



Income and Corporation Taxes Act 1988

1988 CHAPTER 1

PART VIII

TAXATION OF INCOME AND CHARGEABLE GAINS OF COMPANIES

Taxation of income

VALID FROM 24/07/2002

[^{F1}338B Charges on income: annuities or other annual payments

- (1) An annuity or other annual payment is a charge on income if—
 - (a) the requirements specified in subsection (2) are met, and
 - (b) it is not excluded from being a charge on income for the purposes of corporation tax—
 - (i) by any of the following provisions of this section, or
 - (ii) by any other provision of the Corporation Tax Acts.
- (2) The requirements are that the payment—
 - (a) is made under a liability incurred for a valuable and sufficient consideration,
 - (b) is not charged to capital,
 - (c) is ultimately borne by the company, and
 - (d) in the case of a company not resident in the United Kingdom, is incurred wholly and exclusively for the purposes of a trade which is or is to be carried on by it in the United Kingdom through a branch or agency.
- (3) An annuity or other annual payment made to a person not resident in the United Kingdom shall be treated as a charge on income only if the following conditions are met.
- (4) The conditions are that the company making the payment is resident in the United Kingdom and that either—

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- (a) the company deducts tax from the payment in accordance with section 349, and accounts under Schedule 16 for the tax so deducted, or
 - (b) the person beneficially entitled to the income in respect of which the payment is made is a company that is not resident in the United Kingdom but which carries on a trade in the United Kingdom through a branch or agency and the payment falls to be brought into account in computing the chargeable profits (within the meaning given by section 11(2) of that company, or
 - (c) the payment is one payable out of income brought into charge to tax under Case V of Schedule D.
- (5) An annuity or other annual payment is not a charge on income if—
- (a) it is payable in respect of the company’s loan relationships, or
 - (b) it is a royalty to which Schedule 29 to the Finance Act 2002 applies (intangible fixed assets).
- (6) Nothing in this section prevents an annuity or other annual payment from being a charge on income if it is a qualifying donation (within the meaning of section 339).]

Textual Amendments

F1 Ss. 338-338B substituted for s. 338 (24.7.2002) by [Finance Act 2002 \(c. 23\)](#), [Sch. 30 para. 1\(2\)](#)

337 Companies beginning or ceasing to carry on a trade.

- ^{M1}(1) Where a company begins or ceases to carry on a trade, or to be within the charge to corporation tax in respect of a trade, the company’s income shall be computed as if that were the commencement or, as the case may be, discontinuance of the trade, whether or not the trade is in fact commenced or discontinued.
- (2) Subject to subsection (3) below and to any other provision of the Corporation Tax Acts which expressly authorises such a deduction, no deduction shall be made in computing income from any source—
- (a) in respect of dividends or other distributions; nor
 - (b) in respect of any yearly interest, annuity or other annual payment or in respect of any such other payments as are mentioned in section 348(2), but not including sums which are, or but for any exemption would be, chargeable under Schedule A.
- (3) In computing income from a trade, subsection (2)(b) above shall not prevent the deduction of yearly interest payable in the United Kingdom on an advance from a bank carrying on a bona fide banking business in the United Kingdom.

Modifications etc. (not altering text)

C1 See 1988 s.500—Oil Taxation Acts—*deduction of petroleum revenue tax* and s.501—*interest on petroleum revenue tax overpaid to be disregarded for corporation tax.*

Marginal Citations

M1 Source-1970 s.251

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VALID FROM 29/04/1996

337A Interest payable by companies.

No deduction shall be made in respect of interest in computing a company's income from any source except in accordance with Chapter II of Part IV of the Finance Act 1996 (loan relationships).

338 Allowance of charges on income and capital.

- (1) ^{M2}Subject to sections 339, 494 and 787, in computing the corporation tax chargeable for any accounting period of a company any charges on income paid by the company in the accounting period, so far as paid out of the company's profits brought into charge to corporation tax, shall be allowed as deductions against the total profits for the period as reduced by any other relief from tax, other than group relief.
- (2) ^{M3}Subject to the following subsections, [^{F2}to sections 339 and 339A] and to any other express exceptions, "charges on income" means for the purposes of corporation tax—
 - (a) payments of any description mentioned in subsection (3) below, not being dividends or other distributions of the company; and
 - (b) payments which are qualifying donations (within the meaning of section 339); but no payment which is deductible in computing profits or any description of profits for purposes of corporation tax shall be treated as a charge on income.
- (3) ^{M4}Subject to subsections (4) to (6) below, the payments referred to in subsection (2) (a) above are—
 - (a) any yearly interest (whether charged to revenue or capital), annuity or other annual payment and any such other payments as are mentioned in section 348(2) but not including sums which are or, but for any exemption would be, chargeable under Schedule A; and
 - (b) any other interest (whether charged to revenue or capital) payable in the United Kingdom on an advance from a bank carrying on a bona fide banking business in the United Kingdom, or from a person who in the opinion of the Board is bona fide carrying on business as a member of the Stock Exchange or bona fide carrying on the business of a discount house in the United Kingdom; and for the purposes of this section any interest payable by a company as mentioned in paragraph (b) above shall be treated as paid on its being debited to the company's account in the books of the person to whom it is payable.
- (4) No such payment as is mentioned in subsection (3)(a) above made by a company to a person not resident in the United Kingdom shall be treated as a charge on income unless the company is so resident and either—
 - (a) ^{M5}the company deducts income tax from the payment in accordance with section 349, and accounts under Schedule 16 for the tax so deducted, or
 - (b) ^{M6}it is a payment of interest on a quoted Eurobond falling within section 124; or
 - (c) ^{M7}the payment is a payment of interest falling within section 340; or
 - (d) the payment is one payable out of income brought into charge to tax under Case IV or V of Schedule D.

