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STATUTORY INSTRUMENTS

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**1999 No. 358**

**INCOME TAX**

**The Corporation Tax (Treatment of Unrelieved  
Surplus Advance Corporation Tax) Regulations 1999**

<i>Made</i>	- - - -	<i>15th February 1999</i>
<i>Laid before the House of Commons</i>	- - - -	<i>16th February 1999</i>
<i>Coming into force</i>	- -	<i>9th March 1999</i>

The Treasury, in exercise of the powers conferred on them by section 32 of the Finance Act 1998(1), hereby make the following Regulations:

**Citation and commencement**

1. These Regulations may be cited as the Corporation Tax (Treatment of Unrelieved Surplus Advance Corporation Tax) Regulations 1999 and shall come into force on 9th March 1999.

**Introductory**

2.—(1) These Regulations make provision for and in connection with enabling unrelieved surplus ACT that a company has as at 6th April 1999 to be set against its liability to corporation tax on profits charged to corporation tax for an accounting period beginning on or after that date, other than an accounting period that is subsequent to the company's final accounting period.

(2) In paragraph (1) the reference to unrelieved surplus ACT of a company includes, where the company is a member of a group at any time in an accounting period to which that paragraph applies, a reference to unrelieved surplus ACT that another company, which is a member of the same group at any time in that accounting period, has as at 6th April 1999.

**Interpretation**

- 3.—(1) In these Regulations unless the context otherwise requires—
- “accounting period” shall be construed in accordance with regulation 2(1);
  - “ACT” means advance corporation tax;
  - “the Board” means the Commissioners of Inland Revenue;

“distribution” has the meaning given by section 832(1);

“final accounting period” shall be construed in accordance with regulations 4 and 5;

“franked distribution” means the sum of the amount or value of a relevant distribution and such proportion of that amount or value as corresponds to the rate of shadow ACT specified in regulation 11(9), and references in these Regulations to any accounting period in which a franked distribution is made are references to the accounting period in which the relevant distribution in question is made;

“franked investment income” means income of a company resident in the United Kingdom which consists of a distribution in respect of which the company is entitled to a tax credit (and which accordingly represents income equal to the aggregate of the amount or value of the distribution and the amount of that credit), except that it does not include income to which regulation 7, 8(4) or 9 refers, or income falling within regulation 10 to which paragraph (4) of that regulation does not apply;

“group” has the meaning given by regulation 6;

“notification” means notification in writing;

“parent company” in relation to a group shall be construed in accordance with regulation 6(1) to (7); and “immediate parent company” shall be construed in accordance with regulation 6(8);

“relevant distribution” means a distribution made on or after 6th April 1999;

“shadow ACT” means a notional amount of ACT treated as paid by a company in respect of a relevant distribution and computed in accordance with regulation 11;

“straddling accounting period” means an accounting period beginning before, and ending on or after, 6th April 1999, and includes a separate accounting period mentioned in sections 245(2), 245A(2) and 245B(2)(2);

“surplus franked investment income”–

- (a) as respects an accounting period beginning on or after 6th April 1999, has the meaning given by regulation 11(13);
- (b) as respects an accounting period beginning before that date, has the meaning given by section 238(1A)(3);

“surplus shadow ACT” means the excess amount of shadow ACT over the total amount of shadow ACT set against a company’s liability to corporation tax for an accounting period in accordance with regulation 12(1);

“the Taxes Act” means the Income and Corporation Taxes Act 1988(4);

“unrelieved surplus ACT” means the ACT (if any) which, apart from sub-paragraph (3) of paragraph 12 of Schedule 3 to the Finance Act 1998 but otherwise in accordance with that paragraph, would be treated by virtue of section 239(4)(5) as paid in respect of distributions made by a company in the first accounting period of the company to begin on or after 6th April 1999.

(2) References in these Regulations to the profits of a company charged to corporation tax for any accounting period are references to the amount of the company’s profits for that period on which corporation tax falls finally to be borne.

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(2) Section 245 was repealed in relation to changes in ownership occurring on or after 6th April 1999 by paragraph 15 of Schedule 3 to the Finance Act 1998. Sections 245A and 245B were inserted by section 98 of the Finance Act 1989 (c. 26) and repealed in relation to changes in ownership and disposals occurring on or after 6th April 1999 by paragraphs 16 and 17 of Schedule 3 to the Finance Act 1998.

(3) Section 238 was amended by paragraph 18(2) to (4) of Schedule 8 to the Finance Act 1995 (c. 4) and repealed in relation to accounting periods beginning on or after 6th April 1999 by paragraph 11 of Schedule 3 to the Finance Act 1998.

(4) 1988 c. 1.

(5) Section 239 was amended by Part V of Schedule 17 to the Finance Act 1989 and repealed in relation to accounting periods beginning on or after 6th April 1999 by paragraph 12 of Schedule 3 to the Finance Act 1998.

(3) References in these Regulations, however expressed, to a company's liability to corporation tax for an accounting period include references to a company's liability in respect of any sums chargeable on the company for that period under section 747(4)(a)(6) (controlled foreign companies).

(4) For the purposes only of these Regulations, a straddling accounting period shall be treated as if—

- (a) it were composed of two accounting periods, the one ending on 5th April 1999 and the other beginning on 6th April 1999;
- (b) there were apportioned to each of those accounting periods the proportionate part of the profits of the company charged to corporation tax for the straddling accounting period.

(5) References in these Regulations to an accounting period beginning on or after 6th April 1999 include references to—

- (a) an accounting period deemed by virtue of paragraph (4) of this regulation to begin on 6th April 1999, and
- (b) a separate accounting period referred to in regulations 16(2) and 17(2) that begins on or after that date.

(6) References in these Regulations, other than the reference in paragraph (4)(b) above, to a requirement for profits charged to corporation tax for an accounting period to be apportioned between two separate parts of that accounting period are references to a requirement for those profits to be apportioned either—

- (a) on a time basis, or
- (b) where that basis would be unjust and unreasonable, on such basis as would be just and reasonable.

(7) In these Regulations any reference to a particular provision, without more, is a reference to that provision of the Taxes Act.

#### **Definition of final accounting period—company not a member of a group**

4.—(1) For the purpose of regulation 2(1) and subject to paragraphs (3) to (5) of this regulation and to regulation 5(10), where a company is not a member of a group at any time in the relevant accounting period, the final accounting period of that company is the accounting period beginning in the period of twelve months immediately following the end of the relevant accounting period or, if there is more than one accounting period beginning in that period of twelve months, the latest accounting period beginning in that period.

(2) In paragraph (1) “the relevant accounting period” is the first accounting period of the company after which no amount of unrelieved surplus ACT is available to be set against the company's liability to corporation tax in accordance with these Regulations.

(3) Paragraph (1) shall not apply where, at any time in the first of its accounting periods to begin on or after 6th April 1999, the company notifies an officer of the Board that it will not seek or, as the case may be, will cease to seek recovery of unrelieved surplus ACT in respect of that accounting period or any subsequent accounting period.

