# Income Tax (Trading and Other Income) Act 2005

**2005 CHAPTER 5**

## PART 4

SAVINGS AND INVESTMENT INCOME

## CHAPTER 4

DIVIDENDS FROM NON-UK RESIDENT COMPANIES

*Charge to tax on dividends from non-UK resident companies*

### 402 Charge to tax on dividends from non-UK resident companies

(1) Income tax is charged on dividends of a non-UK resident company.

(2) For exemptions, see in particular section 770 (amounts applied by SIP trustees acquiring dividend shares or retained for reinvestment).

(3) Subsection (1) is also subject to section 498 of ITEPA 2003 (no charge on shares ceasing to be subject to SIP in certain circumstances).

(4) In this Chapter "dividends" does not include dividends of a capital nature.

### 403 Income charged

(1) Tax is charged under this Chapter on the [F1]... amount of the dividends arising in the tax year.

(2) Subsection (1) is subject to—

section 406(2) and (3) (later charge where cash dividends retained in SIPs are paid over), section 407(3) (dividend payment when dividend shares cease to be subject to SIP), and

Part 8 (foreign income: special rules).

**Textual Amendments**

**F1** Word in s. 403(1) omitted (with effect in accordance with s. 34(2) of the amending Act) by virtue of Finance Act 2008 (c. 9), **Sch. 12 para. 18**

### 404 Person liable

(1) The person liable for any tax charged under this Chapter is the person receiving or entitled to the dividends.

(2) Subsection (1) is subject to—

section 406(4) (later charge where cash dividends retained in SIPs are paid over), and

section 407(4) (dividend payment when dividend shares cease to be subject to SIP).

### [F2 404A Distributions in a winding up

(1) For the purposes of this Chapter, a distribution made to an individual in respect of share capital in a winding up of a non-UK resident company is a dividend of the company if—

(a) Conditions A to D are met, and

(b) the distribution is not excluded (see subsection (7)).

(2) Condition A is that, immediately before the winding up, the individual has at least a 5% interest in the company.

(3) Condition B is that the company—

(a) is a close company when it is wound up, or

(b) was a close company at any time in the period of two years ending with the start of the winding up.

(4) Condition C is that, at any time within the period of two years beginning with the date on which the distribution is made—

(a) the individual carries on a trade or activity which is the same as, or similar to, that carried on by the company or an effective 51% subsidiary of the company,

(b) the individual is a partner in a partnership which carries on such a trade or activity,

(c) the individual, or a person connected with him or her, is a participator in a company in which he or she has at least a 5% interest and which at that time—

(i) carries on such a trade or activity, or

(ii) is connected with a company which carries on such a trade or activity, or

(d) the individual is involved with the carrying on of such a trade or activity by a person connected with the individual.

(5) Condition D is that it is reasonable to assume, having regard to all the circumstances, that—

(a) the main purpose or one of the main purposes of the winding up is the avoidance or reduction of a charge to income tax, or

(b) the winding up forms part of arrangements the main purpose or one of the main purposes of which is the avoidance or reduction of a charge to income tax.

(6) The circumstances referred to in subsection (5) include in particular the fact that Condition C is met.

(7) A distribution to an individual is excluded if or to the extent that—

(a) the amount of the distribution does not exceed the amount that would result in no gain accruing for the purposes of capital gains tax, or

(b) the distribution is a distribution of irredeemable shares.

(8) In this section—

"arrangements" includes any agreement, understanding, scheme, transaction or series of transactions, whether or not legally enforceable;

"close company" includes a company which would be a close company if it were a UK resident company;

"effective 51% subsidiary" has the meaning given by section 170(7) of TCGA 1992;

"participator" has the meaning given by section 454 of CTA 2010.

(9) For the purposes of this section, a person has at least a 5% interest in a company if—

(a) at least 5% of the ordinary share capital of the company is held by the individual, and

(b) at least 5% of the voting rights in the company are exercisable by the individual by virtue of that holding.

(10) For the purposes of subsection (9) if an individual holds any shares in a company jointly or in common with one or more other persons, he or she is to be treated as sole holder of so many of them as is proportionate to the value of his or her share (and as able to exercise voting rights by virtue of that holding).**]**

**Textual Amendments**

**F2** S. 404A inserted (with effect in accordance with s. 35(3) of the amending Act) by Finance Act 2016 (c. 24), **s. 35(2)**

*Shares in **[**F3 Schedule 2**]** share incentive plans ("SIPs")*

**Textual Amendments**

**F3** Words in s. 405 cross-heading substituted (6.4.2014) by Finance Act 2014 (c. 26), **Sch. 8 paras. 61**, 89 (with Sch. 8 paras. 90-96)

### 405 SIP shares: introduction

(1) Sections 406 to 408 contain special rules about the charge under this Chapter in respect of shares awarded to an individual under **[**[F4]a Schedule 2**]** share incentive plan.

(2) Those sections only apply if the condition in section 392(3) or (5) was met at the time the shares in question were so awarded (earnings within ITEPA 2003).

