



# Income and Corporation Taxes Act 1988

## 1988 CHAPTER 1

### PART VI

#### COMPANY DISTRIBUTIONS, TAX CREDITS ETC

### CHAPTER V

#### ADVANCE CORPORATION TAX AND FRANKED INVESTMENT INCOME

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

(1) 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);

“surplus of franked investment income” means any such excess as is mentioned in subsection (3) of section 241 (calculated without regard to franked investment income which by virtue of subsection (5) of that section cannot be used to frank distributions);

“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.

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- (2) 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.
- (3) References in this Chapter to using franked investment income to frank distributions of a company shall be construed in accordance with section 241(5).
- (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) 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.

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

- (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.

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) Effect shall be given to subsections (1) and (4) above as if on a claim in that behalf by the company and, for that purpose, a return made by the company under section 11

of the Management Act containing particulars of advance corporation tax or surplus advance corporation tax which falls to be dealt with under those subsections shall be treated as a claim.

- (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) This section has effect subject to subsections (5) to (7) of section 430 and the following provisions of this Chapter.

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

- (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 and the advance corporation tax has not been repaid, it may, on making a claim, surrender the benefit of the whole or any part of that amount—
  - (a) to any company which was a subsidiary of the surrendering company throughout that accounting period, or
  - (b) in such proportions as the surrendering company may determine, to any two or more companies which were subsidiaries of the surrendering company throughout that period.
- (2) 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) 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) 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.

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- (5) 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.
- (6) Any claim under this section shall be made within six years after the end of the accounting period to which it relates and shall require the consent, notified to the inspector in such form as the Board may require, of the subsidiary or subsidiaries concerned.
- (7) No amount of advance corporation tax which has been dealt with under section 239(3) shall be available for the purposes of a claim under this section; and no amount of advance corporation tax the benefit of which has been surrendered under this section shall be treated for the purposes of that section as advance corporation tax paid by the surrendering company.
- (8) 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
  - (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) 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) 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.

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

- (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) If the amount of franked investment income received by a company in an accounting period exceeds the amount of the franked payments made 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 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 (that is to say, used in accordance with this section and Schedule 13 so as to relieve the company from, or obtain repayment of, advance corporation tax for which the company would otherwise be liable) 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.

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

- (1) Where a company has a surplus of franked investment income for any accounting period—

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- (a) 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
  - (b) 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 for purposes of section 241(3); and
  - (c) 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.
- (2) 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 393(2);
  - (b) the deduction of charges on income under section 338 or paragraph 5 of Schedule 4;
  - (c) the deduction of expenses of management under section 75 or 76;
  - (d) the setting of certain capital allowances against total profits under section 74(3) of the 1968 Act;
  - (e) the setting of losses against income under section 573(2).
- (3) 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) Where a claim under this section relates to section 393(2) or 573(2) of this Act or to section 74(3) of the 1968 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 393(3) or 573(3) of this Act or by section 74(4) of the 1968 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) 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) 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);
- 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) 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 section 393(2), two years from the end of the accounting period in which the trading loss is incurred;
  - (b) if and so far as the purpose for which the claim is made is the deduction of charges on income under section 338 or paragraph 5 of Schedule 4 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 section 74(3) of the 1968 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.
- (9) 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 by virtue of section 241(5) cannot be used to frank distributions of a company shall be left out of account.

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

- (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) or 394, 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

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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.
- (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.
- (5) If the claim relates to section 394 and an accounting period of the company falls partly outside the three years mentioned in subsection (1) of that section, then—
  - (a) the restriction imposed by subsection (2) of that section on the amount of the reduction that may be made in the trading income of that period 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 trading income of the accounting period by virtue of 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 the three years in question.
- (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,
  - (b) if and so far as the purpose for which the claim is made is the allowance of relief under section 394, six years from the time when the company ceases to carry on the trade.
- (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.

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

- (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.



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

- (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 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.
- (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—
- “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.

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

- (1) If, at the beginning of any financial year, the basic 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 basic rate percentage for the appropriate year of assessment; or
  - (b) 5th August 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) In subsections (1) and (2) above “the basic rate percentage for the appropriate year of assessment”, in relation to a financial year, means the percentage at which income tax at the basic rate is charged for the year of assessment which begins on 6th April in that financial year.
- (5) 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,
 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.