(4) Where, otherwise than in a case to which paragraph (3) applies, the company notifies an officer of the Board at any time in an accounting period that it wishes that accounting period to be its final accounting period and that it will not seek recovery of unrelieved surplus ACT in respect of any subsequent accounting period, the final accounting period of that company is, subject to paragraph (5), the accounting period in which the notification is made.

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(6) Section 747 was amended by paragraph 1 of Schedule 17 to the Finance Act 1998.

(5) Where—

- (a) there is an amount of surplus shadow ACT in respect of an accounting period of the company beginning in the period of twelve months (“the relevant period”) immediately following the end of the accounting period in which the company notifies an officer of the Board as mentioned in paragraph (4) or, if there is more than one such accounting period, the latest accounting period beginning in the relevant period, and
- (b) that amount or any part of it falls to be carried back in accordance with regulation 12(7) to the accounting period in which that notification is made,

the final accounting period shall be the accounting period or, as the case may be, the latest accounting period beginning in the relevant period from which an amount of surplus shadow ACT falls to be carried back as mentioned in sub-paragraph (b) of this paragraph, and not the accounting period in which the notification is made.

**Definition of final accounting period—company a member of a group**

5.—(1) For the purpose of regulation 2 and subject to paragraphs (3) to (10), where a company is a member of a group at any time in the relevant accounting period, the final accounting period of that company in its capacity as a member of that group is the accounting period beginning in the period of twelve months immediately following the end of the relevant accounting period or, if there is more than one accounting period beginning in that period of twelve months, the latest accounting period beginning in that period.

(2) In paragraph (1) “the relevant accounting period” is the first accounting period of the company after which no amount of unrelieved surplus ACT belonging to the company or any other company which is a member of the group at any time in that accounting period is available to be set against any liability to corporation tax in accordance with these Regulations; and for this purpose unrelieved surplus ACT belonging to another company that is a member of the group at any time in that accounting period shall be regarded as so available until the end of that other company’s accounting period.

(3) Paragraph (1) shall not apply where—

- (a) the company is a member of the group as at 6th April 1999, and
- (b) at any time in the first accounting period of the parent company of the group to begin on or after that date, the parent company notifies an officer of the Board on behalf of the group that the group will not seek or, as the case may be, will cease to seek recovery of unrelieved surplus ACT in respect of any accounting period of any member of the group that begins on or after that date.

(4) A notification made in accordance with paragraph (3) shall, subject to paragraph (9), be binding on each company that was a member of the group as at 6th April 1999.

(5) Where, otherwise than in a case to which paragraph (3) applies, at any time in an accounting period of the parent company of the group the parent company notifies an officer of the Board on behalf of the group that the group wishes the accounting period of any member of the group in which the notification is made to be the final accounting period of that member and that it will not seek recovery of amounts of unrelieved surplus ACT available to that member in respect of any subsequent accounting period, the final accounting period of that member and the final accounting period of the parent company is, subject to paragraphs (7) to (10), the accounting period of the parent company in which the notification by the parent company is made.

(6) A notification made in accordance with paragraph (5) shall, subject to paragraph (10), be binding on each company that was a member of the group when the notification was made or that subsequently becomes a member of the group prior to the end of the parent company’s final accounting period.

(7) Where paragraph (5) applies and the accounting period of a company in the group other than the parent company that would otherwise be its final accounting period in accordance with that paragraph begins before the end of, but ends after, the accounting period of the parent company in which the notification by the parent company is made, the accounting period of the company concerned shall be treated as if the part ending with the last day of the parent company's accounting period, and the part after, were two separate accounting periods; and the part ending with the last day of the parent company's accounting period shall, subject to paragraph (10), be treated as the company's final accounting period for the purposes of this regulation.

(8) Where—

- (a) there is an amount of surplus shadow ACT in respect of an accounting period of any company that is a member of the group beginning in the period of twelve months ("the relevant period") immediately following the end of the accounting period of the company in which the parent company notifies an officer of the Board as mentioned in paragraph (5), and
- (b) all or any part of that surplus amount falls to be carried back under regulation 12 or 13 to an accounting period of a company that is a member of the group ending before the relevant period of the company referred to in sub-paragraph (a),

the final accounting period of any company that is a member of the group at any time in the relevant period shall, subject to paragraph (10), be the accounting period or, if more than one, the latest accounting period beginning in the relevant period from which an amount of surplus shadow ACT falls to be carried back as mentioned in sub-paragraph (b) of this paragraph, and not the accounting period referred to in paragraph (5).

(9) Where in an accounting period ("the material period") subsequent to the accounting period in which the parent company notifies an officer of the Board as mentioned in paragraph (3), a company which has an amount of unrelieved surplus ACT becomes a member of the group, these Regulations shall apply in relation to the material period (but not earlier accounting periods) as if no notification had been made in accordance with that paragraph, but not so as to entitle any company to whom that notification, when made, applied to seek recovery of any amount of unrelieved surplus ACT.

(10) Where in an accounting period ("the material period") subsequent to the final accounting period as determined in accordance with paragraph (1), (5), (7) or (8), a company which has an amount of unrelieved surplus ACT becomes a member of the group, these Regulations shall apply in relation to the material period (but not earlier accounting periods) as if the final accounting period had not yet been determined in accordance with any of those paragraphs, but not so as to entitle a company whose final accounting period had previously been determined in accordance with those provisions to seek recovery of any amount of unrelieved surplus ACT.

(11) Where—

- (a) a company is a member of two or more groups,
- (b) its final accounting period as a member of one or more, but not all, of the groups concerned has been determined in accordance with the previous provisions of this regulation, and
- (c) at least one of those determinations is as a result of a notification made by a parent company in accordance with paragraph (5) of this regulation,

these Regulations shall have effect in relation to the group or groups in respect of which the final accounting period of the company has not been determined as if the total amount of its unrelieved surplus ACT had been set against its liability to corporation tax in accordance with regulation 14.

## Definition of group

6.—(1) In these Regulations “group” means a company resident in the United Kingdom (“the parent company”) which has one or more 51 per cent. subsidiaries together with that or those subsidiaries.

(2) For the purposes of paragraph (1)–

- (a) “51 per cent. subsidiary” means a 51 per cent. subsidiary that is a company resident in the United Kingdom;
- (b) a company is not the parent company within a group if–
  - (i) it has no 51 per cent. subsidiary but is itself a 51 per cent. subsidiary of another company, or
  - (ii) it and its 51 per cent. subsidiaries are all members of another group;
- (c) the question whether a company is a 51 per cent. subsidiary of the parent company shall be determined, subject to paragraph (3), in accordance with section 838, except that the parent company shall be treated as not being the owner–
  - (i) of any share capital which it owns directly in a company if a profit on the sale of the shares would be treated as a trading receipt of its trade; or
  - (ii) of any share capital which it owns indirectly, and which is owned directly by a body corporate for which a profit on the sale of the shares would be treated as a trading receipt of its trade; or
  - (iii) of any share capital which it owns directly or indirectly in a body corporate not resident in the United Kingdom.

