



# Income and Corporation Taxes Act 1988

## 1988 CHAPTER 1

### PART VI

#### COMPANY DISTRIBUTIONS, TAX CREDITS ETC

##### Modifications etc. (not altering text)

- C1 Pt. 6 modified by [Airports Act 1986 \(c. 31\)](#), [s. 77\(3\)](#) (as substituted (with effect in accordance with s. 105(1) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [Sch. 14 para. 3](#) (with [Sch. 15](#)))
- C2 Pt. 6 modified by [Gas Act 1986 \(c. 44\)](#), [s. 60\(3\)](#) (as substituted (with effect in accordance with s. 105(1) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [Sch. 14 para. 4](#) (with [Sch. 15](#)))
- C3 Pt. 6 modified by [British Steel Act 1988 \(c. 35\)](#), [s. 11\(7\)](#) (as substituted (with effect in accordance with s. 105(1) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [Sch. 14 para. 55](#) (with [Sch. 15](#)))

### CHAPTER I

#### TAXATION OF COMPANY DISTRIBUTIONS

##### Modifications etc. (not altering text)

- C4 [Pt. 6 Chs. 1-3](#): power to amend conferred (1.4.2009 with effect in accordance with s. 1329(1) of the affecting Act) by [Corporation Tax Act 2009 \(c. 4\)](#), [s. 533\(2\)\(3\)\(d\)](#)

#### [<sup>F1</sup>207A Application of lower rate to company distributions.

<sup>F2</sup> .....

##### Textual Amendments

- F1 [S. 207A](#) inserted (27.7.1993 with application in relation to the year 1993-94 and subsequent years of assessment) by [1993 c. 34](#), [s. 77\(1\)\(2\)\(5\)](#)

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- F2** S. 207A repealed (with effect in accordance with s. 73 of the repealing Act) by Finance Act 1996, Sch. 41 Pt. 5(1), Note 1

## 208 U.K. company distributions not generally chargeable to corporation tax.

<sup>M1</sup>Except as otherwise provided by the Corporation Tax Acts, corporation tax shall not be chargeable on dividends and other distributions of a company resident in the United Kingdom, nor shall any such dividends or distributions be taken into account in computing income for corporation tax.

### Modifications etc. (not altering text)

- C5** S. 208 excluded (with effect in accordance with s. 230(3) of the excluding Act) by Finance Act 1994 (c. 9), ss. 219(4), 220
- C6** S. 208 excluded by Finance Act 1994 (c. 9), ss. 219(4A), 220 (as that s. 219(4A) is inserted (with effect in accordance with s. 22(7) of the amending Act) by Finance (No. 2) Act 1997 (c. 58), s. 22(4))
- C7** S. 208 excluded (27.7.1999) by Commonwealth Development Corporation Act 1999 (c. 20), Sch. 3 paras. 1, 6(2)(a)
- C8** s. 208 excluded (with effect in accordance with s. 22(7) of the amending Act) by Finance Act 1993 (c. 34), s. 171(4A) (as inserted by 1997 c. 58, s. 22(4)),
- C9** S. 208 modified (with retrospective effect) by Finance (No. 3) Act 2010 (c. 33), Sch. 3 para. 6(1)(2)

### Marginal Citations

- M1** Source—1970 s.239

## CHAPTER II

### MATTERS WHICH ARE DISTRIBUTIONS FOR THE PURPOSES OF THE CORPORATION TAX ACTS

### Modifications etc. (not altering text)

- C10** Pt. 6 Ch. 2 modified (retrospective to 11.1.1994) by Finance Act 1994 (c. 9), s. 252(1)(3), Sch. 24 para. 14(5)
- C11** Pt. 6 Ch. 2 modified (19.9.1994) by Coal Industry Act 1994 (c. 21), s. 68(4), Sch. 4 para. 13(5) (with s. 40(7), Sch. 4 para. 14); S.I. 1994/2189, art. 2, Sch.
- C12** Pt. 6 Ch. 2 modified (8.11.1995) by Gas Act 1995 (c. 45), s. 18(2)(c), Sch. 5 paras. 1, 10(4)

## 209 Meaning of “distribution”.

- (1) <sup>M2</sup>The following provisions of this Chapter, together with section 418, shall, subject to section 339(6) and to any other express exceptions, have effect with respect to the meaning of “distribution” and for determining the persons to whom certain distributions are to be treated as made, but references in the Corporation Tax Acts to distributions of a company shall not apply to distributions made in respect of share capital in a winding up.
- (2) In the Corporation Tax Acts “distribution”, in relation to any company, means—
- (a) <sup>M3</sup>any dividend paid by the company, including a capital dividend;

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(b) subject to subsections (5) and (6) below, any other distribution out of assets of the company (whether in cash or otherwise) in respect of shares in the company, except so much of the distribution, if any, as represents repayment of capital on the shares or is, when it is made, equal in amount or value to any new consideration received by the company for the distribution;

(c) subject to section 230, any redeemable share capital or any security issued by the company in respect of shares in or securities of the company otherwise than wholly for new consideration, or such part of any redeemable share capital or any security so issued as is not properly referable to new consideration;

(d) <sup>M4</sup>any interest or other distribution out of assets of the company in respect of securities of the company, where they are securities under which the consideration given by the company for the use of the principal thereby secured represents more than a reasonable commercial return for the use of that principal, except so much, if any, of any such distribution as represents that principal and so much as represents a reasonable commercial return for the use of that principal;

[<sup>F3</sup>(da) any interest or other distribution out of assets of the company (“the issuing company”) in respect of securities issued by that company which are held by another company where—

(i) the issuing company is a 75 per cent. subsidiary of the other company or both are 75 per cent. subsidiaries of a third company, and

(ii) the whole or any part of the distribution represents an amount which would not have fallen to be paid to the other company if the companies had been companies between whom there was (apart from in respect of the securities in question) no relationship, arrangements or other connection (whether formal or informal),

except so much, if any, of any such distribution as does not represent such an amount or as is a distribution by virtue of paragraph (d) above or an amount representing the principal secured by the securities;]

(e) <sup>M5</sup>any interest or other distribution out of assets of the company in respect of securities of the company (except so much, if any, of any such distribution as represents the principal thereby secured and except so much of any distribution as falls within [<sup>F4</sup>paragraph (d) or (da)] above), where the securities are—

(i) securities issued as mentioned in paragraph (c) above, but excluding securities issued before 6th April 1965 in respect of shares and securities issued before 6th April 1972 in respect of securities; or

(ii) securities convertible directly or indirectly into shares in the company or securities issued after 5th April 1972 and carrying any right to receive shares in or securities of the company, not being (in either case) securities [<sup>F5</sup>listed] on a recognised stock exchange nor issued on terms which are reasonably comparable with the terms of issue of securities so [<sup>F5</sup>listed]; or

(iii) securities under which the consideration given by the company for the use of the principal secured is to any extent dependent on the results of the company’s business or any part of it; or

(iv) <sup>F6</sup>.....

(v) <sup>F6</sup>.....

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- (vi) securities which are connected with shares in the company, and for this purpose securities are so connected if, in consequence of the nature of the rights attaching to the securities or shares and in particular of any terms or conditions attaching to the right to transfer the shares or securities, it is necessary or advantageous for a person who has, or disposes of or acquires, any of the securities also to have, or to dispose of or to acquire, a proportionate holding of the shares [<sup>F7</sup>or;
  - (vii) equity notes issued by the company (“the issuing company”) and held by a company which is associated with the issuing company or is a funded company;]
  - (f) any such amount as is required to be treated as a distribution by subsection (4) below or section 210.
- (3) <sup>M6</sup>Without prejudice to section 254(11), no amount shall be regarded for the purposes of [<sup>F8</sup>subsection (2)(d), (da)] and (e) above as representing the principal secured by a security issued after 5th April 1972 in so far as it exceeds any new consideration which has been received by the company for the issue of the security.
- [<sup>F9</sup>(3A) Where any security of a company is issued at a premium representing new consideration—
- (a) the references in subsection (2)(d), (da) and (e) above to so much of any distribution as represents, or is an amount representing, the principal secured by a security shall be construed, in relation to a distribution in respect of the security issued at a premium, as references to the aggregate of—
    - (i) so much of the distribution as represents, or is an amount representing, that principal, and
    - (ii) so much of it as represents, or is an amount representing, the premium;
- and
- (b) the reference in subsection (2)(d) above to so much of any distribution as represents a reasonable commercial return for the use of the principal secured by a security shall be construed, in relation to a distribution in respect of the security issued at a premium, as a reference to the aggregate of—
    - (i) so much of the distribution as represents a reasonable commercial return for the use of that principal, and
    - (ii) so much of it as (when regard is had to the extent to which distributions represent the premium) represents a reasonable commercial return for the use of the premium.]
- (4) <sup>M7</sup>Where on a transfer of assets or liabilities by a company to its members or to a company by its members, the amount or value of the benefit received by a member (taken according to its market value) exceeds the amount or value (so taken) of any new consideration given by him, the company shall, subject to subsections (5) and (6) below, be treated as making a distribution to him of an amount equal to the difference.
- (5) Subsection (4) above shall not apply where the company and the member receiving the benefit are both resident in the United Kingdom and either the former is a subsidiary of the latter or both are subsidiaries of a third company also so resident; and any amount which would apart from this subsection be a distribution shall not constitute a distribution by virtue of subsection (2)(b) above.

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- (6) <sup>M8</sup>No transfer of assets (other than cash) or of liabilities between one company and another shall constitute, or be treated as giving rise to, a distribution by virtue of subsection (2)(b) or (4) above if they are companies—
- (a) both of which are resident in the United Kingdom and neither of which is a 51 per cent. subsidiary of a company not so resident; and
  - (b) which, neither at the time of the transfer nor as a result of it, are under common control.

For the purposes of this subsection two companies are under common control if they are under the control of the same person or persons, and for this purpose “control” shall be construed in accordance with section 416.

- (7) <sup>M9</sup>The question whether one body corporate is a subsidiary of another for the purpose of subsection (5) above shall be determined as a question whether it is a 51 per cent. subsidiary of that other, except that that other shall be treated as not being the owner—
- (a) of any share capital which it owns directly in a body corporate, if a profit on a sale of the shares would be treated as a trading receipt of its trade; or
  - (b) 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 a trading receipt; or
  - (c) of any share capital which it owns directly or indirectly in a body corporate not resident in the United Kingdom.
- (8) <sup>M10</sup>For the purposes of subsection (2)(c) above—
- (a) the value of any redeemable share capital shall be taken to be the amount of the share capital together with any premium payable on redemption, or in a winding up, or in any other circumstances; and
  - (b) the value of any security shall be taken to be the amount of the principal thereby secured (including any premium payable at maturity or in a winding up, or in any other circumstances);

and in determining the amount of the distribution constituted by the issue of any redeemable share capital or any security, the capital or security shall be taken at that value.

- [<sup>F10</sup>(8A) For the purposes of paragraph (da) of subsection (2) above subsections (2) to (4) of section 808A shall apply as they apply for the purposes of a special relationship provision such as is mentioned in that section but as if—
- (a) the references in those subsections to the relationship in question were references to any relationship, arrangements or other connection between the issuing company and the other company mentioned in sub-paragraph (ii) of that paragraph; and
  - (b) the provision in question required no account to be taken, in the determination of any of the matters mentioned in subsection (8B) below, of (or of any inference capable of being drawn from) any other relationship, arrangements or connection (whether formal or informal) between the issuing company and any person, except where that person—
    - (i) has no relevant connection with the issuing company, or
    - (ii) is a company that is a member of the same UK grouping as the issuing company.

- (8B) The matters mentioned in subsection (8A)(b) above are the following—
- (a) the appropriate level or extent of the issuing company’s overall indebtedness;

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- (b) whether it might be expected that the issuing company and a particular person would have become parties to a transaction involving the issue of a security by the issuing company or the making of a loan, or a loan of a particular amount, to that company; and
  - (c) the rate of interest and other terms that might be expected to be applicable in any particular case to such a transaction.
- (8C) For the purposes of subsection (8A) above a person has a relevant connection with the issuing company if he is connected with it within the terms of section 839 or that person (without being so connected to the issuing company) is—
- (a) an effective 51 per cent. subsidiary of the issuing company; or
  - (b) a company of which the issuing company is an effective 51 per cent. subsidiary.
- (8D) For the purposes of subsection (8A) above any question as to what constitutes the UK grouping of which the issuing company is a member or as to the other members of that grouping shall be determined as follows—
- (a) where the issuing company has no effective 51 per cent. subsidiaries and is not an effective 51 per cent. subsidiary of a company resident in the United Kingdom, the issuing company shall be taken to be a member of a UK grouping of which it is itself the only member;
  - (b) where the issuing company has one or more effective 51 per cent. subsidiaries and is not an effective 51 per cent. subsidiary of a company resident in the United Kingdom, the issuing company shall be taken to be a member of a UK grouping of which the only members are the issuing company and its effective 51 per cent. subsidiaries; and
  - (c) where the issuing company is an effective 51 per cent. subsidiary of a company resident in the United Kingdom (“the UK holding company”), the issuing company shall be taken to be a member of a UK grouping of which the only members are—
    - (i) the UK holding company or, if there is more than one company resident in the United Kingdom of which the issuing company is an effective 51 per cent. subsidiary, such one of them as is not itself an effective 51 per cent. subsidiary of any of the others, and
    - (ii) the effective 51 per cent. subsidiaries of the company which is a member of that grouping by virtue of sub-paragraph (i) above.
- (8E) For the purposes of subsections (8C) and (8D) above section 170(7) of the 1992 Act shall apply for determining whether a company is an effective 51 per cent. subsidiary of another company but shall so apply as if the question whether the effective 51 per cent. subsidiaries of a company resident in the United Kingdom (“the putative holding company”) include either—
- (a) the issuing company, or
  - (b) a company of which the issuing company is an effective 51 per cent. subsidiary,
- were to be determined without regard to any beneficial entitlement of the putative holding company to any profits or assets of any company resident outside the United Kingdom.
- (8F) References in subsections (8D) and (8E) above to a company that is resident in the United Kingdom shall not include references to a company which is a dual resident company for the purposes of section 404.]

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[<sup>F11</sup>(9) For the purposes of subsection (2)(e)(vii) above a security is an equity note if as regards the whole of the principal or as regards any part of it—

- (a) the security's terms contain no particular date by which it is to be redeemed,
- (b) under the security's terms the date for redemption, or the latest date for redemption, falls after the expiry of the permitted period,
- (c) under the security's terms redemption is to occur after the expiry of the permitted period if a particular event occurs and the event is one which (judged at the time of the security's issue) is certain or likely to occur, or
- (d) the issuing company can secure that there is no particular date by which the security is to be redeemed or that the date for redemption falls after the expiry of the permitted period;

and the permitted period is the period of 50 years beginning with the date of the security's issue.

(10) For the purposes of subsection (2)(e)(vii) above and subsection (11) below a company is associated with the issuing company if—

- (a) the issuing company is a 75 per cent. subsidiary of the other company,
- (b) the other company is a 75 per cent. subsidiary of the issuing company, or
- (c) both are 75 per cent. subsidiaries of a third company.

(11) For the purposes of subsection (2)(e)(vii) above a company is a funded company if there are arrangements involving the company being put in funds (directly or indirectly) by the issuing company or a company associated with the issuing company.]

#### Textual Amendments

- F3** S. 209(2)(da) inserted (with effect in accordance with s. 87(7)(8) of the amending Act) by Finance Act 1995 (c. 4), s. 87(1)
- F4** Words in s. 209(2)(e) substituted (with effect in accordance with s. 87(7)(8) of the amending Act) by Finance Act 1995 (c. 4), s. 87(2)(a)
- F5** Words in s. 209(2)(e)(ii) substituted (with effect in accordance with Sch. 38 para. 6(4) of the amending Act) by Finance Act 1996 (c. 8), Sch. 38 para. 6(1)(2)(b)
- F6** S. 209(2)(e)(iv)(v) repealed (with effect in accordance with s. 87(7)(8) of the repealing Act) by Finance Act 1995 (c. 4), s. 87(2)(b), Sch. 29 Pt. 8(12), Note
- F7** S. 209(2)(e)(vii) and word "or" immediately preceding inserted (16.7.1992 with application where the interest or other distribution is paid after 14.5.1992) by Finance (No. 2) Act 1992 (c. 48), s. 31(1)(4).
- F8** Words in s. 209(3) substituted (with effect in accordance with s. 87(7)(8) of the amending Act) by Finance Act 1995 (c. 4), s. 87(2)(b)
- F9** S. 209(3A) inserted (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), Sch. 14 para. 11 (with Sch. 15)
- F10** S. 209(8A)-(8F) inserted (with effect in accordance with s. 87(7)(8) of the amending Act) by Finance Act 1995 (c. 4), s. 87(3)
- F11** S. 209(9)-(11) inserted (16.7.1992 with application where the interest or other distribution is paid after 14.5.1992) by Finance (No. 2) Act 1992 (c. 48), s. 31(2)(4).

#### Marginal Citations

- M2** Source—1970 s.233(1); 1980 s.45(2)
- M3** Source—1970 s.233(2)(a), (b), (c); 1972 Sch.22 1, 2(1)
- M4** Source—1970 s.233(2)(d)(iii); 1972 Sch.22 3(2)
- M5** Source—1970 s.233(d), (e); 1970(F) Sch.4 6; 1972 Sch.22 3(1)
- M6** Source—1972 Sch.22 3(3)

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- M7** Source—1970 s.233(3); 1972 Sch.22 4(3)  
**M8** Source—1972 Sch.22 4(1), (2)  
**M9** Source—1970 s.233(4)  
**M10** Source—1972 Sch.22 2(2)

VALID FROM 24/07/2002

**[<sup>F12</sup>209A Section 209(3AA): link to shares of company or associated company**

- (1) Subsection (3AA) of section 209 does not apply in relation to a security issued by a company (the “issuing company”) if the security is one which to a significant extent reflects dividends or other distributions in respect of, or fluctuations in the value of, shares in one or more companies each of which is—
- (a) the issuing company; or
  - (b) an associated company of the issuing company;
- but this subsection is subject to the following provisions of this section.
- (2) Subsection (1) above does not prevent subsection (3AA) of section 209 above from applying in relation to a security if—
- (a) the issuing company is a bank or securities house;
  - (b) the security is issued by the issuing company in the ordinary course of its business; and
  - (c) the security reflects dividends or other distributions in respect of, or fluctuations in the value of, shares in companies falling within paragraph (a) or (b) of subsection (1) above by reason only that the security reflects fluctuations in a qualifying index.
- (3) In subsection (2)(c) above “qualifying index” means an index whose underlying subject matter includes both—
- (a) shares in one or more companies falling within paragraph (a) or (b) of subsection (1) above, and
  - (b) shares in one or more companies falling within neither of those paragraphs, and which is an index such that the shares falling within paragraph (b) above represent a significant proportion of the market value of the underlying subject matter of the index.
- (4) In this section—
- “bank” has the meaning given by section 840A;
- “securities house” means any person—
- (a) who is authorised for the purposes of the Financial Services and Markets Act 2000; and
  - (b) whose business consists wholly or mainly of dealing in financial instruments as principal;
- and in paragraph (b) above “financial instrument” has the meaning given by section 349(5) and (6).
- (5) For the purposes of this section a company is an “associated company” of another at any time if at that time one has control of the other or both are under the control of the same person or persons.



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- (6) For the purposes of subsection (5) above, “control”, in relation to a company, means the power of a person to secure—
- (a) by means of the holding of shares or the possession of voting power in or in relation to the company or any other company, or
  - (b) by virtue of any powers conferred by the articles of association or other document regulating the company or any other company,
- that the affairs of the company are conducted in accordance with his wishes.
- (7) There shall be left out of account for the purposes of subsection (6) above—
- (a) any shares held by a company, and
  - (b) any voting power or other powers arising from shares held by a company, if a profit on a sale of the shares would be treated as a trading receipt of a trade carried on by the company and the shares are not, within the meaning of Chapter 1 of Part 12, assets of an insurance company’s long-term insurance fund (see section 431(2)).]

### Textual Amendments

- F12** Ss. 209A, 209B inserted (with effect in accordance with s. 102(3) of the amending Act) by Finance Act 2002 (c. 23), s. 102(2)

VALID FROM 24/07/2002

### [<sup>F12</sup>209B Section 209(3AA): hedging arrangements

- (1) Subsection (3AA) of section 209 does not at any time apply in relation to a security issued by a company (the “issuing company”) if at that time, or any earlier time on or after 17th April 2002, there are or have been any hedging arrangements that relate to some or all of the company’s liabilities under the security.
- (2) Subsection (1) above does not prevent subsection (3AA) of section 209 from applying in relation to a security at any time if—
  - (a) conditions 1 to 4 below are satisfied in relation to any such hedging arrangements at that time; and
  - (b) at all earlier times on or after 17th April 2002 when there have been hedging arrangements that relate to some or all of the company’s liabilities under the security, conditions 1 to 4 below were satisfied in relation to those hedging arrangements.
- (3) Where subsection (3AA) of section 209 at any time ceases to apply in relation to a security by virtue of this section, subsection (2)(d) of that section shall have effect in relation to the security as from that time as it would have had effect if subsection (3AA) had never applied in relation to the security.
- (4) Condition 1 is that the hedging arrangements do not constitute, include, or form part of, any scheme or arrangement the purpose or one of the main purposes of which is the avoidance of tax or stamp duty.
- (5) Condition 2 is that the hedging arrangements are such that, where for the purposes of corporation tax a deduction in respect of the security falls to be made at any time by the issuing company, then at that time, or within a reasonable time before or after it,

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any amounts intended under the hedging arrangements to offset some or all of that deduction arise—

- (a) to the issuing company; or
  - (b) to a company which is a member of the same group of companies as the issuing company.
- (6) Condition 3 is that the whole of every amount arising as mentioned in subsection (5) above is brought into charge to corporation tax—
- (a) by a company falling within paragraph (a) or (b) of that subsection, or
  - (b) by two or more companies, taken together, each of which falls within paragraph (a) or (b) of that subsection.
- (7) Condition 4 is that for the purposes of corporation tax any deductions in respect of expenses of establishing or administering the hedging arrangements are reasonable, in proportion to the amounts required to be brought into charge to corporation tax by subsection (6) above.
- (8) For the purposes of this section “hedging arrangements”, in relation to a security, means any scheme or arrangement for the purpose, or for purposes which include the purpose, of securing that an amount of income or gain accrues, or is received or receivable, whether directly or indirectly, which is intended to offset some or all of the amounts which fall to be brought into account, in accordance with generally accepted accounting practice, in respect of amounts accruing or falling to be paid in accordance with the terms of the security.
- (9) Any reference in this section to two companies being members of the same group of companies is a reference to their being members of the same group of companies for the purposes of Chapter 4 of Part 10 of this Act (group relief).]

#### Textual Amendments

**F12** Ss. 209A, 209B inserted (with effect in accordance with s. 102(3) of the amending Act) by Finance Act 2002 (c. 23), s. 102(2)

## 210 Bonus issue following repayment of share capital.

<sup>MI1</sup>(1) Where a company—

- (a) repays any share capital or has done so at any time after 6th April 1965, and
- (b) at or after the time of that repayment issues any share capital as paid up otherwise than by the receipt of new consideration,

the amount so paid up shall, except as provided by any provision of the Corporation Tax Acts, be treated as a distribution made in respect of the shares on which it is paid up, except in so far as that amount exceeds the amount or aggregate amount of share capital so repaid less any amounts previously so paid up and treated by virtue of this subsection as distributions.

- (2) Subsection (1) above shall not apply where the repaid share capital consists of fully paid preference shares—
- (a) if those shares existed as issued and fully paid preference shares on 6th April 1965 and throughout the period from that date until the repayment those shares continued to be fully paid preference shares, or

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- (b) if those shares were issued after 6th April 1965 as fully paid preference shares wholly for new consideration not derived from ordinary shares and throughout the period from their issue until the repayment those shares continued to be fully paid preference shares.
- (3) <sup>M12</sup>Except in relation to a company within paragraph D of section 704, subsection (1) above shall not apply if the issue of share capital mentioned in paragraph (b) of that subsection—
- (a) is of share capital other than redeemable share capital; and
- (b) takes place after 5th April 1973 and more than ten years after the repayment of share capital mentioned in paragraph (a) of that subsection.
- (4) <sup>M13</sup>In this section—
- “ordinary shares” means shares other than preference shares;
- “preference shares” means shares—
- (a) which do not carry any right to dividends other than dividends at a rate per cent. of the nominal value of the shares which is fixed, and
- (b) which carry rights in respect of dividends and capital which are comparable with those general for fixed-dividend shares [<sup>F13</sup>listed in the Official List of] the Stock Exchange; and
- “new consideration not derived from ordinary shares” means new consideration other than consideration—
- (a) consisting of the surrender, transfer or cancellation of ordinary shares of the company or any other company or consisting of the variation of rights in ordinary shares of the company or any other company, or
- (b) derived from a repayment of share capital paid in respect of ordinary shares of the company or of any other company.

#### Textual Amendments

**F13** Words in s. 210(4) substituted (with effect in accordance with Sch. 38 para. 7(3) of the amending Act) by Finance Act 1996 (c. 8), Sch. 38 para. 7(1)(2)(a)

#### Marginal Citations

**M11** Source—1970 s.234(1), (2)

**M12** Source—1972 Sch.22 5(2), (3)

**M13** Source—1970 s.234(3); 1973 s.54

## 211 Matters to be treated or not to be treated as repayments of share capital.

- (1) <sup>M14</sup>Where—
- (a) a company issues any share capital as paid up otherwise than by the receipt of new consideration, or has done so after 6th April 1965; and
- (b) any amount so paid up does not fall to be treated as a qualifying distribution or, where the issue took place before 6th April 1973, did not fall to be treated as a distribution;

then, except as otherwise provided by any provision of the Corporation Tax Acts, for the purposes of sections 209 and 210, distributions afterwards made by the company in respect of shares representing that share capital shall not be treated as repayments of share capital, except to the extent to which those distributions, together with any

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relevant distributions previously so made, exceed the amounts so paid up (then or previously) on such shares after 6th April 1965 and not falling to be treated as qualifying distributions or, where the share capital was issued before 6th April 1973, as distributions.

- (2) <sup>M15</sup>Except in relation to a company within paragraph D of section 704, subsection (1) above shall not prevent a distribution being treated as a repayment of share capital if it is made—
- (a) more than ten years after the issue of share capital mentioned in paragraph (a) of that subsection; and
  - (b) in respect of share capital other than redeemable share capital.
- (3) <sup>M16</sup>In subsection (1) above “relevant distribution” means so much of any distribution made in respect of shares representing the relevant share capital as apart from that subsection would be treated as a repayment of share capital, but by virtue of that subsection cannot be so treated.
- (4) For the purposes of subsection (1) above all shares of the same class shall be treated as representing the same share capital, and where shares are issued in respect of other shares, or are directly or indirectly converted into or exchanged for other shares, all such shares shall be treated as representing the same share capital.
- (5) Where share capital is issued at a premium representing new consideration, the amount of the premium is to be treated as forming part of that share capital for the purpose of determining under this Chapter whether any distribution made in respect of shares representing the share capital is to be treated as a repayment of share capital.
- (6) Subsection (5) above shall not have effect in relation to any part of the premium after that part has been applied in paying up share capital.
- (7) Subject to subsection (5) above, premiums paid on redemption of share capital are not to be treated as repayments of capital.

