

Status: Point in time view as at 19/03/1997.

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SCHEDULES

SCHEDULE 16 **U.K.**

Section 138.

FOREIGN INCOME DIVIDENDS

PART I **U.K.**

THE NEW CHAPTER

- 1 In Part VI of the Taxes Act 1988 (company distributions, tax credits etc.) the following Chapter shall be inserted after Chapter V—

“CHAPTER VA **U.K.**

FOREIGN INCOME DIVIDENDS

Election by company paying dividend

Election by company paying dividend.

- 246A(1) Where a company pays a dividend, the dividend shall be treated as a foreign income dividend for the purposes of this Chapter if the company elects for it to be so treated in accordance with this section and section 246B.
- (2) An election may not be made under this section as regards a dividend unless the dividend is paid, or to be paid, in cash.
- (3) An election may not be made under this section as regards a dividend which is paid, or to be paid, to a person by virtue of his holding a share in respect of which there are arrangements for the holder to choose whether, or in what form, dividends are to be paid; and the arrangements may be for the holder to choose to be paid a dividend by a company other than the one which issued the share.
- (4) Where at a given time—
- (a) a company pays one dividend in respect of each of two or more shares of the same class, and
 - (b) payment is on the same terms as respects all the shares involved,
- an election may not be made under this section as regards any of the dividends unless an election is made as regards each of the dividends.
- (5) Where at a given time—
- (a) a company pays two or more dividends in respect of each of two or more shares of the same class, and

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- (b) payment is on the same terms as respects all the shares involved, an election may not be made under this section as regards any one of the dividends in respect of a given share unless an election is also made as regards the corresponding dividend in respect of each of the other shares involved.
- (6) Subject to subsection (7) below, a company which has more than one class of share capital may not make an election under this section as regards any dividend.
- (7) In a case where—
- (a) a company has more than one class of share capital,
 - (b) at a given time the company pays a dividend in respect of each share of each such class, and
 - (c) all of those dividends are paid on the same terms,
- the company may elect that each of those dividends is to be treated as a foreign income dividend.
- (8) For the purposes of subsection (7) above a dividend is paid on the same terms as another dividend if the relevant proportion in the case of each dividend is the same; and the relevant proportion, in relation to a dividend, is the proportion which the amount of the dividend bears to the nominal value of the share in respect of which the dividend is paid.
- (9) For the purposes of subsections (6) and (7) above fixed-rate preference shares shall not be treated as constituting a class of share capital; and “fixed-rate preference shares” shall be construed in accordance with section 95(5).
- (10) Where an election is made under this section as regards a dividend in respect of which an election is in force under section 247(1)—
- (a) the election under this section shall have effect as if it were also a notice to the collector under section 247(3) stating that the paying company does not wish the election under section 247(1) to have effect in relation to the dividend as regards which the election under this section is made;
 - (b) if the election under this section is revoked, the revocation shall have effect as if it were also a revocation of the notice deemed by paragraph (a) above;
 - (c) the notice deemed by paragraph (a) above may not be revoked otherwise than as mentioned in paragraph (b) above;
 - (d) if the notice deemed by paragraph (a) above is revoked it shall be treated as never having been made.

Procedure for making election.

- 246B) An election under section 246A—
- (a) must be made by notice to the inspector;
 - (b) must be made not later than the time the dividend is paid;
 - (c) may be revoked by a further notice to the inspector before that time (without prejudice to the making of another election as regards the same dividend);
 - (d) cannot be revoked after the dividend is paid.

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- (2) A notice under subsection (1)(a) above must—
 - (a) identify the dividend in respect of which the election is made, and
 - (b) be in such form as the Board may require.
- (3) Where section 246A(4), (5) or (7) applies—
 - (a) the same notice must be used to elect as regards all the dividends concerned, and
 - (b) the notice may identify the dividends concerned, or any of them, by means of a general description.

Recipient of foreign income dividend

No tax credit for recipient.

246C Section 231(1) shall not apply where the distribution there mentioned is a foreign income dividend.

Individuals etc.

246D) Where a company pays a foreign income dividend in a case in which an individual is beneficially entitled to the dividend, that individual shall be treated as having received on the date of the payment income of an amount which, if reduced by an amount equal to income tax on that income at the lower rate for the year of assessment in which the date of the payment fell, would be equal to the amount of the dividend.

- (2) Where subsection (1) above applies—
 - (a) no assessment shall be made on the individual in respect of income tax at the lower rate on that income but he shall be treated as having paid tax at the lower 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;
 - (c) to the extent that it would not otherwise be so treated, that income shall be treated as income to which (without prejudice to paragraph (a) above) section 207A shall be taken to apply as it applies to income chargeable under Schedule F;
 - (d) that income shall be treated for the purposes of sections 348 and 349(1) as not brought into charge to income tax.
- (3) Where a company pays a foreign income dividend 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 the dividend, that individual would be treated under subsection (1) 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; and the preceding provisions of this subsection shall be construed as if they were contained in Part XVI.
- (4) Where a company pays a foreign income dividend to trustees and the dividend is income to which section 686 applies—

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- (a) there shall be ascertained the amount of income which, if the case had been one in which an individual was beneficially entitled to the dividend, that individual would be treated under subsection (1) above as having received;
 - (b) income of that amount shall be treated as having arisen to the trustees on the date of the payment and as if it had been chargeable to income tax at the lower rate;
 - (c) paragraphs (a) to (d) of subsection (2) 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 subsection (1) above.
- (5) Subsections (1) and (1A) of section 233 shall not apply where the distribution mentioned in either of those subsections is a foreign income dividend.

Companies: payments and receipts

Foreign income dividend not franked payment.

246E A foreign income dividend shall not constitute a distribution for the purposes of the definition of “franked payment” in section 238(1).

Calculation of ACT where company receives foreign income dividend.

- 246F) Where in any accounting period a company receives foreign income dividends, the company shall not be liable to pay advance corporation tax in respect of foreign income dividends paid by it in that period unless the amount of the foreign income dividends paid by it in that period exceeds the amount of the foreign income dividends received by it in that period.
- (2) If in an accounting period there is such an excess, advance corporation tax shall be payable on an amount equal to the excess.
 - (3) If the amount of foreign income dividends received by a company in an accounting period exceeds the amount of the foreign income dividends paid by it in that period the excess shall be carried forward to the next accounting period and treated for the purposes of this section (including any further application of this subsection) as foreign income dividends received by the company in that period.
 - (4) This section shall have effect subject to section 246T and paragraph 2(6) of Schedule 23A.
 - (5) Without prejudice to section 238(5), Schedule 13 shall apply for the purpose of regulating the manner in which effect is to be given to this section.

Information relating to foreign income dividends.

- 246G) Where section 234A applies by virtue of the fact that a foreign income dividend is paid by a company, references in that section to an appropriate statement shall be construed as references to a written statement—
- (a) in such form as the Board may require,

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- (b) showing the amount of the dividend paid,
 - (c) showing the date of the payment, and
 - (d) stating that the dividend carries no entitlement to a tax credit;
- and in such a case section 234A(7) shall not apply.
- (2) In a case where—
- (a) a requirement is imposed on a company under section 234A(2) or (3) in relation to a foreign income dividend paid by it, and
 - (b) the company fails to comply with the requirement,
- no election may be made by the company under section 246J or 246K as regards the dividend or any part of it.

Power of inspector to require information.