(3) Where a company would otherwise not be a 51 per cent. subsidiary, but–

- (a) persons, whether company members or not, enjoy extraordinary rights or powers under the articles of association or under any other document regulating the company, and
- (b) because of that fact, ownership of the ordinary share capital (for the purposes of the definition of “51 per cent. subsidiary” in section 838(1)(a)) may not be an appropriate test of whether a company is a 51 per cent. subsidiary of the parent company,

then in considering whether a company is a 51 per cent. subsidiary of the parent company for the purposes of paragraph (1), holdings of all kinds of share capital, including preference shares, or of any particular category of share capital, or voting power or any other kind of special power may be taken into account instead of ordinary share capital.

(4) Notwithstanding that, apart from this paragraph, a company (“the subsidiary company”) would at any time be a 51 per cent. subsidiary of the parent company for the purposes of this regulation, the subsidiary company shall not be treated at that time as a 51 per cent. subsidiary for those purposes–

- (a) if arrangements are in existence by virtue of which any person has or could obtain, or any persons together have or could obtain, control of the subsidiary company but not of the parent company; and
- (b) unless the following conditions are also fulfilled, namely–
  - (i) that the parent company is beneficially entitled to more than 50 per cent. of any profits available for distribution to equity holders of the subsidiary company; and
  - (ii) that the parent company would be beneficially entitled to more than 50 per cent. of any assets of the subsidiary company available for distribution to its equity holders on a winding up.

(5) In paragraph (4)–

“arrangements” means arrangements of any kind, whether in writing or not, other than arrangements whose sole or main purpose is to reduce the amount of surplus shadow ACT available to be utilised by a company other than the subsidiary company in accordance with regulation 13;

“control” has the meaning given by section 840.

(6) Where by virtue of any enactment a Minister of the Crown or Northern Ireland department has power to give directions to a statutory body as to the disposal of assets belonging to, or to a subsidiary of, that body, the existence of that power shall not be regarded as constituting (or as having at any time constituted) an arrangement within the meaning of paragraph (4)(a).

(7) The provisions of Schedule 18 shall apply for the purposes of paragraph (4)(b) as if—

- (a) for any reference to section 413(7) to (9) there were substituted a reference to paragraph (4)(b);
- (b) paragraph 7(1) of that Schedule were omitted and for any reference to “the relevant accounting period” there were substituted a reference to the accounting period current at the time in question.

(8) For the purposes of these Regulations, a company (“A”) is the “immediate parent company” of another company (“B”) if, disregarding any other company of which B is a 51 per cent. subsidiary by virtue of section 838 and this regulation, A would be the parent company of B by virtue of section 838 and this regulation.

#### **Restriction on franked investment income—replacement of income**

7. Where a company takes any action the effect of which is that income consisting of interest to which a company is or will be entitled becomes or is replaced by income consisting of a distribution, and the main purpose of that action is to reduce the amount of shadow ACT which it would be treated as having paid under regulation 11 for an accounting period, the income consisting of the distribution shall not be regarded for the purposes of these Regulations as franked investment income.

#### **Restriction on franked investment income—arrangements to pass on value of franked investment income**

8.—(1) This regulation applies in any case where—

- (a) a person (“A”) who is a company is entitled to franked investment income;
- (b) arrangements subsist such that another person (“B”) obtains, whether directly or indirectly, a payment representing any of the value of that franked investment income, in excess of the payment that would have been made in the circumstances specified in paragraph (2);
- (c) the arrangements (whether or not made directly between A and B) were entered into for an unallowable purpose, and
- (d) neither A nor B is a company whose final accounting period has been determined in accordance with regulation 4 or 5.

(2) The circumstances specified in this paragraph are where—

- (a) the payment representing any of the value of that franked investment income was made under a transaction between persons at arm’s length both of whom were companies;
- (b) neither company was or had been at any time a member of a group, and
- (c) neither company was entitled to an amount of unrelieved surplus ACT as at 6th April 1999.

(3) This regulation does not apply if and to the extent that any provision of the Tax Acts has the effect of cancelling or reducing the tax advantage which would otherwise be obtained by virtue of the arrangements.

(4) Where this regulation applies, the franked investment income referred to in paragraph (1) shall not be regarded for the purposes of these Regulations as franked investment income.

(5) For the purposes of this regulation, the question whether any arrangements were entered into for an “unallowable purpose” shall be determined in accordance with paragraphs (6) and (7).

(6) Arrangements are entered into for an unallowable purpose if the purposes for which A is a party to the arrangements include the purpose of reducing the amount of shadow ACT treated as paid, in accordance with regulation 11, on relevant distributions made—

(a) by A, or

(b) where A is a member of a group, by any other company which is a member of that group, at any time in, or after the end of, the accounting period in which the arrangements are entered into.

(7) In determining for the purposes of paragraph (6) whether a company could have used franked investment income for the purpose of reducing shadow ACT, the company shall be taken to use its actual franked investment income for that purpose before using the franked investment income in question.

(8) In this regulation—

“arrangements” means arrangements of any kind, whether in writing or not (and includes a series of arrangements, whether or not between the same parties);

“tax advantage” has the same meaning as in Chapter I of Part XVII of the Taxes Act.

#### **Restriction on franked investment income—dealers**

9.—(1) Where a dealer receives—

(a) a distribution which is made by a company resident in the United Kingdom (“a UK distribution”), or any payment which is representative of a UK distribution, and

(b) the distribution or, as the case may be, the payment is taken into account in computing the profits of the dealer which are chargeable to tax in accordance with the provisions of the Taxes Act applicable to Case I or II of Schedule D,

the distribution or payment shall not be regarded for the purposes of these Regulations as franked investment income.

(2) In paragraph (1) “dealer” means a person who is a dealer in relation to a distribution within the meaning of section 95(2)(7).

#### **Restriction on franked investment income—intra-group distributions**

10.—(1) A distribution received by a company which is a member of a group from another company within the group, or from another company in the circumstances specified in paragraph (2) or (3) shall, subject to paragraph (4), not be regarded for the purposes of these Regulations as franked investment income.

(2) The circumstances specified in this paragraph are where the company making the distribution in question is not a member of the group at the time the distribution is received but arrangements in place at that time are such as to give rise to a reasonable expectation that the company will join or, as the case may be, rejoin the group.

(3) The circumstances specified in this paragraph are where the distribution in question was made by reference to the shareholdings existing at a time when both the company making the distribution and the company owning the shares at that time were members of the same group.

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(7) Section 95 was amended by paragraph 8(1) of Schedule 7 to the Finance Act 1997 (c. 16) and by section 24(2) to (9) of, and Part II(8) of Schedule 8 to, the Finance (No. 2) Act 1997 (c. 58).



(4) Where the distribution is a relevant distribution and the company making the relevant distribution has elected as mentioned in regulation 11(3)(b), paragraph (1) of this regulation shall not apply to so much of the franked distribution in respect of which that election is made.

