



Finance Act 1999

1999 CHAPTER 16

PART III

INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

Advance pricing agreements and CFCs

85 Advance pricing agreements etc

- (1) This section applies in relation to any chargeable period where—
- (a) the Board have made a written agreement with any person (“the taxpayer”);
 - (b) the agreement relates to one or more of the matters mentioned in subsection (2) below and to that chargeable period;
 - (c) the agreement is one made as a consequence of an application by the taxpayer to the Board for the clarification by agreement of the effect in the taxpayer’s case of provisions by reference to which questions relating to any one or more of those matters fall, or might fall, to be determined; and
 - (d) the agreement contains a declaration that it is an agreement made for the purposes of this section.
- (2) Those matters are—
- (a) the attribution of income to a branch or agency through which the taxpayer has been carrying on a trade in the United Kingdom, or is proposing so to carry on a trade;
 - (b) the attribution of income to any permanent establishment of the taxpayer (wherever situated) through which he has been carrying on, or is proposing to carry on, any business;
 - (c) the extent to which income which has arisen or may arise to the taxpayer is to be taken for any purpose to be income arising in a country or territory outside the United Kingdom;
 - (d) the treatment for tax purposes of any provision made or imposed (whether before or after the date of the agreement) as between the taxpayer and any associate of his;

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- (e) the treatment for tax purposes of any provision made or imposed (whether before or after the date of the agreement) as between a ring fence trade carried on by the taxpayer and any other activities so carried on.
- (3) Subject to the following provisions of this section and to section 86 below, the Tax Acts shall have effect in the taxpayer's case as if questions relating to the matters mentioned in subsection (2) above were, to the extent provided for in the agreement, to be determined in accordance with the agreement, and without reference to the provisions in accordance with which they would otherwise have fallen to be determined.
- (4) In the case of so much of any question as—
- (a) relates to any matter mentioned in paragraph (d) or (e) of subsection (2) above, and
 - (b) is not comprised in a question falling within another paragraph of that subsection,
- the provisions reference to which is capable of being excluded under subsection (3) above by an agreement made for the purposes of this section shall be confined to those contained in Schedule 28AA to the Taxes Act 1988 (transfer pricing rules).
- (5) Any such application to the Board as is mentioned in subsection (1)(c) above must set out—
- (a) the taxpayer's understanding of what would, in his case, be the effect, in the absence of any agreement, of the provisions in relation to which clarification is sought;
 - (b) the respects in which it appears to the taxpayer that clarification is required in relation to those provisions; and
 - (c) how the taxpayer proposes that matters should be clarified in a manner consistent with the understanding mentioned in paragraph (a) above.
- (6) For the purposes of this section two persons are associates, in relation to provision made or imposed as between them if, within the meaning of Schedule 28AA to the Taxes Act 1988—
- (a) one of them is directly or indirectly participating, at the time of the making or imposition of the provision, in the management, control or capital of the other; or
 - (b) the same person or persons is or are, at that time, directly or indirectly participating in the management, control or capital of each of the two persons;
- and, in the case of provision made or imposed by or in relation to the terms of any sale of oil (within the meaning of paragraph 9 of that Schedule), two persons shall also be treated as associates for the purposes of this section wherever sub-paragraph (2) of that paragraph would require them for the purposes of that Schedule to be treated in relation to that provision as falling within paragraph (b) above.
- (7) In this section "ring fence trade", in relation to the taxpayer, means any activities which—
- (a) are carried on by the taxpayer as, or as part of, a trade; and
 - (b) in accordance with section 492(1) of the Taxes Act 1988 (tax treatment of oil extraction activities), either—
 - (i) fall to be treated for tax purposes as a separate trade, distinct from all other activities carried on by the taxpayer; or
 - (ii) would so fall if the taxpayer did carry on any other activities as part of that trade.

- (8) This section applies in relation to any chargeable period ending on or after the day on which this Act is passed but only if the agreement is one made on or after that day and in relation to that period.

86 Provisions supplementary to s. 85

- (1) The chargeable periods in relation to which provision may be made by a section 85 agreement include periods ending before the making of the agreement.
- (2) An agreement shall not have effect in accordance with section 85(3) above in relation to any determination of a question which—
- (a) relates to a time after a time as from which an officer of the Board has revoked the agreement in accordance with its terms;
 - (b) relates to a time after or in relation to which there has been a failure by a party to the agreement to comply with any provision of the agreement compliance with which is, under the terms of the agreement, to be a condition of its having effect; or
 - (c) relates to any matter as respects which any other conditions which, by the terms of the agreement, are to be conditions of its having effect have not been, or are no longer, satisfied.