- 246H) This section applies where a return made by a company for a return period in accordance with Schedule 13 shows that the company has paid foreign income dividends in the period.
- (2) 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 to the dividends as he may reasonably require for the purposes of any enactment relating to foreign income dividends.
 - (3) Without prejudice to the generality of subsection (2) above, the notice may require information as to the persons to whom dividends are paid.XXXX

Foreign source profit and distributable foreign profit

Foreign source profit and distributable foreign profit.

- 246I) Where for an accounting period of a company there is any income, or any chargeable gain, in respect of which double taxation relief is afforded, then so much of that income or gain as forms part of the company's chargeable profits for the period is a foreign source profit of the company for the period.
- (2) Subsection (3) below applies where in the accounting period concerned there is any deduction to be made for charges on income, expenses of management or other amounts which can be deducted from or set against or treated as reducing profits of more than one description.
 - (3) In finding for the purposes of this section whether, or how much of, any income or gain forms part of the company's chargeable profits for the period the company may allocate the deduction in such amounts and to such of its profits for the period as it thinks fit.
 - (4) Where a company has a foreign source profit for an accounting period, such part of it as exceeds the relevant amount of tax is for the purposes of this Chapter a distributable foreign profit of the company for the period.
 - (5) Where the amount of foreign tax payable in respect of the foreign source profit exceeds the amount of corporation tax payable, before double taxation relief is afforded, in respect of that profit, the relevant amount of tax is the amount of foreign tax payable in respect of that profit.

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- (6) Where subsection (5) above does not apply, the relevant amount of tax is an amount equal to the aggregate of—
 - (a) the amount of foreign tax payable in respect of the foreign source profit, and
 - (b) the amount of corporation tax payable in respect of that profit after double taxation relief is afforded.
- (7) In this section “double taxation relief” means—
 - (a) relief under double taxation arrangements which takes the form of a credit allowed against corporation tax, or
 - (b) unilateral relief under section 790(1) which takes that form;
 and “double taxation arrangements” here means arrangements having effect by virtue of section 788.
- (8) References in this section to a company’s chargeable profits for an accounting period are to the amount of its profits for that period on which corporation tax falls finally to be borne; and section 238(4) shall apply for the purposes of this subsection.
- (9) For the purposes of this section foreign tax is any tax, imposed by the laws of a territory outside the United Kingdom, for which double taxation relief is afforded.
- (10) Section 788(5) shall apply for the purposes of this section.

Matching of dividend with distributable foreign profit

Matching of dividend with distributable foreign profit.

- 246(1) Where a company pays a foreign income dividend in an accounting period it may elect that the dividend (or part of it) shall be matched with (or with part of) a distributable foreign profit of the company; and subsections (2) to (6) below shall have effect with regard to matching.
- (2) Different parts of a dividend may be matched with different distributable foreign profits or parts; and different dividends, or parts of different dividends, may be matched with different parts of the same distributable foreign profit.
- (3) A foreign income dividend (or part of one) may be matched with a distributable foreign profit (or part of one) only if the amount of the distributable foreign profit or part is equal to the amount of the dividend or part.
- (4) Subject to subsection (5) below, where a company pays a foreign income dividend in a given accounting period the dividend (or part of it) may only be matched with (or with part of) a distributable foreign profit of the company for that period or for the accounting period immediately preceding it, but without the need to exhaust distributable foreign profits for one of those periods before taking those for the other period.
- (5) Where a company pays a foreign income dividend in a given accounting period the dividend (or part of it) may be matched with (or with part of) a

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distributable foreign profit of the company for any subsequent accounting period, but only if there is no amount of unmatched distributable foreign profit of the company for the given period and no such amount for the accounting period immediately preceding the given period.

- (6) Where a distributable foreign profit (or part of one) has been matched with a foreign income dividend (or part of one) it cannot be matched with another foreign income dividend or part.

Matching: subsidiaries.

246K~~I~~) This section applies where a company (the subsidiary) is a 51 per cent. subsidiary of another company (the parent); but this is subject to section 246L.

- (2) In a case where—

- (a) an accounting period of the subsidiary coincides with, or with part of, an accounting period of the parent, and
- (b) the subsidiary has a distributable foreign profit for its accounting period,

the whole of the profit is for the purposes of this section an eligible profit for the parent's accounting period.

- (3) In a case where—

- (a) part of an accounting period of the subsidiary coincides with, or with part of, an accounting period of the parent, and
- (b) the subsidiary has a distributable foreign profit for its accounting period,

then, to the extent of the appropriate fraction, the profit is for the purposes of this section an eligible profit for the parent's accounting period.

- (4) The appropriate fraction is one—

- (a) whose numerator is equal to the number of the days in the subsidiary's accounting period that coincide with days in the parent's accounting period, and
- (b) whose denominator is equal to the number of the days in the subsidiary's accounting period.

- (5) Where the parent pays a foreign income dividend in an accounting period it may elect that the dividend (or part of it) shall be matched with (or with part of) an eligible profit; and subsections (6) to (11) below shall have effect with regard to matching.

- (6) No election as to matching may be made unless the subsidiary gives its written consent in such form as the Board may require.

- (7) Different parts of a dividend may be matched with different eligible profits or parts; and different dividends, or parts of different dividends, may be matched with different parts of the same eligible profit.

- (8) A foreign income dividend (or part of one) may be matched with an eligible profit (or part of one) only if the amount of the eligible profit or part is equal to the amount of the dividend or part.

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- (9) Subject to subsection (10) below, where the parent pays a foreign income dividend in a given accounting period the dividend (or part of it) may only be matched with (or with part of) an eligible profit for that period or for the accounting period immediately preceding it, but without the need to exhaust eligible profits for one of those periods before taking those for the other period.
- (10) Where the parent pays a foreign income dividend in a given accounting period the dividend (or part of it) may be matched with (or with part of) an eligible profit for any subsequent accounting period, but only if there is no amount of unmatched eligible profit derived from the same subsidiary for the given period and no such amount for the accounting period immediately preceding the given period.
- (11) Where an eligible profit (or part of one) has been matched with a foreign income dividend (or part of one) it cannot be matched with another foreign income dividend or part.
- (12) References in this section to a company apply only to bodies corporate; and in determining for the purposes of this section whether one company is a 51 per cent. subsidiary of another company, 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 the 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.

Requirement as to subsidiaries.

- 246(1) Section 246K(5) does not apply unless the subsidiary is a 51 per cent. subsidiary of the parent throughout the relevant period (determined under subsection (3) or (4) below).
- (2) In this section “the payment period” means the accounting period of the parent in which it pays the dividend as regards which an election under section 246K is proposed.
- (3) If the proposed election involves only eligible profits deriving from an accounting period of the subsidiary coinciding with the payment period, the relevant period is the payment period.
- (4) In any other case the relevant period is one that—
 - (a) begins with the beginning of the payment period or (if earlier) the beginning of the first or only relevant accounting period of the subsidiary, and
 - (b) ends with the end of the payment period or (if later) the end of the last or only relevant accounting period of the subsidiary.
- (5) For the purposes of subsection (4) above a relevant accounting period of the subsidiary is an accounting period of the subsidiary for which there is a distributable foreign profit which—
 - (a) is (as to the whole or part) an eligible profit, and

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- (b) would, under the proposed election, be to any extent matched with the dividend as regards which the election is proposed.
- (6) Section 246K(12) shall apply in determining for the purposes of this section whether the subsidiary is a 51 per cent. subsidiary of the parent at any given time.

Matching: further provisions.

