

2010 No. 669

CORPORATION TAX

The Corporation Tax (Treatment of Unrelieved Surplus Advance Corporation Tax) (Amendment) Regulations 2010

<i>Made</i>	- - - -	<i>9th March 2010</i>
<i>Laid before the House of Commons</i>		<i>10th March 2010</i>
<i>Coming into force</i>	- -	<i>1st April 2010</i>

The Treasury make the following Regulations in exercise of the powers conferred by section 32 of the Finance Act 1998(a).

Citation and commencement

1. These Regulations may be cited as the Corporation Tax (Treatment of Unrelieved Surplus Advance Corporation Tax) (Amendment) Regulations 2010 and shall come into force on 1st April 2010.

Amendment of the Corporation Tax (Treatment of Unrelieved Surplus Advance Corporation Tax) Regulations 1999

2. The Corporation Tax (Treatment of Unrelieved Surplus Advanced Corporation Tax) Regulations 1999(b) are amended as follows.

Amendment of regulation 3

3. In regulation 3(1) (interpretation)—

(a) before “accounting period” insert—

““abnormal dividend” has the meaning given by regulation 6A;”;

(b) omit “the Board” means the Commissioners of Inland Revenue”;

(c) before “distribution” insert—

““company” in regulation 6A means a company referred to in section 733 (company liable to counteraction of corporation tax advantage) of the Corporation Tax Act 2010(c);

“the CTA” means the Corporation Tax Act 2010”;

(d) for the definition of “franked investment income” substitute—

““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) 1998 c. 36.

(b) S.I 1999/358, to which there are amendments not relevant to these Regulations.

(c) 2010 c. 4.

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 regulations 7, 8(4), 9 or 10A refer, nor income falling within regulation 10 where paragraph (4) of that regulation does not apply;”.

Insertion of regulation 6A

4. After regulation 6 (definition of a group) insert—

“Abnormal dividends: general

6A.—(1) In regulation 10A an abnormal dividend has been received by a company where section 740 (abnormal dividends: general) of the CTA as modified by paragraph (2) has been applied to it.

(2) For the purposes of regulation 10A, an amount received by way of dividend in subsection (1) of section 740 of the CTA shall, for the avoidance of doubt, be interpreted as being in connection with—

- (a) the purchase of securities where the purchase is followed by the sale of the same or other securities,
- (b) the sale of securities where the sale is followed by the purchase of the same or other securities,
- (c) the distribution, transfer or realisation of assets of a company, or
- (d) the application of such assets in discharge of liabilities.”.

Insertion of regulation 10A

5. After regulation 10 (restriction on franked investment income – intra-group distributions) insert—

“Restriction on franked investment income – abnormal dividends

10A.—(1) For the purposes of these Regulations an abnormal dividend shall not be regarded as franked investment income where it has been received by—

- (a) company (R1) from company (P1) where P1 and R1 are not members of a group, or
- (b) company (R2) from company (P2) where P2 and R2 are members of the same group.

(2) Sub-paragraph (b) of paragraph (1) shall apply notwithstanding that company P2 has made an election under regulation 11(3)(b).”.

Substitution of “an officer of Revenue and Customs”

6. In each place where “an officer of the Board” occurs substitute “an officer of Revenue and Customs”.

Omission of regulation 23

7. Omit regulation 23 (cancellation of tax advantage).

*Tony Cunningham
Dave Watts*

9th March 2010

Two of the Lords Commissioners for Her Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Corporation Tax (Treatment of Unrelieved Surplus Advance Corporation Tax) Regulations 1999 (S.I. 1999/358) (“the principal Regulations”).

The principal Regulations provide for the treatment of unrelieved surplus advance corporation tax arising as a result of the abolition (by virtue of section 31 (abolition of advance corporation tax) of the Finance Act 1998 (c.36)) of advance corporation tax in respect of distributions made by a company on or after 6th April 1999.

These Regulations are being made to remove an impediment to the repeal of two provisions: section 704A (the prescribed circumstances) of the Income and Corporation Taxes Act 1988 (“ICTA”) (c.1), which has been re-written as section 735 Corporation Tax Act 2010 (“CTA”) (c.4). The anticipated repeal of the latter is part of the Government’s Anti-Avoidance Simplification Review.

Regulation 3 inserts new definitions into regulation 3 (interpretation) of the principal Regulations: “abnormal dividend” which has the meaning given by regulation 6A; “company” which means a company referred to in s733 of CTA; “CTA” which means the Corporation Tax Act 2010; and substitutes a new definition of “franked investment income”. Regulation 3(3) deletes the definition of “the Board” in the principal Regulations.

Regulation 4 inserts regulation 6A into the principal Regulations to prescribe when an amount received by way of dividend is to be treated as abnormal for the purposes of regulation 10A.

Regulation 5 inserts regulation 10A into the principal Regulations, which provides that where an “abnormal dividend” is received by a company from another company, whether or not the paying company is part of the same group of companies as the recipient company, it shall not be regarded as franked investment income for the purposes of the principal Regulations.

Regulation 6 substitutes the words “an officer of Revenue and Customs” in each place that the words “officer of the Board” occurs in the principal Regulations.

Regulation 7 deletes regulation 23 (cancellation of tax advantage) of the principal Regulations, which is no longer needed. Regulation 23 inserted s704A(da) into ICTA 1998.

A full Impact Assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

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£4.00