaries.
- (2) In this Part, the expressions “in respect of shares in the company” and “in respect of securities of the company”, in relation to a company which is a member of a 90 per cent. group, mean respectively in respect of shares in that company or any other company in the group and in respect of securities of that company or any other company in the group.
- (3) Without prejudice to section 209(2)(b) as extended by subsection (2) above, in relation to a company which is a member of a 90 per cent. group, “distribution” includes anything distributed out of assets of the company (whether in cash or otherwise) in respect of shares in or securities of another company in the group.
- (4) Nothing in subsections (2) and (3) above shall require a company to be treated as making a distribution to any other company which is in the same group and is resident in the United Kingdom.
- (5) Where share capital has been issued at a premium representing new consideration, any part of that premium afterwards applied in paying up share capital shall be treated as new consideration also for that share capital, except in so far as the premium has been

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taken into account under section 211(5) so as to enable a distribution to be treated as a repayment of share capital.

- (6) Subject to subsection (7) below, no consideration derived from the value of any share capital or security of a company, or from voting or other rights in a company, shall be regarded for the purposes of this Part as new consideration received by the company unless the consideration consists of—
- (a) money or value received from the company as a qualifying distribution;
 - (b) money received from the company as a payment which for those purposes constitutes a repayment of that share capital or of the principal secured by the security; or
 - (c) the giving up of the right to the share capital or security on its cancellation, extinguishment or acquisition by the company.
- (7) No amount shall be regarded as new consideration by virtue of subsection (6)(b) or (c) above in so far as it exceeds any new consideration received by the company for the issue of the share capital or security in question or, in the case of share capital which constituted a qualifying distribution on issue, the nominal value of that share capital.
- (8) Where two or more companies enter into arrangements to make distributions to each other's members, all parties concerned (however many) may for the purposes of this Part be treated as if anything done by any one of those companies had been done by any of the others.
- (9) A distribution shall be treated under this Part as made, or consideration as provided, out of assets of a company if the cost falls on the company.
- (10) References in this Part to issuing share capital as paid up apply also to the paying up of any issued share capital.
- (11) Where securities are issued at a price less than the amount repayable on them, and are not quoted on a recognised stock exchange, the principal secured shall not be taken for the purposes of this Part to exceed the issue price, unless the securities are issued on terms reasonably comparable with the terms of issue of securities so quoted.
- (12) For the purposes of this Part a thing is to be regarded as done in respect of a share if it is done to a person as being the holder of the share, or as having at a particular time been the holder, or is done in pursuance of a right granted or offer made in respect of a share; and anything done in respect of shares by reference to share holdings at a particular time is to be regarded as done to the then holders of the shares or the personal representatives of any share holder then dead.

This subsection shall apply in relation to securities as it applies in relation to shares.

255 “Gross rate” and “gross amount” of distributions to include ACT

- (1) Where any right or obligation created before 6th April 1973 is expressed by reference to a dividend at a gross rate or of a gross amount, that right or obligation shall continue to have effect, in relation to a dividend payable on or after that date, as if the reference were to a dividend of an amount which, when there is added to it such proportion thereof as corresponds to the rate of advance corporation tax in force on that date, that is to say, 6th April 1973, is equal to a dividend at that gross rate or of that gross amount.

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- (2) Subsection (1) above shall apply with the necessary modifications to a dividend partly at a gross rate or of a gross amount and shall apply to any distribution other than a dividend as it applies to a dividend.