### **Computation of shadow ACT**

**11.**—(1) Where a company resident in the United Kingdom makes a relevant distribution, other than a relevant distribution to which paragraph (2) applies, shadow ACT shall, for the purposes of determining the amount of unrelieved surplus ACT that may be set against a company's liability to corporation tax for an accounting period in accordance with regulation 14, be treated as having been paid by the company in accordance with the provisions of this regulation.

(2) This paragraph applies to a relevant distribution—

- (a) which is a manufactured dividend to which paragraph 2(2) of Schedule 23A(8) applies, or
- (b) which is made, otherwise than in the circumstances specified in paragraph (3), by a company that is a member of a group to another company within the group.

(3) The circumstances specified in this paragraph are where the company making the distribution—

- (a) has received, in the accounting period in which the distribution is made, franked investment income of an amount sufficient to ensure that the amount of shadow ACT that, apart from paragraph (2)(b), would be treated as having been paid in respect of that distribution would have been less than it would have been had the company not received that amount of franked investment income;
- (b) has elected in its tax return for the accounting period in which the distribution is made, or in an amendment to that tax return, that an amount of the franked distribution equal to the whole or a stated amount of that franked investment income (multiplied by nine-eighths) should not be excluded in computing its shadow ACT for that period; and
- (c) has informed the company receiving the distribution that sub-paragraphs (a) and (b) of this paragraph apply in relation to the distribution, and of the amount of the distribution to which the election under sub-paragraph (b) applies.

(4) An election to which paragraph (3)(b) refers—

- (a) shall be made not later than two years after the end of the accounting period in which the distribution is made, and
- (b) shall be irrevocable.

(5) Where a relevant distribution to which paragraph (1) applies does not fall within an accounting period of the company making the distribution, it shall be treated, for all purposes of these Regulations, as falling within an accounting period that—

(a) begins—

- (i) on the same date as the date on which the accounting period of the company's immediate parent company in which the distribution falls begins or, if later
- (ii) on the date immediately following the end of the last accounting period of the company making the distribution that precedes the date on which the distribution is made, and

(b) ends—

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(8) Schedule 23A was inserted by paragraph 1 of Schedule 13 to the Finance Act 1991 (c. 31). Paragraph 2 of Schedule 23A was substituted by paragraph 10(1) of Schedule 10 to the Finance Act 1997 and amended by paragraph 17(2) of Schedule 6, and Part II(11) of Schedule 8, to the Finance (No. 2) Act 1997 and by section 102(5) to (8) of, and Part III(24) of Schedule 27 to, the Finance Act 1998.

- (i) on the same date as the date on which the accounting period of the company's immediate parent company in which the distribution falls ends or, if earlier
- (ii) on the date immediately before the beginning of an accounting period of the company making the distribution.

(6) For the purposes of paragraph (5), where the distribution referred to in that paragraph is made at a time when there is no accounting period of the company's immediate parent company, that paragraph shall have effect as if for the references to the accounting period of the company's immediate parent company there were substituted references to the accounting period of the immediate parent company of the company's immediate parent company (and so on until the accounting period of an immediate parent company in which the distribution falls is found).

(7) Where a company ceases to be a member of a group, shadow ACT shall be computed in accordance with paragraph (1) in relation to the accounting period of the company in which it ceases to be a member of the group as if the part ending on the date on which the company ceases to be a member of the group, and the part after, were two separate accounting periods.

(8) Where there is a change of ownership of a company and the change—

- (a) is not such as to cause the company to cease to be a member of a group, but
- (b) occurs in circumstances where either regulation 16 or regulation 17 applies,

shadow ACT shall be computed in accordance with paragraph (1) in relation to the accounting period of the company in which the change occurs as if the part ending with the change, and the part after, were two separate accounting periods.

(9) Subject to paragraphs (10) to (12), for the financial year 1999 and any subsequent financial year, shadow ACT shall be treated as having been paid at the rate of 25 per cent. on an amount equal to the amount or value of the relevant distribution.

(10) Where in any accounting period a company receives franked investment income, subject to regulation 22(1), shadow ACT shall not be treated as having been paid by the company in respect of relevant distributions made by it in that period unless the amount of franked distributions made by it in that period exceeds the aggregate of—

- (a) nine-eighths of the amount of franked investment income consisting of distributions made to the company in that period, and
- (b) the amount of any surplus of franked investment income carried forward from the previous accounting period in accordance with paragraph (12).

(11) If in an accounting period there is such an excess, shadow ACT shall be treated as having been paid on an amount which, when the shadow ACT treated as having been paid thereon is added to it, is equal to the excess.

(12) Where a company has a surplus of franked investment income in any accounting period, the surplus shall be carried forward to the next accounting period for the purposes of paragraphs (3), (10) and (13).

(13) A company has a surplus of franked investment income in an accounting period for the purposes of paragraph (12) if an amount equal to the aggregate of nine-eighths of the franked investment income consisting of distributions made to the company in that period and the surplus of franked investment income carried forward from the previous accounting period in accordance with paragraph (12) exceeds the amount of the franked distributions made by it in that period; and the amount of that excess shall be regarded as the amount of the surplus of franked investment income for the purposes of paragraph (12).

(14) In the application of paragraphs (12) and (13) to a straddling accounting period of a company, or to the case where an accounting period of a company ends on 5th April 1999 and its next accounting period begins on 6th April 1999—

- (a) there shall be ascertained the amount of surplus franked investment income in the accounting period ending or, in the case of a straddling accounting period, deemed by virtue of regulation 3(4) to end, on 5th April 1999;
- (b) that amount shall be treated as carried forward to the accounting period beginning or, in the case of a straddling accounting period, deemed by virtue of regulation 3(4) to begin, on 6th April 1999 and shall be treated as mentioned in paragraph (10).

### **Utilisation of shadow ACT**

**12.**—(1) Shadow ACT which a company is treated as having paid in accordance with regulation 11 in respect of any relevant distribution made by it in an accounting period shall, for the purposes mentioned in regulation 11(1) and in accordance with the provisions of this regulation, be set against the company's liability to corporation tax on any profits charged to corporation tax for that accounting period, but not so as to reduce the amount of that liability.

(2) Subject to paragraph (7)(b), shadow ACT shall be utilised as mentioned in paragraph (1) before any amount of unrelieved surplus ACT is set against a company's liability to corporation tax in accordance with regulation 14.

(3) The amount of shadow ACT to be set against a company's liability for any accounting period under paragraph (1)—

- (a) shall not exceed the amount of shadow ACT that would have been treated as paid (apart from regulation 11(10) to (12)) in respect of a relevant distribution made at the end of that period of an amount which, together with the shadow ACT treated as paid in respect of it, is equal to the company's profits charged to corporation tax for that period;
- (b) shall be computed, where applicable, by reference to the like provisions with respect to separate accounting periods on a change of ownership of a company that are contained in regulations 16 and 17 for the purposes of computing the amount of unrelieved surplus ACT to be set against the company's liability for an accounting period.