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- (5) ^{M8}No such payment made by a company as is mentioned in subsection (3) above shall be treated as a charge on income if—
- (a) the payment, not being interest, is charged to capital or the payment is not ultimately borne by the company; or
 - (b) the payment is not made under a liability incurred for a valuable and sufficient consideration (and, in the case of a company not resident in the United Kingdom, incurred wholly and exclusively for the purposes of a trade carried on by it in the United Kingdom through a branch or agency), and is not a covenanted donation to charity (within the meaning of section 339).
- (6) ^{M9}No such payment of interest as is mentioned in subsection (3) above made by a company shall be treated as a charge on income unless—
- (a) the company exists wholly or mainly for the purpose of carrying on a trade; or
 - (b) the payment of interest is wholly and exclusively laid out or expended for the purposes of a trade carried on by the company; or
 - (c) the company is an investment company, within the meaning of section 130 and including an authorised unit trust; or
 - (d) the payment of interest would, on the assumptions made below, be eligible for relief under section 353 by virtue of section 354 if it were made by an individual.

For the purposes of paragraph (d) above, it shall be assumed that if the land concerned is occupied by the company the conditions of section 355(1) are satisfied if the land either—

- (i) is not used as a residence; or
- (ii) is used as an individual's main or only residence;

but the limit imposed by section 357 shall apply only in a case falling within paragraph (ii) above and shall then apply without regard to any loan made in connection with any other land.

- (7) ^{M10}Any payment to which section 125(1) applies shall not be charge on income for the purposes of corporation tax.

Textual Amendments

F2 1990 s.27(1) *in relation to accounting periods beginning on or after 1 October 1990. Previously “to section 339”.*

Modifications etc. (not altering text)

- C2** See 1988 s.494—Oil Taxation Acts—*restriction of relief against income from oil extraction activities or oil rights.*
- C3** See—1981 s.127—Oil Taxation Acts—*deduction of supplementary petroleum duty.* 1988 s.500—Oil Taxation Acts—*deduction of petroleum revenue tax in computing income.* [Housing Subsidies Act 1967 \(c.29\)](#) ss.24(2) and 26(4) *(reproduced in Part II Vol.5)—approved housing association not entitled to relief for interest subsidised under that Act.*
- C4** See 1990 s.56 and Sch.10 para.25—“*profit*” *from redemption of convertible securities treated as interest. (Applies also to ring fence profits—see 1988 s.494—Oil Taxation Acts.)*
- C5** See 1989 s.116—*certain interest on Eurobonds to Netherlands Antilles subsidiaries made on or after 1 April 1989.*

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Marginal Citations

- M2** Source-1970 s.248(1); 1986 s.29
M3 Source-1970 s.248(2); 1986 s.29
M4 Source-1970 s.248(3); 1973 s.54(1)(a); 1981 s.38(1)
M5 Source-1970 s.248(4); 1972 Sch.24 20
M6 Source-1970 s.248(4)(aa); 1984 s.35(4)
M7 Source-1970 s.248(4)(b), (c)
M8 Source-1970 s.248(5); 1981 s.38(2)
M9 Source-1970 s.248(6); 1974 Sch.1 27
M10 Source-1977 s.48(1)

VALID FROM 01/05/1995

338A Charges on income: loans to buy land.

- (1) Subject to the following provisions of this section, interest shall qualify for treatment in accordance with section 338(6)(d) as a charge on income if—
- (a) at the time when the interest is paid the company in question owns an estate or interest in land, or the property in a caravan or house-boat, in the United Kingdom or the Republic of Ireland;
 - (b) the interest is paid on a loan to defray money applied—
 - (i) in purchasing that estate, interest or property, or another estate, interest or property absorbed into, or given up to obtain, that estate, interest or property;
 - (ii) in improving or developing the land, or buildings on the land; or
 - (iii) in paying off another loan in a case in which interest on that other loan would have qualified under this section for treatment as a charge on income had the loan not been paid off (and on the assumption, if the loan was free of interest, that it carried interest);
 - (c) the land, caravan or house-boat—
 - (i) is occupied by the company and used as the only or main residence of an individual;
 - (ii) is occupied by the company and used otherwise than as a residence; or
 - (iii) is, in any period of 52 weeks comprising the time at which the interest is payable, let at a commercial rent for more than 26 weeks and, when not so let, either available for letting at such a rent or occupied and used as mentioned in sub-paragraph (i) or (ii) above;and
 - (d) the interest is not interest incurred by overdrawing an account or by debiting the account of any person as the holder of a credit card or under similar arrangements.
- (2) Subsections (2) and (7) of section 354 shall have effect in relation to subsection (1) above as they have effect in relation to subsection (1) of that section.
- (3) Interest shall qualify under this section for treatment as a charge on income by reference to any land, caravan or house-boat which is being used as the only or main residence of an individual to the extent only that the amount on which it is payable

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does not exceed the following limit, that is to say, the qualifying maximum for the year of assessment in which the payment is made reduced by the amount on which interest is payable by the company under any earlier loans so far as they—

- (a) are loans the interest on which qualifies under this section for treatment as a charge on income; and
- (b) fall within subsection (1)(b) above in respect of the same land, caravan or house-boat.

(4) Accordingly—

- (a) if the amount on which interest is payable under any loan exceeds the limit specified in subsection (3) above, so much only of the interest that would otherwise qualify under this section shall so qualify as bears to the whole of that interest the same proportion as that part of that amount that does not exceed the limit bears to the whole of that amount; and
- (b) if the amount on which interest is payable under the earlier loans mentioned in that subsection is equal to or exceeds the qualifying maximum for the year of assessment in which the interest is paid, none of the interest on the later loan shall qualify under this section for treatment as a charge on income.

(5) Subsections (1A) and (2) of section 355 shall have effect for the purposes of this section in relation to the condition in paragraph (c) of subsection (1) above as they have effect in relation to the condition referred to in section 355(1A)(a).