246M) Where a parent elects under section 246K as regards an eligible profit for an accounting period, the following rules shall have effect for the purposes of this Chapter—

- (a) to the extent provided for in the election, the eligible profit shall be treated as a separate distributable foreign profit of the parent for the parent's accounting period and as matched;
 - (b) the distributable foreign profit mentioned in section 246K(2)(b) or (3)(b) shall be treated as reduced accordingly or (depending on the circumstances) as extinguished;
 - (c) the foreign source profit of which the distributable foreign profit mentioned in section 246K(2)(b) or (3)(b) forms a part shall be treated as correspondingly divided between the parent and the subsidiary or (depending on the circumstances) as a foreign source profit of the parent alone for its accounting period.
- (2) Where an election is made under section 246J or 246K with regard to anything which is or represents a distributable foreign profit of a subsidiary (or part of such a profit) no further election can be made with regard to it under the other section.

Repayment or set-off of advance corporation tax

ACT to be repaid or set off against corporation tax liability.

246N) This section and section 246Q apply where—

- (a) a company pays a foreign income dividend in an accounting period (the relevant period), and
 - (b) the company does not treat itself as an international headquarters company at any time in the period by virtue of section 246S(9).
- (2) In a case where—
- (a) the company pays an amount of advance corporation tax in respect of qualifying distributions actually made by it in the relevant period,
 - (b) the amount, or part of it, is available to be dealt with under this section, and
 - (c) there is as regards the company an amount of notional foreign source advance corporation tax for the relevant period,

an amount of the advance corporation tax paid shall be repaid to the company, or set off, or partly repaid and partly set off, in accordance with this section and section 246Q.

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- (3) In the following provisions of this section “the relevant advance corporation tax” means the advance corporation tax paid as mentioned in subsection (2) (a) above.
- (4) The amount of the relevant advance corporation tax to be repaid or (as the case may be) set off, or partly repaid and partly set off, is whichever of the following is smaller—
- (a) so much of the relevant advance corporation tax as is available to be dealt with under this section;
 - (b) so much of the relevant advance corporation tax as is equal to the amount which is, as regards the company, the amount of notional foreign source advance corporation tax for the relevant period (found under section 246P).
- (5) So much of the relevant advance corporation tax as remains after deducting the aggregate of the deductible amounts is available to be dealt with under this section; and each of the following is a deductible amount—
- (a) an amount equal to so much (if any) of the relevant advance corporation tax as has been repaid;
 - (b) an amount equal to so much (if any) of the relevant advance corporation tax as has been set off against the company’s corporation tax liability for the relevant period under section 239(1) or, if there is—
 - (i) any amount of advance corporation tax from a preceding accounting period,
 - (ii) any amount of surrendered advance corporation tax, or
 - (iii) any amount of advance corporation tax from a succeeding accounting period,
 as would have been so set off if there had been no amounts as mentioned in sub-paragraphs (i) to (iii) above;
 - (c) an amount equal to so much (if any) of the relevant advance corporation tax as has been dealt with under section 239(3);
 - (d) an amount equal to so much (if any) of the relevant advance corporation tax as is advance corporation tax the benefit of which has been surrendered by the company under section 240;
 - (e) an amount equal to so much (if any) of the relevant advance corporation tax as has been set off against the company’s corporation tax liability for the relevant period by virtue of the previous application of this section and section 246Q.
- (6) For the purposes of subsection (5)(b) above—
- (a) advance corporation tax from a preceding accounting period is advance corporation tax which by virtue of section 239(4) is treated for the purposes of section 239 as paid by the company in respect of distributions made by it in the relevant period;
 - (b) surrendered advance corporation tax is advance corporation tax which by virtue of section 240 is so treated;
 - (c) advance corporation tax from a succeeding accounting period is advance corporation tax which by virtue of section 239(3) is so treated;

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and in applying subsection (5)(b) above in a case where there is any amount as mentioned in subsection (5)(b)(i) to (iii), it shall be assumed that the company would not have surrendered the benefit of any of the relevant advance corporation tax under section 240.

- (7) No amount shall be repaid or set off under this section and section 246Q unless the company makes a claim for the purpose.

Notional foreign source advance corporation tax.

246P(1) As regards the company mentioned in section 246N(1), the amount of notional foreign source advance corporation tax for the relevant period is the amount of advance corporation tax which—

- (a) the company would have paid in respect of distributions made by it in the relevant period, and
- (b) would not have been set off against the company's corporation tax liability for the relevant period under section 239(1),

on the assumptions mentioned in subsection (2) below.

- (2) The assumptions are that—

- (a) the qualifying foreign income dividends were the only distributions made by the company in the relevant period,
- (b) no distributions were received (or treated for the purposes of section 246F as received) by the company in the relevant period,
- (c) no amounts of advance corporation tax were by virtue of section 239(3) or (4) or section 240 treated for the purposes of section 239 as having been paid in respect of distributions made by the company in the relevant period,
- (d) the benefit of the advance corporation tax paid in respect of distributions made by the company in the relevant period was not surrendered under section 240;
- (e) the company's profits for the relevant period on which corporation tax fell finally to be borne consisted of the matched foreign source profits and no other profits, and
- (f) the amount of corporation tax charged in respect of a matched foreign source profit actually arising in an accounting period other than the relevant period was found by reference to—
 - (i) the rate of foreign tax, within the meaning given by section 246I(9), actually chargeable in respect of the profit (having regard to the time when it arose), and
 - (ii) the rate of corporation tax that would have applied had the profit arisen in the relevant period.

- (3) A foreign income dividend is a qualifying foreign income dividend if—

- (a) it is a matched foreign income dividend paid by the company in the relevant period, and
- (b) the company has elected for it to be a qualifying foreign income dividend.

- (4) A foreign income dividend the whole of which is, at the material time, matched with the whole or part of a distributable foreign profit of the company is a matched foreign income dividend.

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- (5) Where there is a foreign income dividend only part of which is at the material time matched as mentioned in subsection (4) above, the part of the dividend which at that time is so matched shall be treated for the purposes of this section as a separate dividend and, accordingly, as a matched foreign income dividend.
- (6) The company may elect that matched foreign income dividends paid by it in the relevant period are qualifying foreign income dividends only if the amount found under paragraph (a) of subsection (7) below exceeds the amount found under paragraph (b) of that subsection; and where there is such an excess the election may only be made as regards matched foreign income dividends whose total amount is the same as or less than the amount of the excess.
- (7) The amounts referred to in subsection (6) above are—
- (a) the total amount of foreign income dividends paid by the company in the relevant period (other than excluded dividends);
 - (b) the total amount of foreign income dividends received (or treated for the purposes of section 246F as received) by the company in the relevant period;
- and for the purposes of this subsection an excluded dividend is a foreign income dividend which by virtue of section 246G(2) is not capable of being matched.
- (8) A matched foreign source profit is a foreign source profit of which a matched distributable foreign profit forms part; and for the purposes of this subsection “a matched distributable foreign profit” means a distributable foreign profit of the company the whole or part of which is, at the material time, matched with a qualifying foreign income dividend, or with part of such a dividend, or with different such dividends or parts.
- (9) Where the matched foreign source profit is a foreign source profit of which a partly matched distributable foreign profit forms part, for the purposes of any calculation required by subsections (1) and (2) above the amount of the matched foreign source profit shall be taken to be reduced by an amount which bears to the full amount of the matched foreign source profit the same proportion as the unmatched part of the distributable foreign profit bears to the amount of the distributable foreign profit.
- (10) For the purposes of subsection (9) above—
- (a) “a partly matched distributable foreign profit” means a distributable foreign profit of the company part of which is not, at the material time, matched as mentioned in subsection (8) above, and
 - (b) “the unmatched part of the distributable foreign profit” shall be construed accordingly.
- (11) For the purposes of this section—
- (a) “the relevant period” shall be construed in accordance with section 246N(1);
 - (b) “the material time” means the time at which the claim mentioned in section 246N(7) is made.