(4) Where an amount of credit for foreign tax falls to be allowed in accordance with section 797(9) against corporation tax attributable to any income or chargeable gain ("the relevant income or gain"), then—

- (a) paragraph (3) shall have effect only in relation to so much of the company's profits chargeable to corporation tax for the relevant accounting period as does not include the relevant income or gain;
- (b) in so far as the company's liability to corporation tax for the relevant accounting period relates to the relevant income or gain, it shall be taken to be reduced by the amount of the credit for foreign tax attributable to that income or gain, as determined in accordance with subsections (2) and (3) of section 797; and
- (c) the amount of shadow ACT which may be set against that liability, so far as it relates to the relevant income or gain, shall not exceed whichever is the lower of the limits specified in paragraph (5).

(5) The limits specified in this paragraph are—

- (a) the limit which would apply under paragraph (3) if the amount of the relevant income or gain, determined in accordance with subsection (3) of section 797, were the company's only income or gain for the relevant accounting period; and
- (b) the amount of corporation tax for which, after taking account of the reduction mentioned in paragraph (4)(b), the company is liable in respect of that income or gain.

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(9) Section 797 was amended by paragraph 42 of Schedule 14 to the Finance Act 1996 (c. 8) and by section 82(2)(a) of, and Part III(17) of Schedule 27 to, the Finance Act 1998.

(6) In paragraph (4) “the relevant accounting period” shall be construed in accordance with subsection (2) of section 797.

(7) Where in respect of any accounting period of a company (“the principal period”) there is an amount of surplus shadow ACT, that amount shall be treated as if it were shadow ACT which the company is treated as having paid in respect of relevant distributions made by it in any of its accounting periods beginning on or after 6th April 1999 and in the six years preceding the principal period, but so that that amount—

- (a) is set, so far as possible, against the company’s liability for a more recent accounting period before a more remote one,
- (b) does not cause the amount of shadow ACT specified in paragraph (3)(a) as respects an accounting period of the company to be exceeded,
- (c) where the company is a member of a group, is not set against the liability of another company in the group for an accounting period, and
- (d) except in relation to the period beginning twenty four months before the end of the principal period and ending the day before the commencement of the principal period, does not displace any amount of unrelieved surplus ACT that, by virtue of regulation 14, is set against the company’s liability for an accounting period.

(8) For the purposes of paragraph (7)—

- (a) the reference to any of the company’s accounting periods beginning on or after 6th April 1999 includes a reference to a separate accounting period mentioned in regulations 16 and 17 beginning on or after that date;
- (b) where an accounting period begins before, but ends during, the period of twenty four months referred to in sub-paragraph (d) of that paragraph, the amount of unrelieved surplus ACT falling to be displaced as mentioned in that sub-paragraph shall be proportionately reduced by reference to the part of that accounting period that falls outside the period of twenty four months.

(9) Subject to regulation 13 (intra-group allocation of shadow ACT), where in respect of any accounting period of a company there is an amount of surplus shadow ACT which has not been dealt with under paragraph (7), that amount shall be treated for the purposes of this regulation (including any further application of this paragraph) as if it were shadow ACT which the company is treated as having paid in the next accounting period.

### **Intra-group allocation of surplus shadow ACT**

**13.—**(1) Where in respect of any accounting period of a company that is a member of a group at any time in that accounting period, there is an amount of surplus shadow ACT that has not been utilised as mentioned in regulation 12(7), the whole or part of that amount shall, for the purposes mentioned in regulation 11(1) and in accordance with the provisions of this regulation, be allocated by the parent company to another company, or other companies, that are members of the group (“the potential recipients”).

(2) Where an amount of surplus shadow ACT is allocated to another company in the group under paragraph (1), that amount shall be set against the balance (if any) of that company’s liability to corporation tax on any profits charged to corporation tax for an accounting period to which that amount is attributed in accordance with paragraph (8), that remains after the amount of that company’s shadow ACT in respect of its own distributions for that period (together with the amount of any surplus shadow ACT treated as belonging to that company under paragraph (6)) has been set against that liability in accordance with regulation 12(1), but not so as to reduce the amount of that liability or so as to exceed the capacity of that company to utilise that amount.

(3) No company that is a member of a group at any time in an accounting period shall be entitled to set an amount of unrelieved surplus ACT against its liability to corporation tax for that accounting period in accordance with regulation 14 until all surplus shadow ACT of that company for that period has been allocated under paragraph (1).

(4) Where the amount of surplus shadow ACT referred to in paragraph (1) is insufficient in relation to the capacity of all the potential recipients fully to utilise surplus shadow ACT, the parent company in the group shall determine the recipients to whom that amount shall be allocated under that paragraph, and the proportion of that amount to be allocated to each of those recipients in accordance with the capacity of each of those recipients to utilise that amount.

(5) Where the amount referred to in paragraph (1) exceeds the amount which could be utilised by all the potential recipients—

- (a) so much of that amount as is able to be utilised by the potential recipients shall be allocated to them by the parent company under that paragraph in accordance with the capacity of each of the potential recipients to utilise that amount, and
- (b) the balance shall, subject to paragraph (6), be retained by the company in which the amount arose and shall be treated by that company (in accordance with regulation 12(9)) as if it were shadow ACT which the company is treated as having paid in the next accounting period.

(6) Where, in a case to which paragraph (1) applies, the company concerned ceases to be a member of the group, otherwise than by reason of a transaction or arrangements between that company or that company's immediate parent company (or the latter company's immediate parent company and so on) and another person who is not connected with that company within the meaning of section 839(10), the amount of surplus shadow ACT shall be treated for the purposes of this regulation as belonging to the immediate parent company of that company at the time it ceases to be a member of the group or, where the immediate parent company ceases to be a member of the group at the same time as that company, as belonging to the next immediate parent company (and so on as necessary until an immediate parent company is found who has not ceased to be a member of the group at the same time as that company).

(7) An amount of surplus shadow ACT allocated to a company under paragraph (1) may subsequently be reallocated at any time under that paragraph, but not so as to reduce the amount allocated to a company to an amount below its capacity to utilise surplus shadow ACT after the time limit for amending that company's tax return has expired.

(8) Where the whole or part of an amount of surplus shadow ACT is allocated to a company under paragraph (1), it shall be attributed to a relevant accounting period, or relevant accounting periods, of that company in the following order—

- (a) an accounting period beginning and ending on the same dates as, or otherwise contained within, the accounting period of the company whose surplus shadow ACT is allocated (“the transferring company's accounting period”);
- (b) an accounting period beginning before, but ending in, the transferring company's accounting period;
- (c) an accounting period beginning in, but ending after, the end of the transferring company's accounting period;
- (d) any further period (whether the whole or part of an accounting period) beginning twenty four months or less prior to the end of the transferring company's accounting period.

(9) In paragraph (8) “relevant accounting period” means an accounting period in which both the transferring company and the company receiving the amount were at some time members of the group.

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(10) Section 839 was amended by paragraph 20 of Schedule 17 to the Finance Act 1995.

(10) Where the further period referred to in paragraph (8)(d) is a part of an accounting period, the capacity of the company to utilise the amount attributed to that further period shall be proportionately reduced by reference to the part of its accounting period which falls outside that further period.

