



# Finance Act 2001

## 2001 CHAPTER 9

### PART 3

#### INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

### CHAPTER 2

#### OTHER PROVISIONS

#### *Miscellaneous*

#### **85 Deduction of tax: payments between companies etc**

- (1) After section 349 of the Taxes Act 1988 (certain payments to be made under deduction of tax) insert—

#### **“349A Exceptions to section 349 for payments between companies etc**

- (1) The provisions specified in subsection (3) below (which require tax to be deducted on making certain payments) do not apply to a payment made by a company if, at the time the payment is made, the company reasonably believes that one of the conditions specified in section 349B is satisfied.
- (2) Subsection (1) above has effect subject to any directions under section 349C.
- (3) The provisions are—  
section 349(1) (certain annuities and other annual payments, and royalties and other sums paid for use of UK patents),  
section 349(2)(a) and (b) (UK interest),  
section 349(3A) (dividend or interest on securities issued by building societies), and

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section 524(3)(b) (which provides for section 349(1) to apply to proceeds of sale of UK patent rights).

- (4) References in subsection (3) above to any provision of section 349 do not include that provision as applied—
- (a) under section 777(9) (directions applying section 349(1) to certain payments to non-residents), or
  - (b) by paragraph 4(2) of Schedule 23A (manufactured overseas dividends to be treated as annual payments within section 349).
- (5) References in this section to the company by which a payment is made do not include a company acting as trustee or agent for another person.
- (6) For the purposes of this section, a payment by a partnership is treated as made by a company if any member of the partnership is a company.

**349B The conditions mentioned in section 349A(1)**

- (1) The first of the conditions mentioned in section 349A(1) is that the person beneficially entitled to the income in respect of which the payment is made is—
- (a) a company resident in the United Kingdom, or
  - (b) a partnership each member of which is a company resident in the United Kingdom.
- (2) The second of those conditions is that—
- (a) the person beneficially entitled to the income in respect of which the payment is made is a company not resident in the United Kingdom (“the non-resident company”),
  - (b) the non-resident company carries on a trade in the United Kingdom through a branch or agency, and
  - (c) the payment falls to be brought into account in computing the chargeable profits (within the meaning given by section 11(2)) of the non-resident company.

**349C Directions disapplying section 349A(1)**

- (1) The Board may give a direction to a company directing that section 349A(1) is not to apply in relation to any payment that—
- (a) is made by the company after the giving of the direction, and
  - (b) is specified in the direction or is of a description so specified.
- (2) Such a direction shall not be given unless the Board have reasonable grounds for believing as respects each payment to which the direction relates that it is likely that neither of the conditions specified in section 349B will be satisfied in relation to the payment at the time the payment is made.
- (3) A direction under this section may be varied or revoked by a subsequent such direction.
- (4) In this section “company” includes a partnership of which any member is a company.

### **349D Section 349A(1): consequences of reasonable but incorrect belief**

(1) Where—

- (a) a payment is made by a company without an amount representing the income tax on the payment being deducted from the payment,
- (b) at the time the payment is made, the company reasonably believes that one of the conditions specified in section 349B is satisfied,
- (c) if the company did not so believe, tax would be deductible from the payment under section 349, and
- (d) neither of the conditions specified in section 349B is satisfied at the time the payment is made,

section 350 applies as if the payment were within section 349 (and Schedule 16 applies as if tax were deductible from the payment under section 349).

(2) In this section “company” includes a partnership of which any member is a company.”.

(2) In section 98 of the Taxes Management Act 1970 (c. 9) (penalties for failing to make, or making incorrectly, certain returns etc.), after subsection (4) insert—

“(4A) If—

- (a) a failure to comply with section 350(1) of, or Schedule 16 to, the principal Act arises from a person’s failure to deliver an account, or show the amount, of a payment, and
- (b) the payment is within subsection (4B) below,

subsection (1) above shall have effect as if for “£300” there were substituted “£3,000” and as if for “£60” there were substituted “£600”.

(4B) A payment is within this subsection if—

- (a) the payment is made by a company without an amount representing the income tax on the payment being deducted from the payment,
- (b) at the time the payment is made, the company—
  - (i) does not believe that either of the conditions specified in section 349B of the principal Act is satisfied, or
  - (ii) where it believes that either of those conditions is satisfied, could not reasonably so believe,
- (c) the payment is one from which tax is deductible under section 349 of the principal Act unless the company reasonably believes that one of those conditions is satisfied, and
- (d) neither of those conditions is satisfied at the time the payment is made.

(4C) In subsection (4B) above “company” includes a partnership of which any member is a company.”.

(3) In section 338(4) of the Taxes Act 1988 (when payment by company to non-resident to be treated as charge on income), after paragraph (a) insert—

- “(aa) the person beneficially entitled to the income in respect of which the payment is made is a company not resident in the United Kingdom (“the non-resident company”), the non-resident company carries on a trade in the United Kingdom through a branch or agency and the

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payment falls to be brought into account in computing the chargeable profits (within the meaning given by section 11(2)) of the non-resident company, or”.

- (4) Subsections (1) to (3) apply to payments made on or after 1st April 2001.
- (5) Sections 247 and 248 of the Taxes Act 1988 (companies within a group may elect for section 349 not to apply to payments between them) shall cease to have effect.
- (6) Subsection (5) applies in relation to payments made after the day on which this Act is passed.