



Finance Act 1994

1994 CHAPTER 9

PART IV

INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

CHAPTER I

GENERAL

Securities

122 Sale and repurchase of securities: deemed manufactured payments.

After section 737 of the Taxes Act 1988 there shall be inserted the following sections—

“737A Sale and repurchase of securities: deemed manufactured payments.

(1) This section applies where on or after the appointed day a person (the transferor) agrees to sell any securities, and under the same or any related agreement the transferor or another person connected with him—

- (a) is required to buy back the securities, or
- (b) acquires an option, which he subsequently exercises, to buy back the securities;

but this section does not apply unless the conditions set out in subsection (2) below are fulfilled.

(2) The conditions are that—

- (a) as a result of the transaction, a dividend which becomes payable in respect of the securities is receivable otherwise than by the transferor,
- (b) the dividend is not, by virtue of any other provision of the Tax Acts, treated as income of the transferor,

Status: Point in time view as at 03/05/1994.

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- (c) there is no requirement under any agreement mentioned in subsection (1) above for a person to pay to the transferor on or before the relevant date an amount representative of the dividend, and
 - (d) it is reasonable to assume that, in arriving at the repurchase price of the securities, account was taken of the fact that the dividend is receivable otherwise than by the transferor.
- (3) For the purposes of subsection (2) above the relevant date is the date when the repurchase price of the securities becomes due.
- (4) Where it is a person connected with the transferor who is required to buy back the securities, or who acquires the option to buy them back, references in the following provisions of this section to the transferor shall be construed as references to the connected person.
- (5) Where this section applies, section 737 and Schedule 23A and dividend manufacturing regulations shall apply as if—
- (a) the relevant person were required, under the arrangements for the transfer of the securities, to pay to the transferor an amount representative of the dividend mentioned in subsection (2)(a) above,
 - (b) a payment were made by that person to the transferor in discharge of that requirement, and
 - (c) the payment were made on the date when the repurchase price of the securities becomes due.
- (6) In subsection (5) above “the relevant person” means—
- (a) where subsection (1)(a) above applies, the person from whom the transferor is required to buy back the securities;
 - (b) where subsection (1)(b) above applies, the person from whom the transferor has the right to buy back the securities;
- and in that subsection “dividend manufacturing regulations” means regulations under Schedule 23A (whenever made).

737B Interpretation of section 737A.

- (1) In section 737A and this section “securities” means United Kingdom equities, United Kingdom securities or overseas securities; and—
- (a) where the securities mentioned in section 737A(1) are United Kingdom securities, references in section 737A to a dividend shall be construed as references to a periodical payment of interest;
 - (b) where the securities mentioned in section 737A(1) are overseas securities, references in section 737A to a dividend shall be construed as references to an overseas dividend.
- (2) In this section “United Kingdom equities”, “United Kingdom securities”, “overseas securities” and “overseas dividend” have the meanings given by paragraph 1(1) of Schedule 23A.
- (3) For the purposes of section 737A agreements are related if each is entered into in pursuance of the same arrangement (regardless of the date on which either agreement is entered into).
- (4) In section 737A “the repurchase price of the securities” means—

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- (a) where subsection (1)(a) of that section applies, the amount which, under any agreement mentioned in section 737A(1), the transferor or connected person is required to pay for the securities bought back, or
 - (b) where subsection (1)(b) of that section applies, the amount which under any such agreement the transferor or connected person is required, if he exercises the option, to pay for the securities bought back.
- (5) In section 737A and subsection (4) above references to buying back securities include references to buying similar securities.
- (6) For the purposes of subsection (5) above securities are similar if they entitle their holders to the same rights against the same persons as to capital and interest and the same remedies for the enforcement of those rights, notwithstanding any difference in the total nominal amounts of the respective securities or in the form in which they are held or the manner in which they can be transferred; and “interest” here includes dividends.
- (7) For the purposes of section 737A and subsection (4) above—
 - (a) a person who is connected with the transferor and is required to buy securities sold by the transferor shall be treated as being required to buy the securities back notwithstanding that it was not he who sold them, and
 - (b) a person who is connected with the transferor and acquires an option to buy securities sold by the transferor shall be treated as acquiring an option to buy the securities back notwithstanding that it was not he who sold them.
- (8) Section 839 shall apply for the purposes of section 737A and this section.
- (9) In section 737A “the appointed day” means such day as the Treasury may by order appoint, and different days may be appointed in relation to—
 - (a) United Kingdom equities,
 - (b) United Kingdom securities, and
 - (c) overseas securities.

737C Deemed manufactured payments: further provisions.

- (1) This section applies where section 737A applies.
- (2) Subsection (3) below applies where—
 - (a) the dividend mentioned in section 737A(2)(a) is a dividend on United Kingdom equities, and
 - (b) by virtue of section 737A(5), section 737 and paragraph 2 of Schedule 23A apply, or paragraph 2 of Schedule 23A applies, in relation to the payment which is treated under section 737A(5) as having been made;and in subsection (3) below “the deemed manufactured dividend” means that payment.
- (3) Where this subsection applies—
 - (a) the amount of the deemed manufactured dividend shall be taken to be an amount equal to the amount of the dividend mentioned in section 737A(2)(a);