#### **Marginal Citations**

**M14** Source—1970 s.235(1); 1972 Sch.22 6(1), (3)

**M15** Source—1972 Sch.22 6(2)

**M16** Source—1970 s.235 (2)-(5)

### **CHAPTER III**

#### **MATTERS WHICH ARE NOT DISTRIBUTIONS FOR THE PURPOSES OF THE CORPORATION TAX ACTS**

##### *Payments of interest*

#### **212 Interest etc. paid in respect of certain securities.**

- <sup>M17</sup>(1) Any interest or other distribution—
- (a) which is paid out of the assets of a company (“the borrower”) to another company which is within the charge to corporation tax; and

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- (b) which is so paid in respect of securities of the borrower which fall within <sup>[F14]</sup>paragraph (da) of section 209(2) or] any of sub-paragraphs (i) to (iii) and (vi) <sup>[F15]</sup>and (vii)] of paragraph (e) of section 209(2); and
- (c) which does not fall within paragraph (d) of section 209(2),

shall not be a distribution for the purposes of the Corporation Tax Acts unless the application of this subsection is excluded by subsection (2) or (3) below.

- (2) Subsection (1) above does not apply in the case of any interest or other distribution which is paid in respect of a security of the borrower falling within section 209(2)(e) (iii) if—

- (a) the principal secured does not exceed £100,000; and
- (b) the borrower is under an obligation to repay the principal and interest before the expiry of the period of five years beginning on the date on which the principal was paid to the borrower; and
- (c) that obligation either was entered into before 9th March 1982 or was entered into before 1st July 1982 pursuant to negotiations which were in progress on 9th March 1982; and
- (d) where the period for repayment of either principal or interest is extended after 8th March 1982 (but paragraph (b) above still applies), the interest or other distribution is paid within the period which was applicable immediately before that date;

and for the purposes of paragraph (c) above negotiations shall not be regarded as having been in progress on 9th March 1982 unless, before that date, the borrower had applied to the lender for a loan and had supplied the lender with any documents required by him to support the application.

- (3) <sup>[F16]</sup>Without prejudice to subsection (4) below,] subsection (1) above does not apply in a case where the company to which the interest or other distribution is paid is entitled under any enactment, other than section 208, to an exemption from tax in respect of that interest or distribution <sup>[F17]</sup>and does not apply in relation to any interest or distribution falling within section 209(2)(da) if that interest or distribution is otherwise outside the matters in respect of which that company is within the charge to corporation tax.]

- <sup>[F18]</sup>(4) Where any interest or other distribution is paid to a charity (within the meaning of section 506) or to any of the bodies mentioned in section 507, the interest or distribution so paid shall not be a distribution for the purposes of the Corporation Tax Acts if it would otherwise fall to be treated as such a distribution by virtue only of paragraph (da) of section 209(2).]

#### Textual Amendments

- F14** Words in s. 212(1)(b) inserted (with effect in accordance with s. 87(7)(8) of the amending Act) by Finance Act 1995 (c. 4), s. 87(4)(a)
- F15** Words in s. 212(1)(b) inserted (16.7.1992 with application where the interest or other distribution is paid after 14.5.1992) by Finance (No. 2) Act 1992 (c. 48), s. 31(3)(4).
- F16** Words in s. 212(3) inserted (with effect in accordance with s. 87(7)(8) of the amending Act) by Finance Act 1995 (c. 4), s. 87(4)(b)(i)
- F17** Words in s. 212(3) inserted (with effect in accordance with s. 87(7)(8) of the amending Act) by Finance Act 1995 (c. 4), s. 87(4)(b)(ii)
- F18** S. 212(4) inserted (with effect in accordance with s. 87(7)(8) of the amending Act) by Finance Act 1995 (c. 4), s. 87(4)(c)

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### Marginal Citations

M17 Source—1982 s.60(1)-(4)

## *Demergers*

### 213 Exempt distributions.

- <sup>M18</sup>(1) The provisions of this section and sections 214 to 218 have effect for facilitating certain transactions whereby trading activities carried on by a single company or group are divided so as to be carried on by two or more companies not belonging to the same group or by two or more independent groups.
- (2) References in the Corporation Tax Acts to distributions of a company shall not apply to any distribution—
- (a) which falls within subsection (3) below, and
  - (b) in respect of which the conditions specified in subsections (4) to (12) below are satisfied;
- and any such distribution is referred to in this section as an “exempt distribution”.
- (3) The following distributions fall within this subsection—
- (a) a distribution consisting of the transfer to all or any of its members by a company (“the distributing company”) of shares in one or more companies which are its 75 per cent. subsidiaries;
  - (b) a distribution consisting of the transfer by a company (“the distributing company”) to one or more other companies (“the transferee company or companies”) of—
    - (i) a trade or trades; or
    - (ii) shares in one or more companies which are 75 per cent. subsidiaries of the distributing company,
 and the issue of shares by the transferee company or companies to all or any of the members of the distributing company;
- and in this section and sections 214 to 217 references to a relevant company are to the distributing company, to each subsidiary whose shares are transferred as mentioned in paragraph (a) or (b) (ii) above and to each transferee company mentioned in paragraph (b) above.
- (4) Each relevant company must be resident in the United Kingdom at the time of the distribution.
- (5) The distributing company must at the time of the distribution be either a trading company or a member of a trading group and each subsidiary whose shares are transferred as mentioned in subsection (3)(a) or (b)(ii) above must at that time be either a trading company or the holding company of a trading group.
- (6) In a case within subsection [<sup>F19</sup>(3)(a)] above—
- (a) the shares must not be redeemable, must constitute the whole or substantially the whole of the distributing company’s holding of the ordinary share capital of the subsidiary and must confer the whole or substantially the whole of the distributing company’s voting rights in the subsidiary; and

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- (b) subject to subsections (7) and (12)(b) below, the distributing company must after the distribution be either a trading company or the holding company of a trading group.
- (7) Subsection (6)(b) above does not apply if the transfer relates to two or more 75 per cent. subsidiaries of the distributing company and that company is dissolved without there having been after the distribution any net assets of the company available for distribution in a winding up or otherwise.
- (8) In a case within subsection (3)(b) above—
- (a) if a trade is transferred the distributing company must either not retain any interest or retain only a minor interest in that trade;
  - (b) if shares in a subsidiary are transferred those shares must constitute the whole or substantially the whole of the distributing company's holding of the ordinary share capital of the subsidiary and must confer the whole or substantially the whole of the distributing company's voting rights in the subsidiary;
  - (c) the only or main activity of the transferee company or each transferee company after the distribution must be the carrying on of the trade or the holding of the shares transferred to it;
  - (d) the shares issued by the transferee company or each transferee company must not be redeemable, must constitute the whole or substantially the whole of its issued ordinary share capital and must confer the whole or substantially the whole of the voting rights in that company; and
  - (e) subject to subsections (9) and (12)(b) below, the distributing company must after the distribution be either a trading company or the holding company of a trading group.
- (9) Subsection (8)(e) above does not apply if there are two or more transferee companies each of which has a trade or shares in a separate 75 per cent. subsidiary of the distributing company transferred to it and the distributing company is dissolved without there having been after the distribution any net assets of the company available for distribution in a winding up or otherwise.
- (10) The distribution must be made wholly or mainly for the purpose of benefiting some or all of the trading activities which before the distribution are carried on by a single company or group and after the distribution will be carried on by two or more companies or groups.
- (11) The distribution must not form part of a scheme or arrangements the main purpose or one of the main purposes of which is—
- (a) the avoidance of tax (including stamp duty); or
  - (b) without prejudice to paragraph (a) above, the making of a chargeable payment, as defined by section 214, or what would be such a payment if any of the companies mentioned in that section were an unquoted company; or
  - (c) the acquisition by any person or persons other than members of the distributing company of control of that company, of any other relevant company or of any company which belongs to the same group as any such company; or
  - (d) the cessation of a trade or its sale after the distribution.
- In paragraph (c) above “group” means a company which has one or more 51 per cent. subsidiaries together with that or those subsidiaries.

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- (12) Where the distributing company is a 75 per cent. subsidiary of another company—
- (a) the group (or, if more than one, the largest group) to which the distributing company belongs at the time of the distribution must be a trading group;
  - (b) subsections (6)(b) and (8)(e) above shall not apply; and
  - (c) the distribution must be followed by one or more other distributions falling within subsection (3)(a) or (b)(ii) above which satisfy the conditions of this section and result in members of the holding company of the group (or, if more than one, the largest group) to which the distributing company belonged at the time of the distribution becoming members of—
    - (i) the transferee company or each transferee company to which a trade was transferred by the distributing company; or
    - (ii) the subsidiary or each subsidiary whose shares were transferred by the distributing company; or
    - (iii) a company (other than that holding company) of which the company or companies mentioned in sub-paragraph (i) or (ii) above are 75 per cent. subsidiaries.

#### Textual Amendments

**F19** 1990 s.89 and Sch.14 para.3 (*correction of errors*)—*deemed always to have had effect. Previously “(3)(1)(a)”.*

#### Marginal Citations

**M18** Source—1980 s.117, Sch.18 1-8, 23

VALID FROM 29/11/2007

#### [<sup>F20</sup>213A Exempt distributions: division of business

- (1) A reference in the Corporation Tax Acts to distributions of a company shall not apply to a distribution if—
  - (a) it is a distribution consisting of—
    - (i) the transfer of part of a business by a company (“the distributing company”) to one or more other companies (“the transferee company or companies”), and
    - (ii) the issue of shares by the transferee company or companies to the members of the distributing company, and
  - (b) the requirements of either section 140A(1A) of the 1992 Act (division of UK business) or section 140C(1A) of that Act (division of non-UK business) are satisfied in relation to the distribution.
- (2) A distribution to which this section applies is an “exempt distribution” for the purposes of sections 214 to 217.
- (3) The expression “relevant company” in sections 214 to 217 includes the distributing company and the transferee company or companies.]



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### Textual Amendments

**F20** S. 213A inserted (29.11.2007 with effect in accordance with reg. 3(1) of the amending S.I. (as retrospectively amended by S.I. 2008/1579, **reg. 4(1)**) by [The Corporation Tax \(Implementation of the Mergers Directive\) Regulations 2007](#) (S.I. 2007/3186), reg. 1(2), **Sch. 1 para. 13**

## 214 Chargeable payments connected with exempt distributions.

- (1) <sup>M19</sup>If within five years after the making of an exempt distribution there is a chargeable payment—
- (a) the amount or value of the payment shall be treated as income chargeable to tax under Case VI of Schedule D;
  - (b) unless the payment is a transfer of money's worth, sections 349(1) and 350 shall apply to the payment as if it were an annual sum payable otherwise than out of profits or gains charged to income tax;
  - (c) the payment shall be regarded as a distribution for the purposes of sections 337(2), [<sup>F21</sup>and 338(2)(a)]; and
  - (d) the payment shall not (if it otherwise would) be treated as a repayment of capital for the purposes of section 210 or 211.
- (2) <sup>M20</sup>In this section “a chargeable payment” means any payment made otherwise than for bona fide commercial reasons or forming part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax (including stamp duty), being a payment which—
- (a) a company concerned in an exempt distribution makes directly or indirectly to a member of that company or of any other company concerned in that distribution; and
  - (b) is made in connection with, or with any transaction affecting, the shares in that or any such company; and
  - (c) is not a distribution or exempt distribution or made to another company which belongs to the same group as the company making the payment.
- (3) Where a company concerned in an exempt distribution is an unquoted company subsection (2)(a) above shall have effect as if any reference to the making of a payment by, or to a member of, a company concerned in the exempt distribution included a reference to the making of a payment by or to any other person in pursuance of a scheme or arrangements made with the unquoted company or, if the unquoted company is—
- (a) under the control of five or fewer persons; and
  - (b) not under the control of (and only of) a company which is not itself under the control of five or fewer persons,
- with any of the persons mentioned in paragraph (a) above.
- (4) References in this section to a company concerned in an exempt distribution are to any relevant company and to any other company which was connected with any such company for the whole or any part of the period beginning with the exempt distribution and ending with the making of the payment which is in question under this section.
- (5) For the purposes of subsection (4) above and this subsection a company shall be deemed to have been connected in the period referred to in that subsection with each company to which a company connected with it was connected in that period.

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- (6) References in this section to a payment include references to a transfer of money's worth including the assumption of a liability.

#### Textual Amendments

**F21** 1989 s.107 and Sch.12 para.10—in relation to accounting periods beginning after 31 March 1989 subject to certain exceptions. Previously “382(2)(a) and 427(4) and paragraph 3 of Schedule 19”.

#### Marginal Citations

**M19** Source—1980 Sch.18 14

**M20** Source—1980 Sch.18 13

### 215 Advance clearance by Board of distributions and payments.

- (1) <sup>M21</sup>A distribution shall be treated as an exempt distribution in any case in which, before the distribution is made, the Board have, on the application of the distributing company, notified that company that the Board are satisfied that it will be such a distribution.
- (2) A payment shall not be treated as a chargeable payment in any case in which, before the payment is made, the Board have, on the application of the person intending to make it, notified him that they are satisfied that it will be made for bona fide commercial reasons and will not form part of any scheme or arrangements the main purpose, or one of the main purposes, of which is the avoidance of tax (including stamp duty).
- (3) A company which becomes or ceases to be connected with another company may make an application under subsection (2) above as respects any payments that may be made by it at any time after becoming or ceasing to be so connected (whether or not there is any present intention to make any payments); and where a notification is given by the Board on such an application no payment to which the notification relates shall be treated as a chargeable payment by reason only of the company being or having been connected with the other company.
- (4) References in subsections (2) and (3) above to a payment shall be construed as in section 214.
- (5) <sup>M22</sup>Any application under this section shall be in writing and shall contain particulars of the relevant transactions and the Board may, within 30 days of the receipt of the application or of any further particulars previously required under this subsection, by notice require the applicant to furnish further particulars for the purposes of enabling the Board to make their decision; and if any such notice is not complied with within 30 days or such longer period as the Board may allow, the Board need not proceed further on the application.
- (6) The Board shall notify their decision to the applicant within 30 days of receiving the application or, if they give a notice under subsection (5) above, within 30 days of the notice being complied with.
- (7) If the Board notify the applicant that they are not satisfied as mentioned in subsection (1) or (2) above or do not notify their decision to the applicant within the time required by subsection (6) above, the applicant may within 30 days of the notification or of that time require the Board to transmit the application, together

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with any notice given and further particulars furnished under subsection (5) above, to the Special Commissioners; and in that event any notification by the Special Commissioners shall have effect for the purposes of this section as if it were a notification by the Board.

- (8) If any particulars furnished under this section do not fully and accurately disclose all facts and circumstances material for the decision of the Board or the Special Commissioners, any resulting notification that the Board or Commissioners are satisfied as mentioned in subsection (1) or (2) above shall be void.

#### Marginal Citations

**M21** Source—1980 Sch.18 17

**M22** Source—1980 Sch.18 18

## 216 Returns.

- (1) <sup>M23</sup>Where a company makes an exempt distribution it shall within 30 days after the distribution make a return to the inspector giving particulars of the distribution and of the circumstances by reason of which it is exempt.
- (2) <sup>M24</sup>Where within five years after the making of an exempt distribution a person makes a chargeable payment which consists of a transfer of money's worth, he shall within 30 days after the transfer make a return to the inspector giving particulars—
- of the transaction effecting the transfer;
  - of the name and address of the recipient or each recipient and the value of what is transferred to him or each of them; and
  - if the transfer is accompanied by a chargeable payment consisting of a payment of money, of that payment.
- (3) Subject to subsection (4) below, where within five years after the making of an exempt distribution a person makes a payment or a transfer of money's worth which would be a chargeable payment but for the fact that it is made for bona fide commercial reasons and does not form part of any such scheme or arrangements as are mentioned in section 214(2), that person shall within 30 days after making the payment or transfer make a return to the inspector giving particulars—
- in the case of a transfer, of the transaction by which it is effected;
  - of the name and address of the recipient or each recipient and the amount of the payment made, or the value of what is transferred, to him or each of them; and
  - of the circumstances by reason of which the payment or transfer is not a chargeable payment.
- (4) Subsection (3) above does not apply where the payment or transfer is one in relation to which a notification under section 215(3) has effect.

#### Marginal Citations

**M23** Source—1980 Sch.18 19

**M24** Source—1980 Sch.18 20

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## 217 Information.

- (1) <sup>M25</sup>Where a distribution falling within section 213(3) has been made and the inspector has reason to believe that it may form part of any such scheme or arrangements as are mentioned in section 213(11), he may by notice require any relevant company or any person controlling any such company to furnish him within such time, not being less than 30 days, as may be specified in the notice with—
  - (a) a declaration in writing stating whether or not, according to information which the company or that person has or can reasonably obtain, any such scheme or arrangements exist or have existed;
  - (b) such other information as the inspector may reasonably require for the purposes of section 213(11) and the company or that person has or can reasonably obtain.
- (2) <sup>M26</sup>If the inspector has reason to believe that a person has not delivered an account or made a return which he is required to deliver or make by virtue of section 214(1) (b) or 216(2) or (3) in respect of any payment or transfer, he may by notice require that person to furnish him within such time, not being less than 30 days, as may be specified in the notice with such information relating to the payment or transfer as he may reasonably require for the purposes of section 214.
- (3) If the inspector has reason to believe that a payment or transfer has been made within five years after the making of an exempt distribution and that the payment or transfer is a chargeable payment by reason of the existence of any such scheme or arrangements as are mentioned in section 214(3), he may by notice require the person making the payment or transfer or, if that person is a company, any person controlling it to furnish him within such time, not being less than 30 days, as may be specified in the notice with—
  - (a) a declaration in writing stating whether or not, according to information which that person has, or can reasonably obtain, any such scheme or arrangements exist or have existed;
  - (b) such other information as the inspector may reasonably require for the purposes of section 214 and that person has or can reasonably obtain.
- (4) Any recipient of a chargeable payment and any person on whose behalf such a payment is received shall, if so required by the inspector, state whether the payment received by him or on his behalf is received on behalf of any person other than himself and, if so, the name and address of that person.

### Marginal Citations

**M25** Source—1980 Sch.18 21

**M26** Source—1980 Sch.18 22

## 218 Interpretation of sections 213 to 217.

- <sup>M27</sup>(1) In sections 213 to 217—
- “chargeable payment” has the meaning given by section 214(2);
  - “control” shall be construed in accordance with section 416(2) to (6);
  - “distributing company” has the meaning given by section 213(3);
  - “exempt distribution” has the meaning given by section 213(2);

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“group”, except in section 213(11)(c), means a company which has one or more 75 per cent. subsidiaries together with that or those subsidiaries;

“holding company” means a company whose business (disregarding any trade carried on by it) consists wholly or mainly of the holding of shares or securities of one or more companies which are its 75 per cent. subsidiaries;

“member”, where the reference is to a member of a company, does not, except in section 214(2)(a), include a person who is a member otherwise than by virtue of holding shares forming part of the company’s ordinary share capital;

“relevant company” has the meaning given by section 213(3);

“shares” includes stock;

“trade”, except in subsection (3) below, does not include dealing in shares, securities, land, trades or commodity futures and “trading activities” shall be construed accordingly;

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

“trading group” means a group the business of whose members, taken together, consists wholly or mainly in the carrying on of a trade or trades; and

“unquoted company” means a company which does not satisfy the condition that its shares or some class thereof (disregarding debenture or loan stock, preferred shares or preferred stock) are listed in the Official List of the Stock Exchange and are dealt in on the Stock Exchange regularly or from time to time, so however that this definition does not apply to a company under the control of (and only of) one or more companies to which this definition does not apply.

- (2) In determining for the purposes of section 213(3) to (9) whether a company whose shares are transferred by the distributing company is a 75 per cent. subsidiary of the distributing company there shall be disregarded any share capital of the first-mentioned company which is owned indirectly by the distributing company.
- (3) In determining for the purposes of sections 213 to 217 whether one company is a 75 per cent. subsidiary of another, the other company shall be treated as not being the owner of—
  - (a) any share capital which it owns directly in a body corporate if a profit on a sale of the shares would be treated as a trading receipt of its trade; or
  - (b) 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 a trading receipt.
- (4) Section 839 applies for the purposes of sections 213 to 217.

#### Marginal Citations

M27 Source—1980 Sch.18 23

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### *Purchase of own shares*

#### **219 Purchase by unquoted trading company of own shares.**

<sup>M28</sup>(1) References in the Corporation Tax Acts to distributions of a company shall not include references to a payment made by a company on the redemption, repayment or purchase of its own shares if the company is an unquoted trading company or the unquoted holding company of a trading group and either—

(a) the redemption, repayment or purchase is made wholly or mainly for the purpose of benefiting a trade carried on by the company or by any of its 75 per cent. subsidiaries, and does not form part of a scheme or arrangement the main purpose or one of the main purposes of which is—

(i) to enable the owner of the shares to participate in the profits of the company without receiving a dividend, or  
 (ii) the avoidance of tax; and

the conditions specified in sections 220 to 224, so far as applicable, are satisfied in relation to the owner of the shares; or

(b) the whole or substantially the whole of the payment (apart from any sum applied in paying capital gains tax charged on the redemption, repayment or purchase) is applied by the person to whom it is made in discharging a liability of his for inheritance tax charged on a death and is so applied within the period of two years after the death;

and in sections 220 to 224—

“the purchase” means the redemption, repayment or purchase referred to in subsection (1)(a) above; and

“the vendor” means the owner of the shares at the time it is made.

(2) Where, apart from this subsection, a payment falls within subsection (1)(b) above, subsection (1) above shall not apply to the extent that the liability in question could without undue hardship have been discharged otherwise than through the redemption, repayment or purchase of shares in the company or another unquoted company which is a trading company or the holding company of a trading group.

#### **Marginal Citations**

**M28** Source—1982 s.53(1)-(3); 1986 s.100

#### **220 Conditions as to residence and period of ownership.**

<sup>M29</sup>(1) The vendor must be resident and ordinarily resident in the United Kingdom in the year of assessment in which the purchase is made and if the shares are held through a nominee the nominee must also be so resident and ordinarily resident.

(2) The residence and ordinary residence of trustees shall be determined for the purposes of this section as they are determined under section [F2269 of the 1992 Act] for the purposes of that Act.

(3) The residence and ordinary residence of personal representatives shall be taken for the purposes of this section to be the same as the residence and ordinary residence of the deceased immediately before his death.

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- (4) The references in this section to a person's ordinary residence shall be disregarded in the case of a company.
- (5) The shares must have been owned by the vendor throughout the period of five years ending with the date of the purchase.
- (6) If at any time during that period the shares were transferred to the vendor by a person who was then his spouse living with him then, unless that person is alive at the date of the purchase but is no longer the vendor's spouse living with him, any period during which the shares were owned by that person shall be treated for the purposes of subsection (5) above as a period of ownership by the vendor.
- (7) Where the vendor became entitled to the shares under the will or on the intestacy of a previous owner or is the personal representative of a previous owner—
  - (a) any period during which the shares were owned by the previous owner or his personal representatives shall be treated for the purposes of subsection (5) above as a period of ownership by the vendor, and
  - (b) that subsection shall have effect as if it referred to three years instead of five.
- (8) In determining whether the condition in subsection (5) above is satisfied in a case where the vendor acquired shares of the same class at different times—
  - (a) shares acquired earlier shall be taken into account before shares acquired later, and
  - (b) any previous disposal by him of shares of that class shall be assumed to be a disposal of shares acquired later rather than of shares acquired earlier.
- (9) If for the purposes of capital gains tax the time when shares were acquired would be determined under any provision of Chapter II of Part IV of the [F22 1992] Act (reorganisation of share capital, conversion of securities, etc.) then, unless the shares were allotted for payment or were comprised in share capital to which section 249 applies, it shall be determined in the same way for the purposes of this section.

#### Textual Amendments

**F22** Words in s. 220(2)(9) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, Sch. 10 para. 14(14) (with ss. 60, 101(1), 171, 201(3)).

#### Marginal Citations

**M29** Source—1982 Sch.9 1, 2

## 221 Reduction of vendor's interest as shareholder.

- (1) <sup>M30</sup>If immediately after the purchase the vendor owns shares in the company, then, subject to section 224, the vendor's interest as a shareholder must be substantially reduced.
- (2) <sup>M31</sup>If immediately after the purchase any associate of the vendor owns shares in the company then, subject to section 224, the combined interests as shareholders of the vendor and his associates must be substantially reduced.
- (3) The question whether the combined interests as shareholders of the vendor and his associates are substantially reduced shall be determined in the same way as is (under

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the following subsections) the question whether a vendor's interest as a shareholder is substantially reduced, except that the vendor shall be assumed to have the interests of his associates as well as his own.

- (4)<sup>M32</sup> Subject to subsection (5) below, the vendor's interest as a shareholder shall be taken to be substantially reduced if and only if the total nominal value of the shares owned by him immediately after the purchase, expressed as a fraction of the issued share capital of the company at that time, does not exceed 75 per cent. of the corresponding fraction immediately before the purchase.
- (5) The vendor's interest as a shareholder shall not be taken to be substantially reduced where—
- (a) he would, if the company distributed all its profits available for distribution immediately after the purchase, be entitled to a share of those profits, and
  - (b) that share, expressed as a fraction of the total of those profits, exceeds 75 per cent. of the corresponding fraction immediately before the purchase.
- (6) In determining for the purposes of subsection (5) above the division of profits among the persons entitled to them, a person entitled to periodic distributions calculated by reference to fixed rates or amounts shall be regarded as entitled to a distribution of the amount or maximum amount to which he would be entitled for a year.
- (7)<sup>M33</sup> In subsection (5) above "profits available for distribution" has the same meaning as it has for the purposes of Part VIII of the <sup>M34</sup>Companies Act 1985, except that for the purposes of that subsection the amount of the profits available for distribution (whether immediately before or immediately after the purchase) shall be treated as increased—
- (a) in the case of every company, by £100, and
  - (b) in the case of a company from which any person is entitled to periodic distributions of the kind mentioned in subsection (6) above, by a further amount equal to that required to make the distribution to which he is entitled in accordance with that subsection;
- and where the aggregate of the sums payable by the company on the purchase and on any contemporaneous redemption, repayment or purchase of other shares of the company exceeds the amount of the profits available for distribution immediately before the purchase, that amount shall be treated as further increased by an amount equal to the excess.
- (8)<sup>M35</sup> References in this section to entitlement are, except in the case of trustees and personal representatives, references to beneficial entitlement.