(6) Interest shall not qualify under this section for treatment as a charge on income by reference to any case in which—

- (a) the land, caravan or house-boat is used as the only or main residence of an individual, and
- (b) the interest is paid on a home improvement loan,

unless the loan was made before 6th April 1988; and subsections (2B) and (2C) of section 355 shall apply for the purposes of this subsection as they apply for the purposes of subsection (2A) of that section.

(7) Interest shall not qualify by virtue of subsection (1)(b)(i) above for treatment as a charge on income—

- (a) where the purchaser has, since 15th April 1969, disposed of an estate or interest in the land, or the property in the caravan or house-boat, in question and it appears that the main purpose of the disposal and purchase was to obtain relief in respect of interest on the loan or to allow interest on the loan to be treated as a charge on income; or
- (b) where the purchaser is directly or indirectly purchasing from a person who is connected with him and the price substantially exceeds the value of what is acquired;

and interest shall not qualify by virtue of subsection (1)(b)(ii) above for such treatment where the money spent is received directly or indirectly by a person connected with the person spending it and substantially exceeds the value of the work done.

(8) For the purposes of subsection (7) above one person is connected with another if he is so connected within the terms of section 839.

(9) In this section—

“caravan” and “house-boat” have the same meanings as are given to them for the purposes of sections 354 to 366 by subsection (1) of section 367; and

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“the qualifying maximum” has the same meaning as is given to it for the purposes of sections 356A to 357 by subsection (5) of that section; and subsections (2) to (4) of section 367 shall apply with the necessary modifications for the determination of any question whether interest qualifies under this section for treatment as a charge on income as they apply for the determination of any question whether interest is eligible for relief under section 353 by virtue of section 354.

- (10) References in this section to an estate or interest do not include references—
- (a) to a rentcharge or, in Scotland, a superiority or the interest of a creditor in a contract of ground annual; or
 - (b) to the interest of a chargee or mortgagee or, in Scotland, the interest of a creditor in a charge or security of any kind over land.

339 Charges on income: donations to charity.

- (1) ^{M11}A qualifying donation is a payment made by a company to a charity, other than—
- (a) a covenanted payment [^{F3}of a sum of money] to charity, as defined in section 660(3); and
 - (b) a payment which is deductible in computing profits or any description of profits for purposes of corporation tax.
- (2) ^{M12}A qualifying donation shall not constitute a charge on the income of the company unless a claim is made by the company and the company is resident in the United Kingdom *and is not a close company*^{F4}.
- (3) ^{M13}A payment made by a company is not a qualifying donation unless, on the making of it, the company deducts out of it a sum representing the amount of income tax on it.
- [^{F5}(3A) A payment made by a close company is not a qualifying donation if it is of a sum which leaves less than £600 after deducting income tax under subsection (3) above.
- (3B) A payment made by a close company is not a qualifying donation if—
- (a) it is made subject to a condition as to repayment, or
 - (b) the company or a connected person receives a benefit in consequence of making it and either the relevant value in relation to the payment exceeds two and a half per cent of the amount given after deducting tax under section 339(3) or the amount to be taken into account for the purposes of this paragraph in relation to the payment exceeds £250.
- (3C) For the purposes of subsections (3B) above and (3D) below, the relevant value in relation to a payment to a charity is—
- (a) where there is one benefit received in consequence of making it which is received by the company or a connected person, the value of that benefit;
 - (b) where there is more than one benefit received in consequence of making it which is received by the company or a connected person, the aggregate value of all the benefits received in consequence of making it which are received by the company or a connected person.
- (3D) The amount to be taken into account for the purposes of subsection (3B)(b) above in relation to a payment to a charity is an amount equal to the aggregate of—
- (a) the relevant value in relation to the payment, and

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- (b) the relevant value in relation to each payment already made to the charity by the company in the accounting period in which the payment is made which is a qualifying donation within the meaning of this section.
- (3E) A payment made by a close company is not a qualifying donation if it is conditional on, or associated with, or part of an arrangement involving, the acquisition of property by the charity, otherwise than by way of gift, from the company or a connected person.
- (3F) A payment made by a company is not a qualifying donation unless the company gives to the charity to which the payment is made a certificate in such form as the Board may prescribe and containing—
- (a) in the case of any company, a statement to the effect that the payment is one out of which the company has deducted tax under subsection (3) above, and
 - (b) in the case of a close company, a statement to the effect that the payment satisfies the requirements of subsections (3A) to (3E) above.
- (3G) A payment made by a company is not a qualifying donation if the company is itself a charity.]
- (4) Where, with a view to securing relief under section 338 a company makes a payment subject to such a deduction as is mentioned in subsection (3) above, then, whether or not it proves to be a qualifying donation, the payment—
- (a) shall be treated as a relevant payment for the purposes of Schedule 16; and
 - (b) shall in the hands of the recipient (whether a charity or not) be treated for the purposes of this Act as if it were an annual payment.
- (5) *In any accounting period of a company, the maximum amount allowable under section 338 by virtue of subsection (2)(b) of that section in respect of qualifying donations made by the company shall be a sum equal to 3 per cent. of the dividends paid on the company's ordinary share capital in that accounting period^{F6}.*
- (6) ^{M14}A covenanted donation to charity shall not be regarded for the purposes of the definition of “charges on income” in section 338, or for any of the other purposes of the Corporation Tax Acts, as being, by reason of any provision of this Act, a distribution.
- (7) ^{M15}Notwithstanding anything in any other provision of the Tax Acts, a covenanted donation to charity made by a company shall not be a charge on income for the purposes of section 338 unless the company—
- (a) deducts out of it a sum representing the amount of income tax on it; and
 - (b) accounts for that tax in accordance with Schedule 16;
- and any such payment from which a deduction is made as mentioned in paragraph (a) above shall be treated as a relevant payment for the purposes of Schedule 16, whether or not it would otherwise fall to be so treated.
- [^{F7}(7A) In subsections (3B) to (3E) above references to a connected person are to a person connected with—
- (a) the company, or
 - (b) a person connected with the company;
- and section 839 applies for the purposes of this subsection.]
- (8) ^{M16}In this section “covenanted donation to charity” means a payment under a disposition or covenant made by the company in favour of a charity whereby the like annual payments (of which the donation is one) become payable for a period which may exceed three years and is not capable of earlier termination under any

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power exercisable without the consent of the persons for the time being entitled to the payments.