(11) Where in accordance with paragraph (8) amounts of surplus shadow ACT in respect of accounting periods of two or more companies are attributed to a relevant accounting period, or relevant accounting periods, of a company, the parent company in the group shall determine the order of priority in which those amounts are attributed, and the order of priority so determined shall apply on any subsequent reallocation of those amounts.

(12) Where a company is a member of more than one group and there is an allocation to that company under paragraph (1) of an amount of surplus shadow ACT by the parent company of more than one group, the order of priority in which allocations are attributed to an accounting period, or accounting periods, of that company in accordance with paragraph (8) shall be determined by reference to the date on which an allocation is made (an earlier allocation having priority over a later allocation).

(13) Where in accordance with paragraph (8) an amount falls to be attributed to an accounting period which is either the first or the last accounting period in which both the transferring company and the company receiving the amount were members of the group, then for the purpose of determining the amount to be attributed to that accounting period—

- (a) the capacity of the company receiving the amount to utilise the amount to be attributed to that accounting period—
  - (i) shall be proportionately reduced by reference to the part of that period during which the transferring company and the company receiving the amount were not both members of the group, and
  - (ii) shall be further reduced by any prior attribution to that period by reason of the allocation to the company receiving the amount of the surplus shadow ACT of another company, and
- (b) the amount shall be treated as attributable to a separate accounting period comprising the part of that accounting period during which both the transferring company and the company receiving the amount were members of the group.

(14) Where in accordance with paragraph (8) an amount is attributed to a relevant accounting period referred to in sub-paragraph (b) or (d) of that paragraph, that amount—

- (a) shall displace any amount of unrelieved surplus ACT that, by virtue of regulation 14, was set against the company's liability to corporation tax on any profits charged to corporation tax for that accounting period, but
- (b) shall not displace any amount of surplus shadow ACT that, in accordance with regulation 12, has previously been set against that company's liability for corporation tax for that accounting period or (as the case may be) has been treated as shadow ACT which that company is treated as having paid in respect of any relevant distributions made by the company in that accounting period.

(15) Where the parent company fails to allocate an amount of surplus shadow ACT in accordance with this regulation—

- (a) that amount may be allocated in accordance with this regulation by an officer of the Board;
- (b) if that amount is subsequently allocated by the parent company in accordance with this regulation, any allocation by an officer of the Board under sub-paragraph (a) shall be treated as if it had not been made.

### **Set-off of unrelieved surplus ACT against liability to corporation tax**

14.—(1) Subject to paragraphs (2) to (4), a company's unrelieved surplus ACT shall be set against its liability to corporation tax on any profits charged to corporation tax for an accounting period beginning on or after 6th April 1999, and shall accordingly discharge a corresponding amount of that liability.

(2) Unrelieved surplus ACT shall not be set against a company's liability to corporation tax for an accounting period under paragraph (1) to the extent that it can be set against the company's liability to corporation tax for an earlier accounting period.

(3) Where section 116(2)(11) applies in relation to a company which is a member of a partnership, no unrelieved surplus advance corporation tax may be set against its liability to corporation tax on its share in the profits of the relevant accounting period of the partnership.

(4) The amount of unrelieved surplus ACT to be set against a company's liability for an accounting period under paragraph (1) shall not exceed the amount calculated in accordance with the formula—

$$A \quad B$$

where—

A is the amount of the company's capacity to utilise unrelieved surplus ACT calculated in accordance with regulation 12, and

B is the amount of any shadow ACT attributed to that period in accordance with regulations 12 and 13.

(5) References to "the relevant accounting period" in paragraph (3) shall be construed in accordance with section 116(3).

### **Restriction on set-off of company's unrelieved surplus ACT against subsidiary company's liability to corporation tax**

15.—(1) Subject to paragraph (2) and regulation 17, unrelieved surplus ACT consisting of ACT which a subsidiary is treated as having paid by virtue of section 240(2)(12) shall be set off against the subsidiary's liability to corporation tax for an accounting period in accordance with regulation 14 before unrelieved surplus ACT consisting of ACT paid in respect of any distribution made by the subsidiary.

(2) No unrelieved surplus ACT consisting of ACT which a subsidiary is treated as having paid by virtue of section 240(2) shall be set against the subsidiary's liability to corporation tax in accordance with regulation 14 for any accounting period in which, or in any part of which, it was not a subsidiary of the surrendering company, unless throughout that period or part both companies were subsidiaries of a third company.

(3) In this regulation "surrendering company" and "subsidiary" have the same meanings as in section 240.

### **Calculation of unrelieved surplus ACT on change of ownership of company**

16.—(1) This regulation applies where—

- (a) within any period of three years there is both a change in the ownership of a company and, either earlier or later in that period, or at the same time, a major change in the nature or conduct of a trade or business carried on by the company; or

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(11) Section 116(2) was amended by paragraph 10 of Schedule 3, and Part III(2) of Schedule 27, to the Finance Act 1998.

(12) Section 240 was amended by section 97 of the Finance Act 1989 and paragraph 1 of Schedule 25 to the Finance Act 1996, and was repealed by paragraph 13 of Schedule 3, and Part III(2) of Schedule 27, to the Finance Act 1998 in relation to accounting periods of the surrendering company referred to in section 240(1) beginning on or after 6th April 1999.

- (b) at any time after the scale of the activities in a trade or business carried on by a company has become small or negligible, and before any considerable revival of the trade or business, there is a change in the ownership of the company.

(2) Regulation 14 shall apply in relation to an accounting period in which the change of ownership occurs as if the part ending with the change of ownership, and the part after, were two separate accounting periods; and for that purpose the profits of the company charged to corporation tax for the accounting period shall be apportioned between those parts.

(3) No unrelieved surplus ACT of the company shall be set off against the company's liability to corporation tax on any profits charged to corporation tax for an accounting period ending after the change of ownership; and for this purpose an accounting period in which the change of ownership occurs shall be treated as if the part ending with the change of ownership, and the part after, were two separate accounting periods.

(4) Paragraph (3) applies to unrelieved surplus ACT consisting of ACT which a subsidiary is treated as having paid by virtue of section 240(2) as it applies to unrelieved surplus ACT consisting of ACT paid in respect of any distribution made by the subsidiary.

(5) Sections 768(8) and (9) and 769(13) shall apply for the purposes of this regulation as if in subsection (3) of section 769 the reference to the benefit of the losses were a reference to the benefit of unrelieved surplus ACT.

- (6) In paragraph (1) "a major change in the nature or conduct of a trade or business" includes—
- (a) a major change in the type of property dealt in, or services or facilities provided, in the trade or business;
  - (b) a major change in customers, outlets or markets of the trade or business;
  - (c) a change whereby the company ceases to be a trading company and becomes an investment company or vice versa; or
  - (d) where the company is an investment company, a major change in the nature of the investments held by the company;

and this paragraph applies even if the change is the result of a gradual process which began outside the period of three years mentioned in paragraph (1).