#### **Marginal Citations**

- M30** Source—1982 Sch.9 3(1)  
**M31** Source—1982 Sch.9 4  
**M32** Source—1982 Sch.9 3(2)-(4)  
**M33** Source—1982 Sch.9 3(5), (6)  
**M34** 1985 c.6  
**M35** Source—1982 Sch.9 3(7)

## **222 Conditions applicable where purchasing company is member of group.**

- (1)<sup>M36</sup> Subject to section 224, where the company making the purchase is immediately before the purchase a member of a group and—



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- (a) immediately after the purchase the vendor owns shares in one or more other members of the group (whether or not he then owns shares in the company making the purchase), or
  - (b) immediately after the purchase the vendor owns shares in the company making the purchase and immediately before the purchase he owned shares in one or more other members of the group,
- the vendor's interest as a shareholder in the group must be substantially reduced.
- (2) In subsections (5) to (7) below "relevant company" means the company making the purchase and any other member of the group in which the vendor owns shares immediately before or immediately after the purchase, but subject to subsection (4) below.
- (3) <sup>M37</sup>Subject to section 224, where the company making the purchase is immediately before the purchase a member of a group and at that time an associate of the vendor owns shares in any member of the group, the combined interests as shareholders in the group of the vendor and his associates must be substantially reduced.
- (4) <sup>M38</sup>The question whether the combined interests as shareholders in the group of the vendor and his associates are substantially reduced shall be determined in the same way as is (under the following subsections) the question whether a vendor's interest as a shareholder in a group is substantially reduced, except that the vendor shall be assumed to have the interests of his associates as well as his own (and references in subsections (5) to (7) below to a relevant company shall be construed accordingly).
- (5) <sup>M39</sup>The vendor's interest as a shareholder in the group shall be ascertained by—
- (a) expressing the total nominal value of the shares owned by him in each relevant company as a fraction of the issued share capital of the company,
  - (b) adding together the fractions so obtained, and
  - (c) dividing the result by the number of relevant companies (including any in which he owns no shares).
- (6) Subject to subsection (7) below, the vendor's interest as a shareholder in the group shall be taken to be substantially reduced if and only if it does not exceed 75 per cent. of the corresponding interest immediately before the purchase.
- (7) The vendor's interest as a shareholder in the group shall not be taken to be substantially reduced if—
- (a) he would, if every member of the group distributed all its profits available for distribution immediately after the purchase (including any profits received by it on a distribution by another member), be entitled to a share of the profits of one or more of them, and
  - (b) that share, or the aggregate of those shares, expressed as a fraction of the aggregate of the profits available for distribution of every member of the group which is—
    - (i) a relevant company, or
    - (ii) a 51 per cent. subsidiary of a relevant company,
 exceeds 75 per cent. of the corresponding fraction immediately before the purchase.
- (8) Subsections (6) and (7) of section 221 shall apply for the purposes of subsection (7) above as they apply for the purposes of subsection (5) of that section.

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- (9) <sup>M40</sup> Subject to the following subsections, in this section “group” means a company which has one or more 51 per cent. subsidiaries, but is not itself a 51 per cent. subsidiary of any other company, together with those subsidiaries.
- (10) <sup>M41</sup> Where the whole or a significant part of the business carried on by an unquoted company (“the successor company”) was previously carried on by—
- (a) the company making the purchase, or
  - (b) a company which is (apart from this subsection) a member of a group to which the company making the purchase belongs, the successor company and any company of which it is a 51 per cent. subsidiary shall be treated as being a member of the same group as the company making the purchase (whether or not, apart from this subsection, the company making the purchase is a member of a group).
- (11) Subsection (10) above shall not apply if the successor company first carried on the business there referred to more than three years before the time of the purchase.
- (12) For the purposes of this section a company which has ceased to be a 51 per cent. subsidiary of another company before the time of the purchase shall be treated as continuing to be such a subsidiary if at that time there exist arrangements under which it could again become such a subsidiary.

#### **Marginal Citations**

- M36** Source—1982 Sch.9 5(1), (2)  
**M37** Source—1982 Sch.9 6(1), (2)  
**M38** Source—1982 Sch.9 6(3)  
**M39** Source—1982 Sch.9 5(3)-(6)  
**M40** Source—1982 Sch.9 5(7), 6(4)  
**M41** Source—1982 Sch.9 5(8)-(10)

## **223 Other conditions.**

- (1) <sup>M42</sup> Subject to section 224, the vendor must not immediately after the purchase be connected with the company making the purchase or with any company which is a member of the same group as that company.
- In this subsection “group” has the same meaning as it has for the purposes of section 222.
- (2) <sup>M43</sup> Subject to section 224, the purchase must not be part of a scheme or arrangement which is designed or likely to result in the vendor or any associate of his having interests in any company such that, if he had those interests immediately after the purchase, any of the conditions in sections 221 and 222 and subsection (1) above could not be satisfied.
- (3) A transaction occurring within one year after the purchase shall be deemed for the purposes of subsection (2) above to be part of a scheme or arrangement of which the purchase is also part.

#### **Marginal Citations**

- M42** Source—1982 Sch.9 7

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**M43** Source—1982 Sch.9 8

## 224 Relaxation of conditions in certain cases.

<sup>M44</sup>Where—

- (a) any of the conditions in sections 221 to 223 which are applicable are not satisfied in relation to the vendor, but
- (b) he proposed or agreed to the purchase in order that the condition in section 221(2) or 222(3) could be satisfied in respect of the redemption, repayment or purchase of shares owned by a person of whom he is an associate,

then, to the extent that that result is produced by virtue of the purchase, section 219(1)

(a) shall have effect as if the conditions in sections 221 to 223 were satisfied in relation to the vendor.

### Marginal Citations

**M44** Source—1982 Sch.9 9

## 225 Advance clearance of payments by Board.

- (1) <sup>M45</sup>A payment made by a company on the redemption, repayment or purchase of its own shares shall be deemed—
  - (a) to be one to which section 219 applies if, before it is made, the Board have on the application of the company notified the company that they are satisfied that the section will apply; and
  - (b) to be one to which section 219 does not apply if, before it is made, the Board have on the application of the company notified the company that they are satisfied that the section will not apply.
- (2) An application under this section shall be in writing and shall contain particulars of the relevant transactions; and the Board may, within 30 days of the receipt of the application or of any further particulars previously required under this subsection, by notice require the applicant to furnish further particulars for the purpose of enabling the Board to make their decision.
- (3) If a notice under subsection (2) above is not complied with within 30 days or such longer period as the Board may allow, the Board need not proceed further on the application.
- (4) The Board shall notify their decision to the applicant within 30 days of receiving the application or, if they give a notice under subsection (2) above, within 30 days of the notice being complied with.
- (5) If particulars furnished under this section do not fully and accurately disclose all facts and circumstances material for the decision of the Board, any resulting notification by the Board shall be void.

### Marginal Citations

**M45** Source—1982 Sch.9 10

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## 226 Returns and information.

- (1) <sup>M46</sup>A company which treats a payment made by it as one to which section 219 applies shall within 60 days after making the payment make a return to the inspector giving particulars of the payment and of the circumstances by reason of which that section is regarded as applying to it.
- (2) Where a company treats a payment made by it as one to which section 219(1)(a) applies, any person connected with the company who knows of any such scheme or arrangement affecting the payment as is mentioned in section 223(2) shall, within 60 days after he first knows of both the payment and the scheme or arrangement, give a notice to the inspector containing particulars of the scheme or arrangement.
- (3) <sup>M47</sup>Where the inspector has reason to believe that a payment treated by the company making it as one to which section 219(1)(a) applies may form part of a scheme or arrangement of the kind referred to therein or in section 223(2), he may by notice require the company or any person who is connected with the company to furnish him within such time, not being less than 60 days, as may be specified in the notice with—
  - (a) a declaration in writing stating whether or not, according to information which the company or that person has or can reasonably obtain, any such scheme or arrangement exists or has existed, and
  - (b) such other information as the inspector may reasonably require for the purposes of the provision in question and the company or that person has or can reasonably obtain.
- (4) The recipient of a payment treated by the company making it as one to which section 219 applies, and any person on whose behalf such a payment is received, shall if so required by the inspector state whether the payment received by him or on his behalf is received on behalf of any person other than himself and, if so, the name and address of that person.

### Marginal Citations

**M46** Source—1982 Sch.9 11

**M47** Source—1982 Sch.9 12

## 227 Associated persons.

- <sup>M48</sup>(1) Any question whether a person is an associate of another in relation to a company shall be determined for the purposes of sections 219 to 226 and 228 in accordance with the following provisions of this section.
- (2) A husband and wife living together are associates of one another, a person under the age of 18 is an associate of his parents, and his parents are his associates.
- (3) A person connected with a company is an associate of the company and of any company controlled by it, and the company and any company controlled by it are his associates.
- (4) Where a person connected with one company has control of another company, the second company is an associate of the first.

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- (5) Where shares in a company are held by trustees (other than bare trustees) then in relation to that company, but subject to subsection (8) below, the trustees are associates of—
- (a) any person who directly or indirectly provided property to the trustees or has made a reciprocal arrangement for another to do so,
  - (b) any person who is, by virtue of subsection (2) above, an associate of a person within paragraph (a) above, and
  - (c) any person who is or may become beneficially entitled to a significant interest in the shares;
- and any such person is an associate of the trustees.
- (6) Where shares in a company are comprised in the estate of a deceased person, then in relation to that company the deceased's personal representatives are associates of any person who is or may become beneficially entitled to a significant interest in the shares, and any such person is an associate of the personal representatives.
- (7) Where one person is accustomed to act on the directions of another in relation to the affairs of a company, then in relation to that company the two persons are associates of one another.
- (8) Subsection (5) above shall not apply to shares held on trusts which—
- (a) relate exclusively to an exempt approved scheme as defined in Chapter I of Part XIV, or
  - (b) are exclusively for the benefit of the employees, or the employees and directors, of the company referred to in that subsection or of companies in a group to which that company belongs, or their dependants (and are not wholly or mainly for the benefit of directors or their relatives);
- and for the purposes of this subsection “group” means a company which has one or more 51 per cent. subsidiaries, together with those subsidiaries.
- (9) For the purposes of subsections (5) and (6) above a person's interest is significant if its value exceeds 5 per cent. of the value of all the property held on the trusts or, as the case may be, comprised in the estate concerned, excluding any property in which he is not and cannot become beneficially entitled to an interest.

#### Marginal Citations

M48 Source—1982 Sch.9 14

## 228 Connected persons.

- <sup>M49</sup>(1) Any question whether a person is connected with a company shall be determined for the purposes of sections 219 to 227 in accordance with the following provisions of this section.
- (2) A person is connected with a company if he directly or indirectly possesses or is entitled to acquire more than 30 per cent. of—
- (a) the issued ordinary share capital of the company, or
  - (b) the loan capital and issued share capital of the company, or
  - (c) the voting power in the company.

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- (3) Where a person—
- (a) acquired or became entitled to acquire loan capital of a company in the ordinary course of a business carried on by him, being a business which includes the lending of money, and
  - (b) takes no part in the management or conduct of the company,
- his interest in that loan capital shall be disregarded for the purposes of subsection (2) above.
- (4) A person is connected with a company if he directly or indirectly possesses or is entitled to acquire such rights as would, in the event of the winding up of the company or in any other circumstances, entitle him to receive more than 30 per cent. of the assets of the company which would then be available for distribution to equity holders of the company; and for the purposes of this subsection—
- (a) the persons who are equity holders of the company, and
  - (b) the percentage of the assets of the company to which a person would be entitled,
- shall be determined in accordance with paragraphs 1 and 3 of Schedule 18, taking references in paragraph 3 to the first company as references to an equity holder and references to a winding up as including references to any other circumstances in which assets of the company are available for distribution to its equity holders.
- (5) A person is connected with a company if he has control of it.
- (6) References in this section to the loan capital of a company are references to any debt incurred by the company—
- (a) for any money borrowed or capital assets acquired by the company, or
  - (b) for any right to receive income created in favour of the company, or
  - (c) for consideration the value of which to the company was (at the time when the debt was incurred) substantially less than the amount of the debt (including any premium thereon).
- (7) For the purposes of this section a person shall be treated as entitled to acquire anything which he is entitled to acquire at a future date or will at a future date be entitled to acquire.
- (8) For the purposes of this section a person shall be assumed to have the rights or powers of his associates as well as his own.

**Marginal Citations**

**M49** Source—1982 Sch.9 15

**229 Other interpretative provisions.**

<sup>M50</sup>(1) In sections 219 to 228—

“control” has the meaning given by section 840;

“holding company” means a company whose business (disregarding any trade carried on by it) consists wholly or mainly of the holding of shares or securities of one or more companies which are its 75 per cent. subsidiaries;

“personal representatives” means persons responsible for administering the estate of a deceased person;

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“quoted company” means a company whose shares (or any class of whose shares) are listed in the official list of a stock exchange;

“shares” includes stock;

“trade” does not include dealing in shares, securities, land or futures and “trading activities” shall be construed accordingly;

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

“trading group” means a group the business of whose members, taken together, consists wholly or mainly of the carrying on of a trade or trades, and for this purpose “group” means a company which has one or more 75 per cent. subsidiaries together with those subsidiaries; and

“unquoted company” means a company which is neither a quoted company nor a 51 per cent. subsidiary of a quoted company.

- (2) References in sections 219 to 228 to the owner of shares are references to the beneficial owner except where the shares are held on trusts (other than bare trusts) or are comprised in the estate of a deceased person, and in such a case are references to the trustees or, as the case may be, to the deceased’s personal representatives.
- (3) References in sections 219 to 228 to a payment made by a company include references to anything else that is, or would but for section 219 be, a distribution.

#### Marginal Citations

**M50** Source—1982 Sch.9 16

### Stock dividends

#### 230 Stock dividends: distributions.

<sup>M51</sup>Any share capital to which section 249 applies and which is issued by a company either <sup>F23</sup>as mentioned in subsection (4), (5) or (6) of that section or to a close company as mentioned in paragraph 12(1) of Schedule 19 <sup>F23</sup>(read in either case <sup>F23</sup>with subsection (3) of that section)—

- (a) shall, notwithstanding section 209(2)(c), not constitute a distribution within the meaning of section 209(2); and
- (b) for purposes of sections 210 and 211 shall not be treated as issued “as paid up otherwise than by the receipt of new consideration”.

#### Textual Amendments

**F23** Words in s. 230 repealed (in relation to accounting periods beginning after 31.3.1989) by Finance Act 1989 (c. 26), s. 187, Sch. 17 Part V

#### Marginal Citations

**M51** Source—1975 (No.2) Sch.8 6

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VALID FROM 01/04/2009

*<sup>F24</sup>Industrial and provident society dividends etc*

**Textual Amendments**

**F24** S. 230A and preceding cross-heading inserted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), **Sch. 1 para. 100** (with Sch. 2 Pts. 1, 2)

**230A Dividend or bonus granted by industrial and provident society**

- (1) This section applies if—
- (a) a dividend or bonus is granted by a registered industrial and provident society, and
  - (b) section 132 (deduction for dividends etc granted by industrial and provident societies) of CTA 2009 allows the sum representing the dividend or bonus to be deducted in calculating the profits of a trade.
- (2) The dividend, or the bonus, is not treated as a distribution for the purposes of the Corporation Tax Acts.]

**CHAPTER IV**

TAX CREDITS

**231 Tax credits for certain recipients of qualifying distributions.**

- <sup>M52</sup>(1) Subject to sections 95(1)(b) [<sup>F25</sup>, 247 and 441A], where a company resident in the United Kingdom makes a qualifying distribution and the person receiving the distribution is another such company or a person resident in the United Kingdom, not being a company, the recipient of the distribution shall be entitled to a tax credit equal to such proportion of the amount or value of the distribution as corresponds to the rate of advance corporation tax in force for the financial year in which the distribution is made.
- (2) Subject to section 241(5), a company resident in the United Kingdom which is entitled to a tax credit in respect of a distribution may claim to have the amount of the credit paid to it if—
- (a) the company is wholly exempt from corporation tax or is only not exempt in respect of trading income; or
  - (b) the distribution is one in relation to which express exemption is given (otherwise than by section 208), whether specifically or by virtue of a more general exemption from tax, under any provision of the Tax Acts.
- (3) A person, not being a company resident in the United Kingdom, who is entitled to a tax credit in respect of a distribution may claim to have the credit set against the income tax chargeable on his income under section 3 or on his total income for the year of assessment in which the distribution is made and [<sup>F26</sup>subject to subsections (3A) to (3D) below] where the credit exceeds that income tax, to have the excess paid to him.



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[<sup>F27</sup>(3A) Subject to subsection (3B) below, where <sup>F28</sup>. . . , in any accounting period of a company at the end of which it is a close investment-holding company—

- (a) arrangements relating to the distribution of the profits of the company exist or have existed the main purpose of which or one of the main purposes of which is to enable payments, or payments of a greater amount, to be made to any one or more individuals under subsection (3) above in respect of such an excess as is mentioned in that subsection, and
- (b) by virtue of those arrangements, any eligible person—
  - (i) receives a qualifying distribution consisting of a payment made by the company on the redemption, repayment or purchase of its own shares, or
  - (ii) receives any other qualifying distribution in respect of shares in or securities of the company, where the amount or value of the distribution is greater than might in all the circumstances have been expected but for the arrangements,

the entitlement of the eligible person to have paid to him under subsection (3) above all or part of a tax credit in respect of any distribution made by the company in the period shall be restricted to such extent as [<sup>F29</sup>is] just and reasonable.

(3B) Subsection (3A) above does not apply in relation to a tax credit in respect of a dividend paid by a company in any accounting period in respect of its ordinary share capital if—

- (a) throughout the period, the company's ordinary share capital consisted of only one class of shares, and
- (b) no person waived his entitlement to any dividend which would have become payable by the company in the period or failed to receive any dividend which had become due and payable to him by the company in the period.

(3C) In subsection (3A) above—

“arrangements” means arrangements of any kind whether in writing or not,  
“close investment-holding company” has the meaning given by section 13A, and

“eligible person”, in relation to a qualifying distribution, means an individual resident in the United Kingdom who would (apart from subsection (3A) above) be entitled to have paid to him under subsection (3) above all or part of a tax credit in respect of the distribution.

(3D) In determining under subsection (3) above whether a person is entitled to have any excess of tax credit paid to him in a case where subsection (3A) above applies, tax credits shall be set against income tax in the order that results in the greatest payment in respect of the excess.]

- (4) Where a distribution mentioned in subsection (1) above is, or falls to be treated as, or under any provision of the Tax Acts is deemed to be, the income of a person other than the recipient, that person shall be treated for the purposes of this section as receiving the distribution (and accordingly the question whether he is entitled to a tax credit in respect of it shall be determined by reference to where he, and not the actual recipient, is resident); *and where any such distribution is income of a United Kingdom trust the trustees shall be entitled to a tax credit in respect of it if no other person falls to be treated for the purposes of this section as receiving the distribution*<sup>F30</sup>.

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- (5) In subsection (4) above “United Kingdom trust” means a trust administered under the law of any part of the United Kingdom, not being a trust the general administration of which is ordinarily carried on outside the United Kingdom and the trustees, or a majority of the trustees, of which are resident or ordinarily resident outside the United Kingdom<sup>F30</sup>.

#### Textual Amendments

- F25** 1990 s.42 and Sch.7 para.2 for accounting periods beginning on or after 1 January 1990 (See para.10).  
**F26** 1989 s.106 in relation to distributions made by companies in accounting periods beginning after 31 March 1989.  
**F27** 1989 s.106 in relation to distributions made by companies in accounting periods beginning after 31 March 1989.  
**F28** Words in s. 231(3A) repealed (with effect in accordance with s. 134(2) of the repealing act) by Finance Act 1996 (c. 8), Sch. 20 para. 12(a), Sch. 41 Pt. 5(10), Note  
**F29** Word in s. 231(3A) substituted (with effect in accordance with s. 134(2) of the amending Act) by Finance Act 1996 (c. 8), Sch. 20 para. 12(b)  
**F30** Repealed by 1989 s.187 and Sch.17 Part IV but in accordance with 1989 ss.110 and 111.

#### Modifications etc. (not altering text)

- C13** See 1989 s.107 and Sch.12—close companies.  
**C14** See—s.94—taxation of dealer's receipts on purchase by company of own shares.s.423 et seq—close company income.s.448—overseas life assurance companies.  
**C15** See—s.812—certain non resident companies connected with unitary states.s.824—repayment supplement.

#### Marginal Citations

- M52** Source—1972 s.86; 1972 s.110(1)

VALID FROM 31/07/1997

#### <sup>F31</sup>231A Restrictions on the use of tax credits by pension funds.

- <sup>F32</sup>(1) No claim shall be made under section 231(2) for payment of the amount of a tax credit if or to the extent that the qualifying distribution to which the credit relates is income of a pension fund.
- (2) In the case of any pension fund, for any year of assessment the aggregate amount of the tax credits in respect of which claims are made under section 231(3) must not exceed the aggregate amount of the tax credits in respect of the qualifying distributions comprised in the income of the pension fund and brought into charge to tax.
- (3) Accordingly, no payment shall be made under section 231(3) in respect of so much of the excess there mentioned as is referable to a tax credit in respect of a qualifying distribution if or to the extent that the qualifying distribution is income of a pension fund.
- (4) In this section—  
“income”, in relation to a pension fund, means income derived from investments or deposits held for the purposes of the pension fund;

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“pension fund” means any scheme, fund or other arrangements established and maintained (whether in the United Kingdom or elsewhere) for the purpose of providing pensions, retirement annuities, allowances, lump sums, gratuities or other superannuation benefits (with or without subsidiary benefits);

“scheme” includes any deed, agreement or series of agreements.

- (5) For convenience of identification only, the schemes, funds or other arrangements which are “pension funds” for the purposes of this section by virtue of the definition of that expression in subsection (4) above include, in particular, those whose income is, in whole or in part, exempt, or eligible for exemption, from tax under or by virtue of any of the following provisions—
- (a) section 512(2);
  - (b) section 592(2);
  - (c) section 608(2)(a);
  - (d) section 613(4);
  - (e) section 614(2), (3), (4) or (5);
  - (f) section 620(6);
  - (g) section 643(2).
- (6) The preceding provisions of this section do not have effect in relation to—
- (a) claims made in respect of tax credits to which entitlement arises by virtue of section 232(3); or
  - (b) claims made by virtue of arrangements having effect under section 788.]]

#### Textual Amendments

- F31** S. 231A inserted (with effect in accordance with s. 19(3) of the amending Act) by Finance (No. 2) Act 1997 (c. 58), s. 19(2)
- F32** S. 231A repealed (with effect in accordance with s. 30(11), Sch. 8 Pt. 2(9) Note 3 of the repealing Act) by Finance (No. 2) Act 1997 (c. 58), s. 30(8), Sch. 8 Pt. 2(9)

VALID FROM 31/07/1998

#### <sup>F33</sup> 231A No tax credit for borrower under stock lending arrangement or interim holder under repurchase agreement.

- (1) A person shall not be entitled to a tax credit under section 231 in respect of a qualifying distribution if—
- (a) he is the borrower under a stock lending arrangement or the interim holder under a repurchase agreement;
  - (b) the qualifying distribution is, or is a payment representative of, a distribution in respect of securities to which the arrangement or agreement relates; and
  - (c) a manufactured dividend representative of that distribution is paid by that person in respect of securities to which the arrangement or agreement relates.
- (2) In this section “stock lending arrangement” has the same meaning as in section 263B of the 1992 Act and, in relation to any such arrangement, any reference to the

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borrower, or the securities to which the arrangement relates, shall be construed accordingly.

(3) For the purposes of this section the cases where there is a repurchase agreement are the following—

- (a) any case falling within subsection (1) of section 730A; and
- (b) any case which would fall within that subsection if the sale price and the repurchase price were different;

and, in any such case, any reference to the interim holder, or the securities to which the agreement relates, shall be construed accordingly.

(4) For the purposes of this section “manufactured dividend” has the same meaning as in paragraph 2 of Schedule 23A (and any reference to a manufactured dividend being paid accordingly includes a reference to a payment falling by virtue of section 736B(2) or 737A(5) to be treated for the purposes of Schedule 23A as if it were made).]

#### Textual Amendments

**F33** S. 231AA inserted (with effect in accordance with s. 102(9) of the amending Act) by Finance Act 1998 (c. 36), s. 102(1)

VALID FROM 31/07/1998

#### <sup>F34</sup>**231A No tax credit for original owner under repurchase agreement in respect of certain manufactured dividends.**

(1) A person shall not be entitled to a tax credit under section 231 in respect of a qualifying distribution if—

- (a) he is the original owner under a repurchase agreement;
- (b) the qualifying distribution is a manufactured dividend paid to that person by the interim holder under the repurchase agreement in respect of securities to which the agreement relates; and
- (c) the repurchase agreement is not such that the actual dividend which the manufactured dividend represents is receivable otherwise than by the original owner.

(2) For the purposes of this section the cases where there is a repurchase agreement are the following—

- (a) any case falling within subsection (1) of section 730A; and
- (b) any case which would fall within that subsection if the sale price and the repurchase price were different;

and, in any such case, any reference to the original owner, the interim holder, or the securities to which the agreement relates, shall be construed accordingly.

(3) Subsection (4) of section 231AA applies for the purposes of this section as it applies for the purposes of that section.]

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### Textual Amendments

**F34** S. 231AB inserted (with effect in accordance with s. 102(10) of the amending Act) by Finance Act 1998 (c. 36), s. 102(2)

VALID FROM 31/07/1997

### [<sup>F35</sup>231B] Consequences of certain arrangements to pass on the value of a tax credit.

- (1) This section applies in any case where—
  - (a) a person (“A”) is entitled to a tax credit in respect of a qualifying distribution;
  - (b) arrangements subsist such that another person (“B”) obtains, whether directly or indirectly, a payment representing any of the value of the tax credit;
  - (c) the arrangements (whether or not made directly between A and B) were entered into for an unallowable purpose; and
  - (d) the condition in subsection (2) below is satisfied.
- (2) The condition is that if B had been the person entitled to the tax credit and the qualifying distribution to which it relates, and had received the distribution when it was made, then—
  - (a) B would not have been entitled to obtain any payment under section 231(2) or (3) in respect of the tax credit; and
  - (b) if B is a company, B could not have used the income consisting of the distribution to frank a distribution actually made in the accounting period in which it would have received the distribution to which the tax credit relates.
- (3) This section does not apply if and to the extent that any other 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 section applies—
  - (a) no claim shall be made under section 231(2) for payment of the amount of the tax credit;
  - (b) no claim shall be made under section 231(3) [<sup>F36</sup>or 441A(7)] in respect of the tax credit;
  - (c) the income consisting of the distribution in respect of which A is entitled to the tax credit shall not be regarded for the purposes of section 241 as franked investment income; and
  - (d) no claim shall be made under section 35 of the Finance (No. 2) Act 1997 (transitional relief) for payment of an amount determined by reference to that distribution.
- (5) For the purposes of this section, the question whether any arrangements were entered into for an “unallowable purpose” shall be determined in accordance with subsections (6) and (7) below.
- (6) Arrangements are entered into for an unallowable purpose if the purposes for which at least one person is a party to the arrangements include a purpose which is not amongst the business or other commercial purposes of that person.