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- (12) References in this section to matching shall be construed in accordance with sections 246J to 246M.
- (13) Section 238(4) shall apply for the purposes of this section.

Repayment or set-off: supplementary.

246Q Subsections (2) and (3) below shall have effect to determine whether the amount which is the smaller of the amounts found under section 246N(4) is to be repaid, set off, or partly repaid and partly set off.

- (2) If at the time when it falls to be determined whether the amount mentioned in subsection (1) above is to be repaid or set off—
 - (a) advance corporation tax paid (or treated for the purposes of section 239 as paid) by the company in respect of distributions made by it in the relevant period has so far as possible been set against its liability to corporation tax for the period under section 239(1), but
 - (b) the company's liability to corporation tax for the period is to any extent undischarged,

the amount mentioned in subsection (1) above shall so far as possible be set off against the company's liability to corporation tax for the relevant period (and an amount of that liability equal to the amount so set off shall accordingly be discharged); and any excess of the amount mentioned in subsection (1) above over the amount so set off shall be repaid.

- (3) Where paragraph (a) of subsection (2) above applies but paragraph (b) of that subsection does not, the whole of the amount mentioned in subsection (1) above shall be repaid.
- (4) No amount shall be repayable under section 246N and this section until the expiry of nine months from the end of the relevant period.
- (5) An amount of advance corporation tax which has been dealt with under section 246N and this section—
 - (a) shall not be set off under section 239(1) against the company's liability to corporation tax for any accounting period;
 - (b) shall not be available for the purposes of a claim under section 240.
- (6) A return made by the company for the relevant period under section 11 of the Management Act, or an amendment of such a return, shall be treated as a claim for the purposes of section 246N and this section if the return or (as the case may be) the amendment contains such particulars as the inspector may require.
- (7) A claim for those purposes which is not made by means of a return under section 11 of the Management Act, or by means of an amendment of such a return, shall be supported by such particulars as the inspector may require.
- (8) In a case where—
 - (a) a claim is made under section 246N and this section, and
 - (b) by virtue of the claim, an amount of advance corporation tax is repaid or set off which has already been set off by virtue of section 239(4) against the company's corporation tax liability for an

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accounting period falling after the accounting period to which the claim relates,

the set-off by virtue of section 239(4) of that amount shall be treated for the purposes of section 252 as if it ought not to have been made.

- (9) In determining for the purposes of subsection (8) above whether an amount repaid or set off by virtue of a claim under section 246N and this section is an amount which has already been set off against the company's corporation tax liability for an accounting period, amounts of advance corporation tax repaid or set off by virtue of that claim shall be treated as having been set off against that liability only after any other amounts of advance corporation tax that were capable of being set off against that liability have been taken into account.
- (10) Where section 252 applies by virtue of this section the reference in subsection (5) of that section to the Management Act shall be treated as not including a reference to section 34 of that Act.
- (11) In this section "the relevant period" shall be construed in accordance with section 246N(1).

Supplementary claims.

246R1) This section applies where—

- (a) a claim is made under sections 246N and 246Q, and
 - (b) at any time after the claim is made the company makes an election under section 246J(5) or 246K(10) matching profits with dividends paid in the accounting period to which the claim relates.
- (2) The company may as regards that accounting period make a further claim under sections 246N and 246Q (a supplementary claim) so as to take account of the election.
 - (3) Subsections (5) and (6) below shall apply in determining for the purposes of the supplementary claim the amount of notional foreign source advance corporation tax for the accounting period to which that claim relates.
 - (4) In subsections (5) and (6) below a "previously counted dividend" means a foreign income dividend (or part of one) which was included in an election made by the company under section 246P for the purposes of an earlier claim as regards the accounting period (and which, accordingly, was treated as a qualifying foreign income dividend for those purposes).
 - (5) In applying section 246P for the purposes of the supplementary claim, a previously counted dividend shall be treated as not being a qualifying foreign income dividend notwithstanding the election mentioned in subsection (4) above; and the company may not include the previously counted dividend in any further election made under section 246P for the purposes of the supplementary claim.
 - (6) In relation to an election which the company proposes to make under section 246P for the purposes of the supplementary claim, section 246P(6) shall have effect as if for the reference to matched foreign income dividends whose total amount is the same as or less than the amount of the excess there mentioned there were substituted a reference to matched foreign income

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dividends whose total amount, when added to the total amount of the previously counted dividends, gives an amount which is equal to or less than the amount of that excess.

- (7) A company may make more than one supplementary claim as regards any accounting period.

International headquarters companies

International headquarters companies.

246(1) For the purposes of this Chapter a company is an international headquarters company in an accounting period if—

- (a) at least one of the first three conditions (set out in subsections (2) to (5) below) is fulfilled, and
 - (b) the fourth condition (set out in subsection (7) below) is fulfilled; but the fourth condition need not be fulfilled if the second condition is fulfilled.
- (2) The first condition is that—
- (a) the company is wholly owned by another company throughout the accounting period, and
 - (b) that other company is a foreign held company in the accounting period.
- (3) The second condition is that—
- (a) the company is wholly owned by another company throughout the accounting period,
 - (b) that other company is not resident in the United Kingdom at any time in the accounting period,
 - (c) throughout the accounting period, and the period of 12 months immediately preceding it, the shares in that other company are quoted in the official list of a recognised stock exchange other than a stock exchange in the United Kingdom,
 - (d) at a time falling within the accounting period or the period of 12 months immediately preceding it, shares in that other company have been the subject of dealings on a recognised stock exchange other than a stock exchange in the United Kingdom, and
 - (e) throughout the accounting period, and the period of 12 months immediately preceding it, the shares in that other company are not quoted in the official list of a recognised stock exchange in the United Kingdom;

but this is subject to subsection (8) below.

- (4) For the purposes of subsection (3)(e) above, shares that (apart from this subsection) would be regarded as quoted in the official list of a recognised stock exchange shall be regarded as not being so quoted if the issuer of the shares is not subject, in relation to them, to the full requirements applicable by virtue of listing rules to the listing of shares on that exchange; and in this subsection “listing rules” shall be construed in accordance with section 142(6) of the Financial Services Act 1986.

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- (5) The third condition is that—
- (a) at each given time in the accounting period each shareholder of the company owns at least 5 per cent. of the company's share capital, and
 - (b) the test mentioned in subsection (6) below is satisfied.
- (6) The test is that at each given time in the accounting period at least 80 per cent. of the company's share capital is owned by—
- (a) persons who are not companies and who are not resident in the United Kingdom at any time in the accounting period,
 - (b) companies which are foreign held companies in the accounting period, or
 - (c) persons falling within paragraph (a) above and companies falling within paragraph (b) above.
- (7) The fourth condition is that at each given time in the accounting period not more than 20 per cent. of the company's ordinary share capital is ultimately owned by persons who are not companies and are resident in the United Kingdom; and where any shares are not directly owned by a person who is not a company their ultimate ownership shall be found by tracing ownership through any corporate holders to persons who are not companies on such basis as is reasonable.
- (8) Notwithstanding subsection (3) above, the second condition shall also be treated as fulfilled in relation to a company (the company concerned) and an accounting period if—
- (a) the company concerned is throughout the accounting period wholly owned by another company, and that other company is throughout the period wholly owned by a company which satisfies the conditions set out in subsection (3)(b) to (e) above,
 - (b) there are two or more companies (intermediary companies) which throughout the accounting period beneficially own between them all the share capital of the company concerned, and there is another company which throughout the period wholly owns all the intermediary companies and which satisfies the conditions set out in subsection (3)(b) to (e) above, or
 - (c) there are two or more companies (relevant companies) which throughout the accounting period beneficially own between them all the share capital of the company concerned, and one of the relevant companies is a company which throughout the period wholly owns all the other relevant companies and which satisfies the conditions set out in subsection (3)(b) to (e) above;
- and in determining for the purposes of this subsection whether a particular company satisfies the conditions set out in subsection (3)(b) to (e) above, references in subsection (3)(b) to (e) to "that other company" shall be construed as references to that particular company.
- (9) Where a company pays a foreign income dividend, for the purposes of this Chapter it may treat itself as an international headquarters company if—
- (a) in the company's opinion it is likely to be an international headquarters company in the accounting period in which the dividend is paid, and