- (3) Where—
- (a) there is a section 85 agreement between the Board and any person, and
 - (b) there is a mutual agreement made under and for the purposes of any double taxation arrangements which is not consistent with the terms of the section 85 agreement,

it shall be the duty of the Board to ensure that all such modifications of the section 85 agreement are made (whether in exercise of powers conferred on the Board by that agreement or otherwise) as may be necessary for enabling effect to be given to the mutual agreement in relation to the subject-matter of the section 85 agreement.

- (4) It shall be the duty of any person who is a party to a section 85 agreement to provide the Board from time to time with all such reports and other information as he may be required to provide under the agreement or by virtue of any request made by an officer of the Board in accordance with the terms of the agreement.

- (5) Where—
- (a) the Board and any person have purported to enter into a section 85 agreement at any time,
 - (b) before that time, that person fraudulently or negligently provided the Board with information which was false or misleading,
 - (c) that information was so provided for or in connection with the application to the Board for the making of the agreement or otherwise in connection with its preparation, and
 - (d) the Board have notified that person that the agreement is nullified by reason of the misrepresentation,

the agreement shall be deemed never to have been made.

- (6) Any provision of a section 85 agreement that provides for the modification or revocation of that agreement by the Board, or by an officer of the Board, may provide for the modification or revocation to take effect as from such time (including a time

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before the modification is made or the agreement revoked) as the Board or officer may determine.

- (7) Where a section 85 agreement—
- (a) relates to a chargeable period beginning or ending before the making of the agreement, and
 - (b) provides for the manner in which adjustments are to be made for tax purposes in consequence of that agreement,
- the adjustments shall be made for those purposes in the manner provided for in the agreement.
- (8) A person shall be liable to a penalty not exceeding £10,000 if he fraudulently or negligently makes any false or misleading statement to the Board or an officer of the Board either—
- (a) for or in connection with any application to the Board for them to enter into a section 85 agreement; or
 - (b) otherwise in connection with the preparation of such an agreement.
- (9) In section 98 of the Taxes Management Act 1970 (penalties in connection with returns etc.), in the second column of the table, after the final entry there shall be inserted the following entry—

“Section 86(4) of the Finance Act 1999.”

- (10) In this section—
- “double taxation arrangements” means any arrangements having effect under or by virtue of section 788 of the Taxes Act 1988 (double taxation agreements); and
 - “section 85 agreement” means an agreement made for the purposes of section 85 above.

87 Effect of section 85 agreements on non-parties

- (1) This section applies where—
- (a) any agreement made for the purposes of section 85 above has effect in relation to any provision (“the actual provision”) made or imposed as between any person (“the taxpayer”) and another (“the other party”); and
 - (b) section 85(3) above has the effect in the taxpayer’s case of requiring a question relating to the actual provision to be determined in accordance with the agreement rather than by reference to rules which would otherwise be applicable by virtue of Schedule 28AA to the Taxes Act 1988.
- (2) Paragraphs 6 and 7 of Schedule 28AA to the Taxes Act 1988 (relief from double counting in the case of disadvantaged persons) shall have effect in the other party’s case on the assumption that any question falling within subsection (3) below is to be determined, to the same extent as in the taxpayer’s case, by reference to the agreement.
- (3) Those questions are—
- (a) whether the taxpayer is a person on whom a potential advantage in relation to United Kingdom taxation is conferred by the actual provision; and
 - (b) what constitutes the arm’s length provision in relation to the actual provision.

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- (4) Subsection (2) above shall have effect subject to any agreement made for the purposes of section 85 above between the Board and the other party.
- (5) Section 111 of the Finance Act 1998 (notice to persons who may be entitled to claim as disadvantaged persons) shall have effect as if the assumptions referred to in subsection (1)(b) of that section included any assumptions falling to be made by virtue of the agreement.

88 Controlled foreign companies

- (1) In Schedule 25 to the Taxes Act 1988 (cases where section 747(3) does not apply), after sub-paragraph (1A) of paragraph 2 (acceptable distribution policy) there shall be inserted the following sub-paragraph—

“(1B) A dividend paid by a company shall not fall within sub-paragraph (1)(d) above if, and to the extent that, the profits which are the relevant profits in relation to the dividend derive from dividends or other distributions paid to the company at any time which are dividends or other distributions—

- (a) to which section 208 applied; or
- (b) to which that section would have applied if the company had been resident in the United Kingdom at that time.

Subsections (3) and (4) of section 799 (double taxation relief: computation of underlying tax) apply for the purposes of this sub-paragraph as they apply for the purposes of subsection (1) of that section.”

- (2) Subsection (1) above applies for the purpose of determining whether dividends paid on or after 9th March 1999 for accounting periods ending on or after that date fall within sub-paragraph (1)(d) of paragraph 2 of that Schedule.