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- (7) Where one of the purposes for which a person enters into any arrangements is the purpose of securing that that person or another obtains a tax advantage, that purpose shall be regarded as a business or other commercial purpose of the person only if it is neither the main purpose, nor one of the main purposes, for which the person enters into the arrangements.
- (8) Any reference in this section to a person obtaining a tax advantage includes a reference to a person obtaining a payment representing any of the value of a tax credit in circumstances where, had the person obtaining the payment been entitled to the tax credit and the qualifying distribution to which it relates, that person—
- (a) would not have been entitled to obtain any payment under section 231(2) or (3) in respect of the tax credit; and
  - (b) if that person is a company, could not have used the income consisting of the distribution to frank a distribution actually made in the accounting period in which it would have received the distribution to which the tax credit relates.
- (9) If an amount representing any of the value of a tax credit to which a person is entitled is applied at the direction of, or otherwise in favour of, some other person (whether by way of set off or otherwise), the case shall be treated for the purposes of this section as one where that other person obtains a payment representing any of the value of the tax credit.
- (10) In determining for the purposes of subsections (2)(b) and (8)(b) above whether a company could have used the income consisting of the distribution in question to frank a distribution of the company, the company shall be taken to use its actual franked investment income to frank distributions before using the income consisting of the distribution in question.
- (11) References in this section to using franked investment income to frank a distribution of a company have the same meaning as in Chapter V of Part VI.
- (12) In this section—
- “arrangements” means arrangements of any kind, whether in writing or not (and includes a series of arrangements, whether or not between the same parties);
  - “business or other commercial purposes” includes the efficient management of investments;
  - “franked investment income” has the same meaning as in Chapter V of Part VI and references to income consisting of a distribution shall be construed accordingly;
  - “tax advantage” has the same meaning as in Chapter I of Part XVII.]

### Textual Amendments

- F35** S. 231B inserted (with effect in accordance with s. 28(2) of the amending Act) by [Finance \(No. 2\) Act 1997 \(c. 58\)](#), [s. 28\(1\)](#)
- F36** Words in s. 231B(4)(b) repealed (with effect in accordance with Sch. 4 para. 26(2), Sch. 8 Pt. 2(10) Note of the repealing Act) by [Finance \(No. 2\) Act 1997 \(c. 58\)](#), [Sch. 4 para 26\(1\)](#), [Sch. 8 Pt. 2\(10\)](#)

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## 232 Tax credits for non-U.K. residents.

- <sup>M53</sup>(1) An individual who, having made a claim in that behalf, is entitled to relief under Chapter I of Part VII by virtue of section 278(2) in respect of any year of assessment shall be entitled to a tax credit in respect of any qualifying distribution received by him in that year to the same extent as if he were resident in the United Kingdom.
- (2) Where a qualifying distribution is income of a fund to which section 615(2)(b) or (c) applies the persons entitled to receive the income shall be entitled to a tax credit in respect of the distribution to the same extent as a recipient mentioned in section 231(1).
- (3) Where a qualifying distribution is income of, or of the government of, any sovereign power or of any international organisation, that power, government or organisation shall be entitled to a tax credit in respect of the distribution to the same extent as a recipient mentioned in section 231(1).

In this subsection “international organisation” means an organisation of which two or more sovereign powers, or the governments of two or more sovereign powers, are members; and if in any proceedings a question arises whether a person is within this subsection, a certificate issued by or under the authority of the Secretary of State stating any fact relevant to that question shall be conclusive evidence of that fact.

### Marginal Citations

**M53** Source—1972 s.98(1), (3), (4)

## 233 Taxation of certain recipients of distributions and in respect of non-qualifying distributions.

- <sup>M54</sup>(1) Where in any year of assessment the income of any person, not being a company resident in the United Kingdom, includes a distribution in respect of which that person is not entitled to a tax credit—
- [<sup>F37</sup>(a) that person shall be treated as having paid income tax at the lower rate on the amount or value of the distribution;
- (b) no repayment shall be made of any income tax treated by virtue of paragraph (a) above as having been paid;]
- (c) the amount or value of the distribution shall be treated <sup>F38</sup> . . . for the purposes of sections 348 and 349(1) as not brought into charge to income tax.

[<sup>F39</sup>(1A) Where in any year of assessment the income of any person who is not a company includes a qualifying distribution in respect of which that person, not being resident in the United Kingdom, is not entitled to a tax credit—

- (a) the amount or value of the distribution so far as it is comprised in—
- [<sup>F40</sup>(i) income on which that person falls to be treated as having paid income tax at the lower rate by virtue of paragraph (a) of subsection (1) above, or]
- (ii) income chargeable to tax in accordance with section 686 at the rate applicable to trusts,

shall be deemed for the purposes of [<sup>F41</sup>that subsection] or, as the case may be, that section to be the sum which if reduced by an amount equal to income tax on that sum at the lower rate would be equal to the amount or value of the distribution actually made; and

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- (b) that person shall be treated for the purposes of section 686 as having paid tax at the lower rate on any amount which under paragraph (a) above is deemed to be the amount or value of the distribution for the purpose of that section; but no repayment shall be made of any income tax treated by virtue of this subsection as having been paid.
- (1B) Where in any year of assessment the income of any trustees which is chargeable to income tax in accordance with section 686 includes any non-qualifying distribution (within the meaning of subsection (2) below), the trustees' liability under any assessment made in respect of income tax at the rate applicable to trusts on the amount or value of the distribution, or on any part of the distribution, shall be reduced by a sum equal to income tax at the lower rate on so much of the distribution as is assessed at the rate applicable to trusts.]
- (2) Where a person has paid tax ("the tax paid") in respect of excess liability on, or on any part of, a non-qualifying distribution, then if, apart from this subsection, he would be liable to pay an amount of tax in respect of excess liability on, or on any part of, a repayment of the share capital or of the principal of the security which constituted that non-qualifying distribution, he shall be so liable only to the extent (if any) to which that amount exceeds the amount of the tax paid.

In this subsection—

"excess liability" means the excess of liability to income tax over what it would be if all income tax [<sup>F42</sup>were charged at the lower rate] to the exclusion of [<sup>F43</sup>the higher rate or, as the case may be, the rate applicable to trusts];

"non-qualifying distribution" means a distribution which is not a qualifying distribution.

#### Textual Amendments

- F37** S. 233(1)(a)(b) substituted (with effect in accordance with s. 121(8) of the amending Act) by [Finance Act 1996 \(c. 8\)](#) {s. 122(3)}
- F38** Words in s. 233(1)(c) repealed (with effect for the year 1993-94 and subsequent years of assessment) by 1993 c. 34, ss. 79, 213, [Sch. 6 paras. 2\(1\)\(b\), 25\(1\)](#), [Sch. 23 Pt.3](#)
- F39** S. 233(1A)(1B) inserted (with effect for the year 1993-94 and subsequent years of assessment) by 1993 c. 34, s. 79, [Sch. 6 paras. 2\(2\), 25\(1\)](#)
- F40** S. 233(1A)(a)(i) substituted (with effect in accordance with s. 121(8) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [s. 122\(4\)\(a\)](#)
- F41** Words in s. 233(1A)(a) substituted (with effect in accordance with s. 121(8) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [s. 122\(4\)\(b\)](#)
- F42** Words in s. 233(2) in the definition of "excess liability" substituted (27.7.1993 with effect for the year 1993-94 and subsequent years of assessment) by 1993 c. 34, s. 79, [Sch. 6 paras. 2\(3\)\(a\), 25\(1\)](#)
- F43** Words in s. 233(2) in the definition of "excess liability" substituted (27.7.1993 with effect for the year 1993-94 and subsequent years of assessment) by 1993 c. 34, s. 79, [Sch. 6 paras. 2\(3\)\(b\), 25\(1\)](#)

#### Marginal Citations

- M54** Source—1972 s.87(5), (6)

## 234 Information relating to distributions.

- (1) <sup>M55</sup>Without prejudice to [<sup>F44</sup>section 234A] but subject to section 95(1)(c), a company which makes a qualifying distribution shall, if the recipient so requests in writing,



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furnish to him a statement in writing showing the amount or value of the distribution and (whether or not the recipient is a person entitled to a tax credit in respect of the distribution) the amount of the tax credit to which a recipient who is such a person is entitled in respect of that distribution.

(2) The duty imposed by subsection (1) above shall be enforceable at the suit or instance of the person requesting the information.

<sup>F45</sup>(3) . . . . .

<sup>F45</sup>(4) . . . . .

(5) <sup>M56</sup>Where a company makes a distribution which is not a qualifying distribution it shall make a return to the inspector—

- (a) within 14 days from the end of the accounting period in which the distribution is made; or
- (b) if the distribution is made on a date not falling in an accounting period, within 14 days from that date.

(6) A return under subsection (5) above shall contain—

- (a) particulars of the transaction giving rise to the distribution; and
- (b) the name and address of the person, or each of the persons, receiving the distribution, and the amount or value of the distribution received by him or by each of them.

(7) Where it is not in the circumstances apparent whether a transaction gives rise to a distribution in respect of which a return is required to be made under subsection (5) above, the company shall—

- (a) within the time within which such a return would be required to be made if the transaction did give rise to such a distribution, make a return to the inspector containing particulars of the transaction in question; and
- (b) if required by a notice served on the company by the inspector, furnish him within the time specified in the notice with such further information in relation to the transaction as he may reasonably require.

(8) If it appears to the inspector that particulars of any transaction ought to have been and have not been included in a return under subsection (5) or (7) above, he may by a notice served on the company require the company to furnish him within the time specified in the notice with such information relating thereto as he may reasonably require.

(9) Any power which the inspector may exercise under [<sup>F46</sup>paragraphs 2 to 4 of Schedule 12 to the Finance Act 1989 for the purposes of the relevant provisions (as defined in paragraph 1 of that Schedule)] may be exercised by him for the purposes of subsections (5) to (8) above.

#### Textual Amendments

- F44** Words in s. 234(1) substituted (with application in relation to distributions begun after 16.7.1992) by Finance (No. 2) Act 1992 (c. 48), s. 32(2)(a)(4).
- F45** S. 234(3)(4) repealed (with application in relation to distributions begun after 16.7.1992) by Finance (No. 2) Act 1992 (c. 48), ss. 32(2)(b)(4), 82, Sch. 18 Pt. VII.
- F46** 1989 s.107 and Sch.12 para.11. Previously “paragraph 17 of Schedule 19 for the purposes of that Schedule”.

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**Modifications etc. (not altering text)**

**C16** S. 234 applied (16.8.1995) by [The Venture Capital Trust Regulations 1995 \(S.I. 1995/1979\)](#), **reg. 21(2)**

**Marginal Citations**

**M55** Source—1970 s.232(4); 1972 Sch.24 18

**M56** Source—1972 Sch.21

**[<sup>F47</sup>234A Information relating to distributions: further provisions.**

- (1) This section applies where dividend or interest is distributed by a company which is—
  - (a) a company within the meaning of the Companies Act 1985 or the Companies (Northern Ireland) Order 1986, or
  - (b) a company created by letters patent or by or in pursuance of an Act.
- (2) If the company makes a payment of dividend or interest to any person, and subsection (3) below does not apply, within a reasonable period the company shall send an appropriate statement to that person.
- (3) If the company makes a payment of dividend or interest into a bank or building society account held by any person, within a reasonable period the company shall send an appropriate statement to either—
  - (a) the bank or building society concerned, or
  - (b) the person holding the account.
- (4) In a case where—
  - (a) a statement is received by a person under subsection (2) or (3)(b) above,
  - (b) the whole or part of the sum concerned is paid to or on behalf of the person as nominee for another person, and
  - (c) the nominee makes a payment of the sum or part to the other person and subsection (5) below does not apply,
 within a reasonable period the nominee shall send an appropriate statement to that person.
- (5) In a case where—
  - (a) a statement is received by a person under subsection (2) or (3)(b) above,
  - (b) the whole or part of the sum concerned is paid to or on behalf of the person as nominee for another person, and
  - (c) the nominee makes a payment of the sum or part into a bank or building society account held by the other person,
 within a reasonable period the nominee shall send an appropriate statement to either the bank or building society concerned or the other person.
- (6) In the case of a payment of interest which is not a qualifying distribution or part of a qualifying distribution, references in this section to an appropriate statement are to a written statement showing—
  - (a) the gross amount which, after deduction of the income tax appropriate to the interest, corresponds to the net amount actually paid,
  - (b) the rate and the amount of income tax appropriate to such gross amount,
  - (c) the net amount actually paid, and
  - (d) the date of the payment.

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- (7) In the case of a payment of dividend or interest which is a qualifying distribution or part of a qualifying distribution, references in this section to an appropriate statement are to a written statement showing—
- (a) the amount of the dividend or interest paid,
  - (b) the date of the payment, and
  - (c) the amount of the tax credit to which a person is entitled in respect of the dividend or interest, or to which a person would be so entitled if he had a right to a tax credit in respect of the dividend or interest.

- (8) In this section “send” means send by post.

[ In this section “bank” has the meaning given by section 840A.]

<sup>F48</sup>(8A)

- (9) If a person fails to comply with subsection (2), (3), (4) or (5) above, the person shall incur a penalty of £60 in respect of each offence, except that the aggregate amount of any penalties imposed under this subsection on a person in respect of offences connected with any one distribution of dividends or interest shall not exceed £600.
- (10) The Board may by regulations provide that where a person is under a duty to comply with subsection (2), (3), (4) or (5) above, the person shall be taken to comply with the subsection if the person either—
- (a) acts in accordance with the subsection concerned, or
  - (b) acts in accordance with rules contained in the regulations;
- and subsection (9) above shall be construed accordingly.
- (11) Regulations under subsection (10) above may make different provision for different circumstances.]

#### Textual Amendments

- F47** S. 234A inserted (with application in relation to distributions begun after 16.7.1992) by [Finance \(No. 2\) Act 1992 \(c. 48\), s. 32\(1\)\(4\)](#).
- F48** S. 234A(8A) inserted (with application in accordance with [Sch. 37 para. 7](#) of the amending Act) by [Finance Act 1996 \(c. 8\), Sch. 37 para. 2\(1\)\(2\)\(a\)](#)

#### Modifications etc. (not altering text)

- C17** S. 234A applied (with modifications) (1.4.2006 with effect in accordance with reg. 1(2) of the affecting S.I.) by [The Authorised Investment Funds \(Tax\) Regulations 2006 \(S.I. 2006/964\), regs. 1\(1\), 70](#) (as amended (1.9.2009) by [The Authorised Investment Funds \(Tax\) \(Amendment\) Regulations 2009 \(S.I. 2009/2036\), regs. 1, 2, 25](#))
- C18** S. 234A applied (1.9.2009 with effect in accordance with reg. 1(2) of the affecting S.I.) by [The Investment Trusts \(Dividends\) \(Optional Treatment as Interest Distributions\) Regulations 2009 \(S.I. 2009/2034\), regs. 1\(1\), 21](#)
- C19** S. 234A(4) excluded (6.4.2003 with effect in accordance with s. 723(1) of the affecting Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\), s. 493\(3\)](#) (with s. 493(5), [Sch. 7](#))
- C20** S. 234A(4)-(11) applied (6.4.2003 with effect in accordance with s. 723(1) of the affecting Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\), Sch. 2 para. 80\(4\)](#) (with [Sch. 7](#))

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## 235 Distributions of exempt funds etc.

- <sup>M57</sup>(1) Where a person entitled to a tax credit in respect of a distribution to which this section applies is, by reason of any exemption from tax, entitled to recover tax and his holding (together with any associated holding) of any one class of the shares, securities or rights by virtue of which he is entitled to the distribution amounts to not less than 10 per cent. thereof, subsection (3) below shall apply to the income represented by any part of the distribution which is not a part—
- (a) to which profits arising after the date of acquisition are attributable in accordance with section 236; or
  - (b) in relation to which the date of acquisition is earlier than 6th April 1965.
- (2) For the purposes of this section and section 236, the date of acquisition, in relation to any part of a distribution or profits attributable to it, is the date on which the shares, securities or rights by virtue of which a person is entitled to that part were acquired by him.
- (3) Where this subsection applies to any income—
- (a) the exemption from tax shall not extend to that income; and
  - (b) it shall be treated for the purposes of sections 348 and 349(1) as not brought into charge to income tax; and
  - (c) no amount of interest shall be deducted from or set off against it under section 353.
- (4) Where, by virtue of this section, an exemption from tax does not apply to any income represented by a distribution or part of a distribution, the person entitled to the income shall be liable to tax or, as the case may be, additional tax, on it at a rate equal to <sup>F49</sup>the difference according to the rates in force at the time the distribution is made between the lower rate and the rate applicable to trusts] and shall be assessable to income tax or corporation tax accordingly.
- (5) This section applies to any qualifying distribution except any amount which is treated as such in accordance with section 209(3) or sections 210 and 211.

### Textual Amendments

**F49** Words in s. 235(4) substituted (27.7.1993 with effect for the year 1993-94 and subsequent years of assessment) by 1993 c. 34, s. 79, Sch. 6 paras.3, 25(1)

### Marginal Citations

**M57** Source—1973 s.22

## 236 Provisions supplementary to section 235.

- <sup>M58</sup>(1) Section 235 shall be construed in accordance with the following provisions of this section.
- (2) Two or more holdings are associated if they were acquired by persons acting in concert or under arrangements made by any person.
  - (3) There shall be attributed—
    - (a) to the distributions made by a company at any time (whether before or after the passing of this Act) in respect of any class of shares, securities or rights

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- such of its relevant profits arising after the date of acquisition and before that time as remain after allowing for earlier distributions made in respect of that or any other class of shares, securities or rights, and for distributions made at or to be made after that time in respect of other classes of shares, securities or rights; and
- (b) to any part of a distribution made at any time to which a person is entitled by virtue of any part of his holding of any class of shares, securities or rights, such proportion of the profits attributable under paragraph (a) above to the distributions made at that time in respect of that class as corresponds to that part of his holding.
- (4) For the purposes of subsection (3) above profits arising in part of an accounting period shall be taken to be a proportionate part of the profits arising in the whole of the accounting period except where a different method of arriving at the profits arising in that part can be shown to be fair and reasonable.
- (5) For the purposes of this section the relevant profits of a company are, subject to subsection (6) below, its profits computed on a commercial basis after allowing for any provision properly made for corporation tax; and the computation shall be made without regard to any capital gains or losses or to any such amount as is mentioned in section 235(5), and—
- (a) shall include franked investment income received from any company not related to the first-mentioned company; and
- (b) shall exclude group income and franked investment income received from a company related to the first-mentioned company.
- (6) There shall be treated as included in the relevant profits of a company the appropriate portion of the relevant profits of any company related to it.
- (7) For the purposes of this section a company (“the owned company”) is related to another company (“the owning company”) if—
- (a) the owning company owns not less than 10 per cent. of any one class of shares in the owned company; or
- (b) any company related to the owning company owns not less than 10 per cent. of any one class of shares in the owned company;
- and the appropriate proportion of the relevant profits of a related company is that proportion of those profits which the owning company would receive by virtue of the shares, securities or rights owned by it, if all the relevant profits of the owned company were distributed and, so far as received directly or indirectly by a company related to the owning company, were distributed by that related company, no account being taken of any profits arising at a time when the owned company was not related to the owning company.

**Modifications etc. (not altering text)**

**C21** S. 236(5) amended (27.7.1993) by 1993 c. 34, s. 78(6)(11)

**Marginal Citations**

**M58** Source—1973 Sch.10

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### 237 Disallowance of reliefs in respect of bonus issues.

- <sup>M59</sup>(1) This section has effect where any person (“the recipient”) receives an amount treated as a distribution by virtue of section 209(3) or 210 or 211(1); and in this section—
- (a) any such distribution is referred to as a bonus issue; and
  - (b) “relevant tax credit” in relation to a bonus issue means the tax credit to which the recipient becomes entitled in respect of the bonus issue.
- (2) Subject to subsection (6) below, if the recipient is entitled by reason of—
- (a) any exemption from tax, or
  - (b) the setting-off of losses against profits or income,
- to recover tax in respect of any distribution received by him, no account shall be taken for the purposes of any such exemption or set-off of any bonus issue or relevant tax credit received by him.
- (3) Subject to subsection (6) below, where, by virtue of this section, no account is to be taken for the purposes of any exemption from tax of any bonus issue and the relevant tax credit, the person entitled to that issue and that credit shall be liable to tax or, as the case may be, additional tax, on them at a rate equal to [<sup>F50</sup>the difference according to the rates in force at the time the distribution is made between the lower rate and the rate applicable to trusts] and shall be assessable to income tax or corporation tax accordingly.
- (4) Subject to subsection (6) below, a bonus issue and the relevant tax credit shall be treated for the purposes of sections 241 and 244 as not being franked investment income.
- (5) Subject to subsection (6) below—
- (a) the relevant tax credit relating to a bonus issue shall not be available to set against any income tax which the recipient is entitled to deduct under section 348 or with which he is chargeable by virtue of section 349(1), and
  - (b) no interest may be deducted or set off [<sup>F51</sup>in accordance with section 353(1B)] from or against so much of a person’s income as consists of bonus issues and relevant tax credits.
- (6) Nothing in subsections (2) to (5) above shall affect the proportion (if any) of any bonus issue made in respect of any shares or securities which, if it were declared as a dividend, would represent a normal return to the recipient on the consideration provided by him for the relevant shares or securities, that is to say, those in respect of which the bonus issue was made and, if those securities are derived from shares or securities previously acquired by the recipient, the shares or securities which were previously acquired; nor shall anything in those subsections affect the like proportion of the relevant tax credit relating to that bonus issue.
- (7) For the purposes of subsection (6) above—
- (a) if the consideration provided by the recipient for any of the relevant shares or securities was in excess of their market value at the time he acquired them, or if no consideration was provided by him for any of the relevant shares or securities, the recipient shall be taken to have provided for those shares or securities consideration equal to their market value at the time he acquired them; and
  - (b) in determining whether an amount received by way of dividend exceeds a normal return, regard shall be had to the length of time previous to the receipt of that amount since the recipient first acquired any of the relevant shares or

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securities and to any dividends and other distributions made in respect of them during that time.

#### Textual Amendments

**F50** Words in s. 237(3) substituted (27.7.1993 with effect for the year 1993-94 and subsequent years of assessment) by 1993 c. 34, s. 79, Sch. 6 paras.3, 25(1)

**F51** Words in s. 237(5)(b) substituted (with effect in accordance with s. 81(6) of the amending Act) by Finance Act 1994 (c. 9), Sch. 9 para. 2

#### Marginal Citations

**M59** Source—1973 s.23

## CHAPTER V

### ADVANCE CORPORATION TAX AND FRANKED INVESTMENT INCOME

#### 238 Interpretation of terms and collection of ACT.

(1) <sup>M60</sup>In this Chapter—

“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), but subject to section 247(2);

“franked payment” means the sum of the amount or value of a qualifying distribution and such proportion of that amount or value as corresponds to the rate of advance corporation tax in force for the financial year in which the distribution is made, but subject to section 247(2);

“surplus advance corporation tax” has the meaning given by section 239(3);

[<sup>F52</sup>“surplus of franked investment income” shall be construed in accordance with subsection (1A) below;]

“tax credit” means a tax credit under section 231;

and references to any accounting or other period in which a franked payment is made are references to the period in which the distribution in question is made.

[<sup>F53</sup>(1A) For the purposes of this Chapter, a company has a surplus of franked investment income in an accounting period if the amount of the franked investment income of the company in that period exceeds the amount of the franked payments made by it in that period.

For the purposes of determining whether a company has such a surplus, or the amount of the surplus, franked investment income that cannot be used to frank distributions of the company shall be disregarded.]

(2) <sup>M61</sup>References in this Chapter to distributions or payments received by a company apply to any received by another person on behalf of or in trust for the company but not to any received by the company on behalf of or in trust for another person.

[<sup>F54</sup>(3) References in this Chapter to using franked investment income to frank distributions of a company are to using the income in accordance with section 241(1) and Schedule 13

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so as to relieve the company from, or obtain repayment of, advance corporation tax for which the company would otherwise be liable.]

- (4) References in this Chapter to an amount of profits on which corporation tax falls finally to be borne are references to the amount of those profits after making all deductions and giving all reliefs that for the purposes of corporation tax are made or given from or against those profits, including deductions and reliefs which under any provision are treated as reducing them for those purposes.
- (5) <sup>M62</sup>Schedule 13 shall have effect for the purpose of regulating the time and manner in which advance corporation tax is to be accounted for and paid.

#### Textual Amendments

- F52** S. 238(1): definition of "surplus franked investment income" substituted (with effect in accordance with Sch. 8 para. 57(1) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 8 para. 18(2)**
- F53** S. 238(1A) inserted (with effect in accordance with Sch. 8 para. 57(1) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 8 para. 18(3)**
- F54** S. 238(3) substituted (with effect in accordance with Sch. 8 para. 57(1) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 8 para. 18(4)**

#### Modifications etc. (not altering text)

- C22** S. 238(4) applied (27.7.1993) by 1993 c. 34, **s. 141(3)**

#### Marginal Citations

- M60** Source—1972 ss.88(1), 84(3), 89(6), 110(1)
- M61** Source—1972 s.110(2)-(4)
- M62** Source—1972 s.84(5)

### 239 Set-off of ACT against liability to corporation tax.

- <sup>M63</sup>(1) Subject to section 497 and subsection (2) below, advance corporation tax paid by a company (and not repaid) in respect of any distribution made by it in an accounting period shall be set against its liability to corporation tax on any profits charged to corporation tax for that accounting period and shall accordingly discharge a corresponding amount of that liability.
- (2) The amount of advance corporation tax to be set against a company's liability for any accounting period under subsection (1) above shall not exceed the amount of advance corporation tax that would have been payable (apart from section 241) in respect of a distribution made at the end of that period of an amount which, together with the advance corporation tax so payable in respect of it, is equal to the company's profits charged to corporation tax for that period.
- (3) Where in the case of any accounting period of a company there is an amount of surplus advance corporation tax, the company may, within two years after the end of that period, claim to have the whole or any part of that amount treated for the purposes of this section (but not of any further application of this subsection) as if it were advance corporation tax paid in respect of distributions made by the company in any of its accounting periods beginning in the six years preceding that period (but so that the amount which is the subject of the claim is set, so far as possible, against the company's liability for a more recent accounting period before a more remote one) and corporation tax shall, so far as may be required, be repaid accordingly.



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In this subsection “surplus advance corporation tax”, in relation to any accounting period of a company, means advance corporation tax which cannot be set against the company’s liability to corporation tax for that period because the company has no profits charged to corporation tax for that period or because of subsection (2) above or section 797(4).

- (4) Where in the case of any accounting period of a company there is an amount of surplus advance corporation tax which has not been dealt with under subsection (3) above, that amount shall be treated for the purposes of this section (including any further application of this subsection) as if it were advance corporation tax paid in respect of distributions made by the company in the next accounting period.
- (5) <sup>F55</sup> . . . . .
- (6) For the purposes of this section the profits of a company charged to corporation tax for any period shall be taken to be the amount of its profits for that period on which corporation tax falls finally to be borne.
- (7) <sup>M64</sup> This section has effect subject to *subsections (5) to (7) of section 430* and <sup>F56</sup> the following provisions of this Chapter.

