



Finance Act 1997

1997 CHAPTER 16

PART V

INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

Double taxation relief

90 Restriction of relief for underlying tax

(1) After section 801 of the Taxes Act 1988 there shall be inserted the following section—

“801A Restriction of relief for underlying tax

- (1) This section applies where—
- (a) a company resident in the United Kingdom (“the United Kingdom company”) makes a claim for an allowance by way of credit in accordance with this Part;
 - (b) the claim relates to underlying tax on a dividend paid to that company by a company resident outside the United Kingdom (“the overseas company”);
 - (c) that underlying tax is or includes an amount in respect of tax (“the high rate tax”) payable by—
 - (i) the overseas company, or
 - (ii) such a third, fourth or successive company as is mentioned in section 801,at a rate in excess of the relievable rate; and
 - (d) the whole or any part of the amount in respect of the high rate tax which is or is included in the underlying tax would not be, or be included in, that underlying tax but for the existence of, or for there having been, an avoidance scheme.

Status: This is the original version (as it was originally enacted).

- (2) Where this section applies, the amount of the credit to which the United Kingdom company is entitled on the claim shall be determined as if the high rate tax had been tax at the relievable rate, instead of at a rate in excess of that rate.
- (3) For the purposes of this section tax shall be taken to be payable at a rate in excess of the relievable rate if, and to the extent that, the amount of that tax exceeds the amount that would represent tax on the relevant profits at the relievable rate.
- (4) In subsection (3) above “the relevant profits”, in relation to any tax, means the profits of the overseas company or, as the case may be, of the third, fourth or successive company which, for the purposes of this Part, are taken to bear that tax.
- (5) In this section “the relievable rate” means the rate of corporation tax in force when the dividend mentioned in subsection (1)(b) above was paid.
- (6) In this section “an avoidance scheme” means any scheme or arrangement which—
 - (a) falls within subsection (7) below; and
 - (b) is a scheme or arrangement the purpose, or one of the main purposes, of which is to have an amount of underlying tax taken into account on a claim for an allowance by way of credit in accordance with this Part.
- (7) A scheme or arrangement falls within this subsection if the parties to it include both—
 - (a) the United Kingdom company, a company related to that company or a person connected with the United Kingdom company; and
 - (b) a person who was not under the control of the United Kingdom company at any time before the doing of anything as part of, or in pursuance of, the scheme or arrangement.
- (8) In this section “arrangement” means an arrangement of any kind, whether in writing or not.
- (9) Section 839 (meaning of “connected persons”) applies for the purposes of this section.
- (10) Subsection (5) of section 801 (meaning of “related company”) shall apply for the purposes of this section as it applies for the purposes of that section.
- (11) For the purposes of this section a person who is a party to a scheme or arrangement shall be taken to have been under the control of the United Kingdom company at all the following times, namely—
 - (a) any time when that company would have been taken (in accordance with section 416) to have had control of that person for the purposes of Part XI;
 - (b) any time when that company would have been so taken if that section applied (with the necessary modifications) in the case of partnerships and unincorporated associations as it applies in the case of companies; and

- (c) any time when that person acted in relation to that scheme or arrangement, or any proposal for it, either directly or indirectly under the direction of that company.”
- (2) This section has effect in relation to dividends paid to a company resident in the United Kingdom at any time on or after 26th November 1996.