

## SCHEDULES

### SCHEDULE 12

Section 34

#### TAX CREDIT FOR CERTAIN FOREIGN DISTRIBUTIONS

##### PART 1

###### THE TAX CREDIT

- 1 Chapter 3 of Part 4 of ITTOIA 2005 (dividends etc from UK resident companies etc) is amended as follows.
- 2 In the heading of the Chapter, for “etc.”, in the second place, substitute “AND TAX CREDITS ETC. IN RESPECT OF CERTAIN DISTRIBUTIONS”.
- 3 In the heading of section 397, after “**distributions**” insert “**of UK resident companies**”.
- 4 After section 397 insert—

##### **“397A Tax credits for distributions of non-UK resident companies: UK residents and eligible non-UK residents**

- (1) This section applies where a UK resident or eligible non-UK resident receives a relevant distribution made by a non-UK resident company, provided that—
  - (a) the company is not an offshore fund (within the meaning of section 756A of ICTA), and
  - (b) the person is a minority shareholder in the company at the time the distribution is received.
- (2) The person is entitled to a tax credit equal to one-ninth of the amount or value of the grossed up distribution (but see subsections (3) and (6)).
- (3) Subsection (2) only applies so far as the distribution is brought into charge to tax, and accordingly if the person’s total income is reduced by any deductions which fall to be made from the distribution, the tax credit for the distribution is reduced in the same proportion as the distribution.
- (4) The person may claim to deduct the tax credit from the income tax charged on the person’s total income for the tax year in which the distribution (or the part of the distribution to which the tax credit relates) is brought into charge to tax.
- (5) If a distribution is, or is treated under any provision of the Tax Acts as, the income of a person (“P”) other than the recipient (“R”), P (not R) is treated as receiving it for the purposes of this section (and so P (not R) is entitled to a tax credit if P falls within subsection (1)).

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- (6) This section is subject to the following provisions—
- section 171(2B) of FA 1993 (no tax credit for distributions in respect of assets in Lloyd’s member’s premium trust fund),
  - section 504(4) of ITA 2007 (disapplication of certain provisions for income of unauthorised unit trusts),
  - section 592 of ITA 2007 (no tax credits for borrower under stock lending arrangement),
  - section 593 of ITA 2007 (no tax credits for interim holder under repo),
  - and
  - section 594 of ITA 2007 (no tax credits for original owner under repo).
- (7) In this section—
- “eligible non-UK resident”, in relation to a distribution, means an individual who, at any time in the tax year in which the distribution (or the part of the distribution to which the tax credit relates) is brought into charge to tax, is a non-UK resident who meets the condition in section 56(3) of ITA 2007 (residence etc of claimants),
  - “grossed up distribution” means the distribution increased by the amount of any tax chargeable in respect of the distribution directly or by deduction under the laws of the territory in which the company is resident, including special withholding tax,
  - “minority shareholder”, in relation to a company, has the meaning given in section 397C,
  - “relevant distribution”, in relation to a person, means—
    - (a) a qualifying distribution arising in a relevant tax year,
    - (b) a cash dividend paid over to the person under paragraph 68(4) of Schedule 2 of ITEPA 2003 (cash dividend paid over if not reinvested etc) in a relevant tax year, and
    - (c) a dividend treated under section 407 as paid to the person in a relevant tax year,
  - “relevant tax year” means the tax year 2008-09 or a subsequent tax year, and
  - “special withholding tax” has the meaning given in section 107(3) of FA 2004.
- (8) Section 397B makes provision about the application of this section in the case of overseas dividends arising from manufactured overseas dividends (within the meaning of Chapter 2 of Part 11 of ITA 2007).

### **397B Tax credits under section 397A: manufactured overseas dividends**

- (1) This section applies where, under section 581 of ITA 2007, a person is treated as receiving an overseas dividend by virtue of having received a manufactured overseas dividend which is representative of an overseas dividend.
- (2) For the purposes of section 397A, the person is treated as receiving a relevant distribution made by a non-UK resident company that is not an offshore fund if, and only if, the manufactured overseas dividend is representative of such a distribution.