- (9)^{M17} For the purposes of this section “charity” includes [^{F8}each of the bodies mentioned in section 507, and in subsections (1) to [^{F9}(4)] above includes] any Association of a description specified in section 508, but, subject to that, in this section “charity” has the same meaning as in section 506.

Textual Amendments

- F3** 1990 s.26(2) in relation to payments made on or after 1 October 1990.
- F4** Words repealed by 1990 ss.26(3) and 132 and Sch.19 Part IV in relation to payments made on or after 1 October 1990.
- F5** 1990 s.26(4) in relation to payments made on or after 1 October 1990.
- F6** Repealed by 1990 ss.27(2) and 132 and Sch.19 Part IV in relation to accounting periods ending on or after 1 October 1990.
- F7** 1990 s.26(5) in relation to payments made on or after 1 October 1990.
- F8** 1989 s.60(2) in respect of payments due on or after 14 March 1989. Previously “the Trustees of the National Heritage Memorial Fund and the Historic Buildings and Monuments Commission for England and, additionally, in subsections (1) to (5) above includes the Trustees of the British Museum, the Trustees of the British Museum (Natural History) and”.
- F9** 1990 s.27(2). Previously “(5)”.

Modifications etc. (not altering text)

- C6** See 1990 s.94 re production of books etc. in respect of repayment claims in respect of payments made on or after 1 October 1990.

Marginal Citations

- M11** Source-1986 s.29(1), (2)
- M12** Source-1986 s.29(1)
- M13** Source-1986 s.29(3)-(5)
- M14** Source-1970 s.248(8); 1972 Sch.24 20
- M15** Source-1970 s.248(8A); 1986 s.30(2)
- M16** Source-1970 s.248(a); 1980 s.55(3)
- M17** Source-1981 s.49; 1983 s.46(3); 1986 s.29(6)

[^{F10}339A] Maximum qualifying donations.

- (1) If in a particular accounting period of a company the company has no associated company, a qualifying donation made by the company in that period shall not be allowable under section 338 by virtue of subsection (2)(b) of that section to the extent that, when taken together with any qualifying donations already made by the company in that period, the amount given, after deducting income tax under section 339(3), exceeds £5 million.
- (2) If in a particular accounting period of a company the company has one or more associated companies, a qualifying donation made by the company in that period shall not be allowable under section 338 by virtue of subsection (2)(b) of that section to the extent that, when taken together with any qualifying donations already made by the company in that period, the amount given, after deducting income tax under section 339(3), exceeds the appropriate fraction of £5 million.

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- (3) Subsection (1) or (2) above shall not apply where—
- (a) the company concerned is not a close company in the accounting period concerned, and
 - (b) in that period the maximum amount allowable under section 338 by virtue of subsection (2)(b) of that section (“the allowable maximum”) is (apart from this subsection) less than a sum equal to 3 per cent. of the dividends paid on the company’s ordinary share capital in that period (“the relevant sum”);
- and in such a case the allowable maximum in that period shall be the relevant sum.
- (4) For the purposes of subsection (2) above, the appropriate fraction is a fraction whose numerator is one and whose denominator is one plus the number of associated companies.
- (5) In applying subsections (1) to (4) above to any accounting period of a company, an associated company shall be disregarded if—
- (a) it has not carried on any trade or business at any time in that accounting period (or, if an associated company during part only of that accounting period, at any time in that part of that accounting period), or
 - (b) it is a charity throughout that accounting period (or, if an associated company during part only of that accounting period, throughout that part of that accounting period).
- (6) In determining for the purposes of this section how many associated companies a company has got in an accounting period or whether a company has an associated company in an accounting period, an associated company shall be counted even if it was an associated company for part only of the period, and two or more associated companies shall be counted even if they were associated companies for different parts of the period.
- (7) For an accounting period of less than 12 months the figure of £5 million specified in subsections (1) and (2) above shall be proportionately reduced.
- (8) For the purposes of this section a company is an associated company of another at a particular time if at that time one of the two has control of the other or both are under the control of the same person or persons; and in this subsection “control” shall be construed in accordance with section 416.]

Textual Amendments

F10 1990 s.27(3) in relation to accounting periods ending on or after 1 October 1990.

340 Charges on income: interest payable to non-residents.

- (1) A payment of interest by a company is one to which section 338(4)(c) applies if the company is carrying on a trade and—
- (a) under the terms of the contract under which the interest is payable, the interest is to be paid, or may be required to be paid, outside the United Kingdom; and
 - (b) the interest is in fact paid outside the United Kingdom; and
 - (c) either—

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- (i) the liability to pay the interest was incurred wholly or mainly for the purposes of activities of the company's trade carried on outside the United Kingdom; or
 - (ii) the interest is payable in a currency other than sterling and, subject to subsection (2) below, the liability to pay the interest was incurred wholly or mainly for the purposes of activities of that trade, wherever carried on.
- (2) Subsection (1)(c)(ii) above does not apply where—
- (a) the trade is carried on by a body of persons over whom the person entitled to the interest has control; or
 - (b) the person entitled to the interest is a body of persons over whom the person carrying on the trade has control; or
 - (c) the person carrying on the trade and the person entitled to the interest are both bodies of persons, and some other person has control over both of them.
- In this subsection references to a body of persons include references to a partnership and "control" has the meaning given by section 840.
- (3) For the purposes of subsection (1) above the company paying the interest shall be treated as carrying on any trade carried on by a 75 per cent. subsidiary of it (both being bodies corporate) if the subsidiary (as well as the company making the payment) is resident in the United Kingdom.
- (4) In determining for the purposes of this section whether one company is a 75 per cent. subsidiary of another that other company shall be treated as not being the owner—
- (a) of any share capital which it owns directly in a body corporate if a profit on a sale of the shares would be treated as a trading receipt of its trade; 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; or
 - (c) of any share capital which it owns directly or indirectly in a body corporate not resident in the United Kingdom.