(3) This section and sections 406 to 408 form part of the SIP code (see section 488 of ITEPA 2003 ([F5]... share incentive plans)).

(4) Accordingly, expressions used in this section or those sections and contained in the index in paragraph 100 of Schedule 2 to that Act ([F5]... share incentive plans) have the meaning indicated by that index.

(5) In particular—

- (a) for the meaning of "award of shares" see paragraph 5(1) of that Schedule,
- (b) for the meaning of "ceasing to be subject to plan" see paragraph 97 of that Schedule,
- (c) for the meaning of "dividend shares" see paragraph 62(3)(b) of that Schedule,
- (d) for the meaning of "participant" see paragraph 5(4) of that Schedule,
- (e) for the meaning of "plan shares" see paragraphs 86 to 88 and 99(1) of that Schedule, and
- (f) for the meaning of "shares" see paragraphs 87(6) and 99(2) of that Schedule.

**Textual Amendments**

**F4** Words in s. 405(1) substituted (6.4.2014) by Finance Act 2014 (c. 26), **Sch. 8 paras. 62(2)**, 89 (with Sch. 8 paras. 90-96)

**F5** Word in s. 405(3)(4) omitted (6.4.2014) by virtue of Finance Act 2014 (c. 26), **Sch. 8 paras. 62(3)**, 89 (with Sch. 8 paras. 90-96)

### 406 Later charge where cash dividends retained in SIPs are paid over

(1) This section applies if a cash dividend is paid over to a participant under paragraph 68(4) of Schedule 2 to ITEPA 2003 (cash dividend paid over if not reinvested etc.).

(2) Tax charged under this Chapter is charged for the tax year in which the cash dividend is paid over instead of the tax year in which in which it was originally paid.

(3) Tax so charged is charged on the amount of the cash dividend paid over.

(4) The person liable for any tax so charged is the participant.

[F6](4A) . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . .

(5) For the purposes of this Chapter, the question whether a cash dividend so paid over is a dividend paid by a company that is non-UK resident is determined by reference to the tax year in which the dividend was originally paid.

**Textual Amendments**

**F6** S. 406(4A) omitted (with effect in accordance with Sch. 1 para. 73 of the amending Act) by virtue of Finance Act 2016 (c. 24), **Sch. 1 para. 15**

## 407 Dividend payment when dividend shares cease to be subject to SIP

(1) This section applies if dividend shares cease to be subject to **[**F7a Schedule 2**]** incentive plan before the end of the period of 3 years beginning with the date on which the shares were acquired on the participant's behalf.

(2) For income tax purposes a dividend is treated as paid to the participant in the tax year in which the shares cease to be subject to the plan.

(3) The amount of the dividend treated as paid is the amount of the cash dividend applied to acquire the shares on the participant's behalf, so far as it represents a cash dividend paid in respect of plan shares in a non-UK resident company.

**[**F8(3A) But if the shares cease to be subject to the plan by virtue of a provision of the kind mentioned in paragraph 65(2) of Schedule 2 to ITEPA 2003 (provision requiring dividend shares to be offered for sale), the amount of the dividend treated as paid is the amount equal to the relevant fraction of the market value of the shares at the time they are offered for sale if that amount is less than the amount given by subsection (3).

(3B) For the purposes of subsection (3A) "the relevant fraction" is—

$$\frac{A}{B}$$

where—

A is so much of the amount of the cash dividend applied to acquire the shares on the participant's behalf as represents a cash dividend paid in respect of plan shares in a non-UK resident company, and

B is the amount of the cash dividend applied to acquire the shares on the participant's behalf.

(3C) Paragraph 92(2) of Schedule 2 to ITEPA 2003 (market value of shares subject to a restriction) applies for the purposes of subsection (3A).**]**

(4) The person liable for any tax charged as a result of this section is the participant.

F9(4A) . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . .

(5) For rules identifying shares ceasing to be subject to **[**F10Schedule 2**]** share incentive plans, see section 508 of ITEPA 2003.

**Textual Amendments**

**F7** Words in s. 407(1) substituted (6.4.2014) by Finance Act 2014 (c. 26), **Sch. 8 paras. 63(2)**, 89 (with Sch. 8 paras. 90-96)

**F8** S. 407(3A)-(3C) inserted (6.4.2014) by Finance Act 2014 (c. 26), **Sch. 8 paras. 63(3)**, 89 (with Sch. 8 paras. 90-96)

**F9** S. 407(4A) omitted (with effect in accordance with Sch. 1 para. 73 of the amending Act) by virtue of Finance Act 2016 (c. 24), **Sch. 1 para. 15**

**F10** Words in s. 407(5) substituted (6.4.2014) by Finance Act 2014 (c. 26), **Sch. 8 paras. 63(4)**, 89 (with Sch. 8 paras. 90-96)

## 408 Reduction in tax due in cases within section 407

(1) This section applies if—

(a) a person is liable for tax as a result of section 407, and

(b) any tax is paid on any capital receipts under section 501 of ITEPA 2003 (charge on capital receipts in respect of plan shares) in respect of the shares that cease to be subject to the **[**[F11]Schedule 2**]** share incentive plan.