#### Textual Amendments

**F55** S. 239(5) repealed (with effect in accordance with Sch. 25 para. 4 of the repealing Act) by [Finance Act 1996 \(c. 8\)](#), Sch. 25 para. 4, **Sch. 41 Pt. 5(14)**, Note

**F56** Words repealed by 1989 s.187 and Sch.17 Part V in relation to accounting periods beginning after 31 March 1989.

#### Modifications etc. (not altering text)

**C23** See—s.116—*partnerships including companies—arrangements for transferring reliefs*. Oil Taxation Acts—*oil industry's limited right to carry back or surrender ACT.s.813—recovery of tax credits incorrectly paid*.

**C24** See s.497—Oil Taxation Acts—*restriction of relief against income from oil extraction activities or oil rights for tax on distributions made to associated resident company*.

**C25** S. 239 applied in part (with modifications) (1.7.1997) by [The Manufactured Dividends \(Tax\) Regulations 1997 \(S.I. 1997/993\)](#), **reg. 9**

**C26** See s.754(5) and Sch.26 para.2—*controlled foreign companies*.

**C27** See—1988 s.825(4)—*repayment supplement*. 1989 s.157—*interest charges in respect of certain claims made on or after 14 March 1989*.

#### Marginal Citations

**M63** Source—1972 s.85(1)–(6); 1974 Sch.7 3(1); 1984 s.52(1), 53(2); 1987 (No.2) s.74(2)

**M64** Source—1972 Sch.16 7

## 240 Set-off of company’s surplus ACT against subsidiary’s liability to corporation tax.

[<sup>F57</sup>(1) Where a company (“the surrendering company”) has paid an amount of advance corporation tax in respect of a dividend or dividends paid by it in an accounting period, it may under this section surrender the benefit of so much of that amount as is available for surrender, or any part of that amount that is available for surrender, to any company which was a subsidiary of it throughout that accounting period.

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- (1A) The surrender shall take effect on the surrendering company making a claim in accordance with Schedule 13A.
- (1B) A claim to surrender an amount exceeding the amount the benefit of which, at the time the claim is made, is available for surrender shall be of no effect.]
- (2) <sup>M65</sup>Subject to subsections (4) and (5) below, where the benefit of any amount of advance corporation tax (“the surrendered amount”) is surrendered under this section to a subsidiary, then—
- (a) if the advance corporation tax mentioned in subsection (1) above was paid in respect of one dividend only or of dividends all of which were paid on the same date, the subsidiary shall be treated for the purposes of section 239 as having paid an amount of advance corporation tax equal to the surrendered amount in respect of a distribution made by it on the date on which the dividend or dividends were paid;
  - (b) if the advance corporation tax mentioned in subsection (1) above was paid in respect of dividends paid on different dates, the subsidiary shall be treated for the purposes of section 239 as having paid an amount of advance corporation tax equal to the appropriate part of the surrendered amount in respect of a distribution made by it on each of those dates.
- (3) <sup>M66</sup>For the purposes of paragraph (b) of subsection (2) above “the appropriate part of the surrendered amount”, in relation to any distribution treated as made on the same date as that on which a dividend was paid, means such part of that amount as bears to the whole of it the same proportion as the amount of that dividend bears to the total amount of the dividends mentioned in that paragraph.
- (4) <sup>M67</sup>No advance corporation tax which a subsidiary is treated as having paid by virtue of subsection (2) above shall be set against the subsidiary’s liability to corporation tax under subsection (3) of section 239; but in determining for the purposes of subsections (3) and (4) of that section what (if any) amount of surplus advance corporation tax there is in any accounting period of a subsidiary, an amount so treated as having been paid shall be set against its liability to corporation tax before any advance corporation tax paid in respect of any distribution made by the subsidiary.
- (5) <sup>M68</sup>No advance corporation tax which a subsidiary is treated as having paid by virtue of subsection (2) above shall be set against the subsidiary’s liability to corporation tax for any accounting period in which, or in any part of which, it was not a subsidiary of the surrendering company [<sup>F58</sup>unless throughout that period or part both companies were subsidiaries of a third company].
- [<sup>F59</sup>(5A) A claim under subsection (1A) above may be withdrawn by the surrendering company with the consent of the subsidiary to whom the surrender was made.
- (5B) The withdrawal of a claim under subsection (1A) above to make a surrender for an accounting period of the surrendering company shall not prevent the making of a further claim under that subsection for that accounting period (whether to the same or a different subsidiary).
- (5C) Where the surrendering company withdraws a claim by virtue of which an amount of advance corporation tax was treated under subsection (2) above as paid by its subsidiary in respect of a distribution made on a date determined under that subsection—

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- (a) the subsidiary shall be treated as if it had not paid that amount in respect of a distribution made by it on the date so determined; and
  - (b) subject to the effect of any further claim, the surrendering company shall be treated as having paid a corresponding amount of advance corporation tax in respect of a distribution made by it on the date so determined.
- (5D) The amount of advance corporation tax the benefit of which is at any time available for surrender is the amount referred to in subsection (1) above less any amount which at that time falls within subsection (5E) below.
- (5E) The amounts are—
  - (a) any amount which has been repaid to the surrendering company;
  - (b) any amount which has been dealt with under section 239(3);
  - (c) any amount surrendered under a claim for that period which has not been withdrawn.
- (5F) Subject to subsection (5C)(b) above, no amount of advance corporation tax the benefit of which has been surrendered under this section shall be treated for the purposes of section 239 as advance corporation tax paid by the surrendering company.]
- (8)<sup>M69</sup> A payment made by a subsidiary to a surrendering company in pursuance of an agreement between them as respects the surrender of the benefit of an amount of advance corporation tax, being a payment not exceeding that amount—
  - (a) shall not be taken into account in computing profits or losses of either company for corporation tax purposes; and
  - (b) shall not for any of the purposes of the Corporation Tax Acts be regarded as a distribution or a charge on income.
- (9) References in this section to dividends shall be construed as including references to distributions made on the redemption, repayment or purchase by a company of its own shares, and references to the payment of dividends shall be construed accordingly.
- (10) References in this section to a company apply only to bodies corporate resident in the United Kingdom; and, subject to subsection (11) below, for the purposes of this section the question whether one body corporate is the subsidiary of another shall be determined as a question whether it is a 51 per cent. subsidiary of that other, except that that other shall be treated as not being the owner—
  - (a) of any share capital which it owns directly in a body corporate if a profit on the sale of the shares would be treated as a trading receipt of its trade; or
  - (b) 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 a trading receipt; or
  - (c) of any share capital which it owns directly or indirectly in a body corporate not resident in the United Kingdom.
- (11) Notwithstanding that, apart from this subsection, one company (“the subsidiary company”) would at any time, by virtue of subsection (10) above, be a subsidiary of another company (“the parent company”) for the purposes of this section, the subsidiary company shall not be treated at that time as a 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

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- (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.

In this subsection “control” has the meaning given by section 840 and “arrangements” means arrangements of any kind, whether in writing or not.

- (12) <sup>M70</sup>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 subsection (11) above.
- (13) <sup>M71</sup>Schedule 18 shall have effect for the purposes of subsection (11)(b) above, subject to the following modifications—
- (a) for any reference to section 413(7) to (10) there shall be substituted a reference to subsection (11)(b) above; and
  - (b) paragraph 7(1) shall be omitted and for any reference to the relevant accounting period there shall be substituted a reference to the accounting period current at the time in question.

[<sup>F60</sup>(14) Schedule 13A (which makes supplementary provision with respect to surrenders of advance corporation tax) shall have effect.]

#### Textual Amendments

- F57** S. 240(1)-(1B) substituted for s. 240(1) (with effect in accordance with [Sch. 25 para. 3](#) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [Sch. 25 para. 1\(2\)](#)
- F58** 1989 s.97(1) *in relation to accounting periods ending on or before 14 March 1989.*
- F59** S. 240(5A)-(5F) substituted for s. 240(6)(7) (with effect in accordance with [Sch. 25 para. 3](#) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [Sch. 25 para. 1\(3\)](#)
- F60** S. 240(14) inserted (with effect in accordance with [Sch. 25 para. 3](#) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [Sch. 25 para. 1\(4\)](#)

#### Modifications etc. (not altering text)

- C28** See s.497—Oil Taxation Acts—*relief not to be given against subsidiary's income from oil extraction activities or oil rights.*

#### Marginal Citations

- M65** Source—1972 s.92(2); 1973 Sch.13 3, 4
- M66** Source—1972 s.92(3)
- M67** Source—1972 s.92(3A); 1973 Sch.13 5
- M68** Source—1972 s.92(4)
- M69** Source—1972 s.92(7)
- M70** Source—1981 s.47
- M71** Source—1972 s.92(11); 1973 Sch.13 8

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## 241 Calculation of ACT where company receives franked investment income.

- <sup>M72</sup>(1) Where in any accounting period a company receives franked investment income the company shall not be liable to pay advance corporation tax in respect of qualifying distributions made by it in that period unless the amount of the franked payments made by it in that period exceeds the amount of that income.
- (2) If in an accounting period there is such an excess, advance corporation tax shall be payable on an amount which, when the advance corporation tax payable thereon is added to it, is equal to the excess.
- (3) [<sup>F61</sup>Where a company has a surplus of franked investment income for any accounting period, the surplus] shall be carried forward to the next accounting period and treated for the purposes of this section (including any further application of this subsection) as franked investment income received by the company in that period.
- (4) Without prejudice to section 238(5), Schedule 13 shall apply for the purpose of regulating the manner in which effect is to be given to subsections (1) to (3) above.
- (5) No franked investment income shall be used to frank distributions of a company <sup>F62</sup> . . . if the amount of the tax credit comprised in it has been paid under subsection (2) of section 231; and no payment shall be made under that subsection in respect of the tax credit comprised in franked investment income which has been so used.

### Textual Amendments

**F61** Words in s. 241(3) substituted (with effect in accordance with Sch. 8 para. 57(1) of the amending Act) by Finance Act 1995 (c. 4), Sch. 8 para. 18(5)

**F62** Words in s. 241(5) repealed (with effect in accordance with Sch. 8 para. 57(1) of the repealing Act) by Finance Act 1995 (c. 4), Sch. 8 para. 18(6), Sch. 29 Pt. 8(5), Note 2

### Modifications etc. (not altering text)

**C29** S. 241(5) amended (27.7.1993) by 1993 c. 34, s. 78(7)

### Marginal Citations

**M72** Source—1972 s.89(1)-(5)

## 242 Set-off of losses etc. against surplus of franked investment income.

- (1) <sup>M73</sup>Where a company has a surplus of franked investment income for any accounting period—
- the company may, on making a claim for the purpose, require that the amount of the surplus shall for all or any of the purposes mentioned in subsection (2) below be treated as if it were a like amount of profits chargeable to corporation tax; and
  - subject to subsection (4) below, the provisions mentioned in subsection (2) below shall apply in accordance with this section to reduce the amount of the surplus <sup>F63</sup> . . . ; and
  - the company shall be entitled to have paid to it the amount of the tax credit comprised in the amount of franked investment income by which the surplus is so reduced.

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- (2)<sup>M74</sup> The purposes for which a claim may be made under subsection (1) above are those of—
- (a) the setting of trading losses against total profits under section [F64393A(1)];
  - (b) the deduction of charges on income under section 338<sup>F65</sup> . . . ;
  - (c) the deduction of expenses of management under section 75 or 76;
  - (d) the setting of certain capital allowances against total profits under [F66section 145(3) of the 1990 Act];
  - (e) the setting of losses against income under section 573(2).
  - [F67(f) the setting of amounts against profits in pursuance of a claim under section 83 of the Finance Act 1996 (non-trading deficits on loan relationships) or paragraph 4 of Schedule 11 to that Act (deficits of insurance companies).]
- (3)<sup>M75</sup> Where a company makes a claim under this section for any accounting period, the reduction falling to be made in profits of that accounting period shall be made, as far as may be, in profits chargeable to corporation tax rather than in the amount treated as profits so chargeable under this section.
- (4)<sup>M76</sup> Where a claim under this section relates to section [F68393A(1)] or 573(2) of this Act or to [F66section 145(3) of the 1990 Act] and an accounting period of the company falls partly before and partly within the time mentioned in that subsection, then—
- (a) the restriction imposed by section [F69393A(2)] or 573(3) of this Act or by [F66section 145(4) of the 1990 Act] on the amount of the relief shall be applied only to any relief to be given apart from this section, and shall be applied without regard to any amount treated as profits of the accounting period under this section; but
  - (b) relief under this section shall be given only against a part of the amount so treated proportionate to the part of the accounting period falling within that time.
- (5)<sup>M77</sup> Where—
- (a) on a claim made under this section for any accounting period relief is given in respect of the whole or part of any loss incurred in a trade, or of any amount which could be treated as a loss under section 393(9); and
  - (b) in a later accounting period the franked payments made by the company exceed its franked investment income;
- then (unless the company has ceased to carry on the trade or to be within the charge to corporation tax in respect of it) the company shall, for the purposes of section 393(1), be treated as having, in the accounting period ending immediately before the beginning of the later accounting period mentioned in paragraph (b) above, incurred a loss equal to whichever is the lesser of—
- (i) the excess referred to in paragraph (b) above; and
  - (ii) the amount in respect of which relief was given as mentioned in paragraph (a) above or so much of that amount as remains after deduction of any part of it dealt with under this subsection in relation to an earlier accounting period.
- (6)<sup>M78</sup> Subject to subsection (7) below, subsection (5) above shall apply, with the necessary adaptations—
- (a) in relation to relief given in respect of management expenses; and
  - (b) in relation to relief given in respect of capital allowances; and
  - (c) in relation to relief given in respect of losses under section 573(2);

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as it applies in relation to relief given in respect of a loss (the reference to the company ceasing to be within the charge to corporation tax in respect of the trade being construed as a reference to its ceasing to be within that charge at all, and as respects the relief mentioned in paragraph (c) above, the reference to the purposes of section 393(1) being construed as a reference to the purposes of corporation tax on chargeable gains).

- (7) Any amount which may be dealt with under subsection (5) above as a loss shall be so dealt with rather than under subsection (6) above, except in so far as the company concerned otherwise elects.
- (8)<sup>M79</sup>The time limits for claims under this section shall be as follows—
- (a) if and so far as the purpose for which the claim is made is the setting of trading losses against total profits under [<sup>F70</sup>subsection (1) of section 393A, the time limit that would, by virtue of subsection (10) or (11) of that section, be applicable in the case of a claim under that section in respect of those losses];
  - (b) if and so far as the purpose for which the claim is made is the deduction of charges on income under section 338 <sup>F65</sup> . . . or of expenses of management under section 75 or 76, six years from the end of the accounting period in which the charges were paid or the expenses of management were incurred;
  - (c) if and so far as the purpose for which the claim is made is the setting of capital allowances against total profits under [<sup>F71</sup>section 145(3) of the 1990 Act], two years from the end of the accounting period for which the capital allowances fall to be made;
  - (d) if and so far as the purpose for which the claim is made is the setting of a loss against income under section 573(2), two years from the end of the accounting period in which the loss was incurred.
- [<sup>F72</sup>(e) if and so far as the purpose for which the claim is made is the setting of an amount against profits in pursuance of a claim under—
- (i) section 83 of the Finance Act 1996 (non-trading deficits on loan relationships), or
  - (ii) paragraph 4 of Schedule 11 to that Act (deficits of insurance companies),
- the time limit that by virtue of subsection (6) of that section or subparagraph (15) of that paragraph would be applicable to such a claim.]
- (9)<sup>M80</sup>For the purposes of a claim under this section for any accounting period, the surplus of franked investment income for that accounting period shall be calculated without regard to the part, if any, carried forward from an earlier accounting period; and for the purposes of subsection (5) above franked investment income which <sup>F73</sup> . . . cannot be used to frank distributions of [<sup>F74</sup>the company] shall be left out of account.

#### Textual Amendments

- F63** Words in s. 242(1)(b) repealed (with effect in accordance with Sch. 8 para. 57(1) of the repealing Act) by Finance Act 1995 (c. 4), Sch. 8 para. 18(7), **Sch. 29 Pt. 8(5)**, Note 2
- F64** Words in s. 242(2)(a) substituted by Finance Act 1991 (c. 31, SIF 63:1), s. 73(3)(4)(5), **Sch. 15 para. 5(1)**
- F65** Words in s. 242(2)(b)(8)(b) repealed (with effect in accordance with s. 105(1) of the repealing Act) by Finance Act 1996 (c. 8), **Sch. 41 Pt. 5(3)**, Note
- F66** 1990(C) s.164 and Sch.1 para.8(11).*Previously* “section 74(3) of the 1968 Act”

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*in subs.(2)(d) and (4) and  
 “section 74(4) of the 1968 Act”  
 in subs.(4)(a).*

- F67** S. 242(2)(f) substituted (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 14 para. 12(1)** (with Sch. 15)
- F68** Words in s. 242(4) substituted by Finance Act 1991 (c. 31, SIF 63:1), s. 73(3)(4)(5), **Sch. 15 para. 5(2)(a)**
- F69** Words in s. 242(4)(a) substituted by Finance Act 1991 (c. 31, SIF 63:1), s. 73(3)(4)(5), **Sch. 15 para. 5(2)(b)**
- F70** Words in s. 242(8)(a) substituted by Finance Act 1991 (c. 31, SIF 63:1), s. 73(3)(4)(5), **Sch. 15 para. 5(3)**
- F71** 1990 s.164 and Sch.1 para.8(11). *Previously* “section 74(3) of the 1968 Act”.
- F72** S. 242(8)(e) substituted (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 14 para. 12(2)** (with Sch. 15)
- F73** Words in s. 242(9) repealed (with effect in accordance with Sch. 8 para. 57(1) of the repealing Act) by Finance Act 1995 (c. 4), **Sch. 8 para. 18(8)(a)**, **Sch. 29 Pt. 8(5)**, Note 2
- F74** Words in s. 242(9) substituted (with effect in accordance with Sch. 8 para. 57(1) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 8 para. 18(8)(b)**

#### **Modifications etc. (not altering text)**

- C30** S. 242 modified (retrospectively and with effect in accordance with s. 71 of the amending Act) by Finance Act 1997 (c. 16), **s. 71**
- C31** S. 242 restricted (31.7.1997) by Finance (No. 2) Act 1997 (c. 58), **s. 20(1)**
- C32** S. 242 modified (31.7.1997) by Finance (No. 2) Act 1997 (c. 58), **s. 20(4)**
- C33** S. 242 modified (31.7.1997) by Finance (No. 2) Act 1997 (c. 58), **Sch. 3 para. 3(8)(9)**
- C34** S. 242(5)(6) restricted (31.7.1997) by Finance (No. 2) Act 1997 (c. 58), **s. 20(2)**

#### **Marginal Citations**

- M73** Source—1970 s.254(1); 1972 Sch.15 Pt.I
- M74** Source—1970 s.254(2); 1981 s.37(2); 1984 Sch.9 13
- M75** Source—1970 s.254(3)
- M76** Source—1970 s.254(4); 1981 s.37(3)
- M77** Source—1970 s.254(5)
- M78** Source—1970 s.254(6); 1981 s.37(4)
- M79** Source—1970 s.254(7); 1981 s.37(5); 1984 Sch.9 13
- M80** Source—1970 s.254(8)

## **243 Set-off of loss brought forward, or terminal loss.**

- <sup>M81</sup>(1) Where a company has a surplus of franked investment income for any accounting period, the company, instead of or in addition to making a claim under section 242, may on making a claim for the purpose require that the surplus shall be taken into account for relief under section 393(1)<sup>F75</sup> . . . , up to the amount of franked investment income for the accounting period which, if chargeable to corporation tax, would have been so taken into account by virtue of section 393(8); and (subject to the restriction to that amount of franked investment income) the following subsections shall have effect where the company makes a claim under this section for any accounting period.
- (2) The amount to which the claim relates shall for the purposes of the claim be treated as trading income of the accounting period.



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- (3) The reduction falling to be made in trading income of an accounting period shall be made as far as possible in trading income chargeable to corporation tax rather than in the amount treated as trading income so chargeable under this section.
- (4) If the claim relates to section 393(1), section 242(5) shall apply in relation to it.
- <sup>F76</sup>(5) . . . . .
- (6) The time limits for claims under this section shall be as follows—
- (a) if and so far as the purpose for which the claim is made is the allowance of relief under section 393(1), six years from the end of the accounting period for which the claim is made,
- <sup>F77</sup>(b) . . . . .
- (7) For the purposes of a claim under this section for any accounting period the surplus of franked investment income for that period shall be calculated without regard to the part, if any, carried forward from an earlier accounting period.

#### Textual Amendments

**F75** Words in s. 243(1) repealed by Finance Act 1991 (c. 31, SIF 63:1), ss. 73(3)(4)(5), 123, Sch. 15 para. 6(1), **Sch. 19 Pt. V** Note 4

**F76** S. 243(5) repealed by Finance Act 1991 (c. 31, SIF 63:1), ss. 73(3)(4)(5), 123, Sch. 15 para. 6(2), **Sch. 19 Pt. V**, Note 4

**F77** S. 243(6)(b) repealed by Finance Act 1991 (c. 31, SIF 63:1), ss. 73(3)(4)(5), 123, Sch. 15 para. 6(3), **Sch. 19 Pt. V**, Note 4

#### Modifications etc. (not altering text)

**C35** S. 243(1) amended (27.7.1993) by 1993 c. 34, s. 78(10)

#### Marginal Citations

**M81** Source—1970 s.255; 1972 Sch.15 Pt.I

### 244 Further provisions relating to claims under section 242 or 243.

- <sup>M82</sup>(1) Without prejudice to section 242(9) or 243(7), the surplus of franked investment income for an accounting period for which a claim is made under either of those sections shall be calculated without regard to any part of that surplus which, when the claim is made, has been used to frank distributions made by the company in a later accounting period.
- (2) Where in consequence of a claim under either section 242 or section 243 for any accounting period a company is entitled to payment of a sum in respect of tax credit—
- (a) an amount equal to that sum shall be deducted from any advance corporation tax which apart from this subsection would fall, under section 239, to be set against the company's liability to corporation tax for the next accounting period or the benefit of which could be surrendered under section 240; and
- (b) if that amount exceeds that advance corporation tax or there is no such advance corporation tax, that excess or that amount (as the case may be) shall be carried forward and similarly deducted in relation to the following accounting period and so on.

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### Marginal Citations

**M82** Source—1972 s.90(2), (3); 1973 Sch.13 9

## 245 Calculation etc. of ACT on change of ownership of company.

<sup>M83</sup>(1) This section applies if—

- (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
- (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) Sections 239 and 241 and Schedule 13 shall apply 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 (as defined in section 239(6)) shall be apportioned between those parts.

(3) No advance corporation tax paid by the company in respect of distributions made in an accounting period beginning before the change of ownership shall be treated under section 239(4) as paid by it in respect of distributions made in an accounting period ending after the change of ownership; and this subsection shall apply 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.

[<sup>F78</sup>(3A) No advance corporation tax paid by the company in respect of distributions made in an accounting period ending after the change of ownership shall be treated under section 239(3) as paid by it in respect of distributions made in an accounting period beginning before the change of ownership; and this subsection shall apply 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.

(3B) Subsection (3A) above applies in relation to changes in ownership occurring on or after 16th March 1993.]

(4) In subsection (1) above “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; or
- (b) a major change in customers, outlets or markets of the trade or business; or
- (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 section applies even if the change is the result of a gradual process which began outside the period of three years mentioned in subsection (1)(a) above.

(5) In this section—

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“trading company” means a company whose business consists wholly or mainly of 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.

- (6) Subsection (3) above applies to advance corporation tax which a company is treated as having paid by virtue of section 240 as it applies to advance corporation tax which it has actually paid.
- (7) Sections 768(8) and (9) and 769 shall apply also for the purposes of this section and as if in subsection (3) of section 769 the reference to the benefit of the losses were a reference to the benefit of advance corporation tax.

#### Textual Amendments

**F78** S. 245(3A)(3B) inserted (27.7.1993) by 1993 c. 34, s.81

#### Marginal Citations

**M83** Source—1972 s.101; 1987 (No.2) s.74(5)

### [<sup>F79</sup>245A Restriction on application of section 240 in certain circumstances.

- (1) This section applies if—
- there is a change in the ownership of a company (“the relevant company”);
  - by virtue of section 240 the relevant company is treated as having paid an amount of advance corporation tax in respect of a distribution made by it at any time before the change; and
  - 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 section 240 the surrendering company in relation to that amount.
- (2) No advance corporation tax which the relevant company is treated by virtue of section 240 as having paid in respect of a distribution made by it in an accounting period beginning before the change of ownership shall be treated under section 239(4) as paid by it in respect of distributions made in an accounting period ending after the change of ownership; and this subsection shall apply 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.
- (3) Subsections (4) and (5) of section 245 shall apply also for the purposes of this section and as if the reference in subsection (4) of section 245 to the period of three years mentioned in subsection (1)(a) of that section were a reference to the period mentioned in subsection (1)(c) above.
- (4) Sections 768(8) and (9) and 769 shall apply also for the purposes of this section and as if in subsection (3) of section 769 the reference to the benefit of losses were a reference to the benefit of advance corporation tax.]

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#### Textual Amendments

**F79** Ss. 245A, 245B inserted (in relation to changes in ownership on or after 14 March 1989) by [Finance Act 1989 \(c. 26\), s. 98](#)

### **245B Restriction on set-off where asset transferred after change in ownership of company.**

- (1) Subsection (4) below applies if—
- (a) there is a change in the ownership of a company (“the relevant company”);
  - (b) any advance corporation tax paid by the relevant company in respect of distributions made by it in an accounting period beginning before the change is treated under section 239(4) as paid by it in respect of distributions made by it in an accounting period ending after the change;
  - (c) after the change the relevant company acquires an asset from another company in such circumstances that section [F80 171(1) of the 1992 Act] applies to the acquisition; and
  - (d) 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) Subsection (1)(b) above shall apply 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.
- (3) For the purposes of subsection (1)(d) above an asset acquired by the relevant company as mentioned in subsection (1)(c) above 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.
- (4) In relation to the accounting period in which the chargeable gain accrues to the relevant company (“the relevant period”), section 239 shall have effect as if the limit imposed by subsection (2) of that section on the amount of advance corporation tax to be set against the relevant company’s liability to corporation tax were reduced by whichever is the lesser of—
- (a) the amount of advance corporation tax that would have been payable (apart from section 241) in respect of a distribution made at the end of the relevant period of an amount which, together with the advance corporation tax so payable in respect of it, is equal to the chargeable gain, and
  - (b) the amount of surplus advance corporation tax in relation to the accounting period which by virtue of subsection (2) above is treated for the purposes of subsection (1)(b) above as ending with the change of ownership.
- (5) Sections 768(8) and (9) and 769 shall apply also for the purposes of this section and as if in subsection (3) of section 769 the reference to the benefit of losses were a reference to the benefit of advance corporation tax.

#### Textual Amendments

**F80** Words in s. 245B(1)(c) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by [Taxation of Chargeable Gains Act 1992 \(c. 12\), ss. 289, 290, Sch. 10 para. 14\(15\)](#) (with ss. 60, 101(1), 171, 201(3)).