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- (b) in a case where the dividend is paid in the company's second accounting period or a subsequent accounting period, it is an international headquarters company in the immediately preceding accounting period;
- and for the purposes of paragraph (a) above the company's opinion held at the time the dividend is paid is to be taken.
- (10) For the purposes of this section a company is a foreign held company in an accounting period if—
- (a) at each given time in the accounting period at least 80 per cent. of the company's share capital is owned by persons who are not resident in the United Kingdom at any time in the accounting period, or
- (b) throughout the accounting period the company is wholly owned by another company and at each given time in the accounting period at least 80 per cent. of that other company's share capital is owned by persons who are not resident in the United Kingdom at any time in the accounting period.
- (11) For the purposes of this section a company wholly owns another company if the first company is the beneficial owner of all the share capital of the second company.
- (12) For the purposes of this section the question whether a person owns a particular percentage of a company's share capital at a particular time shall be determined by—
- (a) assuming that a general meeting of the company is held at that time;
- (b) taking the number of votes carried by the company's share capital and capable of being cast at such a meeting;
- (c) taking the number of those votes capable of being so cast by the person concerned by virtue of the company's share capital beneficially owned by him;
- (d) expressing the number found under paragraph (c) above as a percentage of the number found under paragraph (b) above;
- (e) taking the percentage found under paragraph (d) above as the percentage of the company's share capital owned by that person at that time.
- (13) Subsection (12) above shall not apply for the purposes of subsection (7) above; and in subsection (7) references to ownership shall be construed as references to beneficial ownership.

Liability to pay ACT displaced.

246(II) This section applies where—

- (a) a company pays a foreign income dividend in an accounting period, and
- (b) at the time it pays the dividend the company treats itself as an international headquarters company by virtue of section 246S(9).
- (2) The company shall not be liable to pay advance corporation tax in respect of the dividend.
- (3) This section shall have effect subject to section 246V.

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Settlement of liability by IHC as to ACT.

246(1) This section applies where—

- (a) at any time when it pays a dividend in an accounting period a company treats itself as an international headquarters company by virtue of section 246S(9), and
 - (b) the company is an international headquarters company in the accounting period.
- (2) If amount A exceeds amount B, the company shall be liable to pay an amount equal to the excess as if the amount were advance corporation tax payable in respect of a distribution made by the company in the last return period falling within the accounting period; and “return period” here has the same meaning as in Schedule 13.
- (3) If amount B exceeds amount A, an amount equal to the excess shall be paid to the company in accordance with this section; and the payment shall be treated as if it were a repayment of advance corporation tax which—
- (a) was paid by the company in respect of distributions made by it in the accounting period, and
 - (b) falls to be repaid under sections 246N and 246Q.
- (4) Amount A is the total amount of the advance corporation tax which by virtue of section 246T and paragraph 3A of Schedule 13 the company is not liable to pay, and has not paid, in respect of dividends paid by it in the accounting period.
- (5) Amount B is the amount (if any) of the advance corporation tax which would be required to be repaid, or set off, or partly repaid and partly set off, under sections 246N and 246Q if the company—
- (a) had not treated itself as an international headquarters company at any time in the accounting period, and
 - (b) had, at the expiry of nine months from the end of the accounting period, made a claim as regards the accounting period in accordance with sections 246N and 246Q.
- (6) Where an amount of advance corporation tax actually paid by the company in respect of qualifying distributions made by it in the accounting period has been dealt with under section 239(3), or the benefit of such an amount has been surrendered under section 240, in applying section 246N(5)(c) and (d) by virtue of subsection (5) above it shall be assumed that an equivalent amount of advance corporation tax would have been so dealt with or (as the case may be) that the benefit of an equivalent amount of advance corporation tax would have been so surrendered.
- (7) No amount shall be paid under subsection (3) above unless the company makes a claim for payment; and—
- (a) a return made by the company for the accounting period under section 11 of the Management Act, or
 - (b) an amendment of such a return,
- shall be treated as a claim for payment if the return or (as the case may be) the amendment contains such particulars as the inspector may require.

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- (8) A claim which is not made by means of a return under section 11 of the Management Act, or by means of an amendment of such a return, shall be supported by such particulars as the inspector may require.
- (9) No amount shall be payable under subsection (3) above until the expiry of nine months from the end of the accounting period.

Settlement of liability by non-IHC as to ACT.

246W(1) This section applies where—

- (a) at any time when it pays a dividend in an accounting period a company treats itself as an international headquarters company by virtue of section 246S(9), and
 - (b) the company is not an international headquarters company in the accounting period.
- (2) Section 246T shall not apply, and shall be treated as never having applied, as regards the dividend.
 - (3) Sections 246N and 246Q shall apply as if the company had not treated itself as an international headquarters company at any time in the period by virtue of section 246S(9).

Payments and repayments where further matching takes place.

246W(2) Subsection (2) below applies where—

- (a) a company pays an amount under section 246U(2) as regards an accounting period,
 - (b) the company makes an election under section 246J(5) or 246K(10) matching profits with dividends paid in that accounting period, and
 - (c) had the election been made before the relevant time, the company would not have been required to pay some or all of the amount mentioned in paragraph (a) above.
- (2) The company shall be entitled to repayment of so much of the amount mentioned in subsection (1)(a) above as it would not have been required to pay if the election had been made before the relevant time.
 - (3) Subsection (4) below applies where—
 - (a) a company either pays an amount under section 246U(2) as regards an accounting period or is paid an amount under section 246U(3) as regards the period,
 - (b) the company makes an election under section 246J(5) or 246K(10) matching profits with dividends paid in that accounting period, and
 - (c) had the election been made before the relevant time, the company would have been entitled under section 246U(3) to be paid an amount which was not in fact paid to it.
 - (4) The company shall be entitled to payment of the amount mentioned in subsection (3)(c) above.

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- (5) Any repayment under subsection (2) above shall (without prejudice to section 246U(2)) be treated as if it were a repayment of advance corporation tax which—
- (a) was paid by the company in respect of a distribution made by it in the last return period falling within the accounting period mentioned in subsection (1) above, and
 - (b) falls to be repaid under sections 246N and 246Q.
- (6) In relation to a repayment under subsection (2) above which by virtue of subsection (5) above is treated as a repayment of advance corporation tax, the material date for the purposes of section 826 shall be the date when advance corporation tax in respect of distributions made by the company in the return period mentioned in subsection (5) above became (or, as the case may be, would have become) due and payable; and accordingly subsection (2A) of section 826 shall not apply in relation to the repayment.
- (7) Any payment under subsection (4) above shall be treated as if it were a repayment of advance corporation tax which—
- (a) was paid by the company in respect of distributions made by it in the accounting period mentioned in subsection (3) above, and
 - (b) falls to be repaid under sections 246N and 246Q.
- (8) Subsections (7) and (8) of section 246U shall apply in relation to payments and repayments under this section as they apply in relation to payments under section 246U(3).
- (9) For the purposes of this section—
- (a) “the relevant time” means the expiry of nine months from the end of the accounting period mentioned in subsection (1) or (3) above;
 - (b) “return period” has the same meaning as in Schedule 13.