- (7) In this regulation—

"trading company" means a company whose business consists wholly or mainly in the carrying on of a trade or trades;

"investment company" means a company (other than a holding company) whose business consists wholly or mainly in the making of investments and the principal part of whose income is derived therefrom;

"holding company" means a company whose business consists wholly or mainly in the holding of shares or securities of companies which are its 90 per cent. subsidiaries and which are trading companies;

"90 per cent. subsidiary" has the meaning given by section 838.

### **Restriction on application of regulation 15 on change of ownership of company**

- 17.—(1) This regulation applies where—

- (a) there is a change in the ownership of a company ("the relevant company"),

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(13) Section 769 was amended by section 100 of, and Part IV of Schedule 17 to, the Finance Act 1989, section 135(2) to (5) of the Finance Act 1994 (c. 9), paragraph 4 of Schedule 26 to the Finance Act 1995, paragraph 37 of Schedule 20, and Part V(10) of Schedule 41, to the Finance Act 1996, and section 116(5) of, and paragraph 32 of Schedule 5 to, the Finance Act 1998.



- (b) there is an amount of unrelieved surplus ACT which the relevant company, as a subsidiary company, is treated as having paid by virtue of section 240(2), and
- (c) within the period of six years beginning three years before the change, there is a major change in the nature or conduct of a trade or business of the company which is for the purposes of regulation 15 the surrendering company in relation to that amount.

(2) The amount of unrelieved surplus ACT referred to in paragraph (1)(b) shall not be set off in accordance with regulation 14 against the relevant company's liability to corporation tax on profits charged to corporation tax for an accounting period ending after the change of ownership; and for this purpose an accounting period in which the change of ownership occurs shall be treated as if the part ending with the change of ownership, and the part after, were two separate accounting periods.

(3) Paragraphs (5) to (7) of regulation 16 shall apply for the purposes of this regulation as they apply for the purposes of that regulation and as if the reference in paragraph (6) of regulation 16 to the period of three years mentioned in paragraph (1) of that regulation were a reference to the period mentioned in paragraph (1)(c) of this regulation.

#### **Restriction on set-off under regulation 14 where asset transferred after change of ownership of company**

**18.**—(1) This regulation applies where—

- (a) there is a change in the ownership of a company (“the relevant company”),
- (b) after the change the relevant company acquires an asset from another company in circumstances such that section 171(1) of the Taxation of Chargeable Gains Act 1992<sup>(14)</sup> applies to the acquisition, and
- (c) a chargeable gain accrues to the relevant company on the disposal of the asset within the period of three years beginning with the change of ownership.

(2) For the purposes of paragraph (1)(c) an asset acquired by the relevant company as mentioned in paragraph (1)(b) shall be treated as the same as an asset owned at a later time by that company if the value of the second asset is derived in whole or in part from the first asset, and in particular where the second asset is a freehold, and the first asset was a leasehold and the lessee has acquired the reversion.

(3) In relation to the accounting period in which the chargeable gain accrues to the relevant company (“the relevant period”), regulation 14 shall have effect as if the limit imposed by paragraph (4) of that regulation on the amount of unrelieved surplus ACT to be set against the relevant company's liability to corporation tax were reduced by an amount equal to 20 per cent. of the amount of the chargeable gain.

(4) Paragraph (5) of regulation 16 shall apply for the purposes of this regulation as it applies for the purposes of that regulation.

#### **Recovery of unrelieved surplus ACT wrongly set off**

**19.** If an officer of the Board discovers that any set off of unrelieved surplus ACT of a company by virtue of regulation 14 ought not to have been made, or has become excessive, the officer may make any such assessments as may in his judgment be required for recovering any tax that ought to have been paid and generally for securing that the resulting liability to tax (including interest on unpaid tax) of the company is what it would have been if only such set off had been made as ought to have been made.

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(14) 1992 c. 12.

## **Set off of unrelieved surplus ACT against liability to corporation tax on profits of a controlled foreign company apportioned to a company**

20.—(1) In any case where—

- (a) an amount of chargeable profits (“Chapter IV profits”) of a controlled foreign company is apportioned to a company resident in the United Kingdom under the provisions of Chapter IV of Part XVII of the Taxes Act, and
- (b) the company to whom the amount is apportioned has an amount of surplus shadow ACT, calculated in accordance with regulation 12 and (where applicable) regulation 13, available to be set against the company’s liability to corporation tax for the appropriate accounting period (including, by virtue of regulation 3(3), its liability to tax under section 747(4)(a) for that period),

then so much of that amount as does not exceed the relevant maximum shall be set against the company’s liability to tax under that section in respect of the Chapter IV profits.

(2) So much of any unrelieved surplus ACT of the company as does not exceed the relevant amount may be set against the company’s liability to tax in respect of the Chapter IV profits.

(3) Where—

- (a) the whole of the amount of the company’s surplus shadow ACT has not been set off against the company’s liability to tax as mentioned in paragraph (1), and
- (b) the company is a member of a group,

the part of that amount that has not been so utilised may be allocated by the parent company to any other company in the group to whom an amount of Chapter IV profits has been apportioned, and the provisions of this regulation shall apply accordingly to that other company.

(4) In this regulation—

- (a) “the appropriate accounting period” has the same meaning as in paragraph 1 of Schedule 26(15);
- (b) “the relevant amount” is the amount (if any) which is the difference between the amount of the relevant maximum and the amount of surplus shadow ACT set against the company’s liability in respect of the Chapter IV profits in accordance with paragraph (1);
- (c) “the relevant maximum” is the amount calculated in accordance with the formula—

$$C - D$$

where—

C is the amount of shadow ACT that would have been treated as paid (apart from regulation 11(10) to (12)) in respect of a relevant distribution made at the end of the company’s appropriate accounting period of an amount which, together with the shadow ACT treated as paid in respect of it, is equal to the amount calculated in accordance with the formula specified in paragraph (5), and

D is the portion of the controlled foreign company’s creditable tax (if any) which is apportioned to the company for that accounting period as mentioned in section 747(4)(a).

(5) The formula specified in this paragraph is—

$$F \quad F$$

where—

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(15) Paragraph 1 of Schedule 26 was amended by paragraph 53 of Schedule 14, and Part V(3) of Schedule 41, to the Finance Act 1996, and by paragraph 46 of Schedule 5, paragraph 34 of Schedule 17 and Part III(27) of Schedule 27, to the Finance Act 1998.

E is the amount of the Chapter IV profits on which the company is chargeable to corporation tax for the appropriate accounting period, and

F is the total of any relevant allowances which are to be regarded, by virtue of paragraph 1(5) of Schedule 26, as having been allowed as a deduction against the company's profits together with any such additional amount as would fall to be so regarded if a claim under paragraph 1(1) of Schedule 26 were made in respect of all relevant allowances that are available under that paragraph.