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**Modifications etc. (not altering text)**

C36 S. 245B(4)(a) modified (31.7.1998) by Finance Act 1998 (c. 36), Sch. 3 para. 17(3)

**246 Charge of ACT at previous rate until new rate fixed, and changes of rate.**

- (1) <sup>M84</sup>If, at the beginning of any financial year, the [<sup>F81</sup>lower rate] percentage for the appropriate year of assessment has not been determined (whether under the Provisional Collection of Taxes Act 1968 or otherwise), then, subject to subsection (2) below, advance corporation tax in respect of distributions made in that financial year shall be payable under Schedule 13 and may be assessed under that Schedule according to the rate of advance corporation tax fixed for the previous financial year.
- (2) Subsection (1) above does not apply with respect to any distribution made in a financial year after—
  - (a) the date on which is determined the [<sup>F81</sup>lower rate] percentage for the appropriate year of assessment; or
  - (b) 5th [<sup>F82</sup>May] in that year,whichever is the earlier.
- (3) If a rate of advance corporation tax for any financial year is not fixed, under section 14(3) or any other enactment, or if advance corporation tax for any financial year is charged otherwise than as it has been paid or assessed, the necessary adjustment shall be made by discharge or repayment of tax or by a further assessment.
- (4) <sup>M85</sup>In subsections (1) and (2) above “the [<sup>F81</sup>lower rate] percentage for the appropriate year of assessment”, in relation to a financial year, means the percentage at which income tax at the [<sup>F81</sup>lower rate] is charged for the year of assessment which begins on 6th April in that financial year.
- (5) <sup>M86</sup>Where different rates of advance corporation tax are in force in different parts of an accounting period, the maximum set-off permitted for that accounting period under section 239(2) shall be determined by apportioning the profits of the company charged to corporation tax for that period (as defined in section 239(6)) between the different parts of the period, calculating the maximum for each part as if it were a separate accounting period and aggregating the result.
- (6) Where the rate of advance corporation tax for any financial year differs from the rate last fixed—
  - (a) any advance corporation tax payable in respect of a distribution made in that financial year on or before 5th April shall be calculated according to the rate last fixed and—
    - (i) the definition of “franked payment” in section 238(1), and
    - (ii) section 231(1) and Schedule 13,shall have effect in relation to the distribution as if the rate for that year were the same as the rate last fixed;
  - (b) if a distribution is made on or before 5th April in an accounting period which extends beyond 5th April in that year and another distribution is made, or franked investment income is received, in that period after that date, then—
    - (i) the company’s liability for advance corporation tax,
    - (ii) the amount of any such tax, and
    - (iii) the amount of any surplus of franked investment income,

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for that accounting period, shall be determined under section 241 and Schedule 13 as if the part of the accounting period ending with, and the part of it beginning after, that date were separate accounting periods.

#### Textual Amendments

- F81** Words in s. 246(1)(2)(4) substituted (27.7.1993 with effect in relation to the financial year 1994 and subsequent financial years) by 1993 c. 34, s. 78(12)(13)
- F82** Word in s. 246(2)(b) substituted (27.7.1993) by 1993 c. 34, s. 206(3)

#### Modifications etc. (not altering text)

- C37** S. 246(5) applied (with modifications) (1.7.1997) by The Manufactured Dividends (Tax) Regulations 1997 (S.I. 1997/993), reg. 9(1)

#### Marginal Citations

- M84** Source—1986 s.17(2)-(4)
- M85** Source—1986 s.17(1)
- M86** Source—1972 s.103(4), (5); 1973 Sch.14 5; 1987 (No.2) s.74(5)

## CHAPTER VA

### FOREIGN INCOME DIVIDENDS

#### Modifications etc. (not altering text)

- C38** Pt. 6 Ch. 5A modified (retrospective to 8.10.1996) by Finance Act 1997 (c. 16), Sch. 7 para. 2(1)(3)

#### *<sup>F83</sup> Election by company paying dividend*

#### Textual Amendments

- F83** Pt. 6 Ch. 5A (ss. 246A-246Y) inserted (3.5.1994) by Finance Act 1994 (c. 9), Sch. 16 para. 1

#### **246A Election by company paying dividend.**

- (1) Where a company [<sup>F84</sup>resident in the United Kingdom] pays a dividend, the dividend shall be treated as a foreign income dividend for the purposes of this Chapter if the company elects for it to be so treated in accordance with this section and section 246B.
- (2) An election may not be made under this section as regards a dividend unless the dividend is paid, or to be paid, in cash.
- (3) An election may not be made under this section as regards a dividend which is paid, or to be paid, to a person by virtue of his holding a share in respect of which there are arrangements for the holder to choose whether, or in what form, dividends are to be paid; and the arrangements may be for the holder to choose to be paid a dividend by a company other than the one which issued the share.
- (4) Where at a given time—

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- (a) a company pays one dividend in respect of each of two or more shares of the same class, and
  - (b) payment is on the same terms as respects all the shares involved,

an election may not be made under this section as regards any of the dividends unless an election is made as regards each of the dividends.
- (5) Where at a given time—
  - (a) a company pays two or more dividends in respect of each of two or more shares of the same class, and
  - (b) payment is on the same terms as respects all the shares involved,

an election may not be made under this section as regards any one of the dividends in respect of a given share unless an election is also made as regards the corresponding dividend in respect of each of the other shares involved.
- (6) Subject to subsection (7) below, a company which has more than one class of share capital may not make an election under this section as regards any dividend.
- (7) In a case where—
  - (a) a company has more than one class of share capital,
  - (b) at a given time the company pays a dividend in respect of each share of each such class, and
  - (c) all of those dividends are paid on the same terms,

the company may elect that each of those dividends is to be treated as a foreign income dividend.
- (8) For the purposes of subsection (7) above a dividend is paid on the same terms as another dividend if the relevant proportion in the case of each dividend is the same; and the relevant proportion, in relation to a dividend, is the proportion which the amount of the dividend bears to the nominal value of the share in respect of which the dividend is paid.
- (9) For the purposes of subsections (6) and (7) above fixed-rate preference shares shall not be treated as constituting a class of share capital; and “fixed-rate preference shares” shall be construed in accordance with section 95(5).
- (10) Where an election is made under this section as regards a dividend in respect of which an election is in force under section 247(1)—
  - (a) the election under this section shall have effect as if it were also a notice to the collector under section 247(3) stating that the paying company does not wish the election under section 247(1) to have effect in relation to the dividend as regards which the election under this section is made;
  - (b) if the election under this section is revoked, the revocation shall have effect as if it were also a revocation of the notice deemed by paragraph (a) above;
  - (c) the notice deemed by paragraph (a) above may not be revoked otherwise than as mentioned in paragraph (b) above;
  - (d) if the notice deemed by paragraph (a) above is revoked it shall be treated as never having been made.

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### Textual Amendments

**F84** Words in s. 246A(1) inserted (with effect in accordance with Sch. 27 para. 1(2) of the amending Act) by Finance Act 1996 (c. 8), Sch. 27 para. 1(1)

### 246B Procedure for making election.

- (1) An election under section 246A—
  - (a) must be made by notice to the inspector;
  - (b) must be made not later than the time the dividend is paid;
  - (c) may be revoked by a further notice to the inspector before that time (without prejudice to the making of another election as regards the same dividend);
  - (d) cannot be revoked after the dividend is paid.
- (2) A notice under subsection (1)(a) above must—
  - (a) identify the dividend in respect of which the election is made, and
  - (b) be in such form as the Board may require.
- (3) Where section 246A(4), (5) or (7) applies—
  - (a) the same notice must be used to elect as regards all the dividends concerned, and
  - (b) the notice may identify the dividends concerned, or any of them, by means of a general description.

*Recipient of foreign income dividend*

### 246C No tax credit for recipient.

Section 231(1) shall not apply where the distribution there mentioned is a foreign income dividend.

### 246D Individuals etc.

- (1) Where a company pays a foreign income dividend in a case in which an individual is beneficially entitled to the dividend, that individual shall be treated as having received on the date of the payment income of an amount which, if reduced by an amount equal to income tax on that income at the lower rate for the year of assessment in which the date of the payment fell, would be equal to the amount of the dividend.
- (2) Where subsection (1) above applies—
  - (a) [<sup>F85</sup>the individual shall be treated as having paid income tax at the lower rate on that income] or, if his total income is reduced by any deductions, on so much of it as is part of his total income as so reduced;
  - (b) no repayment shall be made of income tax treated by virtue of paragraph (a) above as having been paid;
  - (c) to the extent that it would not otherwise be so treated, that income shall be treated [<sup>F86</sup>(without prejudice to paragraph (a) above) as if it were income to which section 1A applies;]
  - (d) that income shall be treated for the purposes of sections 348 and 349(1) as not brought into charge to income tax.



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(3) Where a company pays a foreign income dividend to the personal representatives of a deceased person as such during the administration period, the amount of income which, if the case had been one in which an individual was beneficially entitled to the dividend, that individual would be treated under subsection (1) above as having received shall be deemed for the purposes of Part XVI to be part of the aggregate income of the estate of the deceased; and the preceding provisions of this subsection shall be construed as if they were contained in Part XVI.

[<sup>F87</sup>(3A) Without prejudice to subsection (3) above, a foreign income dividend paid as mentioned in that subsection to personal representatives shall not be treated for the purposes of income tax as income of the personal representatives as such.]

(4) Where a company pays a foreign income dividend to trustees and the dividend is income to which section 686 applies—

- (a) there shall be ascertained the amount of income which, if the case had been one in which an individual was beneficially entitled to the dividend, that individual would be treated under subsection (1) above as having received;
- (b) income of that amount shall be treated as having arisen to the trustees on the date of the payment and as if it had been chargeable to income tax at the lower rate;
- (c) paragraphs (a) to (d) of subsection (2) above shall, with the substitution of “income” for “total income” and with all other necessary modifications, apply to that income as they apply to income which an individual is treated as having received under subsection (1) above.

(5) Subsections (1) and (1A) of section 233 shall not apply where the distribution mentioned in either of those subsections is a foreign income dividend [<sup>F88</sup>to which an individual is beneficially entitled, a foreign income dividend paid to personal representatives or a foreign income dividend paid to trustees in a case in which the dividend is income to which section 686 applies.]

#### Textual Amendments

- F85** Words in s. 246D(2)(a) substituted (with effect in accordance with s. 121(8) of the amending Act) by Finance Act 1996 (c. 8), s. 122(5)(a)
- F86** Words in s. 246D(2)(c) substituted (with effect in accordance with Sch. 6 para. 28 of the amending Act) by Finance Act 1996 (c. 8), Sch. 6 para. 5
- F87** S. 246D(3A) inserted (with effect in accordance with s. 76(6) of the amending Act) by Finance Act 1995 (c. 4), s. 76(1)
- F88** Words in s. 246D(5) inserted (retrospectively) by Finance Act 1996 (c. 8), Sch. 27 para. 2

### *Companies: payments and receipts*

#### **246E Foreign income dividend not franked payment.**

A foreign income dividend shall not constitute a distribution for the purposes of the definition of “franked payment” in section 238(1).

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#### **246F Calculation of ACT where company receives foreign income dividend.**

- (1) Where in any accounting period a company receives foreign income dividends, the company shall not be liable to pay advance corporation tax in respect of foreign income dividends paid by it in that period unless the amount of the foreign income dividends paid by it in that period exceeds the amount of the foreign income dividends received by it in that period.
- (2) If in an accounting period there is such an excess, advance corporation tax shall be payable on an amount equal to the excess.
- (3) If the amount of foreign income dividends received by a company in an accounting period exceeds the amount of the foreign income dividends paid by it in that period the excess shall be carried forward to the next accounting period and treated for the purposes of this section (including any further application of this subsection) as foreign income dividends received by the company in that period.
- (4) This section shall have effect subject to section 246T and paragraph 2(6) of Schedule 23A.
- (5) Without prejudice to section 238(5), Schedule 13 shall apply for the purpose of regulating the manner in which effect is to be given to this section.

#### **246G Information relating to foreign income dividends.**

- (1) Where section 234A applies by virtue of the fact that a foreign income dividend is paid by a company, references in that section to an appropriate statement shall be construed as references to a written statement—
  - (a) in such form as the Board may require,
  - (b) showing the amount of the dividend paid,
  - (c) showing the date of the payment, and
  - (d) stating that the dividend carries no entitlement to a tax credit;
 and in such a case section 234A(7) shall not apply.
- (2) In a case where—
  - (a) a requirement is imposed on a company under section 234A(2) or (3) in relation to a foreign income dividend paid by it, and
  - (b) the company fails to comply with the requirement,
 no election may be made by the company under section 246J or 246K as regards the dividend or any part of it.

#### **246H Power of inspector to require information.**

- (1) This section applies where a return made by a company for a return period in accordance with Schedule 13 shows that the company has paid foreign income dividends in the period.
- (2) The inspector may by notice require the company to furnish him within such time (not being less than 30 days) as may be specified in the notice with such further information relating to the dividends as he may reasonably require for the purposes of any enactment relating to foreign income dividends.
- (3) Without prejudice to the generality of subsection (2) above, the notice may require information as to the persons to whom dividends are paid.

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### *Foreign source profit and distributable foreign profit*

#### **246I Foreign source profit and distributable foreign profit.**

- (1) Where for an accounting period of a company there is any income, or any chargeable gain, in respect of which double taxation relief is afforded, then so much of that income or gain as forms part of the company's chargeable profits for the period is a foreign source profit of the company for the period.
- (2) Subsection (3) below applies where in the accounting period concerned there is any deduction to be made for charges on income, expenses of management or other amounts which can be deducted from or set against or treated as reducing profits of more than one description.
- (3) In finding for the purposes of this section whether, or how much of, any income or gain forms part of the company's chargeable profits for the period the company may allocate the deduction in such amounts and to such of its profits for the period as it thinks fit.
- (4) Where a company has a foreign source profit for an accounting period, such part of it as exceeds the relevant amount of tax is for the purposes of this Chapter a distributable foreign profit of the company for the period.
- (5) Where the amount of foreign tax payable in respect of the foreign source profit exceeds the amount of corporation tax payable, before double taxation relief is afforded, in respect of that profit, the relevant amount of tax is the amount of foreign tax payable in respect of that profit.
- (6) Where subsection (5) above does not apply, the relevant amount of tax is [<sup>F89</sup>the amount of corporation tax payable, before double taxation relief is afforded, in respect of the foreign source profit.]
- (7) In this section "double taxation relief" means—
  - (a) relief under double taxation arrangements which takes the form of a credit allowed against corporation tax, or
  - (b) unilateral relief under section 790(1) which takes that form;and "double taxation arrangements" here means arrangements having effect by virtue of section 788.
- (8) References in this section to a company's chargeable profits for an accounting period are to the amount of its profits for that period on which corporation tax falls finally to be borne; and section 238(4) shall apply for the purposes of this subsection.
- (9) For the purposes of this section foreign tax is any tax, imposed by the laws of a territory outside the United Kingdom, for which double taxation relief is afforded.
- (10) Section 788(5) shall apply for the purposes of this section.

#### **Textual Amendments**

- F89** Words in s. 246I(6) substituted (with effect in accordance with Sch. 27 para. 3(4)(5) of the amending Act) by Finance Act 1996 (c. 8), Sch. 27 para. 3(1)

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### *Matching of dividend with distributable foreign profit*

#### **246J Matching of dividend with distributable foreign profit.**

- (1) Where a company pays a foreign income dividend in an accounting period it may elect that the dividend (or part of it) shall be matched with (or with part of) a distributable foreign profit of the company; and subsections (2) to (6) below shall have effect with regard to matching.
- (2) Different parts of a dividend may be matched with different distributable foreign profits or parts; and different dividends, or parts of different dividends, may be matched with different parts of the same distributable foreign profit.
- (3) A foreign income dividend (or part of one) may be matched with a distributable foreign profit (or part of one) only if the amount of the distributable foreign profit or part is equal to the amount of the dividend or part.
- (4) Subject to subsection (5) below, where a company pays a foreign income dividend in a given accounting period the dividend (or part of it) may only be matched with (or with part of) a distributable foreign profit of the company for that period or for the accounting period immediately preceding it, but without the need to exhaust distributable foreign profits for one of those periods before taking those for the other period.
- (5) Where a company pays a foreign income dividend in a given accounting period the dividend (or part of it) may be matched with (or with part of) a distributable foreign profit of the company for any subsequent accounting period, but only if there is no amount of unmatched distributable foreign profit of the company for the given period and no such amount for the accounting period immediately preceding the given period.
- (6) Where a distributable foreign profit (or part of one) has been matched with a foreign income dividend (or part of one) it cannot be matched with another foreign income dividend or part.

#### **Modifications etc. (not altering text)**

**C39** S. 246J(5) modified (31.7.1997) by [Finance \(No. 2\) Act 1997 \(c. 58\)](#), [Sch. 6 para. 22\(2\)](#)

#### **246K Matching: subsidiaries.**

- (1) This section applies where a company (the subsidiary) is a 51 per cent. subsidiary of another company (the parent); but this is subject to section 246L.
- (2) In a case where—
  - (a) an accounting period of the subsidiary coincides with, or with part of, an accounting period of the parent, and
  - (b) the subsidiary has a distributable foreign profit for its accounting period, the whole of the profit is for the purposes of this section an eligible profit for the parent's accounting period.
- (3) In a case where—
  - (a) part of an accounting period of the subsidiary coincides with, or with part of, an accounting period of the parent, and

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- (b) the subsidiary has a distributable foreign profit for its accounting period, then, to the extent of the appropriate fraction, the profit is for the purposes of this section an eligible profit for the parent's accounting period.
- (4) The appropriate fraction is one—
- (a) whose numerator is equal to the number of the days in the subsidiary's accounting period that coincide with days in the parent's accounting period, and
- (b) whose denominator is equal to the number of the days in the subsidiary's accounting period.
- (5) Where the parent pays a foreign income dividend in an accounting period it may elect that the dividend (or part of it) shall be matched with (or with part of) an eligible profit; and subsections (6) to (11) below shall have effect with regard to matching.
- (6) No election as to matching may be made unless the subsidiary gives its written consent in such form as the Board may require.
- (7) Different parts of a dividend may be matched with different eligible profits or parts; and different dividends, or parts of different dividends, may be matched with different parts of the same eligible profit.
- (8) A foreign income dividend (or part of one) may be matched with an eligible profit (or part of one) only if the amount of the eligible profit or part is equal to the amount of the dividend or part.
- (9) Subject to subsection (10) below, where the parent pays a foreign income dividend in a given accounting period the dividend (or part of it) may only be matched with (or with part of) an eligible profit for that period or for the accounting period immediately preceding it, but without the need to exhaust eligible profits for one of those periods before taking those for the other period.
- (10) Where the parent pays a foreign income dividend in a given accounting period the dividend (or part of it) may be matched with (or with part of) an eligible profit for any subsequent accounting period, but only if there is no amount of unmatched eligible profit derived from the same subsidiary for the given period and no such amount for the accounting period immediately preceding the given period.
- (11) Where an eligible profit (or part of one) has been matched with a foreign income dividend (or part of one) it cannot be matched with another foreign income dividend or part.
- (12) References in this section to a company apply only to bodies corporate; and in determining for the purposes of this section whether one company is a 51 per cent. subsidiary of another company, that other company shall be treated as not being the owner—
- (a) of any share capital which it owns directly in a body corporate if a profit on the sale of the shares would be treated as a trading receipt of its trade, or
- (b) 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 a trading receipt.

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**Modifications etc. (not altering text)**

**C40** S. 246K(10) modified (31.7.1997) by [Finance \(No. 2\) Act 1997 \(c. 58\)](#), [Sch. 6 para. 22\(2\)](#)

**246L Requirement as to subsidiaries.**

- (1) Section 246K(5) does not apply unless the subsidiary is a 51 per cent. subsidiary of the parent throughout the relevant period (determined under subsection (3) or (4) below).
- (2) In this section “the payment period” means the accounting period of the parent in which it pays the dividend as regards which an election under section 246K is proposed.
- (3) If the proposed election involves only eligible profits deriving from an accounting period of the subsidiary coinciding with the payment period, the relevant period is the payment period.
- (4) In any other case the relevant period is one that—
  - (a) begins with the beginning of the payment period or (if earlier) the beginning of the first or only relevant accounting period of the subsidiary, and
  - (b) ends with the end of the payment period or (if later) the end of the last or only relevant accounting period of the subsidiary.
- (5) For the purposes of subsection (4) above a relevant accounting period of the subsidiary is an accounting period of the subsidiary for which there is a distributable foreign profit which—
  - (a) is (as to the whole or part) an eligible profit, and
  - (b) would, under the proposed election, be to any extent matched with the dividend as regards which the election is proposed.
- (6) Section 246K(12) shall apply in determining for the purposes of this section whether the subsidiary is a 51 per cent. subsidiary of the parent at any given time.

**246M Matching: further provisions.**

- (1) Where a parent elects under section 246K as regards an eligible profit for an accounting period, the following rules shall have effect for the purposes of this Chapter—
  - (a) to the extent provided for in the election, the eligible profit shall be treated as a separate distributable foreign profit of the parent for the parent’s accounting period and as matched;
  - (b) the distributable foreign profit mentioned in section 246K(2)(b) or (3)(b) shall be treated as reduced accordingly or (depending on the circumstances) as extinguished;
  - (c) the foreign source profit of which the distributable foreign profit mentioned in section 246K(2)(b) or (3)(b) forms a part shall be treated as correspondingly divided between the parent and the subsidiary or (depending on the circumstances) as a foreign source profit of the parent alone for its accounting period.

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- (2) Where an election is made under section 246J or 246K with regard to anything which is or represents a distributable foreign profit of a subsidiary (or part of such a profit) no further election can be made with regard to it under the other section.

*Repayment or set-off of advance corporation tax*

**246N ACT to be repaid or set off against corporation tax liability.**

- (1) This section and section 246Q apply where—
- (a) a company pays a foreign income dividend in an accounting period (the relevant period), and
  - (b) the company does not treat itself as an international headquarters company at any time in the period by virtue of section 246S(9).
- (2) In a case where—
- (a) the company pays an amount of advance corporation tax in respect of qualifying distributions actually made by it in the relevant period,
  - (b) the amount, or part of it, is available to be dealt with under this section, and
  - (c) there is as regards the company an amount of notional foreign source advance corporation tax for the relevant period,
- an amount of the advance corporation tax paid shall be repaid to the company, or set off, or partly repaid and partly set off, in accordance with this section and section 246Q.
- (3) In the following provisions of this section “the relevant advance corporation tax” means the advance corporation tax paid as mentioned in subsection (2)(a) above.
- (4) The amount of the relevant advance corporation tax to be repaid or (as the case may be) set off, or partly repaid and partly set off, is whichever of the following is smaller—
- (a) so much of the relevant advance corporation tax as is available to be dealt with under this section;
  - (b) so much of the relevant advance corporation tax as is equal to the amount which is, as regards the company, the amount of notional foreign source advance corporation tax for the relevant period (found under section 246P).
- (5) So much of the relevant advance corporation tax as remains after deducting the aggregate of the deductible amounts is available to be dealt with under this section; and each of the following is a deductible amount—
- (a) an amount equal to so much (if any) of the relevant advance corporation tax as has been repaid;
  - (b) an amount equal to so much (if any) of the relevant advance corporation tax as has been set off against the company’s corporation tax liability for the relevant period under section 239(1) or, if there is—
    - (i) any amount of advance corporation tax from a preceding accounting period,
    - (ii) any amount of surrendered advance corporation tax, or
    - (iii) any amount of advance corporation tax from a succeeding accounting period,as would have been so set off if there had been no amounts as mentioned in sub-paragraphs (i) to (iii) above;

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- (c) an amount equal to so much (if any) of the relevant advance corporation tax as has been dealt with under section 239(3);
  - (d) an amount equal to so much (if any) of the relevant advance corporation tax as is advance corporation tax the benefit of which has been surrendered by the company under section 240;
  - (e) an amount equal to so much (if any) of the relevant advance corporation tax as has been set off against the company's corporation tax liability for the relevant period by virtue of the previous application of this section and section 246Q.
- (6) For the purposes of subsection (5)(b) above—
- (a) advance corporation tax from a preceding accounting period is advance corporation tax which by virtue of section 239(4) is treated for the purposes of section 239 as paid by the company in respect of distributions made by it in the relevant period;
  - (b) surrendered advance corporation tax is advance corporation tax which by virtue of section 240 is so treated;
  - (c) advance corporation tax from a succeeding accounting period is advance corporation tax which by virtue of section 239(3) is so treated;
- and in applying subsection (5)(b) above in a case where there is any amount as mentioned in subsection (5)(b)(i) to (iii), it shall be assumed that the company would not have surrendered the benefit of any of the relevant advance corporation tax under section 240.
- (7) No amount shall be repaid or set off under this section and section 246Q unless the company makes a claim for the purpose.

#### **246P Notional foreign source advance corporation tax.**

- (1) As regards the company mentioned in section 246N(1), the amount of notional foreign source advance corporation tax for the relevant period is the amount of advance corporation tax which—
- (a) the company would have paid in respect of distributions made by it in the relevant period, and
  - (b) would not have been set off against the company's corporation tax liability for the relevant period under section 239(1),
- on the assumptions mentioned in subsection (2) below.
- (2) The assumptions are that—
- (a) the qualifying foreign income dividends were the only distributions made by the company in the relevant period,
  - (b) no distributions were received (or treated for the purposes of section 246F as received) by the company in the relevant period,
  - (c) no amounts of advance corporation tax were by virtue of section 239(3) or (4) or section 240 treated for the purposes of section 239 as having been paid in respect of distributions made by the company in the relevant period,
  - (d) the benefit of the advance corporation tax paid in respect of distributions made by the company in the relevant period was not surrendered under section 240;
  - (e) the company's profits for the relevant period on which corporation tax fell finally to be borne consisted of the matched foreign source profits and no other profits,



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- [<sup>F90</sup>(ea) where any of the matched foreign source profits represent an amount (“a gross profit”) reduced by one or more such deductions as are mentioned in section 246I(2), the amount of double taxation relief which is to be taken, in finding the amount of corporation tax falling finally to be borne, to have been available (after the reduction) to be allowed by reference to the amount representing the gross profit was equal to the amount that would have been available to be so allowed had no reduction been made]; and
- (f) the amount of corporation tax charged in respect of a matched foreign source profit actually arising in an accounting period other than the relevant period was found by reference to—
- (i) the rate of foreign tax, within the meaning given by section 246I(9), actually chargeable in respect of the profit (having regard to the time when it arose), and
  - (ii) the rate of corporation tax that would have applied had the profit arisen in the relevant period.
- (3) A foreign income dividend is a qualifying foreign income dividend if—
- (a) it is a matched foreign income dividend paid by the company in the relevant period, and
  - (b) the company has elected for it to be a qualifying foreign income dividend.
- (4) A foreign income dividend the whole of which is, at the material time, matched with the whole or part of a distributable foreign profit of the company is a matched foreign income dividend.
- (5) Where there is a foreign income dividend only part of which is at the material time matched as mentioned in subsection (4) above, the part of the dividend which at that time is so matched shall be treated for the purposes of this section as a separate dividend and, accordingly, as a matched foreign income dividend.
- (6) The company may elect that matched foreign income dividends paid by it in the relevant period are qualifying foreign income dividends only if the amount found under paragraph (a) of subsection (7) below exceeds the amount found under paragraph (b) of that subsection; and where there is such an excess the election may only be made as regards matched foreign income dividends whose total amount is the same as or less than the amount of the excess.
- (7) The amounts referred to in subsection (6) above are—
- (a) the total amount of foreign income dividends paid by the company in the relevant period (other than excluded dividends);
  - (b) the total amount of foreign income dividends received (or treated for the purposes of section 246F as received) by the company in the relevant period;
- and for the purposes of this subsection an excluded dividend is a foreign income dividend which by virtue of section 246G(2) is not capable of being matched.
- (8) A matched foreign source profit is a foreign source profit of which a matched distributable foreign profit forms part; and for the purposes of this subsection “a matched distributable foreign profit” means a distributable foreign profit of the company the whole or part of which is, at the material time, matched with a qualifying foreign income dividend, or with part of such a dividend, or with different such dividends or parts.
- (9) Where the matched foreign source profit is a foreign source profit of which a partly matched distributable foreign profit forms part, for the purposes of any calculation

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required by subsections (1) and (2) above the amount of the matched foreign source profit shall be taken to be reduced by an amount which bears to the full amount of the matched foreign source profit the same proportion as the unmatched part of the distributable foreign profit bears to the amount of the distributable foreign profit.