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- (3) References in section 397A to the grossed up distribution have effect as if they were references to the gross amount of the overseas dividend of which the manufactured overseas dividend is representative, disregarding the amount of any overseas tax credit.
- (4) In this section—
- “gross amount”, in relation to a manufactured overseas dividend, has the same meaning as in Chapter 2 of Part 11 of ITA 2007 (manufactured payments) (see section 589 of that Act),
  - “manufactured overseas dividend” and “overseas tax credit” have the same meaning as in Chapter 2 of that Part (see sections 581 and 591 of that Act), and
  - “overseas dividend” has the same meaning as in that Part (see section 567 of that Act).

### **397C Meaning of “minority shareholder”**

- (1) In section 397A “minority shareholder”, in relation to a non-UK resident company, means a person whose shareholding in the company is less than 10% of the company’s issued share capital.
- (2) Subsections (3) to (6) make provision about the circumstances in which shares form part of a person’s shareholding in a company for the purposes of this section.
- (3) Shares form part of a person’s shareholding in a company to the extent that the person is beneficially entitled to the shares or to a distribution arising in respect of the shares (or both).
- (4) Shares form part of a person’s shareholding in the company where—
- (a) a person is a settlor in relation to a settlement, and
  - (b) income arising from shares comprised in the settlement is treated for income tax purposes as the income of that person and of that person alone.
- (5) Shares form part of the shareholding in a company of a person (“P”) if—
- (a) they form part of the shareholding in the company of a person connected with P,
  - (b) P transferred the shares to the connected person or arranged for the connected person to acquire the shares, and
  - (c) the purpose of the transfer or arrangement was wholly or mainly to enable P to avoid tax.
- (6) Shares form part of a person’s shareholding in a company if that person has transferred the shares to another person under a repo or stock lending arrangement.
- (7) In this section—
- “repo” has the same meaning as in Part 11 of ITA 2007 (see section 569 of that Act),
  - “settlement” and “settlor” have the same meaning as in Chapter 5 of Part 5 of this Act, and

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“stock lending arrangement” has the same meaning as in Part 11 of ITA 2007 (see section 568 of that Act).”

- 5 In section 398(1) (increase in amount or value of dividends where tax credit available)—
- (a) after “a tax credit” insert “under section 397 or 397A”, and
- (b) for “section 397(1)” substitute “sections 397(1) and 397A(2)”.
- 6 In section 399(1) (qualifying distributions received by persons not entitled to tax credits), after “a tax credit” insert “under section 397 or 397A”.

## PART 2

### CONSEQUENTIAL PROVISION

#### *TMA 1970*

- 7 TMA 1970 is amended as follows.
- 8 In section 8(1AA)(b) (personal return: amount payable by way of income tax), after “397(1)” insert “or 397A(2)”.
- 9 In section 8A(1AA)(b) (trustee’s return: amount payable by way of income tax), after “397(1)” insert “or 397A(2)”.
- 10 In section 9(1)(b) (self-assessment of amount payable by way of income tax), after “397(1)” insert “or 397A(2)”.
- 11 In section 12AA(1A)(b) (partnership return: amount payable by way of income tax), after “397(1)” insert “or 397A(2)”.
- 12 In section 12AB(5) (partnership statement), in the definition of “tax credit”, after “397(1)” insert “or 397A(2)”.
- 13 In section 59A(8)(b) (payments on account of income tax), after “397(1)” insert “or 397A(2)”.
- 14 In section 59B(2)(b) (payment of income tax), after “397(1)” insert “or 397A(2)”.

#### *ICTA*

- 15 In section 824(4A)(b) of ICTA (repayment supplements: individuals and others), after “397(1)” insert “or 397A(2)”.

#### *FA 1993*

- 16 In section 171(2B) of FA 1993 (Lloyd’s underwriters etc: taxation of profits and allowance of losses), for “Section 397(1)” substitute “Sections 397(1) and 397A(2)”.

#### *ITTOIA 2005*

- 17 ITTOIA 2005 is amended as follows.
- 18 In section 403(1) (dividends from non-UK resident companies: income charged), omit “full”.