### **Displacement of unrelieved surplus ACT—consequential provision**

**21.**—(1) Where, with respect to an accounting period of a company (“the affected company”) that is a member of a group at any time in that accounting period—

- (a) an amount of unrelieved surplus ACT is displaced under regulation 12(7)(d) or 13(8)(b) or (d), and
- (b) as a consequence the affected company is assessed to, or an amendment of its self-assessment is made in respect of, an amount of corporation tax for that accounting period,

then, if the whole of that amount of corporation tax is not paid by the affected company within six months from the date determined under paragraph (2), any other company that is a member of the group at any time in that accounting period may, at any time within two years from that date, be assessed and charged (in the name of the affected company) to the whole or, as the case may be, the unpaid part of that amount; and a company paying any amount of corporation tax under this paragraph shall be entitled to recover from the affected company a sum equal to the aggregate of the amount paid and any interest paid by the company under section 87A of the Taxes Management Act 1970(16) on that amount.

(2) The date referred to in paragraph (1) is whichever is the later of—

- (a) the date when the amount of corporation tax became due and payable by the affected company or, as the case may be, the date when that amount is treated as having become due and payable under the Corporation Tax (Instalment Payments) Regulations 1998(17); and
- (b) the date when an amendment of the affected company's self-assessment was made.

### **Life assurance companies**

**22.**—(1) The policy holders' share of the franked investment income from investments held in connection with a company's life assurance business—

- (a) shall not be used (for the purposes of computing the amount of shadow ACT which the company is treated as having paid for an accounting period under regulation 11(10)) to frank relevant distributions made by the company in that period;
- (b) shall be disregarded in determining whether the company has a surplus of franked investment income as mentioned in regulation 11(13), or the amount of the surplus.

(2) For the purposes of regulations 12 to 14, the profits charged to corporation tax for any accounting period of a company carrying on life assurance business shall be reduced by deducting the policy holders' share of the relevant profits.

(3) In this regulation—

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(16) 1970 c. 9. Section 87A was inserted by section 85 of the Finance Act (No. 2) Act 1987 (c. 51), and the inserted section was amended by paragraph 10(4) of Schedule 29 to the Income and Corporation Taxes Act 1988, section 179(1)(b) of the Finance Act 1989, paragraph 2(9) of Schedule 10 to the Taxation of Chargeable Gains Act 1992, paragraph 4 of Schedule 14 and paragraph 1 of Schedule 18 to the Finance Act 1993 (c. 34), paragraph 24 of Schedule 19 to the Finance Act 1994, paragraphs 8 and 9 of Schedule 24 to the Finance Act 1995, paragraph 1 of Schedule 14 to the Finance Act 1996 and paragraph 4 of Schedule 3, paragraph 4 of Schedule 4 and Part III(2) of Schedule 27, to the Finance Act 1998.

(17) S.I.1998/3175.

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“life assurance business” shall be construed in accordance with section 431(2);

“policy holders' share of the franked investment income” shall be construed in accordance with section 434(6A)(a)(**18**);

“policy holders' share of the relevant profits” shall be construed in accordance with section 89 of the Finance Act 1989(**19**).

### **Cancellation of tax advantage**

**23.**—(1) Section 704(**20**) shall have effect in relation to any relevant distribution with the modification specified in paragraph (2).

(2) In paragraph A after sub-paragraph (d) there shall be inserted—

“(da) the application of franked investment income for the purpose of regulations made under section 32 of the Finance Act 1998, or”.

*Clive Betts*

*Jim Dowd*

Two of the Lords Commissioners of Her Majesty's Treasury

15th February 1999

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(18) Subsection (6A) of section 434 was inserted by section 45(7) of the Finance Act 1990 (c. 29).

(19) Section 89 was substituted by section 45(3) of the Finance Act 1990, and the substituted section was amended by paragraph 9 of Schedule 16 to the Finance Act 1994, paragraph 26(3) of Schedule 6 to the Finance Act 1996, and paragraph 14 of Schedule 3, paragraph 19 of Schedule 6 and Part II(6) and (11) of Schedule 8 to the Finance (No. 2) Act 1997.

(20) Section 704 paragraph A was amended by Part II(4) of Schedule 8 to the Finance (No. 2) Act 1997 and by paragraph 33 of Schedule 3, and Part III(2) of Schedule 27, to the Finance Act 1998.

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations provide for the treatment of unrelieved surplus advance corporation tax arising as a result of the abolition (by virtue of section 31 of the Finance Act 1998) of advance corporation tax (“ACT”) in respect of distributions made by a company on or after 6th April 1999. In computing the amount of unrelieved surplus ACT that may be set off against a company’s liability to corporation tax for an accounting period beginning on or after 6th April 1999 so as to discharge a corresponding amount of that liability, the Regulations provide for notional amounts of ACT (“shadow ACT”) to be treated as paid by the company in respect of distributions made on or after that date, and for those notional amounts to be set off against the company’s liability to corporation tax before amounts of unrelieved surplus ACT may be set off so as to reduce that liability.

Regulation 1 provides for citation and commencement, and regulation 2 summarises the provisions made by the Regulations.

Regulation 3 provides for interpretation.

Regulations 4 and 5 define “final accounting period” for the purposes of the Regulations.

Regulation 6 defines “group” for the purposes of the Regulations.

Regulations 7 to 10 provide that certain distributions received by companies shall not be regarded as franked investment income for the purpose of computing the amount of shadow ACT treated as paid by a company in an accounting period.

Regulation 11 provides for the computation of shadow ACT in respect of distributions made by a company.

Regulation 12 provides for the setting off of amounts of shadow ACT against a company’s liability to corporation tax for an accounting period.

Regulation 13 provides for the allocation of a company’s surplus shadow ACT to other companies in the same group.

Regulation 14 provides for the setting off of unrelieved surplus ACT against a company’s liability to corporation tax for an accounting period.

Regulation 15 makes special provision for the setting off of unrelieved surplus ACT against a subsidiary company’s liability to corporation tax.

Regulations 16 to 18 make special provision for the setting off of unrelieved surplus ACT where there is a change of ownership of a company.

Regulation 19 provides for the making of assessments in circumstances where unrelieved surplus ACT has been wrongly set off against a company’s liability to corporation tax.

Regulation 20 makes special provision for the setting off of unrelieved surplus ACT against a company’s liability to corporation tax on profits of a controlled foreign company that are apportioned to the company.

Regulation 21 makes consequential provision for the recovery of corporation tax where an amount of unrelieved surplus ACT set against a company’s liability to corporation tax for an accounting period under regulation 14 is subsequently displaced by an amount of surplus shadow ACT attributed to that period under regulation 12 or 13.

Regulation 22 provides that the policy holders' share of franked investment income from investments held in connection with a company’s life assurance business shall not be used for the purpose of

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computing the amount of shadow ACT treated as paid by the company in an accounting period under regulation 11 or in determining whether that company has a surplus of franked investment income as mentioned in that regulation.

Regulation 23 adds to paragraph A of section 704 of the Income and Corporation Taxes Act 1988 (c. 1) (cancellation of a tax advantage obtained in certain circumstances in consequence of a transaction in securities) the circumstance of the application of franked investment income for the purposes of these Regulations.