Adjustments

Adjustments where profits or foreign tax altered.

- 246X~~L~~) This section applies where a company is paid or repaid an amount under any provision of this Chapter, or sets off under any such provision an amount against a liability of the company to corporation tax, and either—
- (a) there is any alteration of the profits of a company for an accounting period which renders the payment or repayment, or the amount set off, excessive or insufficient, or
 - (b) there is any alteration of an amount of tax payable under the laws of a territory outside the United Kingdom which renders the payment or repayment, or the amount set off, excessive or insufficient.
- (2) Where there is any such alteration as is mentioned in subsection (1) above the company may revise any election made under section 246J or 246K or 246P in such manner as is just and reasonable having regard to the alteration.
- (3) Where there is any such alteration as is mentioned in subsection (1) above, then such adjustments shall be made of any calculation required by this Chapter as are just and reasonable having regard to the alteration and to any

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revision made under subsection (2) above; and payments or repayments shall be made accordingly.

Application of this Chapter

Application of this Chapter.

246Y This Chapter shall have effect in relation to—

- (a) any dividend paid on or after 1st July 1994;
- (b) any foreign source profit consisting of income for, or a chargeable gain for, an accounting period beginning on or after 1st July 1993.”

PART II U.K.

LIABILITY FOR AND COLLECTION OF ADVANCE CORPORATION TAX

- 2 In section 14 of the Taxes Act 1988 (advance corporation tax and qualifying distributions) in subsection (3) for the words “section 241” there shall be substituted “sections 241 and 246F”.
- 3 (1) Schedule 13 to the Taxes Act 1988 (collection of advance corporation tax) shall be amended as follows.
 - (2) In paragraph 1 (duty to make returns) for sub-paragraph (1) there shall be substituted—

“(1) A company shall for each of its accounting periods make, in accordance with this Schedule, returns to the collector of—

 - (a) the franked payments made and franked investment income received by it in that period,
 - (b) the foreign income dividends paid and foreign income dividends received by it in that period, and
 - (c) the advance corporation tax (if any) payable by it in respect of the franked payments made and foreign income dividends paid by it in that period;

and references in this Schedule to foreign income dividends shall be construed in accordance with Chapter VA of this Part.”
 - (3) In paragraph 1, for sub-paragraph (4) there shall be substituted—

“(4) Subject to paragraphs 4(2), 4A(2) and 7(3) below, no return need be made under this Schedule by a company for any period in which it has—

 - (a) made no franked payments, and
 - (b) paid no foreign income dividends.”
 - (4) In paragraph 2 (contents of return) for sub-paragraph (1) there shall be substituted—

“(1) Subject to paragraphs 7(2), 3A(2) and 9A(2) below, the return made by a company for any return period shall show—

 - (a) the amount of the franked payments, if any, made by it in that period,

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- (b) the amount of franked investment income, if any, received by it in that period,
- (c) if any advance corporation tax is payable in respect of the franked payments, the amount thereof,
- (d) the amount of the foreign income dividends, if any, paid by it in that period,
- (e) the amount of the foreign income dividends, if any, received by it in that period, and
- (f) if any advance corporation tax is payable in respect of the foreign income dividends paid, the amount thereof.”

(5) In paragraph 2, after sub-paragraph (4) there shall be inserted—

“(5) For the purposes of paragraph (e) of sub-paragraph (1) above the amount of foreign income dividends received by a company in a return period shall be treated as including the excess, if any, of—

- (a) any amount carried forward under section 246F(3) to the accounting period for which the return is made, and
- (b) any amount of foreign income dividends received by the company in that accounting period but before the beginning of the return period,

over the amount of any foreign income dividends paid by the company in that accounting period but before the beginning of the return period.

(6) For the purposes of paragraph (f) of sub-paragraph (1) above advance corporation tax shall be payable in respect of foreign income dividends paid in a return period if—

- (a) the amount shown under paragraph (d) of that sub-paragraph exceeds the amount shown under paragraph (e) of that sub-paragraph, or
- (b) no amount is shown under paragraph (e) of that sub-paragraph;

and the amount of that tax shall be calculated at the rate of advance corporation tax in force for the financial year in which the return period ends on an amount equal to that excess or, if no amount is shown under sub-paragraph (1)(e) above, to the amount shown under sub-paragraph (1)(d) above.”

(6) In paragraph 3 (payment of tax)—

- (a) in sub-paragraph (1) after the words “franked payments” there shall be inserted “ and foreign income dividends ”, and
- (b) in sub-paragraph (3) after the words “franked payment” there shall be inserted “ or foreign income dividend ”.

(7) After paragraph 3 there shall be inserted—

International headquarters companies

“3A (1) This paragraph and paragraph 3B below apply where—

- (a) a company pays a foreign income dividend in a return period, and
- (b) at the time it pays the dividend the company treats itself as an international headquarters company by virtue of section 246S(9).

(2) The return made by the company for the return period—

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- (a) shall state that the company has so treated itself;
 - (b) shall show the basis on which it has so treated itself;
 - (c) shall not include the amount of the dividend in the amount shown under paragraph 2(1)(d) above;
 - (d) shall state separately that the dividend was paid and show its amount.
- (3) The dividend shall be treated for the purposes of section 246F(1) and (2), paragraph 2(5) above and paragraph 4A below as if it had not been paid.
- “3B (1) Without prejudice to paragraph 3 above, if at any time before the end of the accounting period in which the return period mentioned in paragraph 3A(1) above falls the inspector is not satisfied that there was a reasonable basis for the company treating itself as mentioned in paragraph 3A(1) he may make an assessment on the company to the best of his judgment; and any advance corporation tax due under an assessment made by virtue of this sub-paragraph shall be treated for the purposes of interest on unpaid tax as having been payable at the time when it would have been payable if the company had not so treated itself.
- (2) Where an assessment which takes account of the dividend mentioned in paragraph 3A(1) above is made under sub-paragraph (1) above, then, subject to any appeal—
- (a) the company shall be deemed for the purposes of Chapter VA of this Part not to have treated itself as an international headquarters company by virtue of section 246S(9) at the time it paid the dividend;
 - (b) paragraph 3A(3) above shall not apply to the dividend.
- (3) In a case where—
- (a) the company is not an international headquarters company in the accounting period in which the return period mentioned in paragraph 3A(1) above falls, and
 - (b) as regards any relevant return period amount X exceeds amount Y, after the end of the accounting period the inspector may make an assessment on the company for an amount of advance corporation tax equal to the excess; and a relevant return period is a return period falling within the accounting period in question.
- (4) For the purposes of sub-paragraph (3) above—
- (a) amount X is the amount of advance corporation tax which, if the company had not treated itself as an international headquarters company at any time in the accounting period and had made a return for the relevant return period under paragraph 2 above accordingly, would have been payable by the company in respect of the relevant return period under paragraph 2(6) above;
 - (b) amount Y is the aggregate of the amounts mentioned in sub-paragraph (5) below.
- (5) The amounts referred to in sub-paragraph (4)(b) above are—
- (a) the amount (if any) of advance corporation tax which was in fact payable by the company under paragraph 2(6) above in respect of the relevant return period,