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- 19 In section 406 (dividends of non-UK resident companies: later charge where cash dividends retained in SIPs are paid over), after subsection (4) insert—
- “(4A) For the purposes of determining—
- (a) whether the participant is entitled to a tax credit under section 397A in respect of a cash dividend so charged, and
- (b) the amount of that tax credit,
- that section applies as it has effect for the tax year in which the cash dividend is paid over.”
- 20 In section 407 (dividends of non-UK resident companies: dividend payment when dividend shares cease to be subject to SIP), after subsection (4) insert—
- “(4A) For the purposes of determining—
- (a) whether the participant is entitled to a tax credit under section 397A in respect of a dividend so charged, and
- (b) the amount of that tax credit,
- that section applies as it has effect for the tax year in which the shares cease to be subject to the plan.”
- 21 In section 408 (reduction in tax due in cases within section 407), after subsection (2) insert—
- “(2A) In subsection (2) “the tax due” means the amount of tax due as a result of section 407 after deduction of the tax credit determined in accordance with section 407(4A).”
- 22 In section 688(1) (income not otherwise charged), omit “full”.

*ITA 2007*

- 23 ITA 2007 is amended as follows.
- 24 In section 425(5) (gift aid: deductions when calculating total amount of income tax to which individual charged for a tax year)—
- (a) in paragraph (a), omit “and” at the end of sub-paragraph (v), and
- (b) insert at the end “, and
- (c) the amount of any tax credit under section 397A of ITTOIA 2005 (tax credits for distributions of non-UK resident companies: UK residents and eligible non-UK residents).”
- 25 In section 504(4)(b) (provisions that do not apply to income of unauthorised unit trusts), for “section 397(1)” substitute “sections 397(1) and 397A(2)”.
- 26 (1) Section 567 (meaning of “overseas securities” etc) is amended as follows.
- (2) After subsection (1) insert—
- “(1A) “Overseas shares” means shares in a non-UK resident company.”
- (3) After subsection (2) insert—
- “(2A) “Overseas securities” includes overseas shares.”
- (4) Accordingly, in the heading, after “of” insert ““overseas shares”,”.

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- 27 (1) Section 592 (no tax credits for borrower under stock lending arrangement) is amended as follows.
- (2) In subsection (1)—
- (a) in paragraph (a), insert at the end “or overseas shares,”
  - (b) in paragraph (c), omit “UK”, and
  - (c) in paragraph (d)—
    - (i) after “manufactured dividend” insert “or manufactured overseas dividend”, and
    - (ii) after “UK shares” insert “or overseas shares”.
- (3) In subsection (2), after “397(1)” insert “or 397A(2)”.
- 28 (1) Section 593 (no tax credits for interim holder under repo) is amended as follows.
- (2) In subsection (1)—
- (a) in paragraph (a), after “UK shares” insert “or overseas shares”,
  - (b) in paragraphs (b) and (d), omit “UK”, and
  - (c) in paragraph (e)—
    - (i) after “manufactured dividend” insert “or manufactured overseas dividend”, and
    - (ii) after “UK shares” insert “or overseas shares”.
- (3) In subsection (2), after “397(1)” insert “or 397A(2)”.
- 29 (1) Section 594 (no tax credits for original owner under repo) is amended as follows.
- (2) In subsection (1)—
- (a) in paragraph (a), after “UK shares” insert “or overseas shares”,
  - (b) in paragraph (b), omit “UK”,
  - (c) in paragraph (d)—
    - (i) after “manufactured dividend” insert “or manufactured overseas dividend”, and
    - (ii) omit “UK”, and
  - (d) in paragraph (e), after “manufactured dividend” insert “or manufactured overseas dividend”.
- (3) In subsection (2), after “397(1)” insert “or 397A(2)”.
- 30 (1) Section 595 (meaning of “manufactured dividend”) is amended as follows.
- (2) For “has” substitute “and “manufactured overseas dividend” have”.
- (3) For “section 573(1)(a)” substitute “sections 573(1)(a) and 581(1)(a)”.
- 31 In section 989 (definitions), in the definition of “tax credit”, after “397(1)” insert “or 397A(2)”.