341 Payments of interest etc. between related companies.

- (1) This section applies where—
- (a) the relationship between two companies is as mentioned in subsection (2) below;
 - (b) one of the companies makes to the other a payment which, for the purposes of corporation tax, is a charge on income of the company making it; and
 - (c) in the hands of the company receiving it, the payment is chargeable to tax under Case III of Schedule D.
- (2) The relationship between two companies which is referred to in subsection (1)(a) above is—
- (a) that one company controls the other; or
 - (b) that another person controls both companies; or
 - (c) that one company is a 51 per cent. subsidiary of the other; or
 - (d) that both companies are 51 per cent. subsidiaries of another company;
- and section 840 applies for the purposes of this section.

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- (3) In a case where this section applies, the payment referred to in subsection (1)(b) above shall be treated for the purposes of corporation tax as received by the company to which it is paid on the same day as that on which it is for those purposes treated as paid by the company paying it.
- (4) Subject to subsection (5) below, where the payment referred to in subsection (1)(b) above is a "relevant payment" for the purposes of Schedule 16, it shall be treated for the purposes of that Schedule as received on the same day as that on which, by virtue of subsection (3) above, it is treated as received for the purposes of corporation tax; and the reference in paragraph 5(1) of that Schedule to the accounting period in which the payment is received shall be construed accordingly.
- (5) Subsection (4) above does not apply if the day on which the payment would be treated as received apart from that subsection falls within the same accounting period (of the receiving company) as the day on which it would be treated as received under that subsection.

342 Tax on company in liquidation.

- (1) ^{M18}In this section references to a company's final year are references to the financial year in which the affairs of the company are completely wound up, and references to a company's penultimate year are references to the last financial year preceding its final year.
- (2) ^{M19}Subject to subsection (3) below—
 - (a) corporation tax shall be charged on the profits of the company arising in the winding-up in its final year at the rate of corporation tax fixed or proposed for the penultimate year; but
 - (b) where the corporation tax charged on the company's income included in those profits falls to be calculated or reduced in accordance with section 13, it shall be so calculated or reduced in accordance with such rate or fraction fixed or proposed for the penultimate year as is applicable under that section.
- (3) If, before the affairs of the company are completely wound up, any of the rates or fractions mentioned in subsection (2) above has been fixed or proposed for the final year, that subsection shall have effect in relation to that rate or fraction as if for the references to the penultimate year there were substituted references to the final year.
- (4) ^{M20}An assessment on the company's profits for an accounting period which falls after the commencement of the winding-up shall not be invalid because made before the end of the accounting period.
- (5) In making an assessment after the commencement of the winding-up of the company but before the date when its affairs are completely wound up, the inspector may, with the concurrence of the liquidator, act on an assumption as to when that date will fall, so far as it governs section 12(7).
- (6) The assumption of the wrong date shall not alter the company's final and penultimate year, and, if the right date is later, an accounting period shall end on the date assumed, and a new accounting period shall begin and section 12(7) shall thereafter apply as if that new accounting period began with the commencement of the winding-up.
- (7) ^{M21}References in this section to a rate or fraction fixed or proposed are references to a rate or fraction fixed by an Act passed before the completion of the winding-up or, if

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not so fixed, proposed by a Budget resolution (and without regard to any subsequent Act); except that if a rate or fraction so fixed is proposed to be altered by a Budget resolution any such reference to it is a reference to it as proposed to be so altered.

In this subsection “Budget resolution” means a resolution of the House of Commons for fixing any such rate or fraction as is mentioned in this section.

- (8) Where the winding-up commenced before the company’s final year, paragraphs (a) and (b) of subsection (2) (but not subsection (3)) above shall apply in relation to the company’s profits arising at any time in its penultimate year.
- (9) Any assessment made by virtue of section 8(4) shall be subject to any such adjustment by discharge or repayment of tax or by a further assessment as may be required to give effect to this section.

Marginal Citations

- M18** Source-1970 s.245(1)
M19 Source-1970 s.245(2), (3); 1974 s.37(1)
M20 Source-1970 s.245(4)-(6)
M21 Source-1970 s.245(7)-(9); 1974 s.37(1)

VALID FROM 10/07/2003

[^{F11}342A Tax on companies in administration

- (1) In this section—
 - (a) references to the relevant event, in relation to a company in administration, are references—
 - (i) to the administrator sending a notice in respect of the company under paragraph 84(1) of Schedule B1 to the Insolvency Act 1986 (company moving from administration to dissolution), or
 - (ii) in the case of a company which enters administration otherwise than under that Act, to the doing of any other act for a like purpose, and
 - (b) references to a company’s final year are references to the financial year in which the relevant event occurs, and references to the company’s penultimate year are references to the last financial year preceding its final year.
- (2) Subject to subsections (3) and (4)—
 - (a) corporation tax shall be charged on the profits of the company arising in the administration in its final year at the rate of corporation tax fixed or proposed for the penultimate year, but
 - (b) where the corporation tax charged on the company’s income included in those profits falls to be calculated or reduced in accordance with section 13, it shall be so calculated or reduced in accordance with such rate or fraction fixed or proposed for the penultimate year as is applicable under that section.
- (3) If, before the relevant event, any of the rates or fractions mentioned in subsection (2) has been fixed or proposed for the final year, that subsection shall have effect in relation to that rate or fraction as if for the references to the penultimate year there were substituted references to the final year.