(10) For the purposes of subsection (9) above—

- (a) “a partly matched distributable foreign profit” means a distributable foreign profit of the company part of which is not, at the material time, matched as mentioned in subsection (8) above, and
- (b) “the unmatched part of the distributable foreign profit” shall be construed accordingly.

(11) For the purposes of this section—

- (a) “the relevant period” shall be construed in accordance with section 246N(1);
- (b) “the material time” means the time at which the claim mentioned in section 246N(7) is made.

(12) References in this section to matching shall be construed in accordance with sections 246J to 246M.

[<sup>F91</sup>(12A) In this section “double taxation relief” has the same meaning as in section 246I.]

(13) Section 238(4) shall apply for the purposes of this section.

#### **Textual Amendments**

**F90** S. 246P(2)(ea) inserted (with effect in accordance with Sch. 27 para. 3(4)(5) of the amending Act) by Finance Act 1996 (c. 8), Sch. 27 para. 3(2)

**F91** S. 246P(12A) inserted (with effect in accordance with Sch. 27 para. 3(4)(5) of the amending Act) by Finance Act 1996 (c. 8), Sch. 27 para. 3(3)

#### **246Q Repayment or set-off: supplementary.**

(1) Subsections (2) and (3) below shall have effect to determine whether the amount which is the smaller of the amounts found under section 246N(4) is to be repaid, set off, or partly repaid and partly set off.

(2) If at the time when it falls to be determined whether the amount mentioned in subsection (1) above is to be repaid or set off—

- (a) advance corporation tax paid (or treated for the purposes of section 239 as paid) by the company in respect of distributions made by it in the relevant period has so far as possible been set against its liability to corporation tax for the period under section 239(1), but
- (b) the company’s liability to corporation tax for the period is to any extent undischarged,

the amount mentioned in subsection (1) above shall so far as possible be set off against the company’s liability to corporation tax for the relevant period (and an amount of that liability equal to the amount so set off shall accordingly be discharged); and any excess of the amount mentioned in subsection (1) above over the amount so set off shall be repaid.

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- (3) Where paragraph (a) of subsection (2) above applies but paragraph (b) of that subsection does not, the whole of the amount mentioned in subsection (1) above shall be repaid.
- (4) No amount shall be repayable under section 246N and this section until the expiry of nine months from the end of the relevant period.
- (5) An amount of advance corporation tax which has been dealt with under section 246N and this section—
  - (a) shall not be set off under section 239(1) against the company's liability to corporation tax for any accounting period;
  - (b) shall not be available for the purposes of a claim under section 240.
- (6) A return made by the company for the relevant period under section 11 of the Management Act, or an amendment of such a return, shall be treated as a claim for the purposes of section 246N and this section if the return or (as the case may be) the amendment contains such particulars as the inspector may require.
- (7) A claim for those purposes which is not made by means of a return under section 11 of the Management Act, or by means of an amendment of such a return, shall be supported by such particulars as the inspector may require.
- (8) In a case where—
  - (a) a claim is made under section 246N and this section, and
  - (b) by virtue of the claim, an amount of advance corporation tax is repaid or set off which has already been set off by virtue of section 239(4) against the company's corporation tax liability for an accounting period falling after the accounting period to which the claim relates,the set-off by virtue of section 239(4) of that amount shall be treated for the purposes of section 252 as if it ought not to have been made.
- (9) In determining for the purposes of subsection (8) above whether an amount repaid or set off by virtue of a claim under section 246N and this section is an amount which has already been set off against the company's corporation tax liability for an accounting period, amounts of advance corporation tax repaid or set off by virtue of that claim shall be treated as having been set off against that liability only after any other amounts of advance corporation tax that were capable of being set off against that liability have been taken into account.
- (10) Where section 252 applies by virtue of this section the reference in subsection (5) of that section to the Management Act shall be treated as not including a reference to section 34 of that Act.
- (11) In this section "the relevant period" shall be construed in accordance with section 246N(1).

#### **246R Supplementary claims.**

- (1) This section applies where—
  - (a) a claim is made under sections 246N and 246Q, and
  - (b) at any time after the claim is made the company makes an election under section 246J(5) or 246K(10) matching profits with dividends paid in the accounting period to which the claim relates.

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- (2) The company may as regards that accounting period make a further claim under sections 246N and 246Q (a supplementary claim) so as to take account of the election.
- (3) Subsections (5) and (6) below shall apply in determining for the purposes of the supplementary claim the amount of notional foreign source advance corporation tax for the accounting period to which that claim relates.
- (4) In subsections (5) and (6) below a “previously counted dividend” means a foreign income dividend (or part of one) which was included in an election made by the company under section 246P for the purposes of an earlier claim as regards the accounting period (and which, accordingly, was treated as a qualifying foreign income dividend for those purposes).
- (5) In applying section 246P for the purposes of the supplementary claim, a previously counted dividend shall be treated as not being a qualifying foreign income dividend notwithstanding the election mentioned in subsection (4) above; and the company may not include the previously counted dividend in any further election made under section 246P for the purposes of the supplementary claim.
- (6) In relation to an election which the company proposes to make under section 246P for the purposes of the supplementary claim, section 246P(6) shall have effect as if for the reference to matched foreign income dividends whose total amount is the same as or less than the amount of the excess there mentioned there were substituted a reference to matched foreign income dividends whose total amount, when added to the total amount of the previously counted dividends, gives an amount which is equal to or less than the amount of that excess.
- (7) A company may make more than one supplementary claim as regards any accounting period.

#### *International headquarters companies*

### **246S International headquarters companies.**

- (1) For the purposes of this Chapter a company is an international headquarters company in an accounting period if—
  - (a) at least one of the first three conditions (set out in subsections (2) to (5) below) is fulfilled, and
  - (b) the fourth condition (set out in subsection (7) below) is fulfilled;
 but the fourth condition need not be fulfilled if the second condition is fulfilled.
- (2) The first condition is that—
  - (a) the company is wholly owned by another company throughout the accounting period, and
  - (b) that other company is a foreign held company in the accounting period.
- (3) The second condition is that—
  - (a) the company is [<sup>F92</sup>a 100 per cent. subsidiary of] another company throughout the accounting period,
  - (b) that other company is not resident in the United Kingdom at any time in the accounting period,

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- (c) throughout the accounting period, and the period of 12 months immediately preceding it, the shares in that other company are [<sup>F93</sup>listed] in the official list of a recognised stock exchange other than a stock exchange in the United Kingdom,
- (d) at a time falling within the accounting period or the period of 12 months immediately preceding it, shares in that other company have been the subject of dealings on a recognised stock exchange other than a stock exchange in the United Kingdom, and
- (e) throughout the accounting period, and the period of 12 months immediately preceding it, the shares in that other company are not [<sup>F93</sup>listed] in the official list of a recognised stock exchange in the United Kingdom;

<sup>F94</sup> .....

- (4) For the purposes of subsection (3)(e) above, shares that (apart from this subsection) would be regarded as quoted in the official list of a recognised stock exchange shall be regarded as not being so quoted if the issuer of the shares is not subject, in relation to them, to the full requirements applicable by virtue of listing rules to the listing of shares on that exchange; and in this subsection “listing rules” shall be construed in accordance with section 142(6) of the Financial Services Act 1986.
- (5) The third condition is that—
  - (a) at each given time in the accounting period each shareholder of the company owns at least 5 per cent. of the company’s share capital, and
  - (b) the test mentioned in subsection (6) below is satisfied.
- (6) The test is that at each given time in the accounting period at least 80 per cent. of the company’s share capital is owned by—
  - (a) persons who are not companies and who are not resident in the United Kingdom at any time in the accounting period,
  - (b) companies which are foreign held companies in the accounting period, or
  - (c) persons falling within paragraph (a) above and companies falling within paragraph (b) above.
- (7) The fourth condition is that at each given time in the accounting period not more than 20 per cent. of the company’s ordinary share capital is ultimately owned by persons who are not companies and are resident in the United Kingdom; and where any shares are not directly owned by a person who is not a company their ultimate ownership shall be found by tracing ownership through any corporate holders to persons who are not companies on such basis as is reasonable.

(8) <sup>F95</sup> .....

- (9) Where a company pays a foreign income dividend, for the purposes of this Chapter it may treat itself as an international headquarters company if—
  - (a) in the company’s opinion it is likely to be an international headquarters company in the accounting period in which the dividend is paid, and
  - (b) in a case where the dividend is paid in the company’s second accounting period or a subsequent accounting period, it is an international headquarters company in the immediately preceding accounting period;

and for the purposes of paragraph (a) above the company’s opinion held at the time the dividend is paid is to be taken.

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- (10) For the purposes of this section a company is a foreign held company in an accounting period if—
- (a) at each given time in the accounting period at least 80 per cent. of the company's share capital is owned by persons who are not resident in the United Kingdom at any time in the accounting period, or
  - (b) throughout the accounting period the company is wholly owned by another company and at each given time in the accounting period at least 80 per cent. of that other company's share capital is owned by persons who are not resident in the United Kingdom at any time in the accounting period.
- [<sup>F96</sup>(10A) For the purposes of this section a company is a 100 per cent. subsidiary of another if and so long as it is a body corporate all of whose share capital would fall to be treated for the purposes of section 838 as owned directly or indirectly by the other and that other is a body corporate; but for this purpose references in that section to owning share capital shall be construed in accordance with subsection (12) below.]
- (11) For the purposes of this section a company wholly owns another company if the first company is the beneficial owner of all the share capital of the second company.
- (12) For the purposes of this section the question whether a person owns a particular percentage of a company's share capital at a particular time shall be determined by—
- (a) assuming that a general meeting of the company is held at that time;
  - (b) taking the number of votes carried by the company's share capital and capable of being cast at such a meeting;
  - (c) taking the number of those votes capable of being so cast by the person concerned by virtue of the company's share capital beneficially owned by him;
  - (d) expressing the number found under paragraph (c) above as a percentage of the number found under paragraph (b) above;
  - (e) taking the percentage found under paragraph (d) above as the percentage of the company's share capital owned by that person at that time.
- (13) Subsection (12) above shall not apply for the purposes of subsection (7) above; and in subsection (7) references to ownership shall be construed as references to beneficial ownership.

#### **Textual Amendments**

- F92** Words in s. 246S(3)(a) substituted (with effect in accordance with Sch. 27 para 4(5)(6) of the amending Act) by Finance Act 1996 (c. 8), Sch. 27 para. 4(2)
- F93** Words in s. 246S(3)(c)(e) substituted (with effect in accordance with Sch. 38 para. 6(5) of the amending Act) by Finance Act 1996 (c. 8), Sch. 38 para. 6(1)(2)(c)
- F94** S. 246S(3): words after paragraph (e) repealed (with effect in accordance with Sch. 41 Pt. 5(17) Note of the repealing Act) by Finance Act 1996 (c. 8), Sch. 41 Pt. 5(17)
- F95** S. 246S(8) repealed (with effect in accordance with Sch. 27 para. 4(5)(6) of the repealing Act) by Finance Act 1996 (c. 8), Sch. 27 para. 4(3), Sch. 41 Pt. 5(17), Note
- F96** S. 246S(10A) inserted (with effect in accordance with Sch. 27 para. 4(5)(6) of the amending Act) by Finance Act 1996 (c. 8), Sch. 27 para. 4(4)

#### **Modifications etc. (not altering text)**

- C41** S. 246S(9) modified (29.4.1996) by Finance Act 1996 (c. 8), Sch. 27 para. 4(6)

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#### **246T Liability to pay ACT displaced.**

- (1) This section applies where—
  - (a) a company pays a foreign income dividend in an accounting period, and
  - (b) at the time it pays the dividend the company treats itself as an international headquarters company by virtue of section 246S(9).
- (2) The company shall not be liable to pay advance corporation tax in respect of the dividend.
- (3) This section shall have effect subject to section 246V.

#### **246U Settlement of liability by IHC as to ACT.**

- (1) This section applies where—
  - (a) at any time when it pays a dividend in an accounting period a company treats itself as an international headquarters company by virtue of section 246S(9), and
  - (b) the company is an international headquarters company in the accounting period.
- (2) If amount A exceeds amount B, the company shall be liable to pay an amount equal to the excess as if the amount were advance corporation tax payable in respect of a distribution made by the company in the last return period falling within the accounting period; and “return period” here has the same meaning as in Schedule 13.
- (3) If amount B exceeds amount A, an amount equal to the excess shall be paid to the company in accordance with this section; and the payment shall be treated as if it were a repayment of advance corporation tax which—
  - (a) was paid by the company in respect of distributions made by it in the accounting period, and
  - (b) falls to be repaid under sections 246N and 246Q.
- (4) Amount A is the total amount of the advance corporation tax which by virtue of section 246T and paragraph 3A of Schedule 13 the company is not liable to pay, and has not paid, in respect of dividends paid by it in the accounting period.
- (5) Amount B is the amount (if any) of the advance corporation tax which would be required to be repaid, or set off, or partly repaid and partly set off, under sections 246N and 246Q if the company—
  - (a) had not treated itself as an international headquarters company at any time in the accounting period, and
  - (b) had, at the expiry of nine months from the end of the accounting period, made a claim as regards the accounting period in accordance with sections 246N and 246Q.
- (6) Where an amount of advance corporation tax actually paid by the company in respect of qualifying distributions made by it in the accounting period has been dealt with under section 239(3), or the benefit of such an amount has been surrendered under section 240, in applying section 246N(5)(c) and (d) by virtue of subsection (5) above it shall be assumed that an equivalent amount of advance corporation tax would have been so dealt with or (as the case may be) that the benefit of an equivalent amount of advance corporation tax would have been so surrendered.

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- (7) No amount shall be paid under subsection (3) above unless the company makes a claim for payment; and—
- (a) a return made by the company for the accounting period under section 11 of the Management Act, or
  - (b) an amendment of such a return,
- shall be treated as a claim for payment if the return or (as the case may be) the amendment contains such particulars as the inspector may require.
- (8) A claim which is not made by means of a return under section 11 of the Management Act, or by means of an amendment of such a return, shall be supported by such particulars as the inspector may require.
- (9) No amount shall be payable under subsection (3) above until the expiry of nine months from the end of the accounting period.

#### **246V Settlement of liability by non-IHC as to ACT.**

- (1) This section applies where—
- (a) at any time when it pays a dividend in an accounting period a company treats itself as an international headquarters company by virtue of section 246S(9), and
  - (b) the company is not an international headquarters company in the accounting period.
- (2) Section 246T shall not apply, and shall be treated as never having applied, as regards the dividend.
- (3) Sections 246N and 246Q shall apply as if the company had not treated itself as an international headquarters company at any time in the period by virtue of section 246S(9).

#### **246W Payments and repayments where further matching takes place.**

- (1) Subsection (2) below applies where—
- (a) a company pays an amount under section 246U(2) as regards an accounting period,
  - (b) the company makes an election under section 246J(5) or 246K(10) matching profits with dividends paid in that accounting period, and
  - (c) had the election been made before the relevant time, the company would not have been required to pay some or all of the amount mentioned in paragraph (a) above.
- (2) The company shall be entitled to repayment of so much of the amount mentioned in subsection (1)(a) above as it would not have been required to pay if the election had been made before the relevant time.
- (3) Subsection (4) below applies where—
- (a) a company either pays an amount under section 246U(2) as regards an accounting period or is paid an amount under section 246U(3) as regards the period,
  - (b) the company makes an election under section 246J(5) or 246K(10) matching profits with dividends paid in that accounting period, and



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- (c) had the election been made before the relevant time, the company would have been entitled under section 246U(3) to be paid an amount which was not in fact paid to it.
- (4) The company shall be entitled to payment of the amount mentioned in subsection (3) (c) above.
- (5) Any repayment under subsection (2) above shall (without prejudice to section 246U(2)) be treated as if it were a repayment of advance corporation tax which—
  - (a) was paid by the company in respect of a distribution made by it in the last return period falling within the accounting period mentioned in subsection (1) above, and
  - (b) falls to be repaid under sections 246N and 246Q.
- (6) In relation to a repayment under subsection (2) above which by virtue of subsection (5) above is treated as a repayment of advance corporation tax, the material date for the purposes of section 826 shall be the date when advance corporation tax in respect of distributions made by the company in the return period mentioned in subsection (5) above became (or, as the case may be, would have become) due and payable; and accordingly subsection (2A) of section 826 shall not apply in relation to the repayment.
- (7) Any payment under subsection (4) above shall be treated as if it were a repayment of advance corporation tax which—
  - (a) was paid by the company in respect of distributions made by it in the accounting period mentioned in subsection (3) above, and
  - (b) falls to be repaid under sections 246N and 246Q.
- (8) Subsections (7) and (8) of section 246U shall apply in relation to payments and repayments under this section as they apply in relation to payments under section 246U(3).
- (9) For the purposes of this section—
  - (a) “the relevant time” means the expiry of nine months from the end of the accounting period mentioned in subsection (1) or (3) above;
  - (b) “return period” has the same meaning as in Schedule 13.

### *Adjustments*

#### **246X Adjustments where profits or foreign tax altered.**

- (1) This section applies where a company is paid or repaid an amount under any provision of this Chapter, or sets off under any such provision an amount against a liability of the company to corporation tax, and either—
  - (a) there is any alteration of the profits of a company for an accounting period which renders the payment or repayment, or the amount set off, excessive or insufficient, or
  - (b) there is any alteration of an amount of tax payable under the laws of a territory outside the United Kingdom which renders the payment or repayment, or the amount set off, excessive or insufficient.

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- (2) Where there is any such alteration as is mentioned in subsection (1) above the company may revise any election made under section 246J or 246K or 246P in such manner as is just and reasonable having regard to the alteration.
- (3) Where there is any such alteration as is mentioned in subsection (1) above, then such adjustments shall be made of any calculation required by this Chapter as are just and reasonable having regard to the alteration and to any revision made under subsection (2) above; and payments or repayments shall be made accordingly.

*Application of this Chapter]*

**246Y Application of this Chapter.**

This Chapter shall have effect in relation to—

- (a) any dividend paid on or after 1st July 1994;
- (b) any foreign source profit consisting of income for, or a chargeable gain for, an accounting period beginning on or after 1st July 1993.

**CHAPTER VI**

MISCELLANEOUS AND SUPPLEMENTAL

*Group income*

**247 Dividends etc. paid by one member of a group to another.**

- (1)<sup>M87</sup> Where a company (“the receiving company”) receives dividends from another company (“the paying company”), both being bodies corporate resident in the United Kingdom, and the paying company is—
  - (a) a 51 per cent. subsidiary of the other or of a company so resident of which the other is a 51 per cent. subsidiary; or
  - [<sup>F97</sup>(b) a trading or holding company which does not fall within subsection (1A) below and which is owned by a consortium the members of which include the receiving company.]

then, subject to the following provisions of this section, the receiving company and the paying company may jointly elect that this subsection shall apply to the dividends received from the paying company by the receiving company (“the election dividends”).

[<sup>F98</sup>(1A) A company falls within this subsection if—

- (a) it is a 75 per cent. subsidiary of any other company, or
- (b) arrangements of any kind (whether in writing or not) are in existence by virtue of which it could become such a subsidiary.]

- (2) So long as an election under subsection (1) above is in force the election dividends shall be excluded from sections 14(1) and 231 and are accordingly not included in references to franked payments made by the paying company or the franked investment income of the receiving company but are in the Corporation Tax Acts referred to as “group income” of the receiving company.

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- (3) Where an election under subsection (1) above is in force the paying company may by notice to the collector state that it does not wish the election to have effect in relation to any amount of dividends specified in the notice and the Corporation Tax Acts shall then have effect in relation to that amount as if there had been no such election.
- (4) <sup>M88</sup>Where a company (“the recipient company”) receives from another company (“the payer company”), both being bodies corporate resident in the United Kingdom, any payments which are [<sup>F99</sup>deductible payments in relation to the payer company for the purposes of corporation tax] and either—
- (a) the conditions in subsection (1)(a) or (b) above would be satisfied in relation to the companies if the payments were dividends, or
  - (b) the recipient company is a 51 per cent. subsidiary of the payer company,
- then, subject to the following provisions of this section, the recipient company and the payer company may jointly elect that this subsection shall apply to any such payments received from the payer company by the recipient company, and so long as the election is in force those payments may be made without deduction of income tax and neither section 349 nor section 350 shall apply thereto.
- [<sup>F100</sup>(4A) The reference in subsection (4) above to a payment which is a deductible payment in relation to a company for the purposes of corporation tax is a reference to any payment which is—
- (a) a charge on income of that company for those purposes; or
  - (b) a payment of interest in relation to which a debit falls to be brought into account in the case of that company for the purposes of Chapter II of Part IV of the Finance Act 1996 (loan relationships).]

(5) <sup>M89</sup>Subsections (1) to (4) above shall not apply to dividends or other payments received by a company on any investments, if a profit on the sale of those investments would be treated as a trading receipt of that company, and shall not apply to a dividend in any case where, if those subsections do not apply to it, the receiving company will, or would but for section 235 or 237, be entitled by virtue of any exemption to claim payment of the tax credit to which it is entitled in respect of the dividend.

[<sup>F101</sup>(5A) Subsections (1) to (3) above shall not apply to foreign income dividends; and “foreign income dividends” shall be construed in accordance with Chapter VA of Part VI.]

(6) <sup>M90</sup>Where—

    - (a) the paying company purports by virtue of an election under subsection (1) above to pay any dividends without paying advance corporation tax, or
    - (b) the payer company purports by virtue of an election under subsection (4) above to make any payment without deduction of income tax,

and advance corporation tax ought to have been paid or income tax ought to have been deducted, as the case may be, the inspector may make such assessments, adjustments or set-offs as may be required for securing that the resulting liabilities to tax (including interest on unpaid tax) of the paying or payer company and the receiving or recipient company are, so far as possible, the same as they would have been if the advance corporation tax had been duly paid or the income tax had been duly deducted.

(7) Where tax assessed under subsection (6) above on the paying or payer company is not paid by that company before the expiry of the period of three months from the date on which that tax is payable, that tax shall, without prejudice to the right to recover it from that company, be recoverable from the receiving or recipient company.

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- (8) <sup>M91</sup>In determining for the purposes of this section whether one body corporate is a 51 per cent. subsidiary of another, that other shall be treated as not being the owner—
- (a) of any share capital which it owns directly or indirectly in a body corporate not resident in the United Kingdom, or
  - (b) 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 a trading receipt.
- [<sup>F102</sup>(8A) Notwithstanding that at any time a company (“the subsidiary company”) is a 51 per cent. subsidiary of another company (“the parent company”) it shall not be treated at that time as such a subsidiary for the purposes of this section unless, additionally, at that time—
- (a) the parent company would be beneficially entitled to more than 50 per cent. of any profits available for distribution to equity holders of the subsidiary company; and
  - (b) 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.]
- (9) <sup>M92</sup>For the purposes of this section—
- (a) “trading or holding company” means a trading company or a company the business of which consists wholly or mainly in the holding of shares or securities of trading companies which are its 90 per cent. subsidiaries;
  - (b) “trading company” means a company whose business consists wholly or mainly of the carrying on of a trade or trades; and
- [<sup>F103</sup>(c) a company is owned by a consortium if 75 per cent. or more of the ordinary share capital of the company is beneficially owned between them by companies resident in the United Kingdom of which none—
- (i) beneficially owns less than 5 per cent. of that capital,
  - (ii) would be beneficially entitled to less than 5 per cent. of any profits available for distribution to equity holders of the company, or
  - (iii) would be beneficially entitled to less than 5 per cent. of any assets of the company available for distribution to its equity holders on a winding-up,
- and those companies are called the members of the consortium.]
- [<sup>F103</sup>(9A) Schedule 18 shall apply for the purposes of subsections (8A) and (9)(c) above as it applies for the purposes of section 413(7).]
- (10) <sup>M93</sup>References in this section to dividends or payments received by a company apply to any received by another person on behalf of or in trust for the company, but not to any received by the company on behalf of or in trust for another person, and references to “group income” shall be construed accordingly.

#### Textual Amendments

- F97** 1989 s.99(2) *in relation to dividends etc. paid on or after 27 July 1989. Previously*  
 “(b) a trading or holding company owned by a consortium the members of which include the receiving company.”
- F98** 1989 s.99(3).

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- F99** Words in s. 247(4) substituted (with effect in accordance with s. 105(1) of the amending act) by Finance Act 1996 (c. 8), **Sch. 14 para. 13(1)** (with Sch. 15)
- F100** S. 247(4A) inserted (with effect in accordance with s. 105(1) of the amending act) by Finance Act 1996 (c. 8), **Sch. 14 para. 13(2)** (with Sch. 15)
- F101** S. 247(5A) inserted (3.5.1994) by Finance Act 1994 (c. 9), **Sch. 16 para. 13**
- F102** 1989 s.99(4) *in relation to dividends etc. paid on or after 27 July 1989.*
- F103** 1989 s.99(5)(6) *in relation to dividends etc. paid on or after 27 July 1989. Previously*  
“(c) a company is owned by a consortium if three-quarters or more of the ordinary share capital of the company is beneficially owned between them by companies resident in the United Kingdom of which none beneficially owns less than one-twentieth of that capital, and those companies are called the members of the consortium.”  
*in subs. (9)(c).*

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#### Marginal Citations

- M87** Source—1970 s.256(1); 1972 Sch.15 Pt.II
- M88** Source—1970 s.256(2)
- M89** Source—1973 s.24
- M90** Source—1970 s.256(4), (4A); 1972 Sch.15 Pt.II
- M91** Source—1970 s.256(5)
- M92** Source—1970 s.256(6)
- M93** Source—1970 s.256(7)

## 248 Provisions supplementary to section 247.

- (1) <sup>M94</sup>The Board may make regulations with respect to the procedure to be adopted for giving effect to section 247 and as to the information and evidence to be furnished by a company in connection with that section and, subject to the provisions of such regulations, an election under that section (“the election”) shall be made by notice to the inspector which shall set out the facts necessary to show that the companies are entitled to make the election.
- (2) <sup>M95</sup>The election shall not have effect in relation to dividends or other payments paid less than three months after the giving of the notice and before the inspector is satisfied that the election is validly made, and has so notified the companies concerned; but shall be of no effect if within those three months the inspector notifies the companies concerned that the validity of the election is not established to his satisfaction.
- (3) The companies concerned shall have the like right of appeal against any decision that the validity of the election is not established as the company paying the dividends or other payments would have if it were an assessment made on that company, and Part V of the Management Act shall apply accordingly.
- (4) <sup>M96</sup>The election shall cease to be in force if at any time the companies cease to be entitled to make the election, and on that happening each company shall forthwith notify the inspector.
- (5) Either of the companies making the election may at any time give the inspector notice revoking the election; and any such notice shall have effect from the time it is given.
- (6) <sup>M97</sup>The Board shall not make any regulations under subsection (1) above unless a draft of them has been laid before and approved by a resolution of the House of Commons.