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- (b) the repurchase price of the securities shall be treated, for the purposes of the Tax Acts other than section 737A and of the 1992 Act, as increased by an amount equal to the gross amount of the deemed manufactured dividend.
- (4) In subsection (3) above the reference to the gross amount of the deemed manufactured dividend is to the aggregate of—
 - (a) the amount of the deemed manufactured dividend, and
 - (b) the amount of the tax credit that would have been issued in respect of the deemed manufactured dividend had the deemed manufactured dividend in fact been a dividend on the United Kingdom equities.
- (5) Subsection (6) below applies where—
 - (a) the dividend mentioned in section 737A(2)(a) is a periodical payment of interest on United Kingdom securities, and
 - (b) by virtue of section 737A(5), section 737 applies in relation to the payment which is treated under section 737A(5) as having been made; and in subsection (6) below “the deemed manufactured interest” means the payment referred to in paragraph (b) above.
- (6) Where this subsection applies, the amount of the deemed manufactured interest shall be taken to be an amount equal to the gross amount of the periodical payment referred to in subsection (5)(a) above reduced by an amount equal to income tax thereon at the basic rate for the year of assessment in which that periodical payment is made.
- (7) Subsection (8) below applies where—
 - (a) the dividend mentioned in section 737A(2)(a) is a periodical payment of interest on United Kingdom securities, and
 - (b) by virtue of section 737A(5), paragraph 3 of Schedule 23A applies in relation to the payment which is treated under section 737A(5) as having been made (whether or not section 737 also applies in relation to that payment); and in subsection (8) below “the deemed manufactured interest” means the payment referred to in paragraph (b) above.
- (8) Where this subsection applies—
 - (a) the gross amount of the deemed manufactured interest shall be taken to be the amount found under paragraph 3(4) of Schedule 23A;
 - (b) any deduction which, by v 3 of Schedule 23A, is required to be made out of the gross amount of the deemed manufactured interest shall be deemed to have been made.
- (9) Where subsections (6) and (8) above apply, or where subsection (8) above applies, the repurchase price of the securities shall be treated, for the purposes of the Tax Acts other than section 737A and of the 1992 Act, as increased by the gross amount of the deemed manufactured interest.
- (10) Subsection (11) below applies where—
 - (a) the dividend mentioned in section 737A(2)(a) is an overseas dividend, and

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(b) by virtue of section 737A(5), paragraph 4 of Schedule 23A applies in relation to the payment which is treated under section 737A(5) as having been made;

and in subsection (11) below “the deemed manufactured overseas dividend” means that payment.

(11) Where this subsection applies—

(a) the gross amount of the deemed manufactured overseas dividend shall be taken to be the amount found under paragraph 4(5)(b) and (c) of Schedule 23A;

(b) any deduction which, by virtue of paragraph 4 of Schedule 23A, is required to be made out of the gross amount of the deemed manufactured overseas dividend shall be deemed to have been made;

(c) the repurchase price of the securities shall be treated, for the purposes of the Tax Acts other than section 737A and of the 1992 Act, as increased by the gross amount of the deemed manufactured overseas dividend.

(12) In this section—

(a) “United Kingdom equities”, “United Kingdom securities” and “overseas dividend” have the meanings given by paragraph 1(1) of Schedule 23A;

(b) “the repurchase price of the securities” shall be construed in accordance with section 737B(4).”

123 Manufactured payments.

(1) In section 715 of the Taxes Act 1988 (exceptions from provisions about deemed sums and reliefs under the accrued income scheme) in subsection (6) (exceptions in certain cases where section 737 has effect) after “section 737” there shall be inserted “ or paragraph 3 or 4 of Schedule 23A ”.

(2) In Schedule 23A to the Taxes Act 1988 (manufactured dividends and interest) paragraph 5 (dividends and interest passing through the market) shall be amended as mentioned in subsections (3) to (5) below.

(3) In sub-paragraph (2) (dividend which manufactured payment represents not to be treated as income of the payment manufacturer) the word “and” at the end of paragraph (b) shall be omitted and at the end of paragraph (c) there shall be inserted “and

(d) relief shall not be given under any provision of the Tax Acts to the payment manufacturer in respect of the manufactured payment.”

(4) In sub-paragraph (4) (dividend which subsequent manufactured payment represents not to be treated as income of the subsequent manufacturer) the word “and” at the end of paragraph (b) shall be omitted and at the end of paragraph (c) there shall be inserted “and

(d) relief shall not be given under any provision of the Tax Acts to the payment manufacturer or any subsequent manufacturer in respect of the manufactured payment or any subsequent manufactured payment.”

(5) After sub-paragraph (6) there shall be inserted—

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“(7) In this paragraph “relief” means relief by way of—

- (a) deduction in computing profits or gains; or
- (b) deduction or set off against income or total profits.”

(6) Subsection (1) above shall apply where any of the contracts mentioned in section 715(6) of the Taxes Act 1988 is made on or after 30th November 1993.

(7) Subsections (2) to (5) above shall apply in relation to payments made on or after 30th November 1993.

124 Overseas dividend manufacturers: limitation of double taxation relief.

The following sub-paragraph shall be inserted after sub-paragraph (7) of paragraph 4 of Schedule 23A to the Taxes Act 1988—

“(7A) Dividend manufacturing regulations may provide that where a person who is an overseas dividend manufacturer is entitled to relief under Part XVIII (or would be apart from provision made under this sub-paragraph) and the circumstances are such as may be prescribed—

- (a) his entitlement shall be extinguished, or
- (b) if the regulations so provide, the amount of the relief shall be reduced to such extent as may be found in accordance with prescribed rules.”

Status:

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