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- (4) If, in the case of the company’s final accounting period, the income (if any) which consists of interest received or receivable by the company under section 826 does not exceed £2,000, that income shall not be subject to corporation tax.
- (5) In subsection (4) “the company’s final accounting period” means the last accounting period of the company before the relevant event.
- (6) An assessment on the company’s profits for an accounting period in which the company is in administration shall not be invalid because made before the end of the accounting period.
- (7) In making an assessment after the company enters administration and before the date of the relevant event, the administrator may act on an assumption as to when that date will fall so far as it governs section 12(3).
- (8) The assumption of the wrong date shall not alter the company’s final and penultimate year and, if the right date is later—
 - (a) an accounting period shall end on the date assumed and a new accounting period shall begin, and
 - (b) thereafter, section 12(3) shall apply as if the company had entered administration at the beginning of that new accounting period.
- (9) Subsections (7) and (9) of section 342 apply in relation to this section as they apply in relation to that section, except that in subsection (7) of that section the reference to the completion of the winding up is to be read as a reference to the relevant event.
- (10) Where the company entered administration before its final year, paragraphs (a) and (b) of subsection (2) (but not subsection (3)) apply in relation to the company’s profits arising at any time in its penultimate year.]

Textual Amendments

F11 S. 342A inserted (with effect in accordance with Sch. 41 para. 5(1) of the amending Act) by Finance Act 2003 (c. 14), Sch. 41 para. 3

343 Company reconstructions without a change of ownership.

- (1)^{M22}Where, on a company (“the predecessor”) ceasing to carry on a trade, another company (“the successor”) begins to carry it on, and—
 - (a) on or at any time within two years after that event the trade or an interest amounting to not less than a three-fourths share in it belongs to the same persons as the trade or such an interest belonged to at some time within a year before that event; and
 - (b) the trade is not, within the period taken for the comparison under paragraph (a) above, carried on otherwise than by a company which is within the charge to tax in respect of it;

then the Corporation Tax Acts shall have effect subject to subsections (2) to (6) below.

In paragraphs (a) and (b) above references to the trade shall apply also to any other trade of which the activities comprise the activities of the first mentioned trade.

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- (2) ^{M23}The trade shall not be treated as permanently discontinued nor a new trade as set up and commenced for the purpose of the allowances and charges provided for by the Capital Allowances Acts; but—
- (a) there shall be made to or on the successor in accordance with those Acts all such allowances and charges as would, if the predecessor had continued to carry on the trade, have fallen to be made to or on it; and
 - (b) the amount of any such allowance or charge shall be computed as if—
 - (i) the successor had been carrying on the trade since the predecessor began to do so, and
 - (ii) everything done to or by the predecessor had been done to or by the successor (but so that no sale or transfer which on the transfer of the trade is made to the successor by the predecessor of any assets in use for the purpose of the trade shall be treated as giving rise to any such allowance or charge).

The preceding provisions of this subsection shall not apply if the successor is a dual resident investing company (within the meaning of section 404) which begins to carry on the trade after 31st March 1987.

- (3) ^{M24}The predecessor shall not be entitled to relief under section 394, except as provided by subsection (6) below; and, subject to subsection (4) below and to any claim made by the predecessor under section 393(2), the successor shall be entitled to relief under section 393(1), as for a loss sustained by the successor in carrying on the trade, for any amount for which the predecessor would have been entitled to claim relief if it had continued to carry on the trade.
- (4) ^{M25}Where the amount of relevant liabilities exceeds the value of relevant assets, the successor shall be entitled to relief by virtue of subsection (3) above only if, and only to the extent that, the amount of that excess is less than the amount mentioned in that subsection.

This subsection does not apply where the predecessor ceased to carry on the trade or part of a trade before 19th March 1986 nor, in a case where subsection (7) below applies, in relation to any earlier event, within the meaning of that subsection, which occurred before that date (but without prejudice to its application in relation to any later event which occurred on or after that date).

- (5) ^{M26}Any securities, within the meaning of section 731, which at the time when the predecessor ceases to carry on the trade form part of the trading stock belonging to the trade shall be treated for the purposes of that section as having been sold at that time in the open market by the predecessor and as having been purchased at that time in the open market by the successor.
- (6) On the successor ceasing to carry on the trade—
- (a) if the successor does so within four years of succeeding to it, any relief which might be given to the successor under section 394 on its ceasing to carry on the trade may, so far as it cannot be given to the successor, be given to the predecessor as if the predecessor had incurred the loss (including any amount treated as a loss under subsection (4) of that section); and
 - (b) if the successor ceases to carry on the trade within one year of succeeding to it, relief may be given to the predecessor under that section in respect of any loss incurred by it (or amount treated as such a loss under subsection (4) of that section);

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but for the purposes of that section, as it applies by virtue of this subsection to the giving of relief to the predecessor, the predecessor shall be treated as ceasing to carry on the trade when the successor does so.

- (7) Where the successor ceases to carry on the trade within the period taken for the comparison under subsection (1)(a) above and on its doing so a third company begins to carry on the trade, then no relief shall be given to the predecessor by virtue of subsection (6) above by reference to that event, but, subject to that, subsections (2) to (6) above shall apply both in relation to that event (together with the new predecessor and successor) and to the earlier event (together with the original predecessor and successor), but so that—

- (a) in relation to the earlier event “successor” shall include the successor at either event; and
- (b) in relation to the later event “predecessor” shall include the predecessor at either event;

and if the conditions of this subsection are thereafter again satisfied, it shall apply again in like manner.

- (8) Where, on a company ceasing to carry on a trade, another company begins to carry on the activities of the trade as part of its trade, then that part of the trade carried on by the successor shall be treated for the purposes of this section as a separate trade, if the effect of so treating it is that subsection (1) or (7) above has effect on that event in relation to that separate trade; and where, on a company ceasing to carry on part of a trade, another company begins to carry on the activities of that part as its trade or part of its trade, the predecessor shall for purposes of this section be treated as having carried on that part of its trade as a separate trade if the effect of so treating it is that subsection (1) or (7) above has effect on that event in relation to that separate trade.