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#### Marginal Citations

- M94** Source—1972 s.91(3); 1970 s.257(1)  
**M95** Source—1970 s.257(2)  
**M96** Source—1970 s.257(3), (4)  
**M97** Source—1972 s.91(3)

### *Stock dividends*

#### **249 Stock dividends treated as income.**

- (1) <sup>M98</sup>Subject to subsections (7) to (9) below, this section applies to any of the following share capital, that is to say—
- (a) any share capital issued by a company resident in the United Kingdom in consequence of the exercise by any person of an option conferred on him to receive in respect of shares in the company (whether the last-mentioned shares were issued before or after the coming into force of this section) either a dividend in cash or additional share capital; and
  - (b) any bonus share capital issued by a company so resident in respect of any shares in the company of a relevant class (whether the last-mentioned shares were issued before or after the coming into force of this section).
- (2) For the purposes of subsection (1)(b) above a class of shares is a relevant class if—
- (a) shares of that class carry the right to receive bonus share capital in the company of the same or a different class; and
  - (b) that right is conferred by the terms on which shares of that class were originally issued or by those terms as subsequently extended or otherwise varied.
- (3) Where a company issues any share capital in a case in which two or more persons are entitled thereto, the following provisions of this section *and paragraph 12(1) to (3) of Schedule 19* <sup>F104</sup> shall have effect as if the company had issued to each of those persons separately a part of that share capital proportionate to his interest therein on the due date of issue.
- (4) Subject to the following provisions of this section, where a company issues any share capital in a case in which an individual is beneficially entitled to that share capital, that individual shall be treated as having received on the due date of issue income of an amount which, if reduced by an amount equal to income tax on that income at the <sup>F105</sup>lower rate] for the year of assessment in which that date fell, would be equal to the appropriate amount in cash, and—
- (a) <sup>F106</sup>the individual shall be treated as having paid income tax at the lower rate on that income] or, if his total income is reduced by any deductions, on so much of it as is part of his total income as so reduced;
  - (b) no repayment shall be made of income tax treated by virtue of paragraph (a) above as having been paid; and
  - (c) that income shall be treated <sup>F107</sup><sup>F108</sup>(without prejudice to paragraph (a) above) as if it were income to which section 1A applies, but] shall be treated] for the purposes of sections 348 and 349(1) as not brought into charge to income tax.

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- (5) Where a company issues any share capital to the personal representatives of a deceased person as such during the administration period, the amount of income which, if the case had been one in which an individual was beneficially entitled to that share capital, that individual would have been treated under subsection (4) above as having received shall be deemed for the purposes of Part XVI to be part of the aggregate income of the estate of the deceased.

This subsection shall be construed as if it were contained in Part XVI.

- (6) Where a company issues any share capital to trustees in respect of any shares in the company held by them (or by them and one or more other persons) in a case in which a dividend in cash paid to the trustees in respect of those shares would have been to any extent income to which section 686 applies, then—
- (a) there shall be ascertained the amount of income which, if the case had been one in which an individual was beneficially entitled to that share capital, that individual would have been treated under subsection (4) above as having received; and
  - (b) income of that amount shall be treated as having arisen to the trustees on the due date of issue and as if it had been chargeable to income tax at the <sup>F109</sup>lower rate]; and
  - (c) paragraphs (a) to (c) of subsection (4) above shall, with the substitution of “income” for “total income” and with all other necessary modifications, apply to that income as they apply to income which an individual is treated as having received under that subsection.
- (7) <sup>M99</sup>This section does not apply to—
- (a) any share capital of which the due date of issue is earlier than 6th April 1975; or
  - (b) any share capital issued by a company in respect of shares in the company which confer on the holder a right to convert or exchange them into or for shares in the company of a class which is not a relevant class for the purposes of subsection (1)(b) above where the due date of issue of the share capital so issued precedes the earlier of the following dates, namely—
    - (i) the day next after the earliest date after 5th August 1975 on which conversion or exchange of the shares could be effected by an exercise of that right; and
    - (ii) 6th April 1976 or, in the case of share capital issued by an investment trust, 6th April 1977.
- (8) Where, in a case within subsection (4) above, the share capital in question is issued in respect of shares in the company issued before 6th April 1975 which confer on the holder a right to convert or exchange them into or for shares of a different class, this section shall not apply to so much (if any) of any bonus share capital issued by the company after 5th April 1976 in connection with an exercise of that right as would have been issued if that right had been exercised so as to effect the conversion or exchange of the shares on the earliest possible date after 5th April 1975; and subsections (5) and (6) above shall, where applicable, have effect accordingly.
- (9) Where any bonus share capital falling within subsection (1)(b) above is after 5th April 1975 converted into or exchanged for shares in the company in question of a different class, then—

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- (a) this section shall not apply to any shares in the company issued, in connection with the conversion or exchange, in consideration of the cancellation, extinguishment or acquisition by the company of that bonus share capital; but
- (b) section 230(a) and (b) shall apply to any shares in the company issued, in connection with the conversion or exchange, in consideration of the cancellation, extinguishment or acquisition by the company of so much of that bonus share capital as caused an individual to be treated under subsection (4) above as having received an amount of income on the due date of issue (or would have done so if the case had been one in which an individual was beneficially entitled to that share capital).

#### Textual Amendments

- F104** Words repealed by 1989 s.187 and Sch.17 Part V in relation to accounting periods beginning after 31 March 1989.
- F105** Words in s. 249(4) substituted (27.7.1993 with application for the year 1993-94 and subsequent years of assessment) by 1993 c. 34, s. 77(3)(a)(i)(5)
- F106** Words in s. 249(4)(a) substituted (with effect in accordance with s. 121(8) of the amending Act) by Finance Act 1996 (c. 8), s. 122(5)(b)
- F107** Words in s. 249(4)(c) inserted (16.7.1992 with application for the year 1992-93 and subsequent years of assessment) by Finance (No. 2) Act 1992 (c. 48), s. 19(4)(7)
- F108** Words in s. 249(4)(c) substituted (with effect in accordance with Sch. 6 para. 28 of the amending Act) by Finance Act 1996 (c. 8), Sch. 6 para. 6
- F109** Words in s. 249(6)(b) substituted (27.7.1993 with application for the year 1993-94 and subsequent years of assessment) by 1993 c. 34, s. 77(3)(b)(5)

#### Modifications etc. (not altering text)

- C42** See Sch.10 para.5—*profit sharing schemes*.

#### Marginal Citations

- M98** Source—1975 (No.2) s.34(1)-(6)  
**M99** Source—1975 (No.2) s.34(9)-(11)

## 250 Returns.

- (1) <sup>M100</sup> A company shall for each of its accounting periods make, in accordance with this section, returns to the inspector of all share capital to which section 249 applies (“relevant share capital”) and which was issued by it in that period.
- (2) <sup>M101</sup> A return shall be made for—
  - (a) each complete quarter falling within the accounting period, that is to say, each of the periods of three months ending with 31st March, 30th June, 30th September or 31st December which falls within that period;
  - (b) each part of the accounting period which is not a complete quarter and ends on the first (or only), or begins immediately after the last (or only), of those dates which falls within the accounting period;
  - (c) if none of those dates falls within the accounting period, the whole accounting period.
- (3) A return for any period for which a return is required to be made under this section (a “return period”) shall be made within 30 days from the end of that period.



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- (4) <sup>M102</sup>No return need be made under this section by a company for any period in which it has issued no relevant share capital.
- (5) The return made by a company for any return period shall state—
- (a) the date on which any relevant share capital issued by it in the period was issued and, if different, the date on which the company was first required to issue it;
  - (b) particulars of the terms on which any such share capital so issued by it was issued; and
  - (c) what is, in relation to any such share capital so issued, the appropriate amount in cash.
- (6) If it appears to the inspector that a company ought to have, but has not, made a return for any return period, he may (notwithstanding subsection (4) above) by notice require the company to make a return for that period within such time (not being less than 30 days) as may be specified in the notice; and a return required to be made under this subsection shall, if such be the case, state that no relevant share capital was issued in the period in question.
- (7) As regards any share capital included in a return made under this section by a company, the inspector may by notice require the company to furnish him within such time (not being less than 30 days) as may be specified in the notice with such further information relating thereto as he may reasonably require for the purposes of sections 230 and 249, this section and section 251 and paragraph 12 of Schedule 19 <sup>F110</sup>.

#### Textual Amendments

**F110** Words in s. 250(7) repealed by Finance Act 1989 (c. 26), s. 187, Sch. 17 Part V (in relation to accounting periods beginning after 31 March 1989).

#### Marginal Citations

**M100** Source—1975 (No.2) Sch.8 7(1)

**M101** Source—1975 (No.2) Sch.8 7(2)

**M102** Source—1975 (No.2) Sch.8 7(3)-(6)

## 251 Interpretation of sections 249 and 250.

<sup>M103</sup>(1) For the purposes of sections 249 and 250 —

- (a) “bonus share capital”, in relation to a company, means share capital issued by the company otherwise than wholly for new consideration or such part of any share capital so issued as is not properly referable to new consideration;
- (b) “due date of issue”, in relation to any share capital issued by a company, means the earliest date on which the company was required to issue that share capital;
- (c) an option to receive either a dividend in cash or additional share capital is conferred on a person not only where he is required to choose one or the other, but also where he is offered the one subject to a right, however expressed, to choose the other instead, and a person’s abandonment of, or failure to exercise, such a right is to be treated as an exercise of the option;

and in section 254 the definition of “security” (in subsection (1)) and subsections (5) and (11) shall not apply.

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- (2) <sup>M104</sup>In sections 249 and 250 “the appropriate amount in cash”, in relation to any share capital to which section 249 applies—
- (a) in a case where that share capital was issued —
- (i) in consequence of the exercise of an option such as is mentioned in section 249(1)(a); or
- (ii) in a quantity which is determined by or determines the amount of a dividend in cash payable in respect of share capital in the company of a different class,
- and where the relevant cash dividend is not substantially greater nor substantially less than the market value of that share capital on the relevant date, means the amount of the relevant cash dividend or, in a case in which section 249(3) applies, a due proportion of that amount;
- (b) in a case where paragraph (a) above does not apply, means the market value of that share capital on the relevant date or, in a case in which section 249(3) applies, a due proportion of that market value.
- (3) <sup>M105</sup>In subsection (2) above—
- “the relevant cash dividend”, in a case falling within subsection (2)(a)(i) above, means the cash dividend mentioned in section 249(1)(a) or, in a case falling within subsection (2)(a)(ii) above, means the cash dividend there mentioned (subject to subsection (4) below);
- “the relevant date”, in the case of share capital listed in the Stock Exchange Daily Official List, means the date of first dealing and, in the case of share capital not so listed, means the due date of issue; and
- “market value”, in relation to any share capital in a company, means, subject to the provisions applied by subsections (5) and (6) below, the price which that share capital might reasonably be expected to fetch on a sale in the open market.
- (4) <sup>M106</sup>Where, in a case falling within subsection (2)(a)(ii) above, the company on the occasion on which it issues the share capital in question also issues a dividend in cash (“the accompanying cash dividend”) in respect of the shares in the company in respect of which that share capital is issued, “the relevant cash dividend” means the cash dividend mentioned in subsection (2)(a)(ii) above reduced by the amount of the accompanying cash dividend.
- (5) <sup>M107</sup>Section [<sup>F111</sup>272(3) of the 1992 Act] (market value of shares or securities [<sup>F112</sup>quoted] in the Stock Exchange Daily Official List) shall apply for the purposes of subsection (3) above as it applies for the purposes of that Act.
- (6) In the case of shares or securities which are not quoted on a recognised stock exchange at the time when their market value for the purposes of subsection (2) above falls to be determined, subsection (3) of section [<sup>F111</sup>273 of the 1992 Act] shall apply with respect to the determination of their market value for those purposes as it applies with respect to a determination falling within subsection (1) of that section.

#### Textual Amendments

**F111** Words in s. 251(5)(6) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 14(16)** (with ss. 60, 101(1), 171, 201(3)).

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**F112** Word in s. 251(5) substituted (with effect in accordance with Sch. 38 para. 8(2) of the amending Act) by Finance Act 1996 (c. 8), Sch. 38 para. 8(1)

**Modifications etc. (not altering text)**

**C43** S. 251(1)(c) applied (19.3.1997) by Finance Act 1997 (c. 16), Sch. 7 para. 4(2)

**Marginal Citations**

**M103** Source—1975 (No.2) s.34(8)(a)-(d)

**M104** Source—1975 (No.2) Sch.8 1(1)-(3)

**M105** Source—1975 (No.2) Sch.8 1(4), 2(1)

**M106** Source—1970 (No.2) Sch.8 1(5)

**M107** Source—1975 (No.2) Sch.8 2(2), (3); 1979(C) Sch.7

VALID FROM 06/04/2003

*<sup>F113</sup> Approved share incentive plans*

**Textual Amendments**

**F113** Ss. 251A-251D and preceding cross-heading inserted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 34 (with Sch. 7)

**251A Application of sections 251B and 251C**

- (1) Sections 251B and 251C apply for income tax purposes in connection with shares awarded under an approved share incentive plan.
- (2) But those sections do not apply to an individual if, at the time of the award of shares in question—
  - (a) the earnings from the eligible employment are not (or would not be if there were any) general earnings to which any of the charging provisions of Chapter 4 or 5 of Part 2 of ITEPA 2003 apply, or
  - (b) in the case of an award made before 6th April 2003, he was not chargeable to tax under Schedule E in respect of the employment by reference to which he met the requirement of paragraph 14 of Schedule 8 to the Finance Act 2000 (employee share ownership plans: the employment requirement) in relation to the plan.
- (3) For the purposes of subsection (2)—
  - (a) “the eligible employment” means the employment which results in the individual meeting the employment requirement in relation to the plan, and
  - (b) the reference to any of the charging provisions of Chapter 4 or 5 of Part 2 of ITEPA 2003 has the same meaning as it has in the employment income Parts of that Act (see sections 14(3) and 20(3) of that Act).

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**Modifications etc. (not altering text)**

**C44** Ss. 251A-251D applied (6.4.2003 with effect in accordance with s. 723(1) of the affecting Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 2 para. 87** (with Sch. 7)

**251B Treatment of cash dividend retained and then later paid out**

- (1) Where 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), the participant is chargeable to tax on the appropriate amount under Schedule F for the year of assessment in which the dividend is paid over.
- (2) In subsection (1), the “appropriate amount” means the amount of the dividend paid over (except to the extent that it represents a foreign cash dividend).
- (3) For the purposes of determining the tax credit (if any) to which the participant is entitled under section 231, the reference in subsection (1) of that section to the tax credit fraction in force when the distribution is made shall be read as a reference to the fraction in force when the dividend is paid over to the participant.

**Modifications etc. (not altering text)**

**C45** Ss. 251A-251D applied (6.4.2003 with effect in accordance with s. 723(1) of the affecting Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 2 para. 87** (with Sch. 7)

**251C Charge on dividend shares ceasing to be subject to plan**

- (1) If dividend shares cease to be subject to the plan before the end of the period of three years beginning with the date on which the shares were acquired on the participant’s behalf, the participant is chargeable to tax on the appropriate amount under Schedule F for the year of assessment in which the shares cease to be subject to the plan.
- (2) In subsection (1) “the appropriate amount” means the amount of the cash dividend applied to acquire the shares on the participant’s behalf (except to the extent that it represents a foreign cash dividend).
- (3) For the purposes of determining the tax credit (if any) to which the participant is entitled under section 231, the reference in subsection (1) of that section to the tax credit fraction in force when the distribution is made shall be read as a reference to the fraction in force when the shares cease to be subject to the plan.
- (4) Where the participant is charged to tax under this section the tax due shall be reduced by the amount or aggregate amount of any tax paid on any capital receipts under section 501 of ITEPA 2003 in respect of those shares.
- (5) In subsection (4) “the tax due” means the amount of tax due after deduction of the tax credit determined under subsection (3).
- (6) This section has effect subject to section 498 of ITEPA 2003 (no charge on shares ceasing to be subject to plan in certain circumstances).

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**Modifications etc. (not altering text)**

**C46** Ss. 251A-251D applied (6.4.2003 with effect in accordance with s. 723(1) of the affecting Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 2 para. 87** (with Sch. 7)

**251D Interpretation of sections 251A to 251C**

- (1) Sections 251A to 251C and this section form part of the SIP code (see section 488 of ITEPA 2003 (approved share incentive plans)).
- (2) Accordingly, expressions used in those sections and contained in the index at the end of Schedule 2 to that Act (approved share incentive plans) have the meaning indicated by that index.
- (3) In sections 251B and 251C “foreign cash dividend” means a cash dividend paid in respect of plan shares in a company not resident in the United Kingdom.]

**Modifications etc. (not altering text)**

**C47** Ss. 251A-251D applied (6.4.2003 with effect in accordance with s. 723(1) of the affecting Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 2 para. 87** (with Sch. 7)

*Supplemental*

**M108 252. Rectification of excessive set-off etc. of ACT or tax credit.**

- (1) If an inspector discovers that—
  - (a) any set-off of advance corporation tax under section 239, or
  - (b) any set-off or payment of tax credit,ought not to have been made, or is or has become excessive, the inspector may make any such assessments as may in his judgment be required for recovering any tax that ought to have been paid or any payment of tax credit that ought not to have been made and generally for securing that the resulting liabilities to tax (including interest on unpaid tax) of the persons concerned are what they would have been if only such set-offs or payments had been made as ought to have been made.
- (2) In any case where—
  - (a) interest has been paid under section 826 on a payment of tax credit; and
  - (b) interest ought not to have been paid on that payment, either at all or to any extent,an assessment under this section may be made for recovering any interest that ought not to have been paid.
- (3) Where—
  - (a) an assessment is made under this section to recover tax credit paid to a company in respect of franked investment income received by the company in an accounting period; and
  - (b) more than one payment of tax credit has been made in respect of that period,

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any sum recovered shall as far as possible be treated as relating to a payment of tax credit made later rather than to a payment made earlier.

- (4) Subsections (2) and (3) above shall have effect in relation to payments of tax credit claimed in respect of accounting periods ending after such day as may be appointed for the purpose of those subsections by order made by the Treasury, not being earlier than 31st March 1992.
- (5) The Management Act shall apply to any assessment under this section for recovering a payment of tax credit or interest on such a payment as if it were an assessment to income tax for the year of assessment, or in the case of a company, corporation tax for the accounting period, in respect of which the payment was claimed, and as if that payment represented a loss of tax to the Crown; and any sum charged by any such assessment shall, subject to any appeal against the assessment, be due within 14 days after the issue of the notice of assessment.

#### Subordinate Legislation Made

- P1** [S. 252\(4\)](#) power exercised: 30.9.1993 appointed for the purposes of [s. 252\(2\)\(3\)](#) by [S.I. 1992/3066](#), [art. 2\(2\)\(b\)](#).

#### Modifications etc. (not altering text)

- C48** [S. 252](#) modified (27.7.1993) by [1993 c. 34, s. 80\(8\)](#)
- C49** [S. 252](#) modified (16.8.1995) by [The Venture Capital Trust Regulations 1995 \(S.I. 1995/1979\)](#), [reg. 15\(4\)\(5\)](#)
- C50** [S. 252](#) applied (16.8.1995) by [The Venture Capital Trust Regulations 1995 \(S.I. 1995/1979\)](#), [reg. 20](#)
- C51** [S. 252](#) modified (31.7.1997) by [Finance \(No. 2\) Act 1997 \(c. 58\)](#), [s. 35\(10\)](#)
- C52** See 1989 s.157(1) for reckonable date for interest charge under 1970(M) s.86 where assessment made to recover corporation tax payable as the result of a claim under s.240 made on or after 14 March 1989. (Ceases to have effect for accounting periods ending after the day appointed for the purposes of s.86).

#### Marginal Citations

- M108** Source—1972 s.102; (No.2) s.88(5)-(7)

### 253 Power to modify or replace section 234(5) to (9) and Schedule 13.

<sup>M109</sup>(1) The Board may by regulations—

- (a) modify, supplement or replace any of the provisions of subsections (5) to (9) of section 234 for the purpose of requiring companies resident in the United Kingdom to make returns and give information to the inspector in respect of distributions made by them, whether before or after the passing of this Act, which are not qualifying distributions;
- (b) modify, supplement or replace any of the provisions of Schedule 13 for the purpose of regulating the time and manner in which advance corporation tax is to be accounted for and paid or the manner in which effect is to be given to section 241(1) to (3);

and references in this Act and in any other enactment to section 234(5) to (9) and to Schedule 13 shall be construed as including references to any such regulations.

- (2) Without prejudice to the generality of subsection (1) above, regulations under that subsection may, in relation to advance corporation tax, modify any provision of

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Parts II to VI of the Management Act or apply any such provision with or without modifications.

- (3) Regulations under this section may—
- (a) make different provision for different descriptions of companies and for different circumstances and may authorise the Board, where in their opinion there are special circumstances justifying it, to make special arrangements as respects advance corporation tax or the repayment of income tax borne by a company or the payment to a company of amounts in respect of any tax credit to which it is entitled;
  - (b) include such transitional and other supplemental provisions as appear to the Board to be expedient or necessary.
- (4) The Board shall not make any regulations under this section unless a draft of them has been laid before and approved by a resolution of the House of Commons.

**Marginal Citations**

**M109** Source—1972 s.108

## 254 Interpretation of Part VI.

- (1) <sup>M110</sup>In this Part, except where the context otherwise requires—
- “new consideration” means, subject to subsections (5) and (6) below, consideration not provided directly or indirectly out of the assets of the company, and in particular does not include amounts retained by the company by way of capitalising a distribution;
  - “security” includes securities not creating or evidencing a charge on assets, and interest paid by a company on money advanced without the issue of a security for the advance, or other consideration given by a company for the use of money so advanced, shall be treated as if paid or given in respect of a security issued for the advance by the company;
  - “share” includes stock, and any other interest of a member in a company;
- and in this section “a 90 per cent. group” means a company and all of its 90 per cent. subsidiaries.
- (2) <sup>M111</sup>In this Part, the expressions “in respect of shares in the company” and “in respect of securities of the company”, in relation to a company which is a member of a 90 per cent. group, mean respectively in respect of shares in that company or any other company in the group and in respect of securities of that company or any other company in the group.
- (3) Without prejudice to section 209(2)(b) as extended by subsection (2) above, in relation to a company which is a member of a 90 per cent. group, “distribution” includes anything distributed out of assets of the company (whether in cash or otherwise) in respect of shares in or securities of another company in the group.
- (4) Nothing in subsections (2) and (3) above shall require a company to be treated as making a distribution to any other company which is in the same group and is resident in the United Kingdom.
- (5) <sup>M112</sup>Where share capital has been issued at a premium representing new consideration, any part of that premium afterwards applied in paying up share capital shall be treated

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as new consideration also for that share capital, except in so far as the premium has been taken into account under section 211(5) so as to enable a distribution to be treated as a repayment of share capital.

- (6)<sup>M113</sup> Subject to subsection (7) below, no consideration derived from the value of any share capital or security of a company, or from voting or other rights in a company, shall be regarded for the purposes of this Part as new consideration received by the company unless the consideration consists of—
- (a) money or value received from the company as a qualifying distribution;
  - (b) money received from the company as a payment which for those purposes constitutes a repayment of that share capital or of the principal secured by the security; or
  - (c) the giving up of the right to the share capital or security on its cancellation, extinguishment or acquisition by the company.
- (7) No amount shall be regarded as new consideration by virtue of subsection (6)(b) or (c) above in so far as it exceeds any new consideration received by the company for the issue of the share capital or security in question or, in the case of share capital which constituted a qualifying distribution on issue, the nominal value of that share capital.
- (8)<sup>M114</sup> Where two or more companies enter into arrangements to make distributions to each other's members, all parties concerned (however many) may for the purposes of this Part be treated as if anything done by any one of those companies had been done by any of the others.
- (9)<sup>M115</sup> A distribution shall be treated under this Part as made, or consideration as provided, out of assets of a company if the cost falls on the company.
- (10)<sup>M116</sup> References in this Part to issuing share capital as paid up apply also to the paying up of any issued share capital.
- (11)<sup>M117</sup> Where securities are issued at a price less than the amount repayable on them, and are not [<sup>F114</sup>listed] on a recognised stock exchange, the principal secured shall not be taken for the purposes of this Part to exceed the issue price, unless the securities are issued on terms reasonably comparable with the terms of issue of securities so [<sup>F114</sup>listed].
- (12)<sup>M118</sup> For the purposes of this Part a thing is to be regarded as done in respect of a share if it is done to a person as being the holder of the share, or as having at a particular time been the holder, or is done in pursuance of a right granted or offer made in respect of a share; and anything done in respect of shares by reference to share holdings at a particular time is to be regarded as done to the then holders of the shares or the personal representatives of any share holder then dead.

This subsection shall apply in relation to securities as it applies in relation to shares.

#### Textual Amendments

**F114** Words in s. 254(11) substituted (with effect in accordance with Sch. 38 para. 6(6) of the amending Act) by Finance Act 1996 (c. 8), Sch. 38 para. 6(1)(2)(d)

#### Marginal Citations

**M110** Source—1970 s.237(1), (3), (5); 1972 Sch.22 10(4)

**M111** Source—1972 Sch.22 10(1)-(3)

**M112** Source—1970 s.237(1)



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**M113** Source—1972 Sch.22 8  
**M114** Source—1972 Sch.22 9  
**M115** Source—1970 s.237 (2)  
**M116** Source—1970 s.237(4)  
**M117** Source—1970 s.237(6)  
**M118** Source—1970 s.237(7)

## 255 “Gross rate” and “gross amount” of distributions to include ACT.

- <sup>M119</sup>(1) Where any right or obligation created before 6th April 1973 is expressed by reference to a dividend at a gross rate or of a gross amount, that right or obligation shall continue to have effect, in relation to a dividend payable on or after that date, as if the reference were to a dividend of an amount which, when there is added to it such proportion thereof as corresponds to the rate of advance corporation tax in force on that date, that is to say, 6th April 1973, is equal to a dividend at that gross rate or of that gross amount.
- (2) Subsection (1) above shall apply with the necessary modifications to a dividend partly at a gross rate or of a gross amount and shall apply to any distribution other than a dividend as it applies to a dividend.

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### Marginal Citations

**M119** Source—1972 Sch.23 18; 1976 s.46(1)

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