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- (b) any amount of advance corporation tax to which the company has been assessed under sub-paragraph (1) above in respect of that period, and
 - (c) any amount of advance corporation tax to which the company has been assessed under paragraph 3 above in respect of that period and which is attributable to foreign income dividends.
- (6) Any advance corporation tax due under an assessment made by virtue of sub-paragraph (3) above shall be treated for the purposes of interest on unpaid tax as having been payable at the time when it would have been payable if the company had not treated itself as an international headquarters company at any time in the accounting period.”
- (8) In paragraph 4 (receipt of franked investment income after payment of advance corporation tax) in sub-paragraph (2) after the words “any franked payments” there shall be inserted “, or paid any foreign income dividends, ”.
- (9) After paragraph 4 there shall be inserted—

Receipt of foreign income dividends after payment of advance corporation tax

“4A (1) This paragraph shall have effect where—

- (a) a return has been made of foreign income dividends paid in any return period falling within an accounting period and advance corporation tax has been paid in respect of those dividends, and
 - (b) the company receives foreign income dividends after the end of the return period but before the end of the accounting period.
- (2) The company shall make a return under paragraph 1 above for the return period in which the foreign income dividends are received whether or not it has made any franked payments, or paid any foreign income dividends, in that period, and, subject to sub-paragraphs (3) to (5) below, shall be entitled to repayment of any advance corporation tax paid (and not repaid) in respect of foreign income dividends paid in the accounting period in question.
- (3) If no foreign income dividends were paid by the company in the return period for which a return is made by virtue of sub-paragraph (2) above (the relevant return period), the amount of the repayment shall not exceed the amount which would have been payable under paragraph 2 above as regards the relevant return period if the company—
- (a) had paid in the period foreign income dividends of an amount equal to the foreign income dividends actually received by it in the period and had paid in the period no other foreign income dividends or franked payments, and
 - (b) had received in the period no foreign income dividends or franked investment income.
- (4) If at least one foreign income dividend was paid by the company in the relevant return period and the amount of the foreign income dividends received by it in the period exceeds the amount of the foreign income dividends paid by it in the period, the amount of the repayment shall not exceed the amount which would have been payable under paragraph 2 above as regards the relevant return period if the company—

Status: Point in time view as at 19/03/1997.

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- (a) had paid in the period foreign income dividends of an amount equal to the foreign income dividends actually received by it in the period and had paid in the period no other foreign income dividends or franked payments, and
 - (b) had received in the period foreign income dividends of an amount equal to the foreign income dividends actually paid by it in the period and had received in the period no other foreign income dividends or franked investment income.
- (5) If at least one foreign income dividend was paid by the company in the relevant return period and the amount of the foreign income dividends paid by it in the period exceeds the amount of the foreign income dividends received by it in the period, the company shall not be entitled to a repayment under this paragraph as regards the relevant return period.”
- (10) After paragraph 6 there shall be inserted—

Claims for set-off in respect of foreign income dividends received by a company

- “6A (1) Where under paragraph 2 or 4A above foreign income dividends received by a company fall to be taken into account in determining—
- (a) whether advance corporation tax is payable or repayable, or
 - (b) the amount of such tax which is payable or repayable,
- the inclusion of the foreign income dividends in the appropriate return shall be treated as a claim by the company to have them so taken into account, and any such claim shall be supported by such evidence as the inspector may reasonably require.
- (2) Paragraph 6 above shall apply in relation to a claim under this paragraph as it applies in relation to a claim under paragraph 5 above.”
- (11) In paragraph 7 (qualifying distributions which are not payments and payments of uncertain nature) in sub-paragraph (3) for the words from “and if” to “that period” there shall be substituted “ and if in that period no franked payment (apart from that distribution or payment) is made and no foreign income dividend is paid ”.
- (12) After paragraph 9 there shall be inserted—

Manufactured foreign income dividends

- “9A (1) This paragraph applies in any case where, by virtue of paragraph 2(2) and (6) of Schedule 23A, a company is treated as having paid a foreign income dividend.
- (2) No amount shall be shown under paragraph 2(1)(d) above in respect of the dividend which is treated as having been paid, but the company’s return for the return period in which the dividend is treated as having been paid shall state separately that it was treated as paid and shall show its amount.”
- (13) This paragraph shall have effect in relation to any return period ending after 30th June 1994.

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PART III U.K.

INSURANCE COMPANIES ETC.

- 4 In section 431(2) of the Taxes Act 1988 (interpretative provisions relating to insurance companies) the following shall be inserted after the definition of “closing liabilities”—
- ““foreign income dividends” shall be construed in accordance with Chapter VA of Part VI;”.
- 5 (1) Section 434 of the Taxes Act 1988 (franked investment income etc.) shall be amended as follows.
- ^{F1}(2)
- ^{F1}(3)
- (4) The following subsections shall be inserted after subsection (3A)—
- “(3B) The policy holders’ share of foreign income dividends received in respect of investments held in connection with a company’s life assurance business shall be left out of account in determining, under subsection (7) of section 13, the foreign income dividends forming part of the company’s profits for the purposes of that section.
- (3C) The policy holders’ share of any income or chargeable gain arising in respect of investments held in connection with a company’s life assurance business shall be left out of account in ascertaining any foreign source profit of the company for the purposes of Chapter VA of Part VI.
- (3D) The policy holders’ share of foreign income dividends received in respect of investments held in connection with a company’s life assurance business shall be left out of account in ascertaining, for the purposes of sections 246F(1) and (3) and Schedule 13, the amount of the foreign income dividends received by the company.”
- (5) In subsection (6A) the word “and” at the end of paragraph (a) shall be omitted and after that paragraph there shall be inserted—
- “(aa) “the policy holders’ share” of any foreign income dividends is so much of the income they represent as is not the shareholders’ share within the meaning of that section,
- (ab) “the policy holders’ share” of any income (other than franked investment income) is so much of that income as is not the shareholders’ share within the meaning of that section,
- (ac) “the policy holders’ share” of any chargeable gain is so much of that gain as is equal to the amount that, if the gain were income, would not be the shareholders’ share within the meaning of that section, and”.

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Textual Amendments

F1 Sch. 16 para. 5(2)(3) repealed (1.5.1995 with effect in accordance with Sch. 8 para. 57 of the repealing Act) by 1995 c. 4, s. 162, Sch. 29 Pt. VIII(5), Note 2 (with Sch. 8 paras. 55(2), 57(1))

- 6 (1) Section 438 of the Taxes Act 1988 (pension business: exemption from tax) shall be amended as follows.
- (2) The following subsection shall be inserted after subsection (3)—
- “(3AA) Subject to subsection (6B) below, the exclusion by section 208 from the charge to corporation tax of foreign income dividends shall not prevent such dividends being taken into account as part of the profits in computing under section 436 income from pension business.”
- (3) In subsection (6) the words from “being” to “that profit,” shall be omitted.
- (4) The following subsections shall be inserted after subsection (6A)—
- “(6B) If for any accounting period there is, apart from this subsection, a profit arising to an insurance company from pension business and computed under section 436, and the company so elects as respects all or any part of the relevant foreign income dividends arising to it in that period, subsection (3AA) above shall not apply to the foreign income dividends to which the election relates.
- (6C) In subsection (6B) above “relevant foreign income dividends” means the shareholders’ share of foreign income dividends within subsection (1) above; and for this purpose “the shareholders’ share” of any foreign income dividends is so much of the income they represent as is the shareholders’ share within the meaning of section 89 of the Finance Act 1989.
- (6D) If in the same accounting period both relevant franked investment income and relevant foreign income dividends arise to the company—
- (a) only one election may be made under subsections (6) and (6B) above;
- (b) the election may be made as regards both relevant franked investment income and relevant foreign income dividends (subject to paragraph (c) below);
- (c) the election may not be made as regards relevant foreign income dividends unless the election is made as regards all the company’s relevant franked investment income arising in the period.
- (6E) Where an election is made under one or both of subsections (6) and (6B) above, the elected amount must not exceed the amount of the profit which (apart from the election) arises to the company for the accounting period from pension business and is computed under section 436; and the elected amount is—
- (a) the amount of franked investment income to which the election relates (where the election is made under subsection (6) alone);
- (b) the amount of the foreign income dividends to which the election relates (where the election is made under subsection (6B) alone);