- (9) ^{M27}Where under subsection (8) above any activities of a company’s trade fall, on the company ceasing or beginning to carry them on, to be treated as a separate trade, such apportionments of receipts, expenses, assets or liabilities shall be made as may be just.

- (10) ^{M28}Where, by virtue of subsection (9) above, any item falls to be apportioned and, at the time of the apportionment, it appears that it is material as respects the liability to tax (for whatever period) of two or more companies, any question which arises as to the manner in which the item is to be apportioned shall be determined, for the purposes of the tax of all those companies—

- (a) in a case where the same body of General Commissioners have jurisdiction with respect to all those companies, by those Commissioners, unless all the companies agree that it shall be determined by the Special Commissioners;
- (b) in a case where different bodies of Commissioners have jurisdiction with respect to those companies, by such of those bodies as the Board may direct, unless all the companies agree that it shall be determined by the Special Commissioners; and
- (c) in any other case, by the Special Commissioners,

and any such Commissioners shall determine the question in like manner as if it were an appeal except that all those companies shall be entitled to appear and be heard by the Commissioners who are to make the determination or to make representations to them in writing.

- (11) Any relief obtainable under this section by way of discharge or repayment of tax shall be given on the making of a claim.

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- (12) ^{M29}In the application of this section to any case in relation to which subsection (4) above does not apply—
- (a) subsection (9) above shall have effect with the substitution for the words following “separate trade” of the words “ any necessary apportionment shall be made of receipts or expenses ”; and
 - (b) subsection (10) above shall have effect with the substitution for “item” of “sum ”.

Marginal Citations

- M22** Source-1970 s.252(1)
M23 Source-1970 s.252(2), (2A); 1971 Sch.8 16(5); 1986 s.56(7), Sch.13 2; 1987 (No.2) s.64(2)
M24 Source-1970 s.252(3)-(7)
M25 Source-1970 s.252(3A); 1986 s.42(2), (3), Sch.10 1(2)
M26 Source-1970 s.252(4)-(7)
M27 Source-1970 s.252(8); 1986 Sch.10 1(3)
M28 Source-1970 s.252(9), (10)
M29 Source-1986 s.42(2), (3)

VALID FROM 21/07/2008

^{F12}**343ZA** Transfers of trade to obtain balancing allowances

- (1) This section applies where—
- (a) a company (“the predecessor”) ceases to carry on a trade,
 - (b) another company (“the successor”) begins to carry on the activities of that trade as its trade or as part of its trade,
 - (c) in the accounting period in which the predecessor ceases to carry on the trade the predecessor would (apart from this section) be entitled under Part 2 of the Capital Allowances Act to a balancing allowance in respect of the trade, and
 - (d) the predecessor's ceasing to carry on the trade is part of a scheme or arrangement the main purpose, or one of the main purposes, of which is to entitle the predecessor to that balancing allowance.
- (2) This section also applies where—
- (a) a company (“the predecessor”) ceases to carry on part of a trade,
 - (b) another company (“the successor”) begins to carry on the activities of that part of the trade as its trade or as part of its trade, and
 - (c) the predecessor's ceasing to carry on the part of the trade mentioned in paragraph (a) is part of a scheme or arrangement the main purpose, or one of the main purposes, of which is to entitle the predecessor, on cessation of the trade, to a balancing allowance in respect of the trade under Part 2 of the Capital Allowances Act.
- (3) This section does not apply where section 343 applies.
- (4) Where this section applies, the Corporation Tax Acts have effect subject to section 343(2), but as if the words “and are subject to section 343A (company reconstructions involving business of leasing plant or machinery)” were omitted.

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- (5) Where this section applies because of subsection (1), and the successor carries on the activities of the trade the predecessor ceased to carry on as part of the successor's trade, for the purposes of section 343(2) that part of the successor's trade is to be treated as a separate trade carried on by the successor.
- (6) Where this section applies because of subsection (2), for the purposes of section 343(2)—
 - (a) that part of the trade which the predecessor ceased to carry on is to be treated as a separate trade carried on by the predecessor, and
 - (b) where the successor carries on the activities of that part of the trade as part of its trade, that part of the successor's trade is to be treated as a separate trade carried on by the successor.
- (7) Where subsection (5) or (6) applies, such apportionment of receipts, expenses, assets and liabilities is to be made as may be just.
- (8) Section 343(10) applies to an apportionment under subsection (7) as it applies to an apportionment under section 343(9).]

Textual Amendments

F12 S. 343ZA inserted (with effect in accordance with s. 89(2) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), s. 89(1)

VALID FROM 19/07/2007

[^{F13}343A] **Company reconstructions involving business of leasing plant or machinery**

- (1) This section applies if the trade is or forms part of a business of leasing plant or machinery which the predecessor or the successor carries on on the day of cessation.
- (2) If, on the day of cessation, both the predecessor and the successor carry on the trade otherwise than in partnership, section 343(2) does not apply unless—
 - (a) the principal company or companies of the predecessor immediately before the cessation are the same as the principal company or companies of the successor immediately afterwards, and
 - (b) if any such principal company is a consortium principal company, the relevant fraction in relation to the predecessor immediately before the cessation is the same as the relevant fraction in relation to the successor immediately afterwards (irrespective of whether the members of each consortium are the same).
- (3) If, on the day of cessation, the predecessor or the successor carries on the trade in partnership, section 343(2) does not apply unless—
 - (a) the predecessor ceases to carry on the whole of its trade, and
 - (b) that trade is a business of leasing plant or machinery which the predecessor carries on in partnership on the day of cessation.
- (4) In any case where section 343(2) does not apply as a result of this section, the plant or machinery belonging to the trade shall be treated for the purposes of the Corporation

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Tax Acts as sold by the predecessor to the successor on the day of the cessation for an amount equal to its market value as at that day.