(2) The tax due as a result of section 407 is to be reduced by an amount equal to the total tax so paid.

**[**[F12](2A) In subsection (2) "the tax due" means the amount of tax due as a result of section 407 [F13]....**]**

(3) For rules identifying shares ceasing to be subject to **[**[F14]Schedule 2**]** share incentive plans, see section 508 of ITEPA 2003.

**Textual Amendments**

**F11** Words in s. 408(1)(b) substituted (6.4.2014) by Finance Act 2014 (c. 26), **Sch. 8 paras. 64**, 89 (with Sch. 8 paras. 90-96)

**F12** S. 408(2A) inserted (with effect in accordance with s. 34(2) of the amending Act) by Finance Act 2008 (c. 9), **Sch. 12 para. 21**

**F13** Words in s. 408(2A) omitted (with effect in accordance with Sch. 1 para. 73 of the amending Act) by virtue of Finance Act 2016 (c. 24), **Sch. 1 para. 16**

**F14** Words in s. 408(3) substituted (6.4.2014) by Finance Act 2014 (c. 26), **Sch. 8 paras. 64**, 89 (with Sch. 8 paras. 90-96)

### *[*[F15]*Anti-avoidance*

**Textual Amendments**

**F15** S. 408A and cross-heading inserted (with effect in accordance with Sch. 45 para. 153(3) of the amending Act) by Finance Act 2013 (c. 29), **Sch. 45 para. 134**

## 408A Temporary non-residents

(1) This section applies if an individual is temporarily non-resident.

(2) Dividends within subsection (3) are to be treated for the purposes of this Chapter as if they were received by the individual, or as if the individual became entitled to them, in the period of return.

(3) A dividend is within this subsection if—

(a) the individual receives or becomes entitled to it in the temporary period of non-residence,

(b) it is a dividend of a company that would be a close company if the company were UK resident,

(c) the individual receives or becomes entitled to it by virtue of being at a relevant time—

(i) a material participator in the company, or

(ii) an associate of a material participator in the company, and

(d) ignoring this section, the individual—

(i) is not liable for tax under this Chapter in respect of the dividend, but

(ii) would have been so liable if the individual had received the dividend, or become entitled to it, in the period of return.

(4) For the purposes of subsection (3)—

(a) "associate" and "participator" have the same meanings as in Part 10 of CTA 2010 (see sections 448 and 454),

(b) a "material participator" is a participator who has a material interest in the company, as defined in section 457 of that Act,

(c) "relevant time" means—

(i) any time in the year of departure or, if the year of departure is a split year as respects the individual, the UK part of that year, or

(ii) any time in one or more of the 3 tax years preceding that year, and

(d) paragraph (d)(i) includes a case where the individual could be relieved of liability on the making of a claim under section 6 of TIOPA 2010 (double taxation relief), even if no claim is in fact made.

(5) If section 809B, 809D or 809E of ITA 2007 (remittance basis) applies to the individual for the year of return, any dividend within subsection (3) that was remitted to the United Kingdom in the temporary period of non-residence is to be treated as remitted to the United Kingdom in the period of return.

(6) This section does not apply to a dividend within subsection (3) to the extent that it is paid in respect of post-departure trade profits.

(7) "Post-departure trade profits" are—

(a) trade profits of the company arising in an accounting period that begins after the start of the temporary period of non-residence, and

(b) so much of any trade profits of the company arising in an accounting period that straddles the start of that temporary period as is attributable (on a just and reasonable basis) to a time after the start of that temporary period.

(8) The extent to which a dividend is paid in respect of post-departure trade profits is to be determined on a just and reasonable basis.

(9) If section 406 or 407 applies, references in this section to a dividend being received by the individual are to a cash dividend being paid over to the individual or (as the case may be) a dividend being treated as paid to the individual.

(10) In this section—

"remitted to the United Kingdom" has the meaning given in Chapter A1 of Part 14 of ITA 2007;

"trade profits of the company" means the profits of any trade carried on by the company, as they would be calculated in accordance with Part 3 of CTA 2009 (trading income) if the company were UK resident.**]**

**Changes to legislation:**
There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax (Trading and Other Income) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations.
View outstanding changes

**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**
Whole provisions yet to be inserted into this Act (including any effects on those provisions):

– s. 7A-7D inserted by 2022 c. 3 Sch. 1 para. 3
– s. 31E(4) inserted by 2022 c. 3 Sch. 1 para. 7(3)
– s. 649(1A)(1B) inserted by 2023 c. 30 Sch. 2 para. 11(2)
– s. 679(3A) inserted by 2023 c. 30 Sch. 2 para. 11(5)(b)
– s. 679A(3A) inserted by 2023 c. 30 Sch. 2 para. 11(6)(b)
– s. 680(1A) inserted by 2023 c. 30 Sch. 2 para. 11(7)(a)