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- (c) the aggregate amount of the franked investment income and the foreign income dividends to which the election relates (where the election is made under subsections (6) and (6B)).”
- (5) In subsection (7) for “subsection (6) above” there shall be substituted “ this section ”.
- 7 In section 458 of the Taxes Act 1988 (capital redemption business) in subsection (2) (a) after “income of” there shall be inserted “ , and foreign income dividends arising to, ”.
- 8 (1) Section 802 of the Taxes Act 1988 (UK insurance companies trading overseas) shall be amended as follows.
- (2) In subsection (2)(a) after “franked investment income” there shall be inserted “ , foreign income dividends ”.
- (3) The following subsection shall be inserted after subsection (3)—
- “(4) In this section “foreign income dividends” shall be construed in accordance with Chapter VA of Part VI.”
- 9 (1) Section 89 of the ^{M1}Finance Act 1989 (policy holders’ share of profits) shall be amended as follows.
- (2) In subsection (2) after paragraph (b) there shall be inserted “, and
- (c) the shareholders’ share of any foreign income dividends arising to the company in the period in respect of investments held in connection with the business.”
- (3) The following subsection shall be inserted after subsection (2)—
- “(2A) For the purposes of subsection (2) above—
- (a) “foreign income dividends” shall be construed in accordance with Chapter VA of Part VI;
- (b) the shareholders’ share of any foreign income dividends is so much of the income they represent as is the shareholders’ share.”

Marginal Citations

M1 1989 c. 26.

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PART IV U.K.

OTHER PROVISIONS

Penalties

- 10 In the first column of the Table in section 98 of the ^{M2}Taxes Management Act 1970 (penalties for failure to furnish particulars etc.) the following entry shall be inserted after the entry relating to section 234 of the principal Act— “ section 246H; ”.

Marginal Citations

M2 1970 c. 9.

Small companies' relief

- 11 (1) Section 13 of the Taxes Act 1988 (small companies' relief) shall be amended as follows.
- (2) In subsection (7) (definition of profits for purposes of small companies' relief) after “companies within the group” there shall be inserted “ and with the addition of foreign income dividends arising to the company ”.
- (3) The following subsection shall be inserted after subsection (8)—
- “(8A) In this section “foreign income dividends” shall be construed in accordance with Chapter VA of Part VI.”

Expenses of management

- 12 (1) Section 75 of the Taxes Act 1988 (expenses of management: investment companies) shall be amended as follows.
- (2) In subsection (2) after “franked investment income,” there shall be inserted “ foreign income dividends, ”.
- (3) The following subsection shall be inserted after subsection (5)—
- “(6) In this section “foreign income dividends” shall be construed in accordance with Chapter VA of Part VI.”

Group income

- 13 In section 247 of the Taxes Act 1988 (dividends etc. paid by one member of a group to another) the following subsection shall be inserted after subsection (5)—
- “(5A) Subsections (1) to (3) above shall not apply to foreign income dividends; and “foreign income dividends” shall be construed in accordance with Chapter VA of Part VI.”

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Mutual business etc.

- 14 (1) Section 490 of the Taxes Act 1988 (companies carrying on a mutual business or not carrying on a business) shall be amended as follows.
- (2) In subsection (1) after “(including group income)” there shall be inserted “ or out of foreign income dividends ”.
- (3) In subsection (4) after “franked investment income” there shall be inserted “ or foreign income dividends ”.
- (4) The following subsection shall be inserted after subsection (4)—
- “(5) In this section “foreign income dividends” shall be construed in accordance with Chapter VA of Part VI.”

Discretionary trusts

- 15 In section 687 of the Taxes Act 1988 (payments under discretionary trusts) in subsection (3) the following paragraph shall be inserted after paragraph (aa)—
- “(aaa) the amount of tax at a rate equal to the difference between the lower rate and the rate applicable to trusts on any sum treated, under section 246D(4), as income of the trustees;” and in paragraph (a) of that subsection after “(aa)” there shall be inserted “, (aaa)”.

Personal representatives

- 16 In section 701 of the Taxes Act 1988 (interpretation of Part XVI) in subsection (8) (meaning of aggregate income) before “249(5),” there shall be inserted “ 246D(3), ”.

Purchase and sale of securities

- 17 (1) Section 731 of the Taxes Act 1988 (application and interpretation of provisions relating to purchase and sale of securities) shall be amended as follows.
- (2) In subsection (9), in the definition of “interest” the words from “and in applying” to the end of paragraph (b) shall be omitted.
- (3) The following subsections shall be inserted after subsection (9)—
- “(9A) In applying references in the relevant provisions to interest in relation to a qualifying distribution other than a foreign income dividend—
- (a) “gross interest” means the qualifying distribution together with the tax credit to which the recipient of the distribution is entitled in respect of it, and
- (b) “net interest” means the qualifying distribution exclusive of any such tax credit.

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- (9B) In applying references in the relevant provisions to interest in relation to a foreign income dividend paid in circumstances where section 246D(1), (3) or (4) applies—
- (a) “gross interest” means the amount of the income arrived at under section 246D(1) by reference to the dividend, and
 - (b) “net interest” means the dividend.
- (9C) Where a foreign income dividend is paid in circumstances other than those where section 246D(1), (3) or (4) applies—
- (a) in applying section 735(2) in relation to the dividend the words “the gross amount corresponding with” shall be disregarded, and
 - (b) in applying references in the relevant provisions (including section 735(2)) to interest in relation to the dividend “net interest” means the dividend.
- (9D) In this section “foreign income dividend” shall be construed in accordance with Chapter VA of Part VI.”

Manufactured dividends

F²18

Textual Amendments

F2 Sch. 16 para. 18 repealed (19.3.1997 with effect as mentioned in Sch. 10 para. 7(1), Sch. 18 Pt. VI(10), Note 1 of the repealing Act) by 1997 c. 16, s. 113, Sch. 18 Pt. VI(10); S.I. 1997/991, art. 2

F³19

Textual Amendments

F3 Sch. 16 para. 19 repealed (19.3.1997 with effect as mentioned in Sch. 10 para. 7(1), Sch. 18 Pt. VI(10), Note 1 of the repealing Act) by 1997 c. 16, s. 113, Sch. 18 Pt. VI(10); S.I. 1997/991, art. 2

Interest on tax overpaid

- 20 (1) Section 826 of the Taxes Act 1988 shall be amended as follows.
- (2) In subsection (1) the following paragraph shall be inserted after paragraph (a)—
- “(aa) a repayment falls to be made under sections 246N and 246Q of advance corporation tax paid by a company in respect of distributions made by it in such an accounting period; or”.
- (3) The following subsection shall be inserted after subsection (2)—
- “(2A) In relation to advance corporation tax paid by a company in respect of distributions made by it in an accounting period, the material date for the purposes of this section is the date on which corporation tax for that accounting period became (or, as the case may be, would have become) due and payable in accordance with section 10.”

Status:

Point in time view as at 19/03/1997.

Changes to legislation:

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