(5) In this section—

“business of leasing plant or machinery”—

(a) has the same meaning as in Part 2 of Schedule 10 to the Finance Act 2006 (sale etc of lessor companies etc) (if the business is carried on otherwise than in partnership), and

(b) has the same meaning as in Part 3 of that Schedule (if the business is carried on in partnership),

“consortium principal company” means a company which is a principal company as a result of paragraph 12 of that Schedule,

“market value”, in relation to plant or machinery, is to be construed in accordance with paragraph 41(8) of that Schedule,

“plant or machinery” has the same meaning as in Part 2 of the Capital Allowances Act,

“principal company” is to be construed in accordance with paragraph 11 or (as the case may be) 12 of Schedule 10 to the Finance Act 2006, and

“relevant fraction” has the same meaning as in paragraph 12 of that Schedule.]

Textual Amendments

F13 S. 343A inserted (19.7.2007, the inserted subsections (2) and (3) having effect in accordance with Sch. 6 para. 1(3)-(5) of the amending Act) by Finance Act 2007 (c. 11), Sch. 6 para. 1(2)

344 Company reconstructions: supplemental.

^{M30}(1) For the purposes of section 343—

- (a) a trade carried on by two or more persons shall be treated as belonging to them in the shares in which they are entitled to the profits of the trade;
- (b) a trade or interest in a trade belonging to any person as trustee (otherwise than for charitable or public purposes) shall be treated as belonging to the persons for the time being entitled to the income under the trust; and
- (c) a trade or interest in a trade belonging to a company shall, where the result of so doing is that subsection (1) or (7) of section 343 has effect in relation to an event, be treated in any of the ways permitted by subsection (2) below.

(2) For the purposes of section 343, a trade or interest in a trade which belongs to a company engaged in carrying it on may be regarded—

- (a) as belonging to the persons owning the ordinary share capital of the company and as belonging to them in proportion to the amount of their holdings of that capital, or
- (b) in the case of a company which is a subsidiary company, as belonging to a company which is its parent company, or as belonging to the persons owning the ordinary share capital of that parent company, and as belonging to them in proportion to the amount of their holdings of that capital,

and any ordinary share capital owned by a company may, if any person or body of persons has the power to secure by means of the holding of shares or the possession of voting power in or in relation to any company, or by virtue of any power conferred by

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the articles of association or other document regulating any company, that the affairs of the company owning the share capital are conducted in accordance with his or their wishes, be regarded as owned by the person or body of persons having that power.

- (3) For the purposes of subsection (2) above—
- (a) references to ownership shall be construed as references to beneficial ownership;
 - (b) a company shall be deemed to be a subsidiary of another company if and so long as not less than three-quarters of its ordinary share capital is owned by that other company, whether directly or through another company or other companies, or partly directly and partly through another company or other companies;
 - (c) the amount of ordinary share capital of one company owned by a second company through another company or other companies, or partly directly and partly through another company or other companies, shall be determined in accordance with section 838(5) to (10); and
 - (d) where any company is a subsidiary of another company, that other company shall be considered as its parent company unless both are subsidiaries of a third company.
- (4) In determining, for the purposes of section 343, whether or to what extent a trade belongs at different times to the same persons, persons who are relatives of one another and the persons from time to time entitled to the income under any trust shall respectively be treated as a single person, and for this purpose “relative” means husband, wife, ancestor, lineal descendant, brother or sister.
- (5) For the purposes of section 343(4), relevant assets are—
- (a) assets which were vested in the predecessor immediately before it ceased to carry on the trade, which were not transferred to the successor and which, in a case where the predecessor was the predecessor on a previous application of section 343, were not by virtue of subsection (9) of that section apportioned to a trade carried on by the company which was the successor on that application; and
 - (b) consideration given to the predecessor by the successor in respect of the change of company carrying on the trade;
- and for the purposes of paragraph (b) above the assumption by the successor of any liabilities of the predecessor shall not be treated as the giving of consideration to the predecessor by the successor.
- (6) For the purposes of section 343(4), relevant liabilities are liabilities which were outstanding and vested in the predecessor immediately before it ceased to carry on the trade, which were not transferred to the successor and which, in a case where the predecessor was the predecessor on a previous application of section 343, were not by virtue of subsection (9) of that section apportioned to a trade carried on by the company which was the successor on that application; but a liability representing the predecessor’s share capital, share premium account, reserves or relevant loan stock is not a relevant liability.
- (7) For the purposes of section 343(4)—
- (a) the value of assets (other than money) shall be taken to be the price which they might reasonably be expected to have fetched on a sale in the open market immediately before the predecessor ceased to carry on the trade; and
 - (b) the amount of liabilities shall be taken to be their amount at that time.

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- (8) Where the predecessor transferred a liability to the successor but the creditor concerned agreed to accept settlement of part of the liability as settlement of the whole, the liability shall be treated for the purposes of subsection (6) above as not having been transferred to the successor except as to that part.
- (9) A liability representing the predecessor's share capital, share premium account, reserves or relevant loan stock shall, for the purposes of subsection (6) above, be treated as not doing so if, in the period of one year ending with the day on which the predecessor ceased to carry on the trade, the liability arose on a conversion of a liability not representing its share capital, share premium account, reserves or relevant loan stock.
- (10) Where a liability of the predecessor representing its relevant loan stock is not a relevant liability for the purposes of section 343(4) but is secured on an asset of the predecessor not transferred to the successor, the value of the asset shall, for the purposes of section 343(4), be reduced by an amount equal to the amount of the liability.
- (11) In this section "relevant loan stock" means any loan stock or similar security (whether secured or unsecured) except any in the case of which subsection (12) below applies.
- (12) This subsection applies where, at the time the liability giving rise to the loan stock or other security was incurred, the person who was the creditor was carrying on a trade of lending money.

Marginal Citations

M30 Source-1970 s.253; 1986 s.42, Sch.